

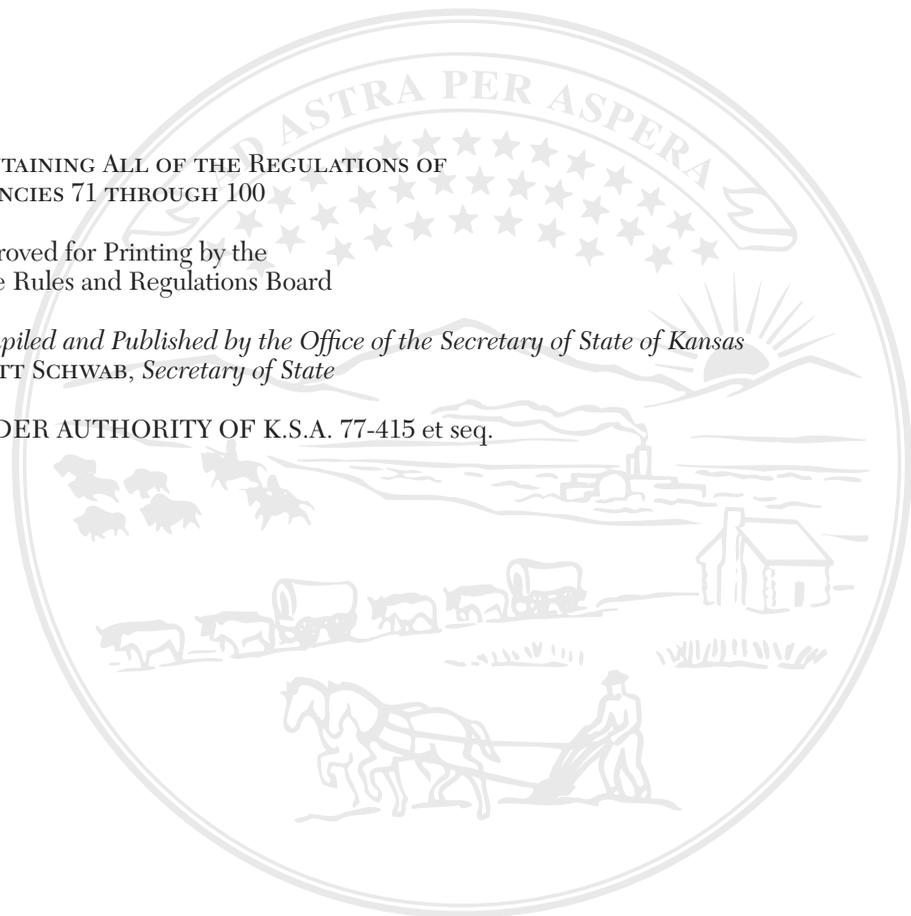
# Kansas Administrative Regulations

CONTAINING ALL OF THE REGULATIONS OF  
AGENCIES 71 THROUGH 100

Approved for Printing by the  
State Rules and Regulations Board

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

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



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## AUTHENTICATION OF RULES AND REGULATIONS

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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 2022 Volume 4 of the Kansas Administrative Regulations; and do hereby certify that this publication of rules and regulations contains all rules and regulations for agencies 71 through 100 approved for printing by the State Rules and Regulations Board and otherwise complies with K.S.A. 77-415 *et seq.* and acts amendatory thereof.

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



DEREK SCHMIDT,  
*Attorney General*



SCOTT SCHWAB,  
*Secretary of State*

[SEAL]

## **EXPLANATORY PREFACE**

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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**

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

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

## **SALES**

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SCOTT SCHWAB, *Secretary of State*

## COMMENTARY

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

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

To find the most recent version of a regulation:

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

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

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

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

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

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

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

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

SCOTT SCHWAB, *Secretary of State*

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\**Editor's note.*

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*\*Editor's note only.*

# Agency 71

## Kansas Dental Board

### Articles

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### Article 1.—GENERAL RULES

**71-1-1.** (Authorized by K.S.A. 65-1428, 65-1429; effective Jan. 1, 1966; revoked Feb. 20, 2004.)

**71-1-2.** (Authorized by K.S.A. 65-1427, 65-1428; effective Jan. 1, 1966; amended, E-77-9, March 19, 1976; amended Feb. 15, 1977; amended May 1, 1980; revoked Feb. 20, 2004.)

**71-1-3.** (Authorized by K.S.A. 65-1426; implementing K.S.A. 65-1427, 65-1428, 74-1405; effective Jan. 1, 1966; amended May 1, 1983; amended Nov. 7, 1997; revoked Feb. 20, 2004.)

#### **71-1-4. Requirements for reexamination.**

(a) Each applicant who, upon taking any examination or any section thereof a second time, fails to obtain a passing grade on that examination or section of an examination shall obtain additional or remedial instruction. The dental board shall determine the amount and type of such required instruction based upon the performance of the applicant on the prior examinations. The required instruction shall be completed in a course and at a school of dentistry or dental hygiene approved by the board. The applicant shall submit a written statement, signed by an authorized member of the faculty of that school of dentistry or dental hygiene, advising the board or its designee that the applicant is qualified for reexamination.

(b) If any applicant fails to pass the examination or any section thereof on reexamination, following

compliance with subsection (a) above, the board may, for good cause shown by the applicant, authorize further reexamination. In such case, the board may accept the results of any reexamination of that applicant conducted thereafter by the national board of dental examiners or by any other testing agency, the results of which are otherwise accepted by the board. (Authorized by and implementing K.S.A. 1983 Supp. 65-1429; effective Jan. 1, 1966; amended May 1, 1984.)

**71-1-5.** (Authorized by K.S.A. 65-1434; effective Jan. 1, 1966; amended, E-77-9, March 19, 1976; amended Feb. 15, 1977; amended May 1, 1980; amended May 1, 1981; revoked May 1, 1985.)

**71-1-6.** (Authorized by K.S.A. 65-1434; effective Jan. 1, 1966; amended May 1, 1981; revoked May 1, 1985.)

**71-1-7.** (Authorized by K.S.A. 65-1426, 65-1428; effective Jan. 1, 1966; revoked May 1, 1981.)

**71-1-8.** (Authorized by K.S.A. 65-1427; effective Jan. 1, 1966; amended May 1, 1979; revoked Feb. 20, 2004.)

**71-1-9. Examination on dental law of Kansas.** All candidates for a Kansas dental license as well as all candidates for a Kansas dental hygienist's license will be required to pass a satisfactory examination on the pertinent provisions of the Kansas dental law pertaining to the practice of dentistry and the practice of dental hygiene.

(Authorized by K.S.A. 65-1426, 65-1427, 65-1428, 65-1455; effective Jan. 1, 1966.)

**71-1-10.** (Authorized by K.S.A. 65-1459; effective Jan. 1, 1966; revoked Feb. 20, 2004.)

**71-1-11.** (Authorized by K.S.A. 65-1427, 65-1429, 65-1447; effective Jan. 1, 1966; revoked Feb. 20, 2004.)

**71-1-12.** (Authorized by K.S.A. 65-1431; effective Jan. 1, 1966; revoked May 1, 1985.)

**71-1-13.** (Authorized by and implementing K.S.A. 65-1438, 74-1406; effective May 1, 1980; revoked March 6, 1995.)

**71-1-14.** (Authorized by and implementing K.S.A. 65-1437; effective May 1, 1984; amended May 1, 1986; revoked May 1, 1988.)

**71-1-15. Dental recordkeeping requirements.** For the purposes of K.S.A. 65-1436 and amendments thereto, each licensee shall maintain for each patient an adequate dental record for 10 years after the date any professional service was provided. Each record shall disclose the justification for the course of treatment and shall meet all of the following minimum requirements: (a) It is legible.

(b) It contains only those terms and abbreviations that are comprehensible to similar licensees.

(c) It contains adequate identification of the patient.

(d) It indicates the date any professional service was provided.

(e) It contains pertinent and significant information concerning the patient's condition.

(f) It reflects what examinations, vital signs, and tests were obtained, performed, or ordered and the findings and results of each.

(g) It indicates the initial diagnosis and the patient's initial reason for seeking the licensee's services.

(h) It indicates the medications prescribed, dispensed, or administered and the quantity and strength of each.

(i) It reflects the treatment performed or recommended.

(j) It documents the patient's progress during the course of treatment provided by the licensee. (Authorized by K.S.A. 74-1406; implementing K.S.A. 65-1436; effective May 1, 1988; amended Feb. 20, 2004.)

**71-1-16.** (Authorized by K.S.A. 74-1406(l); implementing K.S.A. 65-1423(g); effective May 10, 1993; amended Sept. 6, 1994; revoked Nov. 7, 1997.)

**71-1-17.** (Authorized by K.S.A. 74-1406(l); implementing K.S.A. 65-1423(g); effective May 10, 1993; amended Sept. 6, 1994; revoked Nov. 7, 1997.)

**71-1-18. Sterilization and infection control.** (a) As used in this regulation, the following definitions shall apply:

(1) "Dental health care worker" means dentist, dental hygienist, dental assistant, or other employee of the dentist, or any other person who performs or participates in an invasive or exposure-prone procedure or functions ancillary to invasive procedures.

(2) "Exposure-prone procedure" means a procedure in which there is an increased risk of percutaneous injury to the dental health care worker by virtue of digital palpation of a needle tip or other sharp instrument in a body cavity or simultaneous presence of the dental health care worker's fingers and a needle or other sharp instruments in a poorly visualized or highly confined anatomic site, or any other circumstance in which there is a significant risk of contact between the blood or body fluids of the dental health care worker and the blood or body fluids of the patient.

(3) "HBsAg seropositive" means that the presence of the hepatitis B antigen has been confirmed by a test meeting the criteria of federal centers for disease control.

(4) "HBV" means the hepatitis B virus.

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

(6) "HIV seropositive" means that the presence of HIV antibodies has been confirmed by a test meeting the criteria of the federal centers for disease control.

(7) "Invasive procedure" means any surgical or other diagnostic or therapeutic procedure involving manual or instrumental contact with or entry into any blood, body fluids, cavity, internal organ, subcutaneous tissue, mucous membrane, or percutaneous wound of the human body.

(b) Each dental health care worker who performs or participates in an invasive or exposure-prone procedure shall observe and adhere to infection control practices and universal blood and body fluid precautions. For the purpose of in-

fection control, all dental staff members and all patients shall be considered potential carriers of communicable diseases. Infection control procedures shall be required to prevent disease transmission from patient to doctor and staff, doctor and staff to patient, and patient to patient. Each dentist shall be required to comply with the applicable standard of care in effect at the time of treatment. Precautions shall include the following minimum standards.

(1) Each dental health care worker shall routinely use protective barriers and surface decontamination.

(A) Gloves shall be used by the dentist and direct care staff during any treatment involving procedures or contact with items potentially contaminated with the patient's bodily fluids or other dental debris. Fresh gloves shall be used for each patient. Gloves that have been used for dental treatment shall not be reused for any other purpose.

(B) Surgical masks and protective eyewear or chin-length plastic face shields shall be worn to protect the face, the oral mucosa, and the nasal mucosa when splashing or splattering of blood or other body fluids is likely.

(C) Reusable or disposable gowns, laboratory coats, or uniforms shall be worn when clothing is likely to be soiled with blood or other body fluids. If reusable gowns are worn, they may be washed, using a normal laundry cycle. Gowns shall be changed at least daily or when visibly soiled with blood.

(D) Surface decontamination and disinfection or protective barriers shall be used in areas of the dental operatory that may be contaminated by blood or saliva during treatment and are not removable to be sterilized. Contaminated surface coverings shall be removed, discarded, and then replaced with clean material between patients. Surfaces to be covered or decontaminated and disinfected shall include the following:

- (i) The delivery unit;
- (ii) chair controls;
- (iii) light handles;
- (iv) the high-volume evacuator handle;
- (v) x-ray heads and controls;
- (vi) headrests; and
- (vii) instrument trays.

(E) Dental health care workers shall wash their hands after glove removal if the hands have been contaminated by bodily fluids or other dental debris.

(F) Dental health care workers who have exudative lesions or weeping dermatitis shall refrain

from all direct patient care and from handling patient care devices used in exposure-prone invasive procedures, unless covered by an effective barrier.

(2) Dental health care workers shall take appropriate precautions to prevent injuries caused by needles, scalpels, and other sharp instruments during and after procedures. If during a single visit a patient needs multiple injections over time from a single syringe, the needle shall be recapped or placed in a sterile field between each use to avoid the possibility of needlestick injury or needle contamination. Used sharp items shall be placed in puncture-resistant containers for disposal.

(3) Any heat-stable instrument or device that enters tissue or contacts the mucous membranes shall be sterilized. Dental health care workers shall comply with the following sterilization requirements:

(A) Before sterilization, all instruments shall be decontaminated to remove all visible surface contamination, including blood, saliva, tooth and dental restorative material cuttings and debris, soft tissue debris, and bacterial plaque. Decontamination of instruments may be accomplished by a thorough scrubbing with soap and water or detergent, or by using a mechanical device, including an ultrasonic cleaner. Persons involved in cleaning instruments shall take reasonable precautions to prevent injuries.

(B) Heat-stable dental instruments shall be routinely sterilized between patient use by one of the following methods:

- (i) Steam under pressure autoclaves;
- (ii) heat plus pressurized chemical (unsaturated formaldehyde or alcohol);
- (iii) vapor chemoclave;
- (iv) prolonged dry heat exposure;
- (v) dry heat convection sterilizers;
- (vi) ethylene oxide sterilizers; or
- (vii) other equivalent methods.

(C) Biological spore testing devices shall be used on each sterilization unit after each six days of use, but not less often than each month, to verify that all pathogens have been killed. A log of spore testing shall be kept for three years for each sterilization unit.

(D) Items to be sterilized shall include the following:

- (i) Low-speed handpiece contra-angles and prophyl-angles;
- (ii) high-speed handpieces;
- (iii) hand instruments;
- (iv) burs;

- (v) endodontic instruments;
- (vi) air-water syringe tips;
- (vii) high-volume evacuator tips;
- (viii) surgical instruments; and
- (ix) sonic or ultrasonic periodontal scalers.

(E) When sterilizing the heat-stable instruments or devices listed in paragraphs (b)(3)(D)(i) through (ix), each instrument or device shall be placed in a closed bag or container for sterilization and thereafter maintained in that bag or container until immediately before use.

(F) Following the sterilization of heat-stable instruments or devices not listed in paragraphs (b)(3)(D)(i) through (ix), each instrument or device shall be maintained in covered storage until immediately before use.

(G) Nondisposable items used in noninvasive procedures that cannot be heat sterilized shall be decontaminated and disinfected with a chemical sterilant that has been registered by the U.S. Environmental Protection Agency and is tuberculocidal.

(H) Materials, impressions, and intra-oral appliances shall be decontaminated and disinfected before being sent to and upon return from a commercial dental laboratory.

(I) A dental health care worker who is HBeAg seropositive or HIV seropositive, or who otherwise knows or should know that the worker carries and is capable of transmitting HBV or HIV, shall not thereafter perform or participate directly in an exposure-prone procedure unless the worker has sought counsel from an expert review panel. The expert review panel shall be composed of these individuals:

- (i) The dental health care worker's personal physician;
- (ii) an infectious disease specialist with expertise in HIV and HBV transmission;
- (iii) a dentist licensed in the state of Kansas with expertise in procedures performed by the health care worker; and
- (iv) a state of Kansas or local public health official.

(c) Reports and information furnished to the Kansas dental board relative to the HBeAg or HIV status of a dental health care worker shall not be deemed to constitute a public record but shall be deemed and maintained by the board as confidential and privileged as a medical record. These reports and this information shall not be subject to disclosure by means of subpoena in any judicial, administrative, or investigative proceeding, if the dental health care worker adheres to the regula-

tions of the board and is willing to participate in counseling and be reviewed and monitored by the board or its designated agent.

(d) When the board learns that a dental health care worker is HBeAg or HIV seropositive, contact shall be made with that dental health care worker to review the regulations of the board and develop a process of monitoring that individual's practice.

(e) The monitoring of a dental health care worker's HIV or HBV status and discipline of the dental health care worker shall be reported to the Kansas department of health and environment, but shall remain confidential.

(f) During business hours, the office of a licensed dentist may be inspected by the Kansas dental board or its duly authorized agents and employees in order to evaluate compliance with this regulation. A written evaluation shall be given to the licensed person or office representative, and a copy shall be filed with the Kansas dental board. (Authorized by K.S.A. 74-1406; implementing K.S.A. 1998 Supp. 65-1436; effective Dec. 27, 1993; amended Jan. 3, 2000.)

**71-1-19. Proration of fees.** (a) Beginning June 1, 1997, each dentist applying for licensure on or after the first day of January shall pay  $\frac{1}{24}$ th of the biennial renewal fee for each full month remaining in the renewal period, in addition to the application fee.

(b) Beginning June 1, 1997, each dental hygienist applying for licensure on or after the first day of January shall pay  $\frac{1}{24}$ th of the renewal fee for each full month remaining in the renewal period, in addition to the application fee. (Authorized by K.S.A. 65-1447 and 74-1406; implementing K.S.A. 65-1447; effective Nov. 7, 1997.)

**71-1-20. Reinstatement of license fee.** The penalty fee to be paid by any licensee seeking reinstatement of a cancelled license pursuant to K.S.A. 65-1431(e)(2), and amendments thereto, shall be \$200. (Authorized by K.S.A. 65-1426; implementing K.S.A. 1998 Supp. 65-1431, as amended by L. 1999, Ch. 149, § 5; effective May 5, 2000.)

**71-1-21. Suspension, termination, or denial of licensee's authority to practice when found in contempt of court pursuant to K.S.A. 20-1204a(f).** (a)(1) Within 30 days after receipt of a court-ordered notice and a copy of the court order finding an individual in contempt of court

in a child support proceeding, the individual shall be notified by the board in writing of the board's intent to suspend, deny, or withhold renewal of a license and of the individual's rights and duties under K.S.A. 74-147 and amendments thereto.

(2) If the notice accompanied by the court order provides inadequate information identifying the person in contempt, the person serving the notice shall be promptly contacted by the board for additional information. The 30-day notice shall commence when sufficient information identifying the person to contact is received.

(b) Notice to licensee. The written notice issued by the board shall inform the licensee of the following:

(1) The board's intent to deny, refuse to renew, or suspend the license commencing six months after the date the notice is issued unless the licensee furnishes to the board a court order releasing the individual from the contempt citation; and

(2) if the individual does not furnish the release before the expiration of the six-month period, the board's intent to commence proceedings to deny the issuance of, to refuse to renew, or to suspend the license following the summary procedure stated in K.S.A. 77-537 and amendments thereto.

(c) Temporary license.

(1) If an individual has applied for issuance or renewal of a license and is otherwise eligible, a temporary license shall be issued by the board and shall accompany the notice issued pursuant to subsection (b). The temporary license shall be valid for six months after the date of the notice issued according to subsection (b).

(2) If a licensee is eligible to request renewal of a license and has previously received the notice required by subsection (b), the temporary license shall be valid only for the remainder of the six-month period that commenced upon issuance of the notice.

(3) Each temporary license shall include a date of issuance and a date of expiration.

(4) A temporary license shall not be extended, unless the board decides to extend the temporary license for up to 30 days to prevent extreme hardship for a patient of the licensee.

(5) The licensee shall obtain a release from the court that found the individual in contempt before the permanent license may be issued or renewed by the board.

(6) The release shall be furnished to the board before the expiration of the temporary license. If the release is not finished within the six-month

period of time, the temporary license shall expire, and either of the following shall occur:

(A) Summary proceedings to deny issuance shall be commenced by the board.

(B) Renewal of the permanent license may be refused by the board.

(d) Hearing.

(1) If the licensee does not provide a copy of the release as specified in paragraph (c)(5) to the board within the six-month time period, the permanent license shall be denied, refused for renewal, or suspended by the board in accordance with the summary proceedings of K.S.A. 77-537 and amendments thereto.

(2)(A) The issues at the hearing shall be limited to the following:

(i) The identity of the individual;

(ii) the validity of the notices pursuant to K.S.A. 74-147 and amendments thereto; and

(iii) the validity of any additional conditions imposed by the board if the conditions are otherwise subject to review.

(B) Any issues related to child support shall not be subject to the board's jurisdiction.

(3) If the board issues an order denying, refusing to renew, or suspending a permanent license of an individual as specified in this subsection, the individual may apply for reinstatement of the application or license, as appropriate, if the individual furnishes a court order releasing the individual from the contempt citation and it is determined by the board that the individual is otherwise eligible for a license.

(e) Fees. If a license is denied, refused for renewal, or suspended, any fees paid by the individual shall not be refunded. (Authorized by K.S.A. 74-1406(l); implementing K.S.A. 1999 Supp. 74-146 and K.S.A. 1999 Supp. 74-147; effective May 5, 2000.)

## Article 2.—SPECIALISTS

**71-2-1.** (Authorized by and implementing K.S.A. 65-1427; effective Jan. 1, 1966; amended, E-77-9, March 19, 1976; amended Feb. 15, 1977; amended May 1, 1980; amended March 27, 1989; revoked Feb. 20, 2004.)

**71-2-2. Branches of dentistry.** The recognized branches of dentistry for which application may be made for a specialist's certificate shall be the following: dental anesthesiology, dental public health, endodontics, oral and maxillofacial pathology, oral and maxillofacial radiology, oral and max-

illofacial surgery, orthodontics, pediatric dentistry, periodontics, and prosthodontics. These branches of dentistry shall be defined as follows: (a) “Dental anesthesiology” means that branch of dentistry dealing with the advanced use of anesthesia, sedation, and pain management to facilitate dental procedures and surgery.

(b) “Dental public health” means that branch of dentistry relating to the science and art of preventing and controlling dental diseases and promoting dental health through organized community efforts. Dental public health is the form of dental practice that serves the community rather than individual patients. This branch of dentistry is concerned with the dental health education of the public, with applied dental research, and with the administration of group dental care programs as well as the prevention and control of dental diseases on a community basis.

(c) “Endodontics” means that branch of dentistry concerning the morphology, physiology, and pathology of the human dental pulp and periradicular tissues. The study and practice encompass the basic and clinical sciences, including the biology of the normal pulp; the etiology, diagnosis, prevention, and treatment of diseases and injuries of the pulp; and associated periradicular conditions.

(d) “Oral and maxillofacial pathology” means that branch of dentistry concerning the nature, identification, and management of diseases affecting the oral and maxillofacial regions. This branch is a science that investigates the causes, processes, and effects of these diseases. The practice of oral and maxillofacial pathology includes the research and diagnosis of diseases using clinical, radiographic, microscopic, biochemical, and other examinations.

(e) “Oral and maxillofacial radiology” means that branch of dentistry concerning the production and interpretation of images and data produced by all forms of radiant energy that are used for the diagnosis and management of diseases, disorders, and conditions of the oral and maxillofacial region.

(f) “Oral and maxillofacial surgery” means that branch of dentistry concerning the diagnosis and the surgical and adjunctive treatment of disease, injuries, and defects involving both the functional and esthetic aspects of the hard and soft tissues of the oral and maxillofacial region.

(g) “Orthodontics,” which shall include “dentofacial orthopedics,” means that branch of dentistry

concerning the diagnosis, prevention, interception, and correction of malocclusion, as well as neuromuscular and skeletal abnormalities of the developing or mature orofacial structures.

(h) “Pediatric dentistry” means the branch of dentistry that is the age-defined specialty providing both primary and comprehensive prevention and therapeutic oral health care for infants and children through adolescence, including those with special health care needs.

(i) “Periodontics” means that branch of dentistry concerning the prevention, diagnosis, and treatment of diseases of the supporting and surrounding tissues of the teeth or their substitutes and the maintenance of the health, function, and esthetics of these structures and tissues.

(j) “Prosthodontics” means that branch of dentistry concerning the diagnosis, treatment planning, rehabilitation, and maintenance of the oral function, comfort, appearance, and health of patients with clinical conditions associated with missing or deficient teeth or oral and maxillofacial tissues, or both, using biocompatible substitutes. (Authorized by K.S.A. 74-1406; implementing K.S.A. 65-1427; effective Jan. 1, 1966; amended, E-77-9, March 19, 1976; amended Feb. 15, 1977; amended May 1, 1980; amended March 27, 1989; amended April 1, 2005; amended Dec. 30, 2005; amended Dec. 20, 2019.)

**71-2-3.** (Authorized by and implementing K.S.A. 65-1427; effective Jan. 1, 1966; amended May 1, 1980; amended March 27, 1989; revoked Dec. 20, 2019.)

**71-2-4.** (Authorized by and implementing K.S.A. 65-1427; effective Jan. 1, 1966; amended May 1, 1981; amended March 27, 1989; revoked Feb. 20, 2004.)

**71-2-5. Qualifications and requirements of an applicant for certification as a specialist.** (a) Each applicant shall be licensed to practice dentistry in the state of Kansas.

(b) Each applicant shall have successfully completed a graduate program in the specialty for which certification is sought in a dental school, college, or other dental specialty training program that is approved by the board and that the board determines has standards of education not less than those required for accreditation by the commission on dental accreditation of the American dental association, or its equivalent, applicable for the year in which the training was completed.

(c) Any applicant who meets either of the following requirements may request a waiver of the board's requirement to pass a Kansas specialty examination:

(1) Holds a Kansas license to practice dentistry, holds a specialist certificate that is in the specialty for which certification is sought and that has been granted by a duly authorized licensing agency of another state, and has actively practiced in that specialty for the five-year period immediately before submitting an application for certification as a specialist in Kansas; or

(2) is a diplomate of the American board of the specialty for which certification is sought.

(d) To be eligible to take a specialty examination, each applicant shall file with the board an application, upon a form provided by the board, along with payment of the nonrefundable specialty certificate examination fee. (Authorized by K.S.A. 74-1406; implementing K.S.A. 65-1427; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1980; amended May 1, 1981; amended March 27, 1989; amended June 4, 2004.)

**71-2-6.** (Authorized by and implementing K.S.A. 65-1427; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1980; amended May 1, 1985; amended March 27, 1989; revoked June 4, 2004.)

**71-2-7. Additional requirements and qualifications for specialist.** Unless a waiver is granted pursuant to K.A.R. 71-2-5, in addition to any other requirements of either the dental act or these regulations, each applicant for a specialist certificate shall meet the following requirements: (a) Submit with the application a transcript of all graduate-level dental education completed and a letter of reference from a practicing dentist who has personal knowledge of the applicant's experience and qualifications in the specialty for which a specialist certificate is sought; and

(b) pass a board-approved specialist examination for the specialty sought. (Authorized by K.S.A. 74-1406; implementing K.S.A. 65-1427; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1980; amended May 1, 1981; amended March 27, 1989; amended June 4, 2004.)

**71-2-8.** (Authorized by K.S.A. 65-1427; effective Jan. 1, 1966; revoked May 1, 1980.)

**71-2-9.** (Authorized by and implementing K.S.A. 65-1427; effective Jan. 1, 1966; amended

May 1, 1980; amended March 27, 1989; revoked Feb. 20, 2004.)

**71-2-10.** (Authorized by K.S.A. 65-1427; effective Jan. 1, 1966; revoked May 1, 1981.)

**71-2-11. Revocation or suspension of specialist certificate.** Any dental specialist certificate may be revoked or suspended for any of the grounds upon which the board may discipline a dental licensee. (Authorized by and implementing K.S.A. 74-1406; effective Jan. 1, 1966; amended March 27, 1989; amended Sept. 17, 2004.)

**71-2-12.** (Authorized by and implementing K.S.A. 65-1427; effective Jan. 1, 1966; amended March 27, 1989; revoked Feb. 20, 2004.)

**71-2-13.** (Authorized by and implementing K.S.A. 65-1427; effective Jan. 1, 1966; revoked March 27, 1989.)

### Article 3.—DENTAL HYGIENISTS

**71-3-1. Prohibited advertising.** All independent advertising by a dental hygienist is hereby prohibited. (Authorized by K.S.A. 65-1456, 65-1457, 65-1458; effective Jan. 1, 1966.)

**71-3-2. Permitted advertising.** All advertising by a dental hygienist shall include the name of a Kansas-licensed dentist with whom the dental hygienist is employed or associated. If the name of a dental hygienist is used in advertising, the name shall be accompanied by the designation "R.D.H." or "dental hygienist." (Authorized by and implementing K.S.A. 2003 Supp. 65-1456; effective Jan. 1, 1966; amended May 1, 1979; amended Sept. 17, 2004.)

**71-3-3.** (Authorized by K.S.A. 65-1456 and K.S.A. 74-1406(l); implementing K.S.A. 65-1456; effective Jan. 1, 1966; amended May 24, 1993; amended Sept. 6, 1994; revoked Nov. 7, 1997.)

**71-3-4. Duty to notify board of residence and office address.** Each dental hygienist shall notify the board in writing of any change in the following, within 30 days of the change: (a) The hygienist's residence address;

(b) the hygienist's employer or employers; and

(c) the hygienist's practice location or locations. (Authorized by K.S.A. 74-1406; implementing K.S.A. 2003 Supp. 65-1456; effective Jan. 1, 1966; amended Sept. 17, 2004.)

**71-3-5.** (Authorized by K.S.A. 65-1455, 65-1456, 65-1457, 65-1458; effective Jan. 1, 1966; revoked Feb. 20, 2004.)

**71-3-6.** (Authorized by K.S.A. 1979 Supp. 65-1456; effective Jan. 1, 1966; revoked May 1, 1980.)

**71-3-7. Procedures that may be performed under general supervision.** Any hygienist licensed in Kansas may perform, under direct or general supervision, any procedure that a hygienist is authorized by the Kansas dental practices act to perform, except the administration of local anesthesia, which shall be performed only under direct supervision. (Authorized by K.S.A. 74-1406 and implementing K.S.A. 1997 Supp. 65-1456(d), as amended by L. 1998, Ch. 141, Sec. 2; effective Feb. 12, 1999.)

**71-3-8. Refresher course.** (a) An eligible dental hygienist may, except as provided in subsection (e) below, return to the practice of dental hygiene without the requirement of a clinical examination, upon submitting an application on a form provided by the board and providing proof of having successfully completed a refresher course approved by the board.

(b) For purposes of this regulation, an eligible dental hygienist shall be an individual who meets the following requirements:

(1) Was previously licensed to practice dental hygiene;

(2) has not been disciplined by the licensing board in any state in which the individual has been licensed to practice dental hygiene;

(3) has practiced dental hygiene; and

(4) meets the other requirements for licensure set forth in K.S.A. 65-1455, and amendments thereto.

(c) For a refresher course to be approved by the board, it shall meet the following minimum criteria:

(1) Be taught at a dental hygiene school approved by the board;

(2) consist of a minimum of 48 clock hours, including a minimum of 32 clock hours of clinical instruction;

(3) include didactic coursework, which may be presented in a classroom or independent study setting, or both, and clinical coursework covering the following:

(i) Infection control and sterilization;

(ii) patient assessment, including the taking of health histories, an oral inspection and evaluation, and charting;

(iii) radiographic techniques;

(iv) instrumentation techniques, including periodontal procedures and instrument sharpening;

(v) current techniques in the polishing of teeth and the application of fluoride;

(vi) patient education;

(vii) emergency situations; and

(viii) the current Kansas dental laws; and

(4) include final written and clinical evaluations that require a minimum passing score of 75 percent.

(d) As a further condition of returning to the practice of dental hygiene, the dental hygienist may be required to appear before the board.

(e) A formerly retired or disabled dental hygienist who is returning to the practice of dental hygiene, without the requirement of a clinical examination, may not administer local anesthesia or nitrous oxide until having completed courses of instruction in local anesthesia and nitrous oxide approved by the board. (Authorized by K.S.A. 1999 Supp. 65-1431, as amended by L. 2000, ch. 169, sec. 7 and K.S.A. 74-1406, as amended by L. 2000, ch. 169, sec. 18; implementing K.S.A. 1999 Supp. 65-1431, as amended by L. 2000, ch. 169, sec. 7; effective Sept. 1, 2000.)

**71-3-9. Extended care permits.** (a) Definitions.

(1) "Extended care permit I" shall mean a permit issued pursuant to K.S.A. 65-1456, and amendments thereto.

(2) "Extended care permit II" shall mean a permit issued pursuant to K.S.A. 65-1456, and amendments thereto.

(3) "Extended care permit III" shall mean a permit issued pursuant to K.S.A. 65-1456, and amendments thereto.

(4) "Extended care permit treatment" shall mean the treatment that a hygienist may provide if the hygienist has a valid extended care permit I, extended care permit II, or extended care permit III.

(5) "Patient assessment report" shall mean the report of findings and treatment required by K.S.A. 65-1456, and amendments thereto.

(6) "Sponsoring dentist" shall mean a dentist who fulfills the requirements of K.S.A. 65-1456, and amendments thereto.

(b) Application for permit. Each applicant for an extended care permit I, extended care permit II, or extended care permit III shall file with the board a completed application on a form provided by the board.

(c) Notice of practice location to sponsoring dentist. Before providing extended care permit treatment at a new location, each hygienist shall inform the sponsoring dentist, orally or in writing, of the new address and the type of procedures to be performed there.

(d) Patient assessment reports.

(1) Each patient assessment report shall include a description of the extended care permit treatment, the date or dates of treatment, and the hygienist's assessment of the patient's apparent need for further evaluation by a dentist.

(2) No later than 30 days from the date on which extended care permit treatment is completed, the hygienist providing the treatment shall cause the patient assessment report to be delivered to the sponsoring dentist.

(3) When providing extended care permit treatment at a location operated by an organization with a dental or medical supervisor, the dental hygienist providing the extended care permit treatment shall also cause the patient assessment report to be delivered to the dental or medical supervisor within 30 days from the date on which the extended care permit treatment is completed.

(e) Suspension of extended care permit treatment. If a hygienist's sponsoring dentist cannot or will not continue to function as a sponsoring dentist, the hygienist shall cease providing extended care permit treatment until the hygienist obtains a written agreement with a replacement sponsoring dentist.

(f) Review of patient assessment reports. A sponsoring dentist shall review each patient assessment report within 30 days of receiving the report. (Authorized by K.S.A. 74-1406; implementing K.S.A. 2012 Supp. 65-1456; effective Sept. 17, 2004; amended May 31, 2013.)

#### Article 4.—CONTINUING EDUCATION REQUIREMENTS

**71-4-1. Continuing education credit hours and basic cardiac life support certificate required for renewal of license of dentist and dental hygienist.** (a) Each licensee shall submit to the board, with the license renewal application, a current "basic cardiac life support for the health care provider" certificate from the American heart association or a current certificate deemed equivalent by the board from a provider approved by the board. The continuing education hours for either certificate may be applied to the

continuing education requirement specified in subsection (b). Any dentist licensee who holds a specialist certificate may consider these continuing education hours as pertaining to that licensee's specialty hour requirement.

(b) Each dentist licensee shall submit to the board, with the license renewal application, evidence of satisfactory completion of at least 60 hours of continuing education courses that qualify for credit. At least two of these hours shall be in ethics. Each dentist licensee who holds a specialist certificate shall provide evidence satisfactory to the board that at least 40 of the required 60 hours of continuing education are in courses in the specialty for which the licensee holds a specialist certificate. Each required course hour shall be completed in the 24-month period immediately preceding the date of expiration of the license. The term "courses" as used in this article shall include courses, institutes, seminars, programs, and meetings.

(c) Each dental hygienist licensee shall submit, with the license renewal application, evidence of satisfactory completion of at least 30 hours of continuing dental education courses that qualify for credit. At least one of these hours shall be in ethics. Each course shall have been completed in the 24-month period immediately preceding the date of expiration of the dental hygienist license.

(d) An extension of time to complete a continuing education requirement may be granted by the board if it finds that good cause has been shown. (Authorized by K.S.A. 2013 Supp. 65-1431 and K.S.A. 74-1406; implementing K.S.A. 2013 Supp. 65-1431; effective May 1, 1978; amended May 1, 1986; amended March 27, 1989; amended Dec. 27, 1996; amended Feb. 20, 2004; amended Jan. 6, 2012; amended May 30, 2014.)

**71-4-2. Approved continuing dental education.** The following general standards shall be used by the board in determining which courses will qualify for continuing dental education credits required as a condition for the annual renewal of dental and dental hygienist licenses: (a) *Eligibility.* Only those courses which increase the dentist's or dental hygienist's clinical and theoretical dental knowledge or ability to provide care and treatment to patients shall qualify for credit in computing the required hours of continuing dental education. Any person or organization may apply in writing to the board for approval of any courses.

(b) *Courses.* Subject to the eligibility standards set forth in paragraph (a) above, all courses, both within and without the state of Kansas, offered by any of the following organizations shall be approved for credit:

- (1) any college or university;
- (2) the American dental association, the national dental association, or their component and constituent societies and associations;
- (3) the American dental hygienists association and national dental hygienists association or their component and constituent societies and associations;
- (4) the academies and specialty organizations recognized by the dental board;
- (5) local dental society and dental hygiene society meetings;
- (6) dental or dental hygiene study club meetings; and
- (7) programs that are sponsored by the veterans administration or the armed forces and given at a United States government facility. One hour of credit shall be given for each hour in actual attendance at such courses.

(c) *Advanced study.* A waiver of continuing dental education requirements shall be granted if a licensee is engaged as a full-time student in graduate study, internships or a residency program in dentistry, any of the specialties of dentistry recognized by the board, or dental hygiene.

(d) *New graduates.* A waiver of the continuing dental education requirements shall be granted for the first year after a licensee graduates and becomes licensed.

(e) *Lecturing, presenting papers, or clinics, teaching.* Any licensee may receive a maximum of 10 hours of credit annually for any combination of lecturing, presenting papers or clinics or teaching subjects related to dentistry and dental hygiene. Credit for teaching courses involving repeated presentation of similar subject matters shall be limited to the time spent in one presentation.

(f) *Commercially sponsored courses.* Continuing dental education courses sponsored by any person, corporation, association or other entity on a profit-making basis shall be approved by the board for continuing dental education credit subject to the eligibility standards set forth in paragraph (a) above.

(g) Credit for programs of home study shall be allowed for eligible courses based upon the hours of continuing dental education credit established by the sponsor or producers of the course, subject

to prior review and determination of the allowable hours of credit by the board.

(h) Credit may be granted, upon the application of any licensee, for authorship of published dental articles or books or for teaching any approved dental education course. The hours of credit to be allowed shall be determined by the board. The maximum number of hours allowed shall be:

- (1) 10 hours for any single article;
- (2) 20 hours for any book; and
- (3) five hours for teaching a course.

(i) Disabled or retired dentists.

(1) The dental education requirements shall be waived for licensees who are disabled or retired, as those terms are defined by statute. In order to return to active practice, after a period of disability or retirement, each licensee shall complete continuing dental education credit hours according to the following schedule:

(A) Licensed dentists:

- (i) five or more years disability or retirement..... 100 hours
- (ii) four years disability or retirement ..... 80 hours
- (iii) three years disability or retirement ..... 70 hours
- (iv) two years disability or retirement ..... 60 hours
- (v) one year disability or retirement..... 30 hours

(B) Licensed dental hygienists:

- (i) five or more years disability or retirement..... 50 hours
- (ii) four years disability or retirement ..... 40 hours
- (iii) three years disability or retirement ..... 35 hours
- (iv) two years disability or retirement ..... 30 hours
- (v) one year disability or retirement..... 15 hours

(2) Upon application of a licensee, all or any portion of the continuing dental education hours required of a licensee returning to practice may be waived if the licensee passes an examination determined by the board. Such an examination may be required in addition to completion of the continuing dental education hours required above. The examination may be written, oral or clinical, or all of these, at the board's determination. (Authorized by K.S.A. 74-1406 and K.S.A. 1984 Supp. 65-1431; implementing K.S.A. 1984 Supp. 65-1431; effective May 1, 1978; amended May 1, 1986.)

**71-4-3.** (Authorized by K.S.A. 74-1406 and K.S.A. 1995 Supp. 65-1431, as amended by L. 1996, ch. 210, sec. 3; implementing K.S.A. 1995 Supp. 65-1431, as amended by L. 1996, ch. 210, sec. 3; effective May 1, 1978; amended May 1, 1986; amended Dec. 27, 1996; revoked Feb. 20, 2004.)

## Article 5.—SEDATIVE AND GENERAL ANESTHESIA

**71-5-1.** (Authorized by K.S.A. 74-1406 and implementing K.S.A. 1994 Supp. 65-144; effective Nov. 27, 1995; revoked Nov. 19, 2010.)

**71-5-2.** (Authorized by K.S.A. 1994 Supp. 74-1406 and implementing K.S.A. 1994 Supp. 65-1444; effective Nov. 27, 1995; revoked Nov. 19, 2010.)

**71-5-3.** (Authorized by K.S.A. 74-1406 and implementing K.S.A. 1996 Supp. 65-1444; effective Nov. 27, 1995; amended Nov. 7, 1997; revoked Nov. 19, 2010.)

**71-5-4.** (Authorized by K.S.A. 74-1406 and implementing K.S.A. 1996 Supp. 65-1444; effective Nov. 27, 1995; amended Nov. 7, 1997; revoked Nov. 19, 2010.)

**71-5-5.** (Authorized by K.S.A. 74-1406 and implementing K.S.A. 1994 Supp. 65-1444; effective Nov. 27, 1995; revoked Nov. 19, 2010.)

**71-5-6.** (Authorized by K.S.A. 74-1406 and implementing K.S.A. 1994 Supp. 65-1449; effective Nov. 27, 1995; revoked Nov. 19, 2010.)

**71-5-7. Definitions.** As used in these regulations, the following terms shall have the meanings specified in this regulation: (a) “Administer” means to deliver a pharmacological agent to the patient by an enteral or a parenteral route at the direction of a dentist while in a dental office.

(b) “Adult patient” means a patient who is more than 12 years of age.

(c) “Anxiolysis” means the diminution or elimination of anxiety through the means of a single drug or combination of agents prescribed or administered by a dentist and used so as not to induce conscious sedation when used alone or in combination with nitrous oxide.

(d) “Conscious sedation” and “conscious sedative state” mean a minimally depressed level of consciousness that retains the patient’s ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal commands and that is produced by any pharmacological or nonpharmacological agent or a combination of these agents.

(e) “Deep sedation” means an induced state of depressed consciousness accompanied by a partial loss of protective reflexes or the ability to contin-

uously and independently maintain an airway and to respond purposefully to physical stimulation or verbal commands. Deep sedation is produced by a pharmacological or nonpharmacological agent or a combination of these agents.

(f) “Dentist” means any person licensed by the board to practice dentistry and any person licensed to practice medicine and surgery that practices dentistry as a specialty.

(g) “End-tidal carbon dioxide monitoring” means a process to determine the percent of carbon dioxide in a patient’s breath through the use of a carbon dioxide monitor.

(h) “Enteral conscious sedation” and “combination inhalation-enteral conscious sedation” mean the use of one or more sedative agents that are absorbed through the gastrointestinal tract or oral mucosa, including by oral, rectal, and sublingual administration, either by themselves or in combination with nitrous oxide and oxygen to render a patient in a conscious sedative state.

(i) “General anesthesia” means an induced state of unconsciousness accompanied by a partial or complete loss of protective reflexes, including the inability to continuously and independently maintain an airway and to respond purposefully to physical stimulation or verbal commands. General anesthesia is produced by a pharmacological or nonpharmacological agent or a combination of these agents.

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

(k) “Parenteral conscious sedation” means the use of one or more sedative agents that bypass the gastrointestinal tract, including by intramuscular, intravenous, intranasal, submucosal, subcutaneous, and intraocular administration, to render a patient in a conscious sedative state.

(l) “Treating dentist” means a dentist with a level I, II, or III permit who treats a patient while the patient is under conscious sedation, deep sedation, or general anesthesia.

(m) “Vital signs” means blood pressure, heart rate, and respiratory rate. (Authorized by K.S.A. 2008 Supp. 65-1444 and K.S.A. 74-1406; implementing K.S.A. 2008 Supp. 65-1444; effective Nov. 19, 2010.)

**71-5-8. Applicability of regulations.** The regulations in this article shall apply in all treatment settings except when a dentist is treating a patient in a medical care facility. (Authorized by K.S.A. 2008 Supp. 65-1444 and K.S.A. 74-1406;

implementing K.S.A. 2008 Supp. 65-1444; effective Nov. 19, 2010.)

**71-5-9. General requirements.** (a) A dentist shall not be required to obtain a permit from the board to administer nitrous oxide and oxygen to a patient of any age when either substance is used alone or with a local anesthetic.

(b) A dentist shall not be required to obtain a permit from the board to prescribe sedative agents designed to achieve only anxiolysis to a patient of any age.

(c) Each system used to administer nitrous oxide shall include an operational fail-safe mechanism to ensure the delivery of not less than 25 percent oxygen to the patient.

(d) On and after December 1, 2010, a dentist shall not administer enteral conscious sedation or combination inhalation-enteral conscious sedation to a patient 12 years of age or younger unless the dentist has a current level I, II, or III permit issued by the board and has completed one of the following training requirements:

(1) A residency program approved by the board in dental anesthesia or pediatric dentistry or any other program that the board determines to be equivalent;

(2) a residency program approved by the board in general practice, oral and maxillofacial surgery, endodontics, periodontics, or other advanced education in general dentistry, which shall include training in conscious sedation for patients 12 years of age or younger; or

(3) a postgraduate course or training program approved by the board that includes training in conscious sedation for patients 12 years of age or younger.

(e) On and after December 1, 2010, a dentist shall not administer parenteral conscious sedation to a patient 12 years of age or younger unless the dentist has a current level II or III permit issued by the board and has completed one of the following training requirements:

(1) A residency program approved by the board in dental anesthesia or pediatric dentistry or any other program that the board determines to be equivalent;

(2) a residency program approved by the board in general practice, oral and maxillofacial surgery, endodontics, periodontics, or other advanced education in general dentistry, which shall include training in parenteral conscious sedation for patients 12 years of age or younger; or

(3) a postgraduate course or training program approved by the board that includes training in parenteral conscious sedation for patients 12 years of age or younger.

(f) On and after December 1, 2010, a dentist shall not administer deep sedation or general anesthesia to a patient 12 years of age or younger unless the dentist has a current level III permit issued by the board and has completed one of the following training requirements:

(1) A residency program approved by the board in dental anesthesia or pediatric dentistry or any other program that the board determines to be equivalent;

(2) a residency program approved by the board in general practice, oral and maxillofacial surgery, endodontics, periodontics, or other advanced education in general dentistry, which shall include training in deep sedation or general anesthesia for patients 12 years of age or younger; or

(3) a postgraduate course or training program approved by the board that includes training in deep sedation or general anesthesia for patients 12 years of age or younger.

(g) On and after December 1, 2010, a dentist shall not administer enteral conscious sedation or combination inhalation-enteral conscious sedation to an adult patient unless the dentist has a current level I, II, or III permit issued by the board.

(h) On and after December 1, 2010, a dentist shall not administer parenteral conscious sedation to an adult patient unless the dentist has a current level II or III permit issued by the board.

(i) On and after December 1, 2010, a dentist shall not administer deep sedation or general anesthesia to an adult patient unless the dentist has a current level III permit issued by the board.

(j) A dentist shall not be required to obtain a level I, II, or III permit if the sedative agent used is administered to the dentist's patient by a person licensed under Kansas law to administer this agent without supervision.

(k) On and after December 1, 2010, only a dentist with an appropriate license or permit, another person authorized by Kansas law to administer the sedative agent under supervision at the time of administration, or a person authorized by Kansas law to administer the sedative agent without supervision may administer a sedative agent that is designed to achieve anxiolysis, enteral conscious sedation, parenteral conscious sedation, deep sedation, or general anesthesia as part of a dental procedure.

(l) Each dentist shall submit a written report to the board within 30 days of any mortality or morbidity that resulted in transportation to an acute medical care facility or that is likely to result in permanent physical or mental injury to a patient during, or as a result of, any general anesthesia related or sedation-related incident. The report shall include the following:

- (1) A description of the dental procedure;
- (2) a description of the preoperative physical condition of the patient;
- (3) a list of the sedative agents and dosages administered, with the time and route of each administration;
- (4) a description of the incident, which shall include the following:
  - (A) The details of the patient's symptoms;
  - (B) the treatment attempted or performed on the patient; and
  - (C) the patient's response to the treatment attempted or performed;
- (5) a description of the patient's condition upon termination of any treatment attempted or performed; and
- (6) the name of each auxiliary staff member in attendance. (Authorized by K.S.A. 2008 Supp. 65-1444 and K.S.A. 74-1406; implementing K.S.A. 2008 Supp. 65-1444; effective Nov. 19, 2010.)

**71-5-10. Level I permit: enteral conscious sedation or combination inhalation-enteral conscious sedation.** (a) To be eligible for issuance of a level I permit, each dentist shall submit the following to the board:

- (1) An application on the form provided by the board;
- (2) evidence of a current "basic cardiac life support for the health care provider" certificate from the American heart association or a current certificate deemed equivalent by the board from a provider approved by the board;
- (3)(A) Evidence of having successfully completed a course or postdoctoral training program in the control of anxiety and pain in dentistry that is approved by the board; or
  - (B) evidence of performance of 20 clinical cases of conscious sedation over the preceding five years, which shall be evaluated by the board;
- (4) the level I permit fee of \$100; and
- (5) an explanation of any sedation-related mortality or morbidity that occurred to a patient of the applicant during the preceding five years and

could have been associated with the administration of a sedative agent.

(b) To be approved by the board, each course or training program specified in paragraph (a)(3)(A) shall meet the following requirements:

- (1) Provide comprehensive training in the administration and management of enteral conscious sedation or combination inhalation-enteral conscious sedation;
  - (2) include training in patient evaluation and selection, use of equipment, personnel requirements, monitoring, documentation, patient medical management, and emergency management; and
  - (3) include a minimum of 18 hours of education and 20 clinical experiences, which may be simulation or video presentations, or both, but shall include at least one experience in which a patient is deeply sedated and returned to consciousness.
- (c)(1) Each level I permit shall be renewed before the expiration of the dentist's license and as part of the biennial license renewal.

(2) To apply for renewal of a level I permit, each dentist shall provide the following to the board:

- (A) Evidence of a current "basic cardiac life support for the health care provider" certificate from the American heart association or a current certificate deemed equivalent by the board from a provider approved by the board;
- (B) in addition to the continuing education required to renew the dentist's license, proof of six hours of continuing education on sedation; and
- (C) the renewal fee of \$100.

(d) Before administering enteral conscious sedation or combination inhalation-enteral conscious sedation, each treating dentist shall perform the following:

- (1) Review the patient's medical history and current medications;
- (2) for all patients with a severe systemic disease, consult with the patient's primary care physician or any consulting medical specialist regarding the potential risks;
- (3) document that the patient or guardian received written preoperative instructions, including dietary instructions that are based on the sedation technique to be used and the patient's physical status, and that the patient or guardian reported that the patient complied with the instructions;
- (4) obtain from the patient or guardian a signed informed consent form;
- (5) evaluate the inhalation equipment for proper operation;

(6) determine that an adequate oxygen supply is available and can be delivered to the patient if an emergency occurs;

(7) obtain the patient's vital signs and perform a patient assessment; and

(8) confirm the time when the patient last took any solid or liquid by mouth.

(e) During the administration of enteral conscious sedation or combination inhalation-enteral conscious sedation, each treating dentist shall ensure that both of the following conditions are met:

(1) At least one additional staff person who has either a current "basic cardiac life support for the health care provider" certificate from the American heart association or a current certificate deemed equivalent by the board from a provider approved by the board is present.

(2) The following equipment is available and in working order:

(A) A pulse oximeter;

(B) A drug kit that includes an agent to reverse the effects of the sedation agent administered, if an agent to reverse the effects of the sedation agent is commercially available;

(C) a bag-valve mask with patient-appropriate masks that have all connections necessary to attach the bag-valve mask to a 100 percent oxygen source or a separate positive-pressure oxygen source; and

(D) oropharyngeal airways in patient-appropriate sizes.

(f) Whenever enteral conscious sedation or combination inhalation-enteral conscious sedation is administered, each treating dentist shall cause the following records to be contemporaneously created. These records shall be maintained, for at least 10 years, as part of each patient's record:

(1) The date, the type of procedure, the personnel present, and the patient's name, address, and date of birth;

(2) documentation of the sedative agents administered, the approximate time when the sedative agents were administered, the amount of each agent administered, and the patient's blood pressure, heart rate, and oxygen saturation readings at the start of sedation and at the end of the surgical or operative procedure and at 15-minute intervals throughout the procedure;

(3) an indication of the extent to which the effects of the sedation had abated at the time of the patient's release;

(4) the gases used, with flow rates expressed

in liters per minute or relative percentages, and the amount of time during which each gas was administered;

(5) the full name of the person to whom the patient was released;

(6) a record of all prescriptions written or ordered for the patient; and

(7) each type of monitor used.

(g) During the administration of enteral conscious sedation or combination inhalation-enteral conscious sedation and the recovery phase, the treating dentist shall ensure that all of the following conditions are met:

(1) The patient is continuously observed.

(2) The patient is continuously monitored with a pulse oximeter.

(3) The patient's respiration is continuously confirmed.

(4) The patient's blood pressure, heart rate, and oxygen saturation reading are recorded at least every 15 minutes.

(5) The patient's ability to appropriately respond to physical stimulation or verbal command is documented every 15 minutes.

(h) Following the administration of enteral conscious sedation or combination inhalation-enteral conscious sedation and during the recovery phase, each treating dentist shall ensure that all of the following conditions are met:

(1) Oxygen and suction equipment are immediately available in the recovery area.

(2) The patient is continuously supervised until oxygenation, ventilation, and circulation are stable and until the patient is appropriately responsive for discharge from the facility.

(3) Written and verbal postoperative instructions, including an emergency telephone number to contact the treating dentist, are provided to the patient, guardian, or any escort present at the time of discharge.

(4) The patient meets the discharge criteria established by the treating dentist, including having stable vital signs, before leaving the office.

(i) Whenever enteral conscious sedation or combination inhalation-enteral conscious sedation is administered, each treating dentist shall cause the following information to be entered into a sedation log:

(1) The name of each patient;

(2) the date of administration of each sedative agent; and

(3) the name, strength, and dose of each sedative agent.

Each entry shall be maintained for at least 10 years. (Authorized by K.S.A. 2008 Supp. 65-1444, K.S.A. 2008 Supp. 65-1447, and K.S.A. 74-1406; implementing K.S.A. 2008 Supp. 65-1444 and K.S.A. 2008 Supp. 65-1447; effective Nov. 19, 2010.)

**71-5-11. Level II permit: parenteral conscious sedation.** (a) To be eligible for issuance of a level II permit, each dentist shall submit the following to the board:

(1) An application on the form provided by the board;

(2)(A) Evidence of a current “advanced cardiovascular life support” certificate from the American heart association;

(B) evidence of a current certificate deemed equivalent to the certificate specified in paragraph (a)(2)(A) by the board from a provider approved by the board; or

(C) evidence of satisfactory completion of a simulated office emergency course approved by the board;

(3)(A) Evidence of having successfully completed a course or postdoctoral training program in parenteral conscious sedation that is approved by the board; or

(B) evidence of performance of at least 20 clinical cases of parenteral sedation over the preceding two years, which shall be evaluated by the board;

(4) a level II permit fee of \$150; and

(5) an explanation of any sedation-related mortality or morbidity that occurred to a patient of the applicant during the preceding five years and could have been associated with the administration of a sedative agent.

(b) To be approved by the board, each course or training program specified in paragraph (a)(3)(A) shall meet the following requirements:

(1) Provide comprehensive training in the administration and management of parenteral conscious sedation;

(2) include training in patient evaluation and selection, use of equipment, personnel requirements, monitoring, documentation, patient medical management, and emergency management, including emergency airway management; and

(3) include at least 40 hours of didactic instruction and 20 clinical cases of parenteral conscious sedation.

(c)(1) Each level II permit shall be required to be renewed before the expiration of the dentist’s license and as part of the biennial license renewal.

(2) To apply for renewal of a level II permit, each dentist shall provide the following to the board:

(A)(i) Evidence of a current “advanced cardiovascular life support” certificate from the American heart association;

(ii) evidence of a current certificate deemed equivalent to the certificate specified in paragraph (c)(2)(A)(i) by the board from a provider approved by the board; or

(iii) evidence of satisfactory completion, within the 12-month period preceding the filing of the renewal application, of a simulated office emergency course approved by the board;

(B) in addition to the continuing education required to renew the dentist’s license, proof of eight hours of continuing education limited to sedation, which shall include the complications associated with parenteral conscious sedation and their management; and

(C) the biennial renewal fee of \$150.

(d) Before administering parenteral conscious sedation, each treating dentist shall meet all of the requirements specified in K.A.R. 71-5-10(d).

(e) During the administration of parenteral conscious sedation, each treating dentist shall meet the following requirements:

(1) Meet the requirements specified in K.A.R. 71-5-10(e);

(2) continuously monitor for the presence of exhaled carbon dioxide using a capnograph, unless doing so would be precluded or invalidated by the nature of the patient, procedure, or equipment; and

(3) ensure that an automated external defibrillator or defibrillator is available and in working order.

(f) Whenever parenteral conscious sedation is administered, a record containing the information specified in K.A.R. 71-5-10(f)(1), (3), (4), (5), (6), and (7) shall be contemporaneously created. This record shall include the following:

(1) The name and amount of each fluid administered;

(2) the site of administration of each medication and the type of catheter used, if applicable; and

(3) documentation of the sedative agents administered, the approximate time when the sedative agents were administered, the amount of each agent administered, and the patient’s blood pressure, heart rate, and oxygen saturation readings at the start of sedation, at the end of the surgical or operative procedure, and at five-minute intervals throughout the procedure.

These records shall be maintained for at least 10 years as a part of the patient's record.

(g) During the administration of parenteral conscious sedation and the recovery phase, each treating dentist shall ensure that the requirements specified in K.A.R. 71-5-10(g)(1), (2), and (3) and the following conditions are met:

(1) The patient's blood pressure, heart rate, and oxygen saturation reading are recorded at least every five minutes.

(2) The patient's ability to appropriately respond to physical stimulation or verbal command is documented every five minutes.

(h) Following the administration of parenteral conscious sedation and the recovery phase, each treating dentist shall ensure that the requirements specified in K.A.R. 71-5-10(h) are met.

(i) Whenever parenteral conscious sedation is administered, the records required by K.A.R. 71-5-10(i) shall be contemporaneously created. These records shall be maintained for at least 10 years as part of the patient's record. (Authorized by K.S.A. 65-1444, K.S.A. 65-1447, and K.S.A. 74-1406; implementing K.S.A. 65-1444 and K.S.A. 65-1447; effective Nov. 19, 2010; amended Dec. 20, 2019.)

**71-5-12. Level III permit: deep sedation and general anesthesia.** (a) To be eligible for issuance of a level III permit, each dentist shall submit the following to the board:

(1) An application on the form provided by the board;

(2) (A) Evidence of a current "advanced cardiac life support for the health care provider" certificate from the American heart association;

(B) evidence of a current certificate deemed equivalent to the certificate specified in paragraph (a)(2)(A) by the board from a provider approved by the board; or

(C) evidence of satisfactory completion of a simulated office emergency course approved by the board;

(3)(A) Evidence of having successfully completed a postdoctoral training program that is approved by the board; or

(B) evidence of performance of at least 20 clinical cases of deep sedation or general anesthesia, or both, over the preceding two years;

(4) the level III permit fee of \$200; and

(5) an explanation of any sedation-related mortality or morbidity that occurred to a patient of the applicant during the preceding five years and

could have been associated with the administration of a sedative agent.

(b) To be approved by the board, each post-doctoral training program specified in paragraph (a)(3)(A) shall be at least one academic year in duration and shall include training in the administration and management of deep sedation and general anesthesia.

(c)(1) Each level III permit shall be renewed before the expiration of the dentist's license and as part of the biennial license renewal.

(2) To apply for renewal of a level III permit, each dentist shall provide the following to the board:

(A)(i) Evidence of a current "advanced cardiac life support for the health care provider" certificate from the American heart association;

(ii) evidence of a current certificate deemed equivalent to the certificate specified in paragraph (c)(2)(A)(i) by the board from a provider approved by the board; or

(iii) evidence of satisfactory completion, within the 12-month period preceding the filing of the renewal application, of a simulated office emergency course approved by the board;

(B) in addition to the continuing education required to renew the dentist's license, proof of eight hours of continuing education limited to sedation, which shall include the complications associated with airways and intravenous sedation and their management; and

(C) the biennial renewal fee of \$200.

(d) Before administering deep sedation or general anesthesia, each treating dentist shall comply with all of the requirements specified in K.A.R. 71-5-10(d).

(e) During the administration of deep sedation or general anesthesia, each treating dentist shall meet the following requirements:

(1) Ensure that at least two additional staff persons with a current certificate in cardiopulmonary resuscitation for health care providers are present in addition to the treating dentist;

(2) comply with all of the requirements specified in K.A.R. 71-5-11(e); and

(3) ensure that the location at which the deep sedation or general anesthesia is administered has readily available emergency agents and devices necessary to perform advanced cardiac life support.

(f) Whenever deep sedation or general anesthesia is administered, each treating dentist shall contemporaneously cause the records required by K.A.R. 71-5-10(i) and K.A.R. 71-5-11(f) to be

created. These records shall be maintained for at least 10 years as part of the patient's record.

(g) During the administration of deep sedation or general anesthesia, each treating dentist shall ensure that the requirements specified in K.A.R. 71-5-11(g) are met.

(h) Following the administration of deep sedation or general anesthesia, each treating dentist shall ensure that the requirements specified in K.A.R. 71-5-11(h) and the following requirements are met:

(1) End-tidal carbon dioxide monitoring of the patient if an endotracheal tube or a laryngeal mask airway was used during the administration of the deep sedation or general anesthesia; and

(2) the continuous use of an ECG monitor if patient cooperation and the length of the procedure permit.

(i) Whenever deep sedation or general anesthesia is administered, the records required by K.A.R. 71-5-10(i) shall be contemporaneously created. These records shall be maintained for at least 10 years as part of the patient's record. (Authorized by K.S.A. 2008 Supp. 65-1444, K.S.A. 2008 Supp. 65-1447, and K.S.A. 74-1406; implementing K.S.A. 2008 Supp. 65-1444 and K.S.A. 2008 Supp. 65-1447; effective Nov. 19, 2010.)

**71-5-13. Grounds for refusal to issue permit or for revocation, suspension, or limitation of permit.** Any permit authorized by this article may be refused issuance or may be revoked, suspended, restricted, or subjected to any other action that the board is authorized to take regarding a dentist's license, including assessing a fine, if at least one of the following is established, after providing the dentist with notice and an opportunity for a hearing in accordance with the Kansas administrative procedures act: (a) The dentist is no longer in compliance with one or more of the requirements of these regulations.

(b) The dentist has, in one or more instances, acted in a way that does not adhere to the applicable standard of dental care to a degree that constitutes ordinary negligence.

(c) The dentist has, in one or more instances, failed to act in a way that adheres to the applicable standard of dental care to a degree that constitutes ordinary negligence.

(d) Facts or conditions that justify the board's taking adverse action against the dentist's license, other than those specified in subsections (a), (b), and (c), exist. (Authorized by K.S.A. 2008 Supp.

65-1444 and K.S.A. 74-1406; implementing K.S.A. 2008 Supp. 65-1444; effective Nov. 19, 2010.)

## Article 6.—DENTAL AUXILIARIES

**71-6-1. Definitions.** As used in these regulations, the following terms shall have the meanings indicated: (a) "Approved instruction course" means a course of instruction that the board has found to meet the requirements listed in K.A.R. 71-6-3.

(b) "Coronal" means the portion of a tooth or tooth replacement visible above the gum line.

(c) "Coronal polish teeth" means to remove soft accretions and stains from coronal surfaces of teeth or tooth replacements.

(d) "Coronal scale teeth" means to remove hard deposits and accretions from the coronal surfaces of teeth or tooth replacements.

(e) "Direct supervision" means that the dentist is in the dental office, personally diagnoses the condition to be treated, personally authorizes the procedure, and, before dismissal of the patient, evaluates the performance or has it evaluated by another person licensed by the board. (Authorized by K.S.A. 74-1406; implementing K.S.A. 65-1423; effective Feb. 12, 1999; amended April 16, 2004.)

**71-6-2. Acts restricted.** (a)(1) A nonlicensed person shall not perform coronal scaling as part of a prophylaxis without first obtaining a certificate demonstrating successful completion of an approved course of instruction.

(2) The supervising dentist shall not permit a nonlicensed person to perform coronal scaling as part of a prophylaxis until that person's certificate, demonstrating successful completion of an approved course of instruction, is prominently posted at the location where the coronal scaling will be performed.

(b) A nonlicensed person shall not perform coronal scaling as a part of a prophylaxis on a patient who is under local or general anesthesia.

(c) A nonlicensed person may perform coronal scaling only under the direct supervision of a supervising dentist licensed and practicing in Kansas. (Authorized by K.S.A. 74-1406 and implementing K.S.A. 1997 Supp. 65-1423(h)(5), as amended by L. 1998, Ch. 141, Sec. 1; effective Feb. 12, 1999.)

**71-6-3. Approved instruction course.** (a) Each private or public educational entity seeking

approval by the board, pursuant to L. 1998, Ch. 141, Sec. 1, of an instruction course shall demonstrate that the course meets the following minimum requirements:

(1) Has a student-instructor ratio consistent with the American dental association accreditation standards for dental assisting programs;

(2) encourages enrollment by a geographically diverse population of prospective students;

(3) includes the following course topics:

(A) Dental and gingival anatomy and morphology;

(B) periodontal disease, including recognition and treatment;

(C) dental plaque, stain, and calculus formation;

(D) sterilization and infection control;

(E) oral hygiene, with an emphasis on technique, products, and devices;

(F) topical fluoride application;

(G) the use of instruments, including technique, position, and sharpening;

(H) coronal scaling, including laboratory experience with mechanical and ultrasonic devices; and

(I) coronal polishing, including laboratory experience;

(4) is a minimum of 90 hours;

(5) includes one or more outcome assessment examinations that demonstrate that the student has obtained technical and clinical competency in the coronal scaling of teeth; and

(6) upon successful completion of the course, issuance by the offering educational entity of a certificate identifying the student and the date of successful completion.

(b) Before any proposed changes are made to the required elements of an approved instruction course, the changes shall be approved by the board. (Authorized by K.S.A. 74-1406 and implementing K.S.A. 1997 Supp. 65-1423(h)(5), as amended by L. 1998, Ch. 141, Sec. 1; effective Feb. 12, 1999.)

**71-6-4. Subgingival scaling.** Whenever coronal scaling is performed as part of a prophylaxis by a nonlicensed person who has a certificate from an educational entity demonstrating successful completion of an approved course of instruction, all subgingival scaling shall be performed by a hygienist or dentist licensed in Kansas. (Authorized by K.S.A. 74-1406 and implementing K.S.A. 1997 Supp. 65-1423 (h)(5), as amended by L. 1998, Ch. 141, Sec. 1; effective Feb. 12, 1999.)

**71-6-5. Duty to notify board.** Each supervising dentist who allows a nonlicensed person to coronal scale teeth after the effective date of this regulation shall meet the following requirements:

(a) Verify that the nonlicensed person has proof of completing the training to coronal scale teeth required by K.S.A. 65-1423 (a)(8)(E), and amendments thereto; and

(b) report to the board the name and practice location of the nonlicensed person within 30 days of the effective date of this regulation or within 30 days of the nonlicensed person's first performing the coronal scaling of teeth under the supervision of the dentist, whichever is later. (Authorized by K.S.A. 74-1406; implementing K.S.A. 2014 Supp. 65-1423; effective Feb. 12, 1999; amended June 4, 2004; amended March 4, 2016.)

**71-6-6. Coronal polishing.** Any dentist licensed and practicing in Kansas may delegate to a nonlicensed person the coronal polishing of teeth if the dentist provides that person with direct supervision and has provided that person with the appropriate training in polishing techniques. (Authorized by K.S.A. 74-1406 and implementing K.S.A. 1997 Supp. 65-1423(h)(5), as amended by L. 1998, Ch. 141, Sec. 1; effective Feb. 12, 1999.)

## Article 7.—ADVERTISING

### 71-7-1. Prior submission to the board.

Before a licensee, or anyone else acting on the licensee's behalf or on behalf of any associated or affiliated licensee, uses or participates in the use of any form of advertising that contains one or more statements regarding the professional superiority of or the performance of professional services in a superior manner by the licensee or any associated or affiliated licensees, the licensee shall submit to the board evidence demonstrating the truthfulness of each such statement. (Authorized by and implementing K.S.A. 65-1437; effective Feb. 20, 2004.)

## Article 8.—MOBILE DENTAL FACILITIES AND PORTABLE DENTAL OPERATIONS

### 71-8-1. Applicability of other regulations.

Each regulation applicable to a stationary dental office shall also apply to each mobile dental facility or portable dental operation. (Authorized by and implementing L. 2005, ch. 115, § 2; effective Feb. 17, 2006.)

**71-8-2. Registration fee.** Each applicant for a registration to operate a mobile dental facility or portable dental operation shall pay a registration fee of \$500 per facility. (Authorized by K.S.A. 65-1447, as amended by L. 2005, ch. 115, § 1, and L. 2005, ch. 115, § 2; implementing K.S.A. 65-1447, as amended by L. 2005, ch. 115, § 1; effective Feb. 17, 2006.)

**71-8-3. Renewal of registration.** (a) Each operator who wants to renew the registration shall submit a renewal application, on a form provided by the board, at least 60 days before the expiration date.

(b) Each registrant shall pay a registration renewal fee of \$350 per facility when submitting the renewal application. (Authorized by K.S.A. 65-1447, as amended by L. 2005, ch. 115, § 1, and L. 2005, ch. 115, § 2; implementing K.S.A. 65-1447, as amended by L. 2005, ch. 115, § 1; effective Feb. 17, 2006.)

**71-8-4. Office address and telephone number.** (a) Each operator of a mobile dental facility or portable dental operation shall maintain a business or mailing address of record, which shall be filed with the board. This address shall not be a post office box.

(b) Each operator of a mobile dental facility or portable dental operation shall maintain a telephone number of record, which shall be filed with the board.

(c) Each operator shall notify the board within 30 days of any change in the address or telephone number of record.

(d) Each written or printed document available from or issued by the mobile dental facility or portable dental operation shall contain the address and telephone number of record for the mobile dental facility or portable dental operation.

(e) Each operator shall maintain all dental and billing records, when not in transit, at the address of record. (Authorized by and implementing L. 2005, ch. 115, § 2; effective Feb. 17, 2006.)

**71-8-5. Written procedures; communication facilities; conformity with requirements; driver requirements; consent forms; follow-up treatment.** Each operator of a mobile dental facility or portable dental operation shall ensure that the following conditions and requirements are met: (a) A written procedure for emergency follow-up care is used for patients treated in the mobile dental facility or portable dental op-

eration, and the procedure includes arrangements for treatment in a health care facility that is permanently established in the area where services were provided.

(b) The mobile dental facility or portable dental operation has communication facilities that will enable the operator to contact necessary parties if a medical or dental emergency occurs. The communication facilities shall enable the patient or the parent or guardian of the patient treated to contact the operator for emergency care, follow-up care, or information about treatment received. The health care provider who renders follow-up care shall also be able to contact the operator and receive treatment information, including radiographs when taken.

(c) The mobile dental facility or portable dental operation and the dental procedures performed meet the requirements of K.A.R. 71-1-18.

(d) The driver of the mobile dental facility or portable dental operation possesses a valid driver's license appropriate for the operation of the vehicle.

(e) No services are performed on minors or individuals for whom a guardian has been established without a signed consent form signed by the parent or guardian that includes the following:

(1) An authorization for the treatment to be provided;

(2) an acknowledgement by the parent or guardian that the treatment of the patient at the mobile dental facility or portable dental operation could affect the future benefits that the patient could receive under any of the following:

(A) Private insurance;

(B) medicaid; or

(C) a children's health insurance program; and

(3) an acknowledgement by the parent or guardian that the parent or guardian has been advised to arrange for continued dental care for the patient.

(f) If the mobile dental facility or portable dental operation accepts any patients and provides preventive treatment, including prophylaxis, radiographs, and fluoride, the operator offers follow-up treatment when this treatment is indicated. (Authorized by and implementing L. 2005, ch. 115, § 2; effective Feb. 17, 2006.)

**71-8-6. Identification of personnel; notification of changes in written procedures; display of licenses.** (a) Each operator of a mobile dental facility or portable dental operation shall identify and advise the board in writing within

30 days of any personnel change involving the licensed dentists and licensed dental hygienists associated with the mobile dental facility or portable dental operation. The operator shall provide the full name, address, telephone number and license number of each licensed dentist or licensed dental hygienist involved in the personnel change. The operator shall also provide the effective date of each personnel change.

(b) Each operator shall advise the board in writing within 30 days of any change in the written procedure for emergency follow-up care for patients treated in the mobile dental facility or portable dental operation, including arrangements for treatment in a health care facility that is permanently established in the area. The permanent health care facility shall be identified in the written procedure.

(c) Each dentist and dental hygienist providing dental services in the mobile dental facility or portable dental operation shall display that individual's Kansas dental license or Kansas dental hygienist license in plain view of the patients. (Authorized by and implementing L. 2005, ch. 115, § 2; effective Feb. 17, 2006.)

**71-8-7. Identification of location of services.** (a) Each operator of a mobile dental facility or portable dental operation shall maintain a written or electronic record containing the following information for each location where services are provided:

- (1) The street address of the service location;
- (2) the date or dates of each session;
- (3) the number of patients served; and
- (4) the types of dental services provided and number of each type of service provided.

(b) Each operator of a mobile dental facility or portable dental operation shall make the record specified in subsection (a) available to the board or its representative within 10 days of each request. The operator shall submit the record in a format approved by the board. (Authorized by and implementing L. 2005, ch. 115, § 2; effective Feb. 17, 2006.)

**71-8-8. Information for patients.** (a) As used in this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) "Nursing home" means an adult care home as defined in K.S.A. 39-923, and amendments thereto.

(2) "School" means any preschool and any public or private elementary or secondary school.

(b) During or at the conclusion of each patient's visit to the mobile dental facility or portable dental operation, the patient, parent, or guardian shall be provided with an information sheet. If the patient, parent, or guardian has provided consent for a nursing home or school to access the patient's dental health records, the institution shall also be provided with a copy of the information sheet.

(c) Each information sheet shall include the following information:

- (1) The address and telephone number of record required by K.A.R. 71-8-4;
- (2) the name of each dentist and dental hygienist who provided services;
- (3) a description of the treatment rendered, including the billed service codes and fees associated with the treatment, tooth numbers along with surface and quadrant descriptors when appropriate, and the names and telephone numbers of the billing entity and any third party being billed;
- (4) the date of the services and the location where the services were rendered;
- (5) the name and telephone number of the entity to contact for information regarding the processing and payment for billed services; and
- (6) if necessary, referral information to another health care provider. (Authorized by and implementing K.S.A. 65-1469; effective Feb. 17, 2006; amended Dec. 20, 2019.)

**71-8-9. Cessation of operations.** (a) Upon cessation of operations by the mobile dental facility or portable dental operation, each operator shall notify the board, in writing and within 30 days of the last day of operations, of the final disposition of patient records and charts.

(b) As used in this regulation, "active patient" shall mean an individual whom the mobile dental facility or portable dental operation has examined, treated, cared for, or otherwise consulted with during the two-year period before discontinuing practice or moving from the community.

(c) Upon choosing to discontinue practice or services in a community, each operator of a mobile dental facility or portable dental operation shall perform the following:

- (1) Notify all of the operator's active patients in writing, or by publication once a week for three consecutive weeks in a newspaper of general circulation in the community, that the operator intends to discontinue the mobile dental facility or

portable dental operation's practice in the community; and

(2) advise each active patient to seek the services of another dentist and document, in the patient's dental record, the date of the advice and the manner in which the advice was provided.

(d) Each operator shall make reasonable arrangements with the active patients of the mobile dental facility or portable dental operation for the transfer of each patient's records, including radiographs or copies, to the succeeding practitioner or, at the written request of the patient, parent, or guardian, to the patient, parent, or guardian.

(e) If the mobile dental facility or portable dental operation is sold, each new operator shall file a registration application and pay the registration fee specified in K.A.R. 71-8-2. Each new operator shall be required to receive board approval before providing services. (Authorized by and implementing L. 2005, ch. 115, § 2; effective Feb. 17, 2006.)

## Article 9.—PRACTICE OF DENTISTRY BY A DENTAL STUDENT

**71-9-1. Definitions.** As used in this article, the following terms shall have the meanings specified in this regulation: (a) "Dental student" means a person who meets the following requirements:

(1) Has completed at least 50 percent of the required hours of dental classroom and clinical training at an educational institution; and

(2) is currently enrolled as a student at an educational institution.

(b) "Educational institution" means a dental school approved by the board that has obtained approval from the board to operate an educational program, pursuant to K.S.A. 65-1423(a)(9) and amendments thereto, in which dental students will perform dentistry.

(c) "Supervising dentist" means a dentist who meets the following requirements:

(1)(A) Has an active license to practice dentistry in Kansas; or

(B) is eligible to be licensed in Kansas and has an application to be licensed in Kansas pending;

(2) has faculty status with an educational institution;

(3) has been assigned to a department of the educational institution and has agreed in writing to use the department's objectives in supervising and evaluating the work of the dental students; and

(4) has agreed in writing to confer as necessary, but at least annually, with the department chair and educational institution administrators to ensure that the educational activities supervised by the supervising dentist are being conducted to achieve the educational goals of the educational institution. (Authorized by K.S.A. 74-1406(l); implementing K.S.A. 65-1423(a)(9); effective Jan. 9, 2009.)

### **71-9-2. Approval of educational program.**

The administrator of each educational program shall not permit any dental student to perform the practice of dentistry in this state unless the educational program has been approved by the board. (Authorized by K.S.A. 74-1406(l); implementing K.S.A. 65-1423(a)(9); effective Jan. 9, 2009.)

### **71-9-3. Requirements for approval of educational program.**

To be approved, pursuant to K.S.A. 65-1423(a)(9) and amendments thereto, as an educational program in which the practice of dentistry may be performed by a dental student, the administrator of each educational program shall ensure that all of the following requirements are met: (a) The administrator of the educational program shall file a written application with the executive director of the board. This application shall be submitted upon the form furnished by the board.

(b) The educational program shall be operated pursuant to a written affiliation agreement between an educational institution and either a licensee or an entity approved by the board. The affiliation agreement shall establish requirements for the educational program and the supervising dentist that are consistent with these regulations.

(c) Each dental student shall be permitted to practice dentistry only under the direct supervision of a supervising dentist.

(d) Patient records that meet the requirements of the Kansas dental practice act and the board's regulations shall be maintained.

(e) The administrator of the educational program shall have policies and procedures in place to ensure appropriate care of each patient treated in the program.

(f) Each dental student shall have professional liability coverage.

(g) All dental students performing dentistry shall be evaluated by a supervising dentist using methods approved by the educational institution.

(h) Before any patient receives dental services from a dental student, the patient shall sign a form indicating that patient's consent to being treated by a dental student. (Authorized by K.S.A. 74-1406(l); implementing K.S.A. 65-1423(a)(9); effective Jan. 9, 2009.)

**71-9-4. Notice of new location.** The administrator of each educational program shall notify the board in writing at least 30 days before establishing a new location at which dental students will be practicing dentistry in the state of Kansas. (Authorized by K.S.A. 74-1406(l); implementing K.S.A. 65-1423(a)(9); effective Jan. 9, 2009.)

#### **Article 10.—PRACTICE OF DENTAL HYGIENE BY A DENTAL HYGIENE STUDENT**

**71-10-1. Definitions.** As used in this article, the following terms shall have the meanings specified in this regulation: (a) "Dental hygiene student" means a person who meets the following requirements:

(1) Has completed at least one semester of full-time dental hygiene education, including all pre-clinical courses, at an educational institution. For purposes of this article, "pre-clinical courses" shall mean the courses that are a prerequisite to academic clinical courses; and

(2) is currently enrolled as a student at an educational institution and is not currently licensed by the Kansas dental board.

(b) "Educational institution" means a dental hygiene school approved by the board that has obtained approval from the board to operate an educational program, pursuant to K.S.A. 65-1423(a)(9) and amendments thereto, in which dental hygiene students will perform dental hygiene.

(c) "Supervising dental hygienist" means a dental hygienist who meets the following requirements:

(1)(A) Has an active license to practice dental hygiene in Kansas; or

(B) is eligible to be licensed in Kansas and has an application to be licensed in Kansas pending;

(2) has faculty status with an educational institution;

(3) has been assigned to a department of the educational institution and has agreed in writing to use the department's objectives in supervising and evaluating the work of the dental hygiene students supervised; and

(4) has agreed in writing to confer as necessary, but at least annually, with the department chair and educational institution administrators to ensure that the educational activities supervised by the supervising dental hygienist are being conducted to achieve the educational goals of the educational institution.

(d) "Supervising dentist" means a dentist who meets the following requirements:

(1)(A) Has an active license to practice dentistry in Kansas; or

(B) is eligible to be licensed in Kansas and has an application to be licensed in Kansas pending;

(2) has faculty status with an educational institution;

(3) has been assigned to a department of the educational institution and has agreed in writing to use the department's objectives in supervising and evaluating the work of the dental hygiene students; and

(4) has agreed in writing to confer as necessary, but at least annually, with the department chair and educational institution administrators to ensure that the educational activities supervised by the supervising dentist are being conducted to achieve the educational goals of the educational institution. (Authorized by K.S.A. 74-1406(l); implementing K.S.A. 65-1423(a)(9); effective Jan. 9, 2009.)

**71-10-2. Approval of educational program.** The administrator of each educational program shall not permit any dental hygiene student to perform the practice of dental hygiene in this state unless the educational program has been approved by the board. (Authorized by K.S.A. 74-1406(l); implementing K.S.A. 65-1423(a)(9); effective Jan. 9, 2009.)

**71-10-3. Requirements for approval of educational program.** To be approved, pursuant to K.S.A. 65-1423(a)(9) and amendments thereto, as an educational program in which the practice of dental hygiene may be performed by a dental hygiene student, the administrator of each educational program shall ensure that all of the following requirements are met: (a) The administrator of the educational program shall file a written application with the executive director of the board. This application shall be submitted upon the form furnished by the board.

(b) The educational program shall be operated pursuant to a written affiliation agreement between an educational institution and either a

licensee or an entity approved by the board. The affiliation agreement shall establish requirements for the educational program and for the supervising dentist or supervising dental hygienist that are consistent with these regulations.

(c) Each dental hygiene student shall be permitted to practice dental hygiene only under the direct supervision of a supervising dentist or a supervising dental hygienist.

(d) Patient records that meet the requirements of the Kansas dental practice act and the board's regulations shall be maintained.

(e) The administrator of the educational program shall have policies and procedures in place to ensure appropriate care of each patient treated in the program.

(f) Each dental hygiene student shall have professional liability coverage.

(g) All dental hygiene students performing dental hygiene shall be evaluated by a supervising dentist or a supervising dental hygienist using methods approved by the educational institution.

(h) Before any patient receives dental hygiene services from a dental hygiene student, the patient shall sign a form indicating that patient's consent to being treated by a dental hygiene student. (Authorized by K.S.A. 74-1406(l); implementing K.S.A. 65-1423(a)(9); effective Jan. 9, 2009.)

**71-10-4. Notice of new location.** The administrator of each educational program shall notify the board in writing at least 30 days before establishing a new location at which dental hygiene students will be practicing dental hygiene in the state of Kansas. (Authorized by K.S.A. 74-1406(l); implementing K.S.A. 65-1423(a)(9); effective Jan. 9, 2009.)

#### **Article 11.—MISCELLANEOUS PROVISIONS**

**71-11-1. Practice of dentistry.** Each nonlicensed person who provides any service or procedure meeting either of the following conditions shall be deemed to be practicing dentistry, unless the person provides the service or procedure under the direct supervision of a dentist licensed and practicing in Kansas: (a) Alters the color or physical condition of natural, restored, or prosthetic teeth; or

(b) requires the positioning and adjustment of equipment or appliances for the purpose of altering the color or physical condition of natural, restored, or prosthetic teeth. (Authorized by K.S.A. 74-1406(l); implementing K.S.A. 65-1422; effective Aug. 21, 2009.)



## Agency 72

# Board of Examiners of Psychologists

### Editor's Note:

For new regulations concerning certification of psychologists, see regulations of the Behavioral Sciences Regulatory Board, K.A.R. 102-1-1 *et seq.*

### Articles

- 72-1. *THE BOARD. (Not in active use.)*
- 72-2. *OFFICERS. (Not in active use.)*
- 72-3. *COMMITTEES. (Not in active use.)*
- 72-4. *MEETINGS. (Not in active use.)*
- 72-5. *LEGAL COUNSEL. (Not in active use.)*
- 72-6. *ANNUAL REPORT. (Not in active use.)*
- 72-7. *APPLICATIONS. (Not in active use.)*
- 72-8. *QUALIFICATIONS. (Not in active use.)*
- 72-9. *CERTIFICATION, REVOCATION AND RENEWAL. (Not in active use.)*
- 72-10. *CERTIFICATION BY ENDORSEMENT. (Not in active use.)*
- 72-11. *EXAMINATIONS. (Not in active use.)*
- 72-12. *ETHICAL STANDARDS OF PSYCHOLOGISTS. (Not in active use.)*

### Article 1.—THE BOARD

**72-1-1 to 72-1-3.** (Authorized by K.S.A. 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-1-4.** (Authorized by K.S.A. 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; amended, E-76-47, Sept. 19, 1975; amended, E-78-1, Oct. 28, 1976; amended Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

### Article 2.—OFFICERS

**72-2-1.** (Authorized by K.S.A. 74-5306, 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; amended, E-76-47, Sept. 19, 1975; amended, E-78-1, Oct. 28, 1976; amended Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-2-2.** (Authorized by K.S.A. 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-2-3.** (Authorized by K.S.A. 74-5308; ef-

fective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; amended, E-76-47, Sept. 19, 1975; amended, E-78-1, Oct. 28, 1976; amended Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-2-4.** (Authorized by K.S.A. 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-2-5.** (Authorized by K.S.A. 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; amended, E-76-47, Sept. 19, 1975; amended, E-78-1, Oct. 28, 1976; amended Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-2-6.** (Authorized by K.S.A. 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; amended, E-76-47, Sept. 19, 1975; revoked, E-78-1, Oct. 28, 1976; revoked Feb. 15, 1977.)

### Article 3.—COMMITTEES

**72-3-1.** (Authorized by K.S.A. 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; amended, E-76-47, Sept. 19, 1975; amended, E-78-1, Oct. 28, 1976; amended Feb. 15,

1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

#### Article 4.—MEETINGS

**72-4-1.** (Authorized by K.S.A. 74-5306, 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; amended, E-78-1, Oct. 28, 1976; amended Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-4-2 and 72-4-3.** (Authorized by K.S.A. 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

#### Article 5.—LEGAL COUNSEL

**72-5-1.** (Authorized by K.S.A. 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

#### Article 6.—ANNUAL REPORT

**72-6-1.** (Authorized by K.S.A. 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

#### Article 7.—APPLICATIONS

**72-7-1 and 72-7-2.** (Authorized by K.S.A. 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; amended, E-76-47, Sept. 19, 1975; amended, E-78-1, Oct. 28, 1976; amended Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-7-3.** (Authorized by K.S.A. 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-7-4 and 72-7-5.** (Authorized by K.S.A. 74-5308, 74-5317; effective, E-76-47, Sept. 19, 1975; effective, E-78-1, Oct. 28, 1976; effective, Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-7-6.** (Authorized by K.S.A. 74-5308, 74-5310; effective, E-76-47, Sept. 19, 1975; effective, E-78-1, Oct. 28, 1976; effective Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

#### Article 8.—QUALIFICATIONS

**72-8-1.** (Authorized by K.S.A. 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; amended, E-76-47, Sept. 19, 1975; amended, E-78-1, Oct. 28, 1976; amended Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-8-2.** (Authorized by K.S.A. 74-5310, 74-5314; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; amended, E-76-47, Sept. 19, 1975; amended, E-78-1, Oct. 28, 1976; amended Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-8-3.** (Authorized by K.S.A. 74-5310, 74-5314; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; amended, E-76-47, Sept. 19, 1975; amended, E-78-1, Oct. 25, 1976; amended Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-8-4 and 72-8-5.** (Authorized by K.S.A. 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-8-6.** (Authorized by K.S.A. 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; amended, E-76-47, Sept. 19, 1975; amended, E-78-1, Oct. 28, 1976; amended Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

#### Article 9.—CERTIFICATION, REVOCATION AND RENEWAL

**72-9-1 and 72-9-2.** (Authorized by K.S.A. 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; amended, E-76-47, Sept. 19, 1975; amended, E-78-1, Oct. 28, 1976; amended Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-9-3 and 72-9-4.** (Authorized by K.S.A. 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-9-5.** (Authorized by K.S.A. 74-5308, 74-5324; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; amended, E-76-47, Sept. 19, 1975; amended, E-78-1, Oct. 28, 1976; amended Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-9-6.** (Authorized by K.S.A. 74-5308, 74-5325; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; amended, E-76-47, Sept. 19, 1975; amended, E-78-1, Oct. 28, 1976; amended Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-9-7.** (Authorized by K.S.A. 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-9-8.** (Authorized by K.S.A. 74-5308, 74-5319; effective, E-76-47, Sept. 19, 1975; effective, E-78-1, Oct. 28, 1976; amended Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

#### Article 10.—CERTIFICATION BY ENDORSEMENT

**72-10-1.** (Authorized by K.S.A. 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; amended, E-76-47, Sept. 19, 1975; amended, E-78-1, Oct. 28, 1976; amended Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-10-2.** (Authorized by K.S.A. 74-5308, 74-5315; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; amended, E-76-47, Sept. 19, 1975; amended, E-78-1, Oct. 26, 1976; amended Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

#### Article 11.—EXAMINATIONS

**72-11-1.** (Authorized by K.S.A. 74-5308, 74-5310; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; amended, E-76-47, Sept. 19, 1975; amended, E-78-1, Oct. 28, 1976; amended Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-11-2.** (Authorized by K.S.A. 74-5308, 74-5311; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-11-3.** (Authorized by K.S.A. 74-5308; effective, E-68-26, Sept. 25, 1968; effective Jan. 1, 1969; amended, E-76-47, Sept. 15, 1975; amended, E-78-1, Oct. 28, 1976; amended Feb. 15,

1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-11-4.** (Authorized by K.S.A. 74-5308, 74-5311; effective, E-76-47, Sept. 19, 1975; effective, E-78-1, Oct. 28, 1976; effective Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-11-5.** (Authorized by K.S.A. 74-5310; effective, E-76-47, Sept. 19, 1975; effective, E-78-1, Oct. 28, 1976; effective Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-11-6.** (Authorized by K.S.A. 74-5308, 74-5311; effective, E-76-47, Sept. 19, 1975; effective, E-78-1, Oct. 28, 1976; effective Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

#### Article 12.—ETHICAL STANDARDS OF PSYCHOLOGISTS

**72-12-1.** (Authorized by K.S.A. 74-5308; effective Jan. 1, 1972; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-12-2.** (Authorized by K.S.A. 74-5308; effective Jan. 1, 1972; amended, E-78-1, Oct. 28, 1976; amended Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-12-3 to 72-12-10.** (Authorized by K.S.A. 74-5308; effective Jan. 1, 1972; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-12-11.** (Authorized by K.S.A. 74-5308; effective Jan. 1, 1972; amended, E-78-1, Oct. 28, 1976; amended Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-12-12 to 72-12-15.** (Authorized by K.S.A. 74-5308; effective Jan. 1, 1972; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-12-16.** (Authorized by K.S.A. 74-5308; effective Jan. 1, 1972; amended, E-78-1, Oct. 28, 1976; amended Feb. 15, 1977; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)

**72-12-17 to 72-12-19.** (Authorized by K.S.A. 74-5308; effective Jan. 1, 1972; revoked, E-82-17, Aug. 26, 1981; revoked May 1, 1982.)



## Agency 73

# Registration and Examining Board for Architects

### Editor's Note:

Effective July 1, 1976, the State Registration and Examining Board for Architects was abolished and its powers and duties transferred to the State Board of Technical Professions. The rules and regulations formerly appearing under this Agency 73 have been replaced by rules and regulations adopted by the State Board of Technical Professions, see Agency 66.

### Articles

73-4. *PROCEDURE FOR PROCURING ORIGINAL REGISTRATION. (Not in active use.)*

73-5. *PRACTICE. (Not in active use.)*

73-6. *PROVISIONS CONCERNING ANNUAL REGISTRATION. (Not in active use.)*

### Article 4.—PROCEDURE FOR PROCURING ORIGINAL REGISTRATION

**73-4-1.** (Authorized by K.S.A. 6-108; effective Jan. 1, 1966; powers and duties transferred July 1, 1976 to agency 66.)

**73-4-2.** (Authorized by K.S.A. 6-108; effective Jan. 1, 1966; revoked May 1, 1975.)

**73-4-3.** (Authorized by K.S.A. 6-108; effective Jan. 1, 1966; amended, E-73-11, Feb. 16, 1973; amended Jan. 1, 1974; powers and duties transferred July 1, 1976 to agency 66.)

**73-4-4.** (Authorized by K.S.A. 6-108; effective Jan. 1, 1966; powers and duties transferred July 1, 1976 to agency 66.)

**73-4-5.** (Authorized by K.S.A. 6-108; effective Jan. 1, 1966; revoked May 1, 1975.)

**73-4-6.** (Authorized by K.S.A. 6-108; effective Jan. 1, 1966; amended May 1, 1975; powers and duties transferred July 1, 1976 to agency 66.)

**73-4-7 through 73-4-9.** (Authorized by K.S.A. 6-108; effective Jan. 1, 1969; powers and duties transferred July 1, 1976 to agency 66.)

**73-4-10.** (Authorized by K.S.A. 6-108; effective Jan. 1, 1969; amended, E-73-11, Feb. 16, 1973; amended Jan. 1, 1974; powers and duties transferred July 1, 1976 to agency 66.)

**73-4-11.** (Authorized by K.S.A. 6-108; effective Jan. 1, 1969; amended Jan. 1, 1974; powers and duties transferred July 1, 1976 to agency 66.)

### Article 5.—PRACTICE

**73-5-1.** (Authorized by K.S.A. 6-108; effective Jan. 1, 1966; amended, E-74-47, Aug. 28, 1974; amended May 1, 1975; powers and duties transferred July 1, 1976 to agency 66.)

**73-5-2.** (Authorized by K.S.A. 6-108; effective Jan. 1, 1966; powers and duties transferred July 1, 1976 to agency 66.)

### Article 6.—PROVISIONS CONCERNING ANNUAL REGISTRATION

**73-6-1.** (Authorized by K.S.A. 6-108; effective Jan. 1, 1966; amended, E-74-47, Aug. 28, 1974; amended May 1, 1975; powers and duties transferred July 1, 1976 to agency 66.)



# Agency 74

## Board of Accountancy

### Articles

- 74-1. EXAMINATIONS.
- 74-2. CPA EXAM APPLICATION AND EDUCATION REQUIREMENTS.
- 74-3. ISSUANCE OF CERTIFICATES.
- 74-4. PERMITS TO PRACTICE AND CONTINUING EDUCATION REQUIREMENTS.
- 74-5. CODE OF PROFESSIONAL CONDUCT.
- 74-6. ADDITIONAL OFFICES.
- 74-7. FIRM REGISTRATION.
- 74-8. *CORPORATE PRACTICE. (Not in active use.)*
- 74-9. *CONTINUING EDUCATION. (Not in active use.)*
- 74-10. LICENSED MUNICIPAL PUBLIC ACCOUNTANTS.
- 74-11. PEER REVIEW PROGRAM.
- 74-12. FEES.
- 74-13. *TEMPORARY PERMITS. (Not in active use.)*
- 74-14. *LIMITED LIABILITY COMPANIES. (Not in active use.)*
- 74-15. UNIFORM ACCOUNTANCY ACT.

### Article 1.—EXAMINATIONS

**74-1-1. Type of examination.** The uniform certified public accountant examination prepared by the American institute of certified public accountants shall be used for all examinations. (Authorized by K.S.A. 1-202 and K.S.A. 1-304, as amended by 2003 HB 2241, § 3; implementing K.S.A. 1-302 and K.S.A. 1-304, as amended by 2003 HB 2241, § 3; effective Jan. 1, 1966; amended Nov. 14, 2003.)

**74-1-2. Determining and reporting examination grades.** (a) Each testing candidate shall be required to pass all test sections of the examination in order to qualify for a certificate.

(b) Each testing candidate shall be required to attain at least a minimum grade established through a psychometrically acceptable, standard-setting procedure approved by the board.

(c) Upon the board's receipt of each candidate's advisory grades from the examination provider, the grades shall be reviewed and may be adopted by the board. The examination grades shall be reported to the testing candidate. (Authorized by K.S.A. 1-202 and K.S.A. 2006 Supp. 1-304, as amended by L. 2007, ch. 97, § 2; implementing K.S.A. 2006 Supp. 1-304, as amended by L. 2007, ch. 97, § 2; effective Jan. 1, 1966; amended Nov.

17, 2000; amended Nov. 14, 2003; amended Jan. 11, 2008.)

**74-1-3. Retaking the examination and granting of credits.** (a) Each testing candidate shall be deemed to have passed the examination if the candidate obtains credit for passing each of the four test sections. Credit for passing a test section shall be valid from the date of the examination regardless of the date on which the testing candidate receives actual notice of the passing grade.

(b) A testing candidate may take the test sections individually and in any order. Credit for passing any test section shall be valid for 18 months from the date of testing regardless of the number of sections taken or the scores on any failed sections.

(c) Each testing candidate shall pass all four test sections within a rolling 18-month period that begins on the date the first test section passed is taken. If all four test sections are not passed within this 18-month period, credit for any test section passed outside the 18-month period shall expire.

(d) A testing candidate shall not retake a failed test section until the candidate has received the score for the most recent attempt of that test section.

(e) Each testing candidate shall retain credit for any test section passed in another state if the credit would have been given if the testing candidate had taken the examination in Kansas.

(f) Despite the provisions of subsections (a), (b), and (c), the period of time in which to pass all test sections of the examination may be extended by the board upon a showing that the credit was lost by reason of circumstances beyond the testing candidate's control. (Authorized by K.S.A. 1-202 and K.S.A. 2018 Supp. 1-304; implementing K.S.A. 2018 Supp. 1-304; effective Jan. 1, 1966; amended, E-82-27, Dec. 22, 1981; amended May 1, 1982; amended Jan. 12, 1996; amended Nov. 14, 2003; amended Jan. 11, 2008; amended Feb. 19, 2016; amended Nov. 29, 2019.)

**74-1-4. Transfer of examination credit.**

An applicant for the certificate of certified public accountant who has passed one or more sections of the uniform certified public accountant examination under the jurisdiction of another state shall be given conditional credit by the board for passing those subjects if the applicant meets the following requirements:

- (a) Has established residence in Kansas;
- (b) has passed one or more sections of the uniform certified public accountant examination in accordance with K.A.R. 74-1-3, with the grades determined by the advisory grading service of the board of examiners of the American institute of certified public accountants;
- (c) meets the education requirement prescribed by K.S.A. 1-302a, and amendments thereto; and
- (d) at the time of applying to transfer the credit earned in another state, is still eligible to be reexamined in that state except for reason of change of residence. (Authorized by K.S.A. 1-202; implementing K.S.A. 1-302; effective Jan. 1, 1966; amended, E-82-27, Dec. 22, 1981; amended May 1, 1982; amended May 25, 2012; amended Feb. 19, 2016.)

**74-1-5.** (Authorized by K.S.A. 1981 Supp. 1-202(a); implementing K.S.A. 1981 Supp. 1-301(b)(1); effective, E-82-27, Dec. 22, 1981; effective May 1, 1982; revoked July 18, 1997.)

**74-1-6. Refund of examination fees.** (a) Any examination fee may be refunded by the board to a testing candidate who is unable to be present for an examination if the board determines that the testing candidate had an acceptable reason for not sitting. Acceptable reasons shall include a documented illness, death in the immediate family, and any other reason that the board determines to be unavoidable.

(b) Each refunded examination fee shall be subject to a 25 percent processing fee. (Authorized

by K.S.A. 1-202 and K.S.A. 2006 Supp. 1-304, as amended by L. 2007, ch. 97, §2; implementing K.S.A. 2006 Supp. 1-304, as amended by L. 2007, ch. 97, § 2; effective July 18, 1997; amended Nov. 14, 2003; amended Jan. 11, 2008.)

**74-1-7. Examination security.** Scheduled examinations, the grading of examinations, and the issuance of certificates may be postponed by the board for any of the following reasons:

- (a) Breach of examination security;
- (b) unauthorized acquisition or disclosure of the contents of an examination;
- (c) suspected or actual negligence, errors, omissions, or irregularities in conducting examinations; or
- (d) any other reasonable cause or unforeseen circumstance. (Authorized by K.S.A. 1999 Supp. 1-202, as amended by L. 2000, Ch. 81, § 4; implementing K.S.A. 1999 Supp. 1-302, as amended by L. 2000, Ch. 81, § 7; effective Nov. 17, 2000.)

**74-1-8. Administration of examination; cheating.** (a) Either of the following actions by a testing candidate shall invalidate any grade otherwise earned on any test section and may warrant the candidate's summary expulsion from the test site and disqualification from taking the examination for a specified period of time:

- (1) Failing to comply with the testing administrator's instructions; or
- (2) cheating in applying for or taking the examination.

(b) The following actions or attempted actions by a testing candidate may be considered cheating:

- (1) Falsifying or misrepresenting educational credentials or other information required for admission to the examination;
- (2) any communication between testing candidates inside or outside the test site or copying another testing candidate's answers while the examination is in progress;
- (3) with the exception of persons associated with the examination process, any communication with others inside or outside the test site while the examination is in progress;
- (4) the substitution of another person to sit in the test site in the stead of a testing candidate;
- (5) other than those materials provided to the testing candidate as part of the examination, referring to cribnotes, textbooks, or any other materials or electronic media inside or outside the test site while the examination is in progress;

(6) violating the nondisclosure prohibitions of the examination or aiding or abetting another in doing so; and

(7) retaking or attempting to retake a test section by an individual holding a valid certificate or by a testing candidate who has unexpired credit for having already passed the same test section, unless the individual has been authorized to retake a test section or has been expressly authorized by the board to do so.

(c) If it appears that a testing candidate has failed to comply with the testing site administrator's instructions or that cheating has occurred or is occurring, the testing candidate either may be summarily expelled by the board or its designee or may be moved to a position in the testing center away from other testing candidates.

(d) If the board has reason to believe that a testing candidate either has failed to comply with the testing site administrator's instructions or has cheated on the examination, an investigation and a hearing may be conducted by the board to determine whether the testing candidate will be given credit for any of the test sections and whether the testing candidate will be barred from taking the examination for a specified period of time.

(e) If the board determines that a testing candidate has failed to comply with the testing site administrator's instructions or that cheating occurred but the board allows a testing candidate to take any subsequent examinations, any of the following actions may be taken by the board:

(1) Admonish the testing candidate;

(2) seat the testing candidate in a segregated location for the rest of the examination;

(3) keep a record of the testing candidate's seat location and identifying information as well as the names and identifying information of the testing candidates in close proximity to the candidate; or

(4) provide information concerning the circumstances of the cheating to the national candidate database, the American institute of certified public accountants, and the testing center.

(f) Other state regulatory boards may be notified by the board of the board's findings and any actions taken against a testing candidate who is refused credit for any test section, disqualified from taking any test section, or barred from taking the examination in the future. (Authorized by K.S.A. 1-202 and K.S.A. 2006 Supp. 1-304, as amended by L. 2007, ch. 97, §2; implementing K.S.A. 2006 Supp. 1-304, as amended by L. 2007, ch. 97, §2; effective Nov. 14, 2003; amended Jan. 11, 2008.)

## **Article 2.—CPA EXAM APPLICATION AND EDUCATION REQUIREMENTS**

### **74-2-1. Applications for examination.**

(a) Each application to take the certified public accountant examination shall be submitted on a form provided by the board or its designee and shall be filed by a date specified in the application.

(b) An application shall not be considered filed until the following conditions are satisfied:

(1) All information requested on the form is provided.

(2) All fees are included with the application.

(3) Official transcripts and any documents that establish that the applicant has satisfied or will satisfy the education requirements in K.A.R. 74-2-7 and K.S.A. 1-302a, and amendments thereto, are provided with the application.

(4) All supporting documents identified in the application form are received, including proof of identity as specified in the application form.

(c) Each testing candidate shall notify the board or its designee of any change of home or business address within 30 days of the change. (Authorized by K.S.A. 1-202 and K.S.A. 2016 Supp. 1-304; implementing K.S.A. 2016 Supp. 1-304; effective Jan. 1, 1966; amended May 1, 1978; amended, E-82-27, Dec. 22, 1981; amended May 1, 1982; amended July 18, 1997; amended Nov. 17, 2000; amended Nov. 14, 2003; amended March 21, 2014; amended Jan. 26, 2018.)

**74-2-2. Evaluation of college credits.** In evaluating credit hours earned at a college or university operating under the quarter plan, these hours shall be converted to semester hours at the rate of two (2) semester hours for every three (3) quarter hours. (Authorized by K.S.A. 1-202; effective Jan. 1, 1966; amended May 1, 1978.)

### **74-2-3. Submission of college transcripts.**

(a) An individual applying for admission to the examination, or for issuance of a certificate as certified public accountant by waiver of examination, shall submit with the application official college transcripts and include the number of hours of credit received in courses that are listed in K.A.R. 74-2-7. College transcripts shall not be returned.

(b) Transcripts received from foreign universities shall be evaluated by a credentialing evaluation service approved by the board. (Authorized by K.S.A. 1999 Supp. 1-202, as amended by L. 2000, Ch. 81, §4; implementing K.S.A. 1999 Supp. 1-202, as amended by L. 2000, Ch. 81, §4, K.S.A.

1-302a, as amended by L. 2000, Ch. 81, §8, K.S.A. 1999 Supp. 1-307, as amended by L. 2000, Ch. 81, §10; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Feb. 15, 1977; amended May 1, 1978; amended, E-82-27, Dec. 22, 1981; amended May 1, 1982; amended Nov. 17, 2000.)

**74-2-4.** (Authorized by K.S.A. 1999 Supp. 1-202, as amended by L. 2000, Ch. 81, §4; implementing K.S.A. 1-302a, as amended by L. 2000, Ch. 81, §8; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Feb. 15, 1977; amended May 1, 1978; amended Nov. 17, 2000; revoked Nov. 14, 2003.)

**74-2-5. Residence requirement for examination.** To be eligible for the initial or complete re-examination in Kansas, a candidate must be a resident or have a place of business as a public accountant in, or be permanently employed by a public accounting firm in Kansas. The board may require satisfactory proof that the candidate meets this requirement. (Authorized by K.S.A. 1-202; effective Jan. 1, 1972; amended Jan. 1, 1973; amended May 1, 1978.)

**74-2-6.** (Authorized by K.S.A. 1-302a(d); effective Jan. 1, 1972; amended May 1, 1978; revoked, E-82-27, Dec. 22, 1981; revoked May 1, 1982.)

**74-2-7. Concentration in accounting.** (a) The “concentration in accounting” courses required to qualify for admission to the certified public accountant examination shall be as follows:

(1) At least 42 semester credit hours in business and general education courses, including the following:

(A) A macroeconomics course, a microeconomics course, and one upper-division economics course;

(B) at least two courses in the legal aspects of business or business law;

(C) college algebra or higher-level math course;

(D) statistics and probability theory course;

(E) computer systems and applications course;

(F) finance course;

(G) management and administration course;

(H) marketing course; and

(I) production, operations research, or applications of quantitative techniques to business problems course;

(2) at least 11 semester credit hours in courses in written and oral communications; and

(3) at least 30 semester credit hours in courses in accounting theory and practice, including the following:

(A) Financial accounting and reporting for business organizations course, which may include any of the following:

(i) Intermediate accounting course;

(ii) advanced accounting course; or

(iii) accounting theory course;

(B) managerial accounting beyond an introductory course;

(C) auditing course concentrating on auditing standards generally accepted in the United States as issued by the AICPA auditing standards board or the PCAOB, or both;

(D) U.S. income tax course; and

(E) accounting systems beyond an introductory computer course.

(b) The following types of credits awarded by a college or university approved by the board shall be accepted by the board for purposes of determining compliance with subsection (a), if the credits are related to those areas specified in subsection (a):

(1) Credit for advanced placement;

(2) credit by examination;

(3) credit for military education;

(4) credit for competency gained through experience; and

(5) courses taken for pass-fail credit.

Credits recognized by the board pursuant to this subsection shall not exceed a total of six semester hours.

(c) Credit shall not be allowed for any course that is only audited.

(d) Credit shall not be allowed for any course for which credit has already been received.

(e) Any credits earned for an accounting internship may count toward the overall 150-hour education requirement, but these credits shall not be acceptable in satisfaction of the required concentration in accounting courses.

(f) Credits earned for CPA exam review courses shall not be acceptable in satisfaction of the required concentration in accounting courses. However, these credits may be used toward the overall 150-hour education requirement.

(g) Not to exceed a total of six hours, up to three hours of course requirements specified in paragraph (a)(1), (a)(2), or (a)(3) may be waived by the board, upon the applicant’s demonstration of compelling circumstances and upon receipt of satisfactory verification that the applicant has otherwise met the requirements. (Authorized by K.S.A.

1-202 and K.S.A. 2016 Supp. 1-302a; implementing K.S.A. 2016 Supp. 1-302a; effective Jan. 1, 1973; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1979; amended July 22, 1991; amended Sept. 25, 1998; amended Jan. 11, 2008; amended May 25, 2012; amended March 21, 2014; amended Feb. 19, 2016; amended Jan. 26, 2018.)

**74-2-8.** (Authorized by K.S.A. 1-302a(a)(3); effective May 1, 1979; revoked, E-82-27, Dec. 22, 1981; revoked May 1, 1982.)

### Article 3.—ISSUANCE OF CERTIFICATES

**74-3-1.** (Authorized by K.S.A. 1-202(a); effective Jan. 1, 1972; amended Jan. 1, 1973; amended May 1, 1978; revoked, E-82-27, Dec. 22, 1981; revoked May 1, 1982.)

**74-3-2.** (Authorized by K.S.A. 1-202; effective Jan. 1, 1966; revoked, E-82-27, Dec. 22, 1981; revoked May 1, 1982.)

**74-3-3.** (Authorized by K.S.A. 1-302a(d); effective Jan. 1, 1966; amended Jan. 1, 1972; amended Feb. 15, 1977; revoked, E-82-27, Dec. 22, 1981; revoked May 1, 1982.)

**74-3-4 and 74-3-5.** (Authorized by K.S.A. 1-302a(d); effective Jan. 1, 1966; amended Jan. 1, 1972; revoked, E-82-27, Dec. 22, 1981; revoked May 1, 1982.)

**74-3-6.** (Authorized by K.S.A. 1-202; effective Jan. 1, 1966; revoked Jan. 1, 1972.)

**74-3-7.** (Authorized by K.S.A. 1-302a; effective Jan. 1, 1973; amended Feb. 15, 1977; revoked, E-82-27, Dec. 22, 1981; revoked May 1, 1982.)

**74-3-8. Ethics examination requirement for issuance of certificate.** Completion of an examination in professional ethics approved by the board, with a passing score of at least 90 percent, shall be required for issuance of the Kansas certificate. (Authorized by K.S.A. 1-202; implementing K.S.A. 1-302; effective Feb. 15, 1977; amended, E-82-27, Dec. 22, 1981; amended May 1, 1982; amended Nov. 17, 2000; amended Jan. 26, 2018.)

### Article 4.—PERMITS TO PRACTICE AND CONTINUING EDUCATION REQUIREMENTS

**74-4-1.** (Authorized by K.S.A. 1997 Supp. 1-202 and K.S.A. 75-1119; implementing K.S.A.

1997 Supp. 1-316, K.S.A. 75-1119, and 75-1128; effective Jan. 1, 1966; amended Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1985; amended Jan. 12, 1996; amended Sept. 25, 1998; revoked Nov. 17, 2000.)

**74-4-1a. Experience requirement for attest services.** (a) Each permit holder who supervises attest services or who signs or authorizes a person to sign a report on any audit, attest, review, or compilation engagement on behalf of a firm shall meet the requirements set forth in the “statements on quality control standards” issued by the auditing standards board of the American institute of certified public accountants and contained in the “AICPA professional standards,” as adopted by reference in K.A.R. 74-5-2.

(b) Notwithstanding subsection (a), each permit holder who supervises attest services or signs or authorizes a person to sign a report on any applicable engagement on behalf of a firm that is registered with the PCAOB shall comply with the applicable standards of the PCAOB, which are adopted by reference in K.A.R. 74-5-2.

(c) Each permit holder who supervises attest services or who signs or authorizes a person to sign a report for a governmental audit engagement on behalf of a firm shall comply with the government auditing standards adopted by reference in K.A.R. 74-5-2. (Authorized by and implementing K.S.A. 1-202 and K.S.A. 1-302b; effective Nov. 17, 2000; amended May 27, 2005; amended May 19, 2006; amended Feb. 16, 2007.)

**74-4-2.** (Authorized by K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1970; amended Jan. 1, 1972; revoked, E-82-27, Dec. 22, 1981; revoked May 1, 1982.)

**74-4-2a. Evidence of experience.** (a) Any certified public accountant who refuses to verify an applicant’s experience may be required to inform the board of the certified public accountant’s reason for refusing to verify this experience.

(b) Any certified public accountant who has verified the experience of an applicant may be required by the board to substantiate any information provided to the board.

(c) Any documentation relating to an applicant’s experience may be reviewed by the board. The applicant may be required to appear before the board or its designee to supplement or verify the applicant’s experience. (Authorized by K.S.A. 1999 Supp. 1-202, as amended by L. 2000, Ch.

81, §4; implementing K.S.A. 1999 Supp. 1-302b, as amended by L. 2000, Ch. 81, § 9; effective Nov. 17, 2000.)

**74-4-3.** (Authorized by K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1970; amended Jan. 1, 1972; revoked, E-82-27, Dec. 22, 1981; revoked May 1, 1982.)

**74-4-3a. Permit renewal.** (a) Each application for renewal of a permit shall be submitted on a form provided by the board.

(b) A renewal application that is insufficient shall not be processed and shall be returned to the applicant.

(1) An application shall be deemed insufficient if it meets any of the following conditions:

- (A) Is not completely filled out;
- (B) lacks the required number of continuing education hours;
- (C) lacks the required documentation; or
- (D) does not include the renewal fee.

(2) If the renewal fee is paid by credit card, the application shall be deemed insufficient if it meets either of the following conditions:

- (A) The information necessary to process the credit card payment is deficient.
  - (B) The credit card company rejects payment.
- (Authorized by K.S.A. 1-202; implementing K.S.A. 2016 Supp. 1-310; effective Nov. 17, 2000; amended Nov. 2, 2001; amended May 25, 2012; amended Jan. 26, 2018.)

**74-4-4. Experience requirement for permits.** (a) The accounting experience required under K.S.A. 1-302b, and amendments thereto, may include any type of service or advice involving the use of attest or nonattest skills pursuant to K.S.A. 1-302b and amendments thereto. Attest and nonattest services shall be as defined in K.S.A. 1-321, and amendments thereto.

(b) One year of experience shall consist of full- or part-time employment that extends over a period of no less than one year and no more than three years and that includes no fewer than 2,000 hours of performance of services as described in subsection (a). (Authorized by K.S.A. 2000 Supp. 1-202, as amended by 2001 HB 2343, § 7; implementing K.S.A. 2000 Supp. 1-302b, as amended by 2001 HB 2343, § 1; effective, E-82-27, Dec. 22, 1981; effective May 1, 1982; amended Jan. 12, 1996; amended Sept. 25, 1998; amended Nov. 17, 2000; amended Nov. 2, 2001.)

**74-4-5.** (Authorized by K.S.A. 1981 Supp. 1-202(a); implementing K.S.A. 1981 Supp. 1-302b; effective, E-82-27, Dec. 22, 1981; effective May 1, 1982; revoked Jan. 12, 1996.)

**74-4-6.** (Authorized by K.S.A. 1990 Supp. 1-202(a); implementing K.S.A. 1990 Supp. 1-302a(b); effective, E-82-27, Dec. 22, 1981; effective May 1, 1982; amended July 22, 1991; revoked Jan. 12, 1996.)

**74-4-7. Continuing education requirements.** (a)(1) Each applicant for renewal of a permit to practice as a certified public accountant in Kansas shall have completed 80 hours of acceptable continuing education (CE) during each biennial period for renewal and shall be in possession of proof of attendance or completion of the CE hours claimed before the applicant submits an application for renewal. Each applicant for renewal or reinstatement of a permit shall have completed two hours in professional ethics relating to the practice of certified public accountancy as part of the continuing education requirement.

(2) Ethics courses, which shall be defined as courses dealing with regulatory and behavioral ethics, shall be limited to courses on the following:

- (A) Professional standards;
- (B) licenses and renewals;
- (C) SEC oversight;
- (D) competence;
- (E) acts discreditable;
- (F) advertising and other forms of solicitation;
- (G) independence;
- (H) integrity and objectivity;
- (I) confidential client information;
- (J) contingent fees;
- (K) commissions;
- (L) conflicts of interest;
- (M) full disclosure;
- (N) malpractice;
- (O) record retention;
- (P) professional conduct;
- (Q) ethical practice in business;
- (R) personal ethics;
- (S) ethical decision making; and
- (T) corporate ethics and risk management as

these topics relate to malpractice and relate solely to the practice of certified public accountancy.

(b) Each applicant for renewal of a permit to practice as a licensed municipal public accountant in Kansas shall have completed a 16-hour program of acceptable continuing education during

each year within the biennial period. At least eight of the 16 hours shall be in the area of municipal accounting or auditing.

(c) The standards used to determine acceptable continuing education shall include the following:

(1) One hour of credit shall be granted for each 50 minutes of participation in a group, independent study, or self-study program. One-half hour of credit shall be granted for each 25-minute period after the first hour of credit has been earned.

(2) Hours devoted to actual preparation time by an instructor, discussion leader, or speaker for formal programs shall be computed at a maximum of up to twice the number of continuing education credits that a participant would be entitled to receive, in addition to the time for presentation. No CE credit shall be granted for time devoted to preparation by a participant.

(3) Hours served as an instructor, discussion leader, or speaker shall be included to the extent that they contribute to the professional competence of the applicant in the practice of certified public accountancy. Repeated presentations of the same course shall not be counted unless it is demonstrated that the program content involved was substantially changed and the change required significant additional study or research.

(4) Hours devoted to actual preparation as specified in paragraph (c)(2) and hours served as an instructor, discussion leader, or speaker as specified in paragraph (c)(3) shall not exceed, alone or in combination, 50 percent of the total number of continuing education hours required for permit renewal or reinstatement.

(d) The requirements of subsection (a) may be waived by the board for reasons of health, military service, foreign residence, or retirement, or for other good cause determined by the board.

(e) Any applicant for renewal of a permit to practice as a certified public accountant may carry over a maximum of 20 hours of continuing education earned in the previous renewal period. Any professional ethics hours that exceed the two-hour requirement may be included in the 20-hour carryover, but these hours shall not be used to meet the professional ethics requirement for any subsequent renewal period.

(f) If an applicant for renewal fails to obtain the continuing education required by this regulation, the applicant shall be required by the board to obtain an additional eight hours of continuing education within a period of time specified by the board before the applicant's permit to practice is

renewed. (Authorized by K.S.A. 1-202 and K.S.A. 75-1119; implementing K.S.A. 1-202, K.S.A. 2016 Supp. 1-310, and K.S.A. 75-1119; effective, E-82-27, Dec. 22, 1981; effective May 1, 1982; amended May 1, 1985; amended July 13, 1992; amended Sept. 25, 1998; amended Nov. 17, 2000; amended Nov. 15, 2002; amended Nov. 14, 2003; amended May 19, 2006; amended May 23, 2008; amended May 29, 2009; amended May 25, 2012; amended Jan. 26, 2018.)

**74-4-8. Continuing education programs; requirements.** (a) A program designed to allow a participant to learn a given subject through interaction with an instructor and other participants in a classroom or conference setting, or intrafirm program using the internet, may be approved for continuing education credit under K.A.R. 74-4-7 if the program meets the following conditions:

(1) It is a formal program of learning that maintains or improves the professional competence of a certified public accountant and requires attendance.

(2) Participants are informed in advance of the learning objectives, prerequisites, program level, program content, any requirements for advance preparation, instructional delivery methods, recommended CE credit, and course registration requirements.

(3) The program is at least 50 minutes in length.

(4) The program is conducted by a person qualified in the subject area.

(5) The program sponsor issues to each participant a certificate of attendance that reflects the name of the program sponsor, title and course field of study, date and location of the program, delivery method of the course, name of the participant, signature of a representative of the program sponsor, and number of CE contact hours.

(6) A record of registration and attendance is retained for five years by the program sponsor.

(b) The following types of programs addressing the subjects of accounting, auditing, consulting services, specialized knowledge and applications, taxation, management of a practice, ethics, or personal development may qualify as acceptable continuing education if the programs meet the requirements of subsection (a):

(1) Programs of the American institute of certified public accountants, state societies and local chapters of certified public accountants, and providers of continuing education courses;

(2) technical sessions at meetings of the American institute of certified public accountants, and

of state societies and local chapters of certified public accountants;

(3) university or college credit courses. Each semester hour of credit shall equal 15 hours of continuing education credit. Each quarter hour of credit shall equal 10 hours of continuing education credit;

(4) university or college non-credit courses. These courses shall qualify for continuing education credit that equals the number of actual, full 50-minute class hours attended; and

(5) formal, organized, in-firm or interfirm educational programs.

(c) Hours from personal development courses shall not exceed 30 percent of the total number of continuing education hours required for permit renewal or reinstatement. Personal development courses, which shall be defined as courses dealing with self-management and self-improvement both inside and outside of the business environment, shall be limited to courses on communication, leadership, character development, dealing effectively with others, interviewing, counseling, career planning, emotional growth and learning, and social interactions and relationships.

(d) Any author of a published article or book and any writer of a continuing education program may receive continuing education credit for the actual research and writing time if all of the following conditions are met:

(1) The board determines that the research and writing maintain or improve the professional competence of the author or writer.

(2) The number of credit hours claimed is consistent with the quality and scope of the article, book, or program.

(3) The article or book has been published or the program was created during the biennial period for which credit is claimed.

(e)(1) Group internet-based programs and individual self-study programs that allow a participant to learn a particular subject without the major involvement of an instructor may be eligible for continuing education credit if all of the following requirements are met:

(A) The program sponsor shall meet one of the following requirements:

(i) Has been approved by NASBA's national registry of continuing professional education sponsors or NASBA's quality assurance service;

(ii) is the American institute of certified public accountants; or

(iii) is a state society of certified public accountants.

(B) The program shall require registration.

(C) The sponsor shall provide a certificate of satisfactory completion.

(2) In addition to meeting the requirements specified in paragraph (e)(1), each individual self-study program shall meet the following requirements:

(A) The program shall include a final examination.

(B) Each participant shall be required to score at least 70 percent on the final examination.

(f) The amount of credit for group internet-based programs and self-study programs shall be determined by the board, as follows:

(1) Programs may be approved for one hour of continuing education credit for each 50 minutes of participation and one-half credit for each 25-minute period of participation after the first hour of credit has been earned.

(2) The amount of credit shall not exceed the number of recommended hours assigned by the program sponsor.

(g) Independent study programs that are designed to allow a participant to learn a given subject under the guidance of a continuing education program sponsor may be eligible for continuing education credit if all of the following conditions are met:

(1) The program meets one of the following requirements:

(A) Has been approved by NASBA's national registry of continuing professional education sponsors or NASBA's quality assurance service;

(B) is sponsored through the American institute of certified public accountants; or

(C) is sponsored through a state society of certified public accountants.

(2) The participant has a written learning contract with a program sponsor that contains a recommendation of the number of credit hours to be awarded upon successful completion of the program.

(3) The program sponsor reviews and signs a report indicating that all of the requirements of the independent study program, as outlined in the learning contract, are satisfied.

(4) The program is completed in 15 weeks or less.

(h) A participant in an independent study program may receive up to one hour of credit for each 50 minutes of participation and one-half hour of credit for each 25-minute period of participation after the first hour of credit has been earned. (Authorized by K.S.A. 1-202 and K.S.A. 75-1119; implementing K.S.A. 1-202, K.S.A. 2016 Supp. 1-310, and K.S.A. 75-1119; effective, E-82-27,

Dec. 22, 1981; effective May 1, 1982; amended May 1, 1985; amended Feb. 14, 1994; amended Sept. 25, 1998; amended Nov. 2, 2001; amended Nov. 15, 2002; amended Nov. 14, 2003; amended May 27, 2005; amended May 19, 2006; amended May 23, 2008; amended May 29, 2009; amended Nov. 29, 2010; amended May 25, 2012; amended Feb. 19, 2016; amended Jan. 26, 2018.)

**74-4-9. Continuing education controls and reporting.** (a) When applying for renewal of the permit to practice, each applicant shall sign a statement indicating the applicant's compliance with the requirements in K.A.R. 74-4-7 and 74-4-8, unless the applicant qualifies for the exemption outlined in K.S.A. 1-310, and amendments thereto.

(b)(1) Any applicant may be required by the board to verify the number of CE hours claimed in subsection (a), on a form provided by the board, which shall include the following information:

(A) The name of the organization, school, firm, or other sponsor conducting the program or course;

(B) the location of the program or course attended;

(C) the title of the program or course, or a brief description;

(D) the course field of study;

(E) the delivery method of the program or course;

(F) the dates attended or the date the program or course was completed; and

(G) the number of continuing education credits that the applicant received for participating in a program or course.

(2) Each applicant specified in paragraph (b)(1) shall provide the board with a certificate of completion or attendance for all attended, group, independent, and self-study program CE hours claimed. Each certificate of completion or attendance shall include the following:

(A) The name of the organization, school, firm, or other sponsor conducting the program or course;

(B) the location of the program or course attended;

(C) the title of the program or course, or a brief description;

(D) the dates attended or the date the program or course was completed;

(E) the delivery method of the program or course;

(F) the name of the participant;

(G) the signature of a representative of the program sponsor; and

(H) the number of continuing education credits that the applicant received for participating in a program or course.

(3) For instruction credit, each applicant shall provide the board with a certificate or other verification supplied by the CE program sponsor.

(4) For a university or college course that is successfully completed for credit, each applicant shall provide the board with an official transcript of the grade that the participant received.

(5) For a university or college non-credit course, each applicant shall provide the board with a certificate of attendance issued by a representative of the university or college.

(c) Each applicant shall retain documentation of completion or attendance for any continuing education program or course for five years from the end of the year in which the program or course was completed.

(d) Each applicant required to verify the number of CE hours claimed shall respond to the board's request for verification within 30 days. (Authorized by K.S.A. 1-202 and K.S.A. 75-1119; implementing K.S.A. 1-202, K.S.A. 2016 Supp. 1-310, and K.S.A. 75-1119; effective, E-82-27, Dec. 22, 1981; effective May 1, 1982; amended May 1, 1985; amended Sept. 25, 1998; amended Nov. 22, 2002; amended Nov. 14, 2003; amended May 23, 2008; amended Nov. 29, 2010; amended March 21, 2014; amended Feb. 19, 2016; amended Jan. 26, 2018.)

**74-4-10. Continuing education requirements for renewal of initial or reinstated permits.** (a) To renew an initial or reinstated permit to practice as a certified public accountant in Kansas, each applicant shall complete the number of continuing education (CE) hours proportionate to the number of hours required for the renewal period, given the number of full months from the date of the issuance of the permit to the June 30 renewal date. This requirement shall include two hours of ethics.

(b) CE hours used to reinstate a permit shall not be used toward a subsequent renewal of a permit.

(c) Continuing education credit obtained by the applicant on and after July 1 of the issuance year of the permit may be used to satisfy the continuing education requirement in subsection (a) if the credit meets the requirements specified in K.A.R. 74-4-7 and 74-4-8 and was not used to reinstate a permit. (Authorized by K.S.A. 1-202; implementing K.S.A. 2016 Supp. 1-310; effective, E-82-27, Dec. 22, 1981; effective May 1, 1982; amended

Sept. 25, 1998; amended Sept. 10, 1999; amended Nov. 17, 2000; amended May 23, 2008; amended May 25, 2012; amended Jan. 26, 2018.)

### Article 5.—CODE OF PROFESSIONAL CONDUCT

**74-5-1.** (Authorized by and implementing K.S.A. 1981 Supp. 1-202(c)(1); effective Jan. 1, 1974; amended May 1, 1978; amended, E-82-27, Dec. 22, 1981; amended May 1, 1982; revoked May 1, 1985.)

**74-5-2. Definitions.** Each of the following terms, wherever used in this article of the board's regulations, shall have the meaning specified in this regulation:

(a) "AICPA" means American institute of certified public accountants.

(b) "AICPA professional standards" means the standards specified in this subsection, including definitions and interpretations, published by the AICPA, which are hereby adopted by reference. As used in the following AICPA professional standards, "member" shall mean a person or firm subject to the board's regulation:

(1) "U.S. auditing standards—AICPA (clarified)" in "AICPA professional standards," volume 1, pages 37-1364, except pages 1279-1285, as in effect on June 1, 2016, and statement on auditing standards no. 132, "the auditor's consideration of an entity's ability to continue as a going concern," dated February 2017;

(2) "statements on standards for attestation engagements" in "AICPA professional standards," volume 1, pages 1373-1705, as in effect on June 1, 2016;

(3) "U.S. attestation standards—AICPA (clarified)" in "AICPA professional standards," volume 1, pages 1727-2095, as in effect on June 1, 2016;

(4) "statements on standards for accounting and review services [clarified]" in "AICPA professional standards," volume 2, pages 2719-2882, as in effect on June 1, 2016, and the following statements issued after June 1, 2016:

(A) Statement on standards for accounting and review services no. 22, "compilation of pro forma financial information," except the three unnumbered pages before the table of contents, issued September 2016; and

(B) statement on standards for accounting and review services no. 23, "omnibus statement on standards for accounting and review ser-

vices—2016," except the six unnumbered pages before the table of contents, issued October 2016;

(5) "code of professional conduct" in "AICPA professional standards," volume 2, pages 2883-3076, as in effect on June 1, 2016, except for the following sections in Part 1:

(A) Section 1.800.001, "form of organization and name";

(B) section 1.810.020, "partner designation";

(C) section 1.810.030, "a member's responsibility for nonmember practitioners";

(D) section 1.810.040, "attest engagement performed with a former partner";

(E) section 1.810.050, "alternative practice structures"; and

(F) section 1.820.040, "use of a common brand name in firm name";

(6) "statements on standards for valuation services" in "AICPA professional standards," volume 2, pages 3293-3344, as in effect on June 1, 2016;

(7) "consulting services" in "AICPA professional standards," volume 2, pages 3345-3350, as in effect on June 1, 2016;

(8) "quality control" in "AICPA professional standards," volume 2, pages 3353-3386, as in effect on June 1, 2016;

(9) "standards for performing and reporting on peer reviews" in "AICPA professional standards," volume 2, pages 3387-3588, as in effect on June 1, 2016;

(10) "tax services" in "AICPA professional standards," volume 2, pages 3589-3630, as in effect on June 1, 2016; and

(11) "personal financial planning" in "AICPA professional standards," volume 2, pages 3639-3654, as in effect on June 1, 2016.

All definitions included in the standards adopted in this subsection shall apply only to the documents adopted by reference.

(c) "Audit" means an independent examination of financial information or assertions of any entity, regardless of profit orientation, size, and legal form, if the examination is conducted to express an opinion thereon.

(d) "Board" means Kansas board of accountancy.

(e) "Certified public accountant" and "CPA" mean any of the following:

(1) A holder of a Kansas certificate;

(2) a person practicing certified public accountancy under the authorization to practice as provided in K.S.A. 1-322 and amendments thereto; or

(3) a firm.

(f) “Compilation” shall have the meaning specified in K.S.A. 1-321 and amendments thereto.

(g) “Firm” shall have the meaning specified in K.S.A. 1-321 and amendments thereto.

(h) “Generally accepted accounting principles” and “GAAP” mean the following standards, as applicable, in effect as specified and hereby adopted by reference:

(1) “Federal accounting standards,” issued by the federal accounting standards advisory board (FASAB) in “FASAB handbook of federal accounting standards and other pronouncements, as amended,” as in effect on June 30, 2016, except for the following portions: the forward, the preamble, and appendixes A-F. The following standards issued after June 30, 2016 are also adopted:

(A) Statement of federal financial accounting standards 50, “establishing opening balances for general property, plant, and equipment: amending statement of federal financial accounting standards (SFFAS) 6, SFFAS 10, SFFAS 23, and rescinding SFFAS 35,” dated August 4, 2016; and

(B) statement of federal financial accounting standards 51, “insurance programs,” dated January 18, 2017;

(2) accounting principles as adopted by the financial accounting standards board (FASB) and contained in “FASB accounting standards codification,” including accounting standards updates, as contained in volumes 1 through 5, published by the financial accounting standards board (FASB), as in effect on October 31, 2016;

(3) financial accounting principles for state and local governments as adopted by the governmental accounting standards board (GASB) as follows:

(A) “GASB codification of governmental accounting and financial reporting standards,” issued by the governmental accounting standards board, as in effect on June 30, 2016;

(B) GASB statement no. 83, “certain asset retirement obligations,” except appendixes A and B, issued November 2016;

(C) GASB statement no. 84, “fiduciary activities,” except appendixes A and B, issued January 2017; and

(D) GASB statement no. 85, “omnibus 2017,” except appendixes A and B, issued March 2017; and

(4) international accounting and reporting principles established by the international accounting standards board (IASB) as contained in “IFRS<sup>®</sup> standards,” part A, issued by the international accounting standards board, as in effect on January 1, 2017, except part A, pages A7-A25.

(i) “Government auditing standards” means the “government auditing standards” issued by the United States government accountability office, 2011 revision, revised on January 20, 2012, which is hereby adopted by reference, except pages 1-3 and appendixes I and III.

(j) “Licensed municipal public accountant” and “LMPA” mean a holder of a permit issued under the laws of Kansas to practice as a municipal public accountant.

(k) “PCAOB” means the public company accounting oversight board created by the Sarbanes-Oxley act of 2002.

(l) “Practice of certified public accountancy” means performing or offering to perform attest or nonattest services for the public while using the designation “certified public accountant” or “CPA” in conjunction with these services. “Attest” and “nonattest” services shall have the meaning specified in K.S.A. 1-321 and amendments thereto.

(m) “Standards of the PCAOB” means the following, which are hereby adopted by reference:

(1) In “public company accounting oversight board bylaws and rules—rules—professional standards” as in effect on December 31, 2016, section 3, “auditing and related professional practice standards,” part 1, “general requirements,” and part 5, “ethics and independence”;

(2) “auditing standards—reorganized,” issued by the PCAOB as in effect on December 31, 2016; and

(3) “attestation standard no. 1” and “attestation standard no. 2,” issued by the PCAOB as in effect on December 31, 2016.

(n) “Staff accountant” means a certified public accountant who meets the following requirements:

(1) Holds both a Kansas certificate and a Kansas permit;

(2) is employed by a firm that is the certified public accountant’s primary employer; and

(3) works at least 1,040 hours for the firm during a calendar year. (Authorized by and implementing K.S.A. 1-202; effective Jan. 1, 1974; amended May 1, 1978; amended May 1, 1979; amended May 1, 1985; amended July 22, 1991; amended July 13, 1992; amended April 5, 1993; amended Aug. 23, 1993; amended Jan. 12, 1996; amended Jan. 8, 1999; amended Nov. 17, 2000; amended Nov. 2, 2001; amended May 27, 2005; amended May 19, 2006; amended Feb. 16, 2007; amended Jan. 11, 2008; amended May 29, 2009; amended Nov. 29, 2010; amended May 25, 2012; amended

March 21, 2014; amended Feb. 19, 2016; amended Jan. 26, 2018.)

**74-5-2a. Definitions of terms in the AICPA code of professional conduct.** (a) The definitions of the terms in ET 0.400 of the AICPA “code of professional conduct,” as adopted by reference in K.A.R. 74-5-2, shall be applicable whenever these terms are used in this article, including any document adopted by reference in this article.

(b) The term “member,” as used in the AICPA “code of professional conduct,” shall mean any certified public accountant, firm, or licensed municipal public accountant. (Authorized by and implementing K.S.A. 1-202; effective May 29, 2009; amended Feb. 19, 2016.)

**74-5-2b. Applicability of AICPA professional standards.** The AICPA professional standards shall apply to each certified public accountant, firm, and licensed municipal public accountant as defined in K.A.R. 74-5-2, regardless of whether the person or entity is a member of the AICPA. (Authorized by and implementing K.S.A. 1-202; effective Feb. 19, 2016.)

**74-5-101. Independence.** (a) Each certified public accountant, firm, and licensed municipal public accountant shall be independent in the performance of professional services as required by the following standards, as applicable:

(1) AICPA “code of professional conduct,” including the interpretations, as contained in the AICPA professional standards adopted by reference in K.A.R. 74-5-2(b)(5);

(2) chapter three of the government auditing standards adopted by reference in K.A.R. 74-5-2;

(3) regulation S-X codified at 17 C.F.R. Part 210, as in effect on September 3, 2013, which is hereby adopted by reference; and

(4) PCAOB rules, section 3, “professional standards,” part 5, “ethics,” as adopted by reference in K.A.R. 74-5-2.

(b) In determining whether a certified public accountant’s, a firm’s, or a licensed municipal public accountant’s independence is impaired, any other circumstances, relationship, or activity that the board determines could impair independence may be considered by the board. (Authorized by and implementing K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1978; amended May 1, 1985; amended Nov. 15, 2002; amended May 27, 2005; amended May 19, 2006; amended Feb. 16,

2007; amended Jan. 11, 2008; amended May 29, 2009; amended Nov. 29, 2010; amended May 25, 2012; amended March 21, 2014; amended Feb. 19, 2016.)

**74-5-102. Integrity and objectivity.** (a) In the performance of professional services, each certified public accountant, firm, and licensed municipal public accountant shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts to others or subordinate the accountant’s or firm’s judgment to another’s judgment. In tax practice, any certified public accountant, firm, or licensed municipal public accountant may resolve doubt in favor of the client if there is reasonable support for that position.

(b) Each certified public accountant, firm, and licensed municipal public accountant shall comply with the following applicable standards:

(1) AICPA “code of professional conduct,” including the interpretations, as contained in the AICPA professional standards adopted by reference in K.A.R. 74-5-2(b)(5), which shall be used in determining whether integrity and objectivity have been maintained;

(2) chapter three of the government auditing standards adopted by reference in K.A.R. 74-5-2; and

(3) PCAOB rules, section 3, “professional standards,” part 5, “ethics,” as adopted by reference in K.A.R. 74-5-2. (Authorized by and implementing K.S.A. 1-202 and K.S.A. 75-1119; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1978; amended May 1, 1985; amended Nov. 15, 2002; amended May 27, 2005; amended May 19, 2006; amended May 29, 2009; amended Feb. 19, 2016.)

**74-5-103. Commissions and referral fees.** Each certified public accountant or firm shall comply with the AICPA “code of professional conduct” regarding commissions and referral fees, including the interpretations, as contained in the AICPA professional standards adopted by reference in K.A.R. 74-5-2(b)(5). (Authorized by and implementing K.S.A. 1-202; effective May 1, 1978; amended July 13, 1992; amended Jan. 12, 1996; amended Jan. 8, 1999; amended Sept. 10, 1999; amended May 27, 2005; amended May 29, 2009; amended Feb. 19, 2016.)

**74-5-104. Contingent fees.** Each certified public accountant or firm shall comply with the AICPA “code of professional conduct” regarding

contingent fees, including the definitions and interpretations, as contained in the AICPA professional standards adopted by reference in K.A.R. 74-5-2(b)(5). (Authorized by and implementing K.S.A. 1-202; effective May 1, 1978; amended July 13, 1992; amended Jan. 8, 1999; amended Sept. 10, 1999; amended May 27, 2005; amended Feb. 19, 2016.)

**74-5-105.** (Authorized by K.S.A. 1-202; effective May 1, 1978; revoked Feb. 16, 2007.)

**74-5-201. General standards.** (a) Each certified public accountant, firm, or licensed municipal public accountant shall meet the following requirements:

(1) Undertake only those professional services that the CPA, firm, or licensed municipal public accountant can reasonably expect to be completed with professional competence;

(2) exercise due professional care in the performance of professional services;

(3) adequately plan and supervise the performance of professional services; and

(4) obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

(b) The AICPA “code of professional conduct” regarding general standards, including the interpretations as contained in the AICPA professional standards adopted by reference in K.A.R. 74-5-2, shall be used in determining whether there is compliance with the general standards. (Authorized by and implementing K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1978; amended May 1, 1985; amended May 27, 2005; amended Jan. 11, 2008; amended May 29, 2009; amended Feb. 19, 2016.)

**74-5-202. Compliance with standards.**

(a) Each certified public accountant or firm that performs auditing, attestation, review, compilation, management consulting, tax, or other professional services shall comply with the applicable professional standards promulgated by the following entities, which are adopted by reference in K.A.R. 74-5-2 and this regulation:

(1) The federal accounting standards advisory board;

(2) the financial accounting standards board;

(3) the governmental accounting standards board;

(4) the PCAOB;

(5) the international accounting standards board;

(6) the municipal services team of the office of the chief financial officer, Kansas department of administration;

(7) the AICPA accounting and review services committee;

(8) the AICPA auditing standards board;

(9) the AICPA management consulting services executive committee;

(10) the AICPA tax executive committee;

(11) the AICPA forensic and valuation services executive committee;

(12) the AICPA professional ethics executive committee;

(13) the AICPA personal financial planning executive committee; and

(14) the AICPA peer review board.

(b) Each licensed municipal public accountant shall comply with the generally accepted auditing standards in the 2017 “Kansas municipal audit and accounting guide,” including appendices A through N, prescribed by the director of accounts and reports, department of administration, and hereby adopted by reference. (Authorized by and implementing K.S.A. 1-202 and K.S.A. 75-1119; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1978; amended, E-82-27, Dec. 22, 1981; amended May 1, 1982; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended May 22, 1989; amended Jan. 7, 1991; amended July 13, 1992; amended Aug. 23, 1993; amended Sept. 26, 1994; amended Jan. 12, 1996; amended Sept. 25, 1998; amended Sept. 10, 1999; amended Nov. 17, 2000; amended Nov. 2, 2001; amended Nov. 15, 2002; amended Nov. 14, 2003; amended May 27, 2005; amended May 19, 2006; amended Feb. 16, 2007; amended Jan. 11, 2008; amended May 29, 2009; amended Nov. 29, 2010; amended May 25, 2012; amended March 21, 2014; amended Feb. 19, 2016; amended Jan. 26, 2018.)

**74-5-203. Accounting principles.** Each certified public accountant, firm, or licensed municipal public accountant shall comply with the AICPA “code of professional conduct” regarding accounting principles, including the interpretations, as contained in the AICPA professional standards adopted by reference in K.A.R. 74-5-2(b)(5). (Authorized by and implementing K.S.A. 1-202 and K.S.A. 75-1119; effective Jan. 1, 1966;

amended Jan. 1, 1974; amended May 1, 1978; amended, E-82-27, Dec. 22, 1981; amended May 1, 1982; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended May 22, 1989; amended Jan. 7, 1991; amended July 13, 1992; amended Aug. 23, 1993; amended Sept. 26, 1994; amended Jan. 12, 1996; amended Sept. 25, 1998; amended Sept. 10, 1999; amended Nov. 17, 2000; amended May 27, 2005; amended May 19, 2006; amended Nov. 29, 2010; amended Feb. 19, 2016.)

**74-5-204.** (Authorized by K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1978; revoked Jan. 11, 2008.)

**74-5-205.** (Authorized by and implementing K.S.A. 2000 Supp. 1-202, as amended by 2001 HB 2343, § 7; effective Nov. 17, 2000; amended Nov. 2, 2001; revoked May 27, 2005.)

**74-5-301. Confidential client information.** (a) A certified public accountant, firm, or licensed municipal public accountant shall not disclose any confidential client information without the consent of the client.

(b) The AICPA “code of professional conduct,” including the interpretations as contained in the AICPA professional standards adopted by reference in K.A.R. 74-5-2(b)(5), shall be used by the board in determining compliance with subsection (a). (Authorized by and implementing K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1978; amended Sept. 25, 1998; amended May 27, 2005; amended May 29, 2009; amended Feb. 19, 2016.)

**74-5-302.** (Authorized by and implementing K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1978; amended Nov. 2, 2001; amended Nov. 15, 2002; amended May 29, 2009; revoked May 25, 2012.)

**74-5-303.** (Authorized by K.S.A. 1-202; effective Jan. 1, 1966; revoked Jan. 1, 1972.)

**74-5-304.** (Authorized by K.S.A. 1-202; effective Jan. 1, 1966; revoked Jan. 1, 1974.)

**74-5-401. Acts discreditable.** (a) A certified public accountant or firm shall not commit any act discreditable to the profession.

(b) The AICPA “code of professional conduct,” including the interpretations of the AICPA professional standards adopted by reference in

K.A.R. 74-5-2(b)(5), shall be used by the board in determining whether a certified public accountant or firm has committed an act discreditable to the profession. (Authorized by and implementing K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1978; amended Nov. 15, 2002; amended May 27, 2005; amended May 29, 2009; amended Feb. 19, 2016.)

**74-5-402. Acting through others.** A certified public accountant shall not permit others to carry out on his or her behalf, either with or without compensation, acts which, if carried out by the certified public accountant, would place him or her in violation of the rules of conduct. (Authorized by K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1978.)

**74-5-403. Advertising.** (a) A certified public accountant or firm shall not advertise in a manner that is false, misleading, or deceptive.

(b) The use of any non-CPA’s name or the name of any firm not registered with the board as a firm, pursuant to K.S.A. 1-308 and K.S.A. 1-316 and amendments thereto, in any advertisement or publication in any medium or under any heading used for certified public accountants shall be prohibited.

(c) The AICPA “code of professional conduct,” including the interpretations as contained in the AICPA professional standards adopted by reference in K.A.R. 74-5-2(b)(5), shall be used by the board in determining whether a certified public accountant has violated subsection (a). (Authorized by and implementing K.S.A. 1-202; effective May 1, 1978; amended May 1, 1985; amended July 22, 1991; amended May 27, 2005; amended Feb. 16, 2007; amended May 29, 2009; amended Feb. 19, 2016.)

**74-5-404.** (Authorized by K.S.A. 1-202; effective May 1, 1978; revoked May 1, 1986.)

**74-5-404a. Use of CPA designation while performing non-attest services.** (a) A person who has a Kansas permit to practice as a certified public accountant may use the “certified public accountant” or “CPA” designation when performing non-attest services in an organization that is not required to register as a firm.

(b) Non-attest services shall mean those services set forth in K.S.A. 1-321 and amendments thereto. (Authorized by and implementing K.S.A.

2000 Supp. 1-202, as amended by 2001 HB 2343, § 7; effective Jan. 8, 1999; amended Nov. 2, 2001.)

**74-5-405.** (Authorized by K.S.A. 1999 Supp. 1-202, as amended by L. 2000, Ch. 81, § 4; implementing K.S.A. 1999 Supp. 1-311, as amended by L. 2000, Ch. 81, § 13(a)(7); effective May 1, 1978; amended Aug. 23, 1993; amended Nov. 17, 2000; revoked Jan. 26, 2018.)

**74-5-405a. Certified public accountants who own a separate business.** Each certified public accountant in the practice of certified public accountancy who owns an interest in a separate business shall comply with ET section 1.810.010, titled “ownership of separate business,” of the AICPA “code of professional conduct,” as contained in the AICPA professional standards adopted by reference in K.A.R. 74-5-2(b)(5). (Authorized by K.S.A. 1-202; implementing K.S.A. 1-202 and K.S.A. 2014 Supp. 1-311; effective Jan. 11, 2008; amended May 29, 2009; amended Feb. 19, 2016.)

**74-5-406. Firm or professional names.**

(a) A certified public accountant or firm shall not practice certified public accountancy under a firm or professional name or advertise a firm or professional name that includes descriptive words relating to the quality of services offered or that is misleading concerning the legal form or the persons who are owners, partners, officers, members, managers, or shareholders of the firm.

(b) A firm or professional name shall not be considered to be misleading solely because it contains words describing the geographical area in which the services are offered or words describing the type of services actually being performed by the certified public accountants who are owners, partners, officers, members, managers, or shareholders of the firm.

(c) A firm or professional name or designation shall be considered to be misleading in any of the following instances:

(1) The name contains a misrepresentation of facts.

(2) The name is intended or is likely to create false or unjustified expectations of favorable results.

(3) The name implies education, professional attainment, or licensing recognition of its owners, partners, officers, members, managers, or shareholders that is not supported by facts.

(4) The name of a Kansas professional corporation or association, limited liability company, lim-

ited liability partnership, or general corporation does not include its full name as registered with the board each time the firm or professional name is used.

(5) The name misrepresents the number of partners, shareholders, owners, members, or staff accountants holding CPA certificates and permits who own or provide services on behalf of the firm or business.

(6) The name contains the name or names of one or more former partners, shareholders, or owners without their written consent.

(d) A fictitious firm or professional name shall be defined as a name that contains anything other than the name or names of one or more present or former owners, partners, members, or shareholders or the term “certified public accountant” or “CPA,” or the plural form of either of these two terms. A fictitious firm or professional name may be used if the name is registered with the board and is not false or misleading as determined by the board. Each firm shall utilize its full name as registered with the board each time the name is used.

(e) A fictitious firm or professional name shall be considered to be misleading if the name misrepresents the number of partners, shareholders, owners, members, or staff accountants holding CPA certificates and permits who own or provide services on behalf of the firm or business.

(f) Each certified public accountant or firm that falls out of compliance with this regulation due to any change in ownership or personnel shall notify the board within 30 days after the change. A reasonable period of time may be granted by the board for a firm or certified public accountant to take corrective action.

(g) If a firm does not have an office in Kansas but is required to register with the board pursuant to K.S.A. 1-308 and amendments thereto, the name shall not be considered misleading even if the name meets the criteria for being “misleading” as specified in paragraph (c)(5) or subsection (e) of this regulation. (Authorized by K.S.A. 1-202; implementing K.S.A. 1-202 and K.S.A. 2016 Supp. 1-308; effective May 1, 1978; amended Oct. 8, 1990; amended Aug. 23, 1993; amended Jan. 12, 1996; amended Sept. 25, 1998; amended Sept. 10, 1999; amended Nov. 15, 2002; amended Jan. 11, 2008; amended May 29, 2009; amended March 21, 2014; amended Feb. 16, 2016; amended Jan. 26, 2018.)

**74-5-407. Cooperation with the board.** Each certified public accountant, firm, or licensed municipal public accountant shall cooperate in a timely manner with the board in its investigation of complaints or possible violations of the accounting statutes or the regulations of the board. Cooperation shall include responding to written communications from the board, and providing information and documentation as requested by the board, sent by mail to the last known preferred mailing address on file with the board, within a reasonable time frame specified by the board or appearing before the board, or any of its members, upon request. (Authorized by and implementing K.S.A. 1-202 and K.S.A. 75-1119(a); effective May 1, 1978; amended May 1, 1979; amended, E-82-27, Dec. 22, 1981; amended May 1, 1982; amended May 1, 1985; amended Sept. 25, 1998; amended March 21, 2014; amended Feb. 19, 2016.)

**74-5-408. Change of name or address.** Each certified public accountant shall notify the board in writing of any change in the person's name, home address, employer name, business address, or electronic-mail address within 30 days of the change. (Authorized by and implementing K.S.A. 1-202; effective Feb. 16, 2007; amended Jan. 26, 2018.)

**74-5-501 to 74-5-503.** (Authorized by K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked May 1, 1978.)

**74-5-504 and 74-5-505.** (Authorized by K.S.A. 1-202; effective Jan. 1, 1974; revoked May 1, 1978.)

#### Article 6.—ADDITIONAL OFFICES

**74-6-1. Definitions of office and firm.** (a) "Office" shall mean any space that is identified to the public as being connected with a registered firm with a location in Kansas, or for which there is a separate telephone listing in a telephone directory.

(b) "Firm," as used in this article, has the meaning specified in K.S.A. 1-321 and amendments thereto. (Authorized by K.S.A. 1-202; implementing K.S.A. 1-308, as amended by L. 2007, Ch. 97, § 3; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Aug. 23, 1993; amended Jan. 12, 1996; amended Nov. 17, 2000; amended Jan. 11, 2008.)

**74-6-2. Management of an office.** (a) Each firm or sole proprietorship with an office, as defined by K.A.R. 74-6-1, that is located in this state

shall have one resident manager in charge of the office who is the holder of a current permit to practice as a certified public accountant issued by this state, who oversees the planning, administration, direction, and review of the services being performed in that office, and who devotes more than half of the resident manager's working time to the affairs of that office.

(b) Any firm or sole proprietorship specified in subsection (a) may, however, have additional offices in this state for which the designated resident manager specified in subsection (a) shall also be responsible to notify the board of each additional office by providing a written statement to the board. (Authorized by K.S.A. 1-202; implementing K.S.A. 2016 Supp. 1-308; effective Jan. 1, 1972; amended May 1, 1980; amended May 1, 1982; amended Aug. 21, 1989; amended Aug. 23, 1993; amended Jan. 12, 1996; amended Sept. 25, 1998; amended Nov. 17, 2000; amended Nov. 29, 2010; amended March 21, 2014; amended Jan. 26, 2018.)

**74-6-3. Emergency assistance.** A certified public accountant holding a current permit to practice in this state may, upon notification to the board, provide services leading to the disposition of a deceased certified public accountant's practice. In the case of a disabled or incapacitated certified public accountant, such services, upon notification to the board, may be provided for the continuance of a practice. These services may be provided for a period of up to six (6) months. The board may, in its discretion, grant additional periods of time beyond six (6) months. (Authorized by K.S.A. 1-202; effective May 1, 1980.)

#### Article 7.—FIRM REGISTRATION

**74-7-1.** (Authorized by K.S.A. 1-202; effective Jan. 1, 1966; revoked, E-82-27, Dec. 22, 1981; revoked May 1, 1982.)

**74-7-2. Firms eligible for registration.** (a) Unless exempt from registration pursuant to K.S.A. 1-308 and amendments thereto, before practicing certified public accountancy, a firm, as defined in K.S.A. 1-321 and amendments thereto, shall meet the following requirements:

(1) Register with the board on forms provided by the board;

(2) affirm that any individual who signs or authorizes someone to sign the accountant's report on any audit, review, or compilation or on the examination of prospective financial information

on behalf of the firm has met the competency requirements specified in K.A.R. 74-4-1a; and

(3) pay the fee specified in K.A.R. 74-12-1.

(b) Each firm shall renew its registration annually on or before December 31 on forms provided by the board and shall pay the fee specified in K.A.R. 74-12-1. (Authorized by K.S.A. 1-202; implementing K.S.A. 2016 Supp. 1-308; effective Jan. 1, 1966; amended May 1, 1988; amended Jan. 12, 1996; amended Nov. 17, 2000; amended Jan. 11, 2008; amended Jan. 26, 2018.)

**74-7-3. Revocable living trusts.** An owner of a firm may include a partner, shareholder, member, or a trustee of a revocable living trust established by a licensed CPA or other natural person permitted to own an interest in a firm pursuant to K.S.A. 1-308 and amendments thereto, if the terms of the trust include all of the following provisions:

(a) The CPA or other natural person is the principal beneficiary and a trustee of the trust.

(b) The CPA or other natural person has the unrestricted right to revoke the trust.

(c) The trust does not continue to hold an ownership interest in the firm following the death of the CPA or other natural person for more than a reasonable period of time necessary to dispose of the stock or ownership interest. (Authorized by K.S.A. 2000 Supp. 1-202, as amended by 2001 H.B. 2343, §7; implementing K.S.A. 2000 Supp. 1-308; effective Nov. 2, 2001.)

**74-7-4. Notification; firm registration; sole proprietors.** Each certified public accountant who is an unincorporated sole proprietor shall perform the following, upon the issuance of the first report subject to peer review:

(a) Notify the board, on a form provided by the board;

(b) register as a firm with the board in compliance with K.S.A. 1-308 and amendments thereto; and

(c) provide a peer review letter of completion to the board within 18 months after the date on which the report subject to peer review was issued. (Authorized by K.S.A. 1-202; implementing K.S.A. 1-202 and K.S.A. 1-308; effective Nov. 15, 2002; amended May 29, 2009.)

#### Article 8.—CORPORATE PRACTICE

**74-8-1.** (Authorized by K.S.A. 1-202; effective Jan. 1, 1972; amended May 1, 1980; revoked, E-82-27, Dec. 22, 1981; revoked May 1, 1982.)

**74-8-2.** (Authorized by K.S.A. 1-202(a) and K.S.A. 17-2708; implementing K.S.A. 1-308(b); effective Jan. 1, 1972; amended May 1, 1980; amended May 1, 1982; amended May 1, 1988; amended Aug. 23, 1993; revoked Jan. 12, 1996.)

**74-8-3.** (Authorized by K.S.A. 1981 Supp. 1-202; implementing K.S.A. 1981 Supp. 1-308; effective Jan. 1, 1972; amended May 1, 1980; amended, E-82-27, Dec. 22, 1981; amended May 1, 1982; revoked May 1, 1985.)

**74-8-4.** (Authorized by K.S.A. 1-202(a); effective Jan. 1, 1972; amended May 1, 1980; revoked, E-82-27, Dec. 22, 1981; revoked May 1, 1982.)

**74-8-5.** (Authorized by K.S.A. 1-202 and K.S.A. 17-2708 and 17-6001 and implementing K.S.A. 1-308; effective May 1, 1988; amended Aug. 23, 1993; revoked Jan. 12, 1996.)

#### Article 9.—CONTINUING EDUCATION

**74-9-1.** (Authorized by K.S.A. 1-310(b); effective Jan. 1, 1974; amended May 1, 1978; amended May 1, 1980; revoked, E-82-27, Dec. 22, 1981; revoked May 1, 1982.)

**74-9-2 to 74-9-4.** (Authorized by K.S.A. 1-310(b); effective Jan. 1, 1974; amended May 1, 1978; revoked, E-82-27, Dec. 22, 1981; revoked May 1, 1982.)

#### Article 10.—LICENSED MUNICIPAL PUBLIC ACCOUNTANTS

**74-10-1. Licenses; duration and renewal.** Each permit to practice shall be issued for a biennial period and shall expire on June 30 of odd-numbered years, or upon failure to maintain either an office or a residence in the state of Kansas. (Authorized by and implementing K.S.A. 1983 Supp. 75-1119; effective May 1, 1985.)

**74-10-2. Administrative hearings; notice; grounds for revocation.** (a) The board may revoke, suspend or refuse to renew any permit to practice issued to a licensed municipal public accountant, or may censure the holder of any such permit to practice, for any of the following causes:

(1) Fraud or deceit in obtaining a permit to practice or a renewal thereof from this board;

(2) Dishonesty, fraud, or negligence in practice as a licensed municipal public accountant;

(3) Violation of a rule of professional conduct promulgated by the board;

(4) Conviction of a felony under the laws of any state or of the United States;

(5) Conviction of any crime under the laws of any state or of the United States that has dishonesty or fraud as an essential element;

(6) Cancellation, revocation, suspension or refusal to renew the authority to practice as a public accountant in any state or foreign country.

(b) A written notice of intention to take any action under subsection (a) of this regulation shall be mailed by certified mail to the holder of the permit at least 30 days prior to any hearing thereon. The notice shall be mailed to the last known address of the holder of the permit and shall state the cause of the contemplated action. (Authorized by and implementing K.S.A. 1983 Supp. 75-1119; effective May 1, 1985.)

#### Article 11.—PEER REVIEW PROGRAM

**74-11-1 to 74-11-4.** (Authorized by K.S.A. 1-202(a) and implementing K.S.A. 1-401(c); effective May 1, 1987; revoked Feb. 14, 1994.)

**74-11-5.** (Authorized by K.S.A. 1-202(a) and implementing K.S.A. 1-311(b) and K.S.A. 1-401(c); effective May 1, 1987; revoked Feb. 14, 1994.)

**74-11-6. Definitions.** Each of the following terms, wherever used in this article of the board's regulations, shall have the meaning specified in this regulation:

(a) "AICPA" means American institute of certified public accountants.

(b) "AICPA professional standards" means the standards adopted by reference in K.A.R. 74-5-2 that are contained in the "AICPA professional standards," volumes 1 and 2, published by the AICPA, as adopted by reference in K.A.R. 74-5-2.

(c) "Firm" shall have the meaning specified in K.S.A. 1-321 and amendments thereto.

(d) "Peer review" means a review of a firm's accounting and auditing practice in accordance with the standards for performing and reporting on peer reviews.

(e) "Peer review team" means persons or organizations participating in the peer review program required by this article of the board's regulations. This term shall specifically include the team captain, team members, review captain, the report acceptance committee, and the oversight body,

but shall not include the board.

(f) "Standards for performing and reporting on peer reviews" means the AICPA "standards for performing and reporting on peer reviews" contained in volume two of the AICPA professional standards, as adopted by reference in K.A.R. 74-5-2(b)(9).

(g)(1) "Substantially similar program" means a peer review program that meets the following requirements:

(A) The peer review team shall be approved by a nationally recognized accounting organization as having the qualifications, training, and experience to perform the peer review function required by this regulation.

(B)(i) The peer review shall be conducted pursuant to peer review standards as issued by a nationally recognized peer review program that has received prior approval by the board; or

(ii) the peer review shall be conducted pursuant to a written submission detailing the qualifications of the peer review team to conduct the peer review and providing a written plan for the peer review illustrating the means of compliance with this regulation with the prior specific approval of the board.

(2) Each inspection performed by the PCAOB of areas of a firm's practice related to audits of issuers, as defined by the public company accounting oversight board, shall be deemed to satisfy the peer review requirements related to this element of the firm's practice.

(h) For peer reviews commencing on and after January 1, 2009, "modified peer review report" shall mean a peer review report with a peer review rating of "pass with deficiencies," as defined in the AICPA "standards for performing and reporting on peer reviews."

(i) For peer reviews commencing on and after January 1, 2009, "adverse peer review report" shall mean a peer review report with a peer review rating of "fail," as defined in the AICPA "standards for performing and reporting on peer reviews." (Authorized by and implementing K.S.A. 1-202, K.S.A. 2016 Supp. 1-312, and K.S.A. 2016 Supp. 1-501; effective Feb. 14, 1994; amended Sept. 25, 1998; amended Sept. 10, 1999; amended Nov. 17, 2000; amended Nov. 2, 2001; amended Nov. 15, 2002; amended Nov. 14, 2003; amended May 27, 2005; amended May 19, 2006; amended Feb. 16, 2007; amended May 29, 2009; amended May 25, 2012; amended March 21, 2014; amended Feb. 19, 2016; amended Jan. 26, 2018.)

**74-11-7. Renewal of a firm's registration.**

(a) Each application for renewal of a firm's registration shall include one of the following, if applicable:

(1) A letter issued by the administering entity stating that a peer review has been completed and including a due date for the next peer review;

(2) a letter issued by the administering entity stating that the peer review is in process; or

(3) a completed form titled "peer review form," which shall be provided by the board and completed by the firm.

(b) For the purpose of this regulation, for a peer review to be "in process" shall mean that the peer review report has been issued to the firm and the report and, if applicable, the letter of response have been submitted to the administering entity. However, the letter stating that the peer review has been completed and signifying a due date for the next peer review has not been issued.

(c) If a firm has received a waiver pursuant to K.S.A. 1-501 and amendments thereto, before commencement of any attestation engagement, the firm shall have in place a system of internal quality control and shall notify the board. The firm shall provide a letter of completion to the board within 18 months after the date on which the report subject to peer review was issued.

(d) The letter of completion shall be valid until the due date for the next peer review specified in the letter of completion. (Authorized by K.S.A. 1-202; implementing K.S.A. 1-202 and K.S.A. 2014 Supp. 1-501; effective Feb. 14, 1994; amended Sept. 25, 1998; amended Nov. 2, 2001; amended Nov. 15, 2002; amended Nov. 14, 2003; amended May 19, 2006; amended Nov. 29, 2010; amended March 21, 2014; amended Feb. 19, 2016.)

**74-11-8 through 74-11-12.** (Authorized by and implementing K.S.A. 1997 Supp. 1-501; effective Feb. 14, 1994; amended Sept. 25, 1998; revoked Nov. 2, 2001.)

**74-11-13.** (Authorized by and implementing K.S.A. 1997 Supp. 1-501 and 1-311; effective Feb. 14, 1994; amended Sept. 25, 1998; revoked Nov. 2, 2001.)

**74-11-14.** (Authorized by K.S.A. 1997 Supp. 1-202 and 1-501 and implementing K.S.A. 1997 Supp. 1-501; effective Feb. 14, 1994; amended Sept. 25, 1998; revoked Nov. 2, 2001.)

**74-11-15.** (Authorized by and implementing K.S.A. 1-202 and K.S.A. 1-501; effective Nov.

2, 2001; amended May 27, 2005; revoked March 21, 2014.)

**Article 12.—FEES**

**74-12-1. Fees.** Each applicant shall submit the appropriate application form and fee as shown in the following schedule:

- (a) Issuance of Kansas certificate (initial or duplicate).....\$50.00
- (b) Issuance of reciprocal certificate.....\$250.00
- (c) Initial permit to practice as a certified public accountant:
  - (1) For more than one year of a biennial period.....\$165.00
  - (2) For one year or less of a biennial period.....\$82.50
- (d) Renewal of biennial permit to practice as a certified public accountant:
  - (1) If received on or before July 1 of the renewal year in which the permit expires.....\$165.00
  - (2) If received after July 1 of the renewal year in which the permit expires.....\$247.50
- (e) Reinstatement of permit to practice as a certified public accountant whose permit has expired:
  - (1) For more than one year of a biennial period.....\$247.50
  - (2) For one year or less of a biennial period.....\$123.75
- (f) Issuance of a duplicate permit.....\$25.00
- (g) Renewal of a biennial permit to practice as a licensed municipal public accountant:
  - (1) If received on or before July 1 of the odd-numbered renewal years.....\$50.00
  - (2) If received after July 1, or for reinstatement of a permit to practice that has been expired for one or more years.....\$75.00
- (h) Firm registration fee:
  - (1) Initial registration.....\$100.00
  - (2) Annual renewal.....\$100.00
  - (3) Late renewal.....\$150.00

(Authorized by and implementing K.S.A. 2016 Supp. 1-301 and K.S.A. 75-1119; effective May 1, 1988; amended May 22, 1989; amended Dec. 18, 1989; amended Sept. 26, 1994; amended Aug. 23, 1996; amended July 18, 1997; amended May 28, 1999; amended Nov. 29, 1999; amended Nov. 17, 2000; amended Nov. 2, 2001; amended Nov. 14, 2003; amended Nov. 29, 2010; amended Jan. 26, 2018.)

**Article 13.—TEMPORARY PERMITS**

**74-13-1 and 74-13-2.** (Authorized by and implementing K.S.A. 1-317, as amended by L. 1989, Ch. 1, Sec. 1; effective April 2, 1990; revoked Jan. 12, 1996.)

**Article 14.—LIMITED LIABILITY COMPANIES**

**74-14-1 and 74-14-2.** (Authorized by K.S.A. 1-202(a) and implementing K.S.A. 17-2708; effective Aug. 23, 1993; revoked Jan. 12, 1996.)

**Article 15.—UNIFORM  
ACCOUNTANCY ACT**

**74-15-1. Adoption of the uniform accountancy act.** For purposes of determining substantial equivalency, the board hereby adopts by reference sections 5(c), 5(d), and 5(f) of the “uniform accountancy act,” fifth edition, July 2007. In section 5(c), all references to “the effective date of

this act” shall be stricken and replaced with “January 1, 2007.” (Authorized by K.S.A. 1-202; implementing K.S.A. 2015 Supp. 1-321 and 1-322; effective Nov. 17, 2000; amended Feb. 19, 2016.)

**74-15-2.** (Authorized by K.S.A. 1999 Supp. 1-202, as amended by L. 2000, Ch. 81, § 4, and L. 2000, Ch. 81, §2; implementing L. 2000, Ch. 81, §2; effective Nov. 17, 2000; revoked Nov. 29, 2010.)

**Agency 75**  
**State Bank Commissioner—**  
**Consumer and Mortgage Lending Division**

**Editor's Note:**

The office of the Consumer Credit Commissioner was abolished on July 1, 1999. Power, duties and functions of the department were transferred to the State Bank Commissioner. The Deputy Commissioner for Consumer and Mortgage Lending shall be the successor in every way to those powers, duties and functions of the Consumer Credit Commissioner concerning the administration of the Uniform Consumer Credit Code. See K.S.A. 75-1314 and 75-1315.

*Articles*

- 75-1. *INTEREST AND CHARGES. (Not in active use.)*
- 75-2. *PRECOMPUTED NOTES. (Not in active use.)*
- 75-3. *INSURANCE; CONSUMER LOAN. (Not in active use.)*
- 75-4. *RECEIPTS UNDER LOAN ACT. (Not in active use.)*
- 75-5. *RECORDS UNDER LOAN ACT. (Not in active use.)*
- 75-6. **UNIFORM CONSUMER CREDIT CODE.**
- 75-7. *FAIR CREDIT REPORTING ACT. (Not in active use.)*
- 75-8. *KANSAS INVESTMENT CERTIFICATE ACT. (Not in active use.)*
- 75-26. *REFUNDS; SALES FINANCE. (Not in active use.)*
- 75-27. *INSURANCE; SALES FINANCE. (Not in active use.)*
- 75-28. *CONTRACTS; SALES FINANCE. (Not in active use.)*
- 75-29. *RECORDS; SALES FINANCE. (Not in active use.)*

**Article 1.—INTEREST AND CHARGES**

16-403; effective Jan. 1, 1966; revoked, E-77-27, May 21, 1976; revoked Feb. 15, 1977.)

**75-1-1 to 75-1-5.** (Authorized by K.S.A. 16-403; effective Jan. 1, 1966; revoked, E-77-27, May 21, 1976; revoked Feb. 15, 1977.)

**Article 6.—UNIFORM CONSUMER CREDIT CODE**

**Article 2.—PRECOMPUTED NOTES**

**75-2-1 to 75-2-7.** (Authorized by K.S.A. 16-403; effective Jan. 1, 1966; revoked, E-77-27, May 21, 1976; revoked Feb. 15, 1977.)

**75-6-1. Making transactions outside of the scope of the Kansas uniform consumer credit code subject to same.** The parties to a sale, lease, loan, or modification of a sale, lease, or loan that is not a consumer credit transaction may agree in a writing signed by the parties to make the transaction subject to the Kansas uniform consumer credit code. Any such agreement may be included in the contractual agreement evidencing the credit transaction, and when so included, no additional signatures shall be required to evidence the agreement to include the transaction within the scope of the Kansas uniform consumer credit code other than the signatures normally used in executing the credit transaction. In order to be effective, each such agreement shall be executed simultaneously with the contractual agreement evidencing the credit transaction. (Authorized by K.S.A. 16a-6-104(e), as amended by 2009 SB

**Article 3.—INSURANCE; CONSUMER LOAN**

**75-3-1 to 75-3-6.** (Authorized by K.S.A. 16-403; effective Jan. 1, 1966; revoked, E-77-27, May 21, 1976; revoked Feb. 15, 1977.)

**Article 4.—RECEIPTS UNDER LOAN ACT**

**75-4-1 to 75-4-4.** (Authorized by K.S.A. 16-403; effective Jan. 1, 1966; revoked, E-77-27, May 21, 1976; revoked Feb. 15, 1977.)

**Article 5.—RECORDS UNDER LOAN ACT**

**75-5-1 to 75-5-4.** (Authorized by K.S.A.

240, §21; implementing K.S.A. 16a-1-109; effective, E-74-13, Jan. 1, 1974; effective May 1, 1975; amended Oct. 2, 2009.)

**75-6-2.** (Authorized by K.S.A. 16a-6-104(e); implementing K.S.A. 16a-1-301(1); effective, E-74-13, Jan. 1, 1974; effective May 1, 1975; amended May 1, 1984; revoked July 14, 2000.)

**75-6-3 and 75-6-4.** (Authorized by K.S.A. 16a-6-104(e); effective, E-74-13, Jan. 1, 1974; effective May 1, 1975; revoked Aug. 9, 1996.)

**75-6-5.** (Authorized by K.S.A. 16a-6-104(e), 16a-2-510(5); effective, E-74-13, Jan. 1, 1974; effective May 1, 1975; revoked May 1, 1982.)

**75-6-6.** (Authorized by and implementing K.S.A. 16a-6-104(e); effective, E-74-13, Jan. 1, 1974; effective May 1, 1975; amended April 18, 1994; revoked July 14, 2000.)

**75-6-7 and 75-6-8.** (Authorized by K.S.A. 16a-6-104(e); effective, E-74-13, Jan. 1, 1974; effective May 1, 1975; revoked Aug. 9, 1996.)

**75-6-9. Additional charges.** (a) The charges enumerated in K.S.A. 16a-2-501 (1)(d), and amendments thereto, shall be considered “additional charges in connection with a consumer credit transaction” if the charges meet the following requirements:

(1) Are made under conditions that permit their exclusion from the definition of “finance charge” under K.S.A. 16a-1-301 (22) and amendments thereto; and

(2) are payable to a third party who is not related to the creditor, except as allowed by K.S.A. 16a-1-301 (10)(b) and amendments thereto.

(b) Additional charges shall be considered “in connection with a consumer credit transaction,” as used in K.S.A. 16a-2-501 and amendments thereto and subsection (a) of this regulation, if either of the following conditions is met:

(1) In relation to insurance premiums, the creditor or a person related to the creditor receives a commission on any insurance sold on the same day on which the consumer credit transaction was consummated.

(2) In relation to all other additional charges, the charges are made for goods, services, or both rendered within one month before or after the consummation of the consumer credit transaction. (Authorized by K.S.A. 16a-6-104(e), as amended by 2009 SB 240, §21; implementing K.S.A. 16a-2-

501(1)(d); effective, E-74-13, Jan. 1, 1974; effective May 1, 1975; amended May 1, 1985; amended Sept. 20, 1996; amended Oct. 2, 2009.)

**75-6-10.** (Authorized by K.S.A. 16a-6-104(e); effective, E-74-13, Jan. 1, 1974; effective May 1, 1975; revoked Aug. 9, 1996.)

**75-6-11.** (Authorized by K.S.A. 16a-6-104(e); implementing K.S.A. 16a-2-502, as amended by 1992 H.B. 2838, section 1; effective, E-74-13, Jan. 1, 1974; effective May 1, 1975; amended Aug. 6, 1990; amended Sept. 8, 1992; revoked Aug. 9, 1996.)

**75-6-12.** (Authorized by K.S.A. 16a-6-104(e); effective, E-74-13, Jan. 1, 1974; effective May 1, 1975; revoked Oct. 17, 1988.)

**75-6-13.** (Authorized by K.S.A. 1973 Supp. 16a-6-104(e); effective, E-74-13, Jan. 1, 1974; effective May 1, 1975; revoked Oct. 17, 1988.)

**75-6-15.** (Authorized by K.S.A. 16a-6-104(1)(e); effective, E-74-13, Jan. 1, 1974; effective May 1, 1975; amended, E-77-28, May 21, 1976; amended Feb. 15, 1977; amended, E-78-13, April 21, 1977; amended May 1, 1978; revoked May 1, 1982.)

**75-6-16 to 75-6-18.** (Authorized by K.S.A. 16a-6-104(e); effective, E-74-13, Jan. 1, 1974; effective May 1, 1975; revoked Aug. 9, 1996.)

**75-6-19.** (Authorized by K.S.A. 16a-6-104(e), 16a-2-510(5); effective, E-74-17, April 5, 1974; effective May 1, 1975; revoked Jan. 16, 1989.)

**75-6-20 to 75-6-22.** (Authorized by K.S.A. 16a-6-104(e); effective May 1, 1975; revoked May 1, 1982.)

**75-6-23. (K.S.A. 16a-3-305(1)). No assignment of earnings.** When a debtor authorizes a deduction from his earnings by the debtor’s employer to be paid to the employee’s creditor in accordance with the provision permitting such a deduction in K.S.A. 16a-3-305(1), the authorization providing for such “earnings deduction” shall be in a separate printed form or writing apart from the contract. Such authorization shall contain a clear and conspicuous notice to the debtor that the “earnings deduction” that the debtor is authorizing may be revoked by the debtor at any time, and shall also provide appropriate wording so that the form may be used as a form for revoking any

such authorization. A copy must be delivered to the debtor at the time of execution. In no such authorization may a reference to an “earnings deduction” be termed a wage assignment. For the purposes of remedies and penalties a violation of this regulation shall constitute a violation of K.S.A. 16a-3-305. (Authorized by K.S.A. 1976 Supp. 16a-6-104(1)(e); effective Feb. 15, 1977.)

**75-6-24.** (Authorized by and implementing K.S.A. 16a-2-401a; effective, E-79-9, April 20, 1978; effective May 1, 1979; amended, E-81-15, June 25, 1980; amended May 1, 1981; amended, T-83-16, July 1, 1982; amended May 1, 1983; amended, T-85-18, July 1, 1984; amended May 1, 1985; amended, T-87-14, June 6, 1986; amended May 1, 1987; amended, T-89-22, May 27, 1988; amended Oct. 1, 1988; amended July 23, 1990; amended July 20, 1992; amended July 1, 1998; revoked July 14, 2000.)

**75-6-25.** (Authorized by K.S.A. 1978 Supp. 16a-2-401a(3), 16a-6-104(1)(e); effective May 1, 1979; revoked Aug. 9, 1996.)

**75-6-26. Federal consumer credit laws.**

(a) Each creditor subject to the federal laws and regulations set forth below shall make the disclosures required under these laws and regulations, and shall comply with all other terms and provisions of these laws and regulations applicable to the creditor. The pertinent federal laws and regulations, which are hereby adopted by reference, shall be the following:

(1) Title I of the consumer credit protection act, 15 USC § 1601 et seq., as amended, and in effect on January 1, 2000;

(2) regulation M, 12 CFR part 213, including all appendices, as amended and in effect on January 1, 2000; and

(3) regulation Z, 12 CFR part 226, including all appendices, as amended and in effect on March 31, 2000.

(b) The terms “amount financed” and “annual percentage rate,” as used in the Kansas uniform consumer credit code, shall have the same meanings given to these terms in, and shall be interpreted in a manner that is consistent with the usage and treatment of these terms in, and shall be calculated in a manner that conforms to the following:

(1) Title I of the consumer credit protection act, 15 USC § 1601 et seq., as amended, and in effect on January 1, 2000; and

(2) regulation Z, 12 CFR part 226, including all appendices, as amended and in effect on March 31, 2000.

(c) The terms “finance charge” and “prepaid finance charge,” as used in the Kansas uniform consumer credit code, shall have substantially the same meanings given to these terms in, and shall be interpreted in a manner that is consistent with the usage and treatment of these terms in, and shall be calculated in a manner that conforms to the following:

(1) Title I of the consumer credit protection act, 15 USC § 1601 et seq., as amended, and in effect on January 1, 2000; and

(2) regulation Z, 12 CFR part 226, including all appendices, as amended and in effect on March 31, 2000.

(d) Notwithstanding subsection (c), the following shall not be included in the meaning of the terms “finance charge” and “prepaid finance charge” as used in the Kansas uniform consumer credit code:

(1) The actual fees paid a public official or agency of the state or federal government, for filing, recording or releasing any instrument relating to the debt; and

(2) bona fide and reasonable expenses incurred by the lender in connection with the making, closing, disbursing, extending, readjusting, or renewing of the debt that are payable to third parties not related to the lender. However, reasonable fees for an appraisal made by the lender or related party shall be permissible. (Authorized by and implementing K.S.A. 1999 Supp. 16a-1-301, and K.S.A. 1999 Supp. 16a-6-117; effective, E-82-16, Aug. 12, 1981; amended, T-83-2, Jan. 7, 1982; amended, T-83-6, April 14, 1982; amended, T-84-10, May 25, 1983; amended, T-85-15, May 3, 1984; amended, T-86-12, May 1, 1985; amended, T-87-14, June 6, 1986; amended, T-88-15, July 1, 1987; amended, T-75-7-29-88, July 29, 1988; amended Sept. 19, 1988; amended June 11, 1990; amended Oct. 28, 1991; amended Sept. 8, 1992; amended March 7, 1997; amended Dec. 12, 1997; amended July 14, 2000.)

**75-6-27.** (Authorized by K.S.A. 16a-6-104(e); implementing K.S.A. 16a-2-510(4); effective, T-83-16, July 1, 1982; effective May 1, 1983; revoked Oct. 17, 1988.)

**75-6-28.** (Authorized by K.S.A. 16a-6-104(e) and implementing K.S.A. 1985 Supp. 16a-2-401,

as amended by 1986 HB No. 3018; effective, T-87-19, July 23, 1986; amended May 1, 1987; revoked Oct. 17, 1988.)

**75-6-29.** (Authorized by K.S.A. 16a-6-104(1)(e) and implementing K.S.A. 1987 Supp. 16a-2-510(3)(4)(5), as amended by L. 1988, Ch. 86, Sec. 5; effective Jan. 16, 1989; revoked Aug. 9, 1996.)

**75-6-30. Application; place of business.**

(a) Each person who proposes to engage in any of the activities for which a license is required under K.S.A. 16a-2-301, and amendments thereto, shall first apply for and obtain a license for each of the person's places of business. Each applicant for a license and each licensee seeking to license one or more additional places of business shall complete and submit a license application for each place of business.

(b) Each location at which an applicant or licensee regularly performs either of the following activities shall constitute a place of business for the purpose of this regulation:

(1) Makes a supervised loan to a Kansas consumer or makes any loan for personal, family, or household purposes to a Kansas consumer; or

(2) accepts payments on loans made to Kansas consumers that the applicant or licensee has taken assignment of for direct collection.

(c) Any location in Kansas at which an applicant or licensee places an automated loan machine shall be deemed a location where an applicant or licensee makes a supervised loan. (Authorized by and implementing K.S.A. 2004 Supp. 16a-2-302(5), as amended by L. 2005, ch. 144, sec. 9; effective July 14, 2000; amended Jan. 6, 2006.)

**75-6-31. Bond requirements.** (a) Each applicant for a supervised loan license shall submit a bond in the following amounts:

(1) For any applicant who engages in or intends to engage in making loans secured by an interest in real property or contracts for deed, \$250,000.00 for the first licensed place of business, plus an additional \$25,000.00 for each additional licensed place of business or, if the applicant made more than \$50,000,000.00 in such loans in Kansas during the previous calendar year, \$300,000.00; or

(2) for all other applicants, \$100,000.00 for the first licensed place of business, plus an additional \$25,000.00 for each additional licensed place of business.

(b) The total bond requirement for each applicant shall not exceed \$300,000.00, unless the

administrator determines, after consideration of the factors specified in subsection (c), that special circumstances require a higher bond amount in order to adequately protect Kansas consumers.

(c) In determining whether a higher bond amount is necessary, the following factors shall be considered by the administrator:

(1) Whether the business proposed to be conducted by the applicant involves technology or methods that may require additional regulatory oversight by the administrator;

(2) whether the applicant has been the subject of regulatory or disciplinary actions by the administrator, any regulatory body of this state or any other state, or any federal regulatory body; or

(3) whether the applicant's structure, business activities, or operations possess elements of risk that may require additional regulatory oversight by the administrator. (Authorized by K.S.A. 16a-2-302(1)(a), as amended by 2009 SB 240, §17, and K.S.A. 16a-6-104, as amended by 2009 SB 240, §21; implementing K.S.A. 16a-2-302(2), as amended by 2009 SB 240, §17; effective July 14, 2000; amended Jan. 6, 2006; amended Oct. 2, 2009.)

**75-6-32. Notification.** (a) Each person subject to K.S.A. 16a-6-201 through K.S.A. 16a-6-203, and amendments thereto, shall file notification with the administrator within 30 days after commencing business in Kansas and, thereafter, on or before April 30 of each year. The notification shall be submitted on a form provided by the administrator.

(b) If the business's name, status, or list of locations contained in the notification becomes inaccurate after filing, the person shall notify the administrator in writing within 30 days of the date of the change. (Authorized by K.S.A. 2000 Supp. 16a-6-104; implementing K.S.A. 2000 Supp. 16a-6-202; effective Feb. 23, 2001.)

**75-6-33.** (Authorized by K.S.A. 2002 Supp. 16a-6-104; implementing K.S.A. 2002 Supp. 16a-2-304; effective Oct. 31, 2003; revoked Oct. 2, 2009.)

**75-6-34.** (Authorized by K.S.A. 2002 Supp. 16a-6-104 and K.S.A. 2002 Supp. 16a-3-308; implementing K.S.A. 2002 Supp. 16a-3-308; effective Sept. 12, 2003; revoked Oct. 2, 2009.)

**75-6-35. Net worth requirements.** (a) Each applicant for a supervised loan license who engages in or intends to engage in making loans

secured by an interest in real property or contracts for deed shall comply with both of the following requirements:

(1) Each applicant shall maintain a minimum net worth of \$250,000.

(2) At least 20% or \$100,000 of the net worth of each applicant, whichever is less, shall be comprised of liquid assets consisting of cash or readily marketable securities registered on a national securities exchange.

(b) As evidence that the applicant is in compliance with subsection (a), each applicant shall submit annually to the administrator, on or before January 1, a current and complete financial statement, accompanied by a written statement signed by an independent certified public accountant attesting that the statement has been reviewed and is in compliance with generally accepted accounting principles. For the purposes of this regulation, a current financial statement shall be one that was prepared within the preceding 12 months. (Authorized by and implementing K.S.A. 2004 Supp. 16a-2-302(2)(b), as amended by L. 2005, ch. 144, sec. 9; effective Jan. 6, 2006.)

**75-6-36. Prelicensing and continuing education; requirements.** (a) Each individual required to register as a residential mortgage loan originator pursuant to the Kansas uniform consumer credit code, K.S.A. 16a-1-101 et seq. and amendments thereto, shall complete at least 20 hours of prelicensing professional education (PPE) approved in accordance with subsection (c), which shall include at least the following:

(1) Three hours of federal law and regulations;

(2) three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) Each individual required to register as a residential mortgage loan originator pursuant to the Kansas uniform consumer credit code, K.S.A. 16a-1-101 et seq. and amendments thereto, shall annually complete at least eight hours of approved continuing professional education (CPE) as a condition of registration renewal, which shall include at least the following:

(1) Three hours of federal law and regulations;

(2) two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(c) Each PPE and CPE course shall first be approved by the administrator, or the administrator's designee, before granting credit.

(d) In addition to the specific topic requirements in subsections (a) and (b), PPE and CPE courses shall focus on issues of mortgage business, as defined by K.S.A. 9-2201 and amendments thereto, or related industry topics.

(e) One PPE or CPE hour shall consist of at least 50 minutes of approved instruction.

(f) Each request for PPE or CPE course approval shall be submitted on a form approved by the administrator. A request for PPE or CPE course approval may be submitted by any person, as defined by K.S.A. 16a-1-301 and amendments thereto.

(g) Evidence of satisfactory completion of approved PPE or CPE courses shall be submitted in the manner prescribed by the administrator. Each residential mortgage loan originator registrant shall ensure that PPE or CPE credit has been properly submitted to the administrator and shall maintain verification records in the form of completion certificates or other documentation of attendance at approved PPE or CPE courses.

(h) Each CPE year shall begin on the first day of January and shall end on the 31st day of December each year.

(i) Each residential mortgage loan originator registrant may receive credit for a CPE course only in the year in which the course is taken. A registrant shall not take the same approved course in the same or successive years to meet the annual requirements for CPE.

(j) Each residential mortgage loan originator registrant who fails to renew the registrant's certificate of registration, in accordance with K.S.A. 16a-2-302 and amendments thereto, shall obtain all delinquent CPE before receiving a new certificate of registration.

(k) A residential mortgage loan originator registrant who is an instructor of an approved continuing education course may receive credit for the registrant's own annual continuing education requirement at the rate of two hours of credit for every one hour taught. (Authorized by and implementing K.S.A. 16a-6-104, as amended by 2009 SB 240, §21; effective Oct. 2, 2009.)

**75-6-37. Prelicensure testing.** (a) On and after July 31, 2010, each individual required to register as a residential mortgage loan originator pursuant to the Kansas uniform consumer credit code, K.S.A. 16a-1-101 et seq. and amendments thereto, shall pass a qualified written test. For purposes of this regulation, the administrator's designee for developing and administering the qualified written test shall be the nationwide mortgage licensing system and registry.

(b) A written test shall not be treated as a qualified written test for purposes of subsection (a) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

- (1) Ethics;
- (2) federal laws and regulations pertaining to mortgage origination;
- (3) state laws and regulations pertaining to mortgage origination;
- (4) federal and state laws and regulations, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c)(1) An applicant shall not be considered to have passed a qualified written test unless the applicant achieves a test score of at least 75 percent.

(2) An applicant may retake a test three consecutive times, with each consecutive taking occurring at least 30 days after the preceding test.

(3) After failing three consecutive tests, an applicant shall wait at least six months before taking the test again.

(4) A registered mortgage loan originator registrant who fails to maintain a valid license for five years or longer shall retake the test, not including any time during which the individual is a registered loan originator, as defined in section 1503 of title V, S.A.F.E. mortgage licensing act of 2008, P.L. 110-289. (Authorized by and implementing K.S.A. 16a-6-104, as amended by 2009 SB 240, §21; effective Oct. 2, 2009.)

**75-6-38. Record retention.** (a) In any loan, lease, or credit sale not secured by an interest in real estate, the licensee or any person required to file notification with the administrator pursuant to K.S.A. 16a-6-202, and amendments thereto, shall retain the following:

(1) The following documents, as applicable, in any transaction closed in the name of the licensee or person filing notification, for at least 36 months following the closing date or, if the transaction is not closed, the application date:

- (A) The application;
  - (B) the contract and any addendum or rider;
  - (C) the final truth-in-lending disclosure statement, including an itemization of the amount financed and an itemization of any prepaid finance charges, or consumer lease disclosures;
  - (D) any written agreements with the borrower that describe rates or fees;
  - (E) any documentation that aided the licensee or person in making a credit decision, including a credit report, verification of employment, verification of income, bank statements, payroll records, and tax returns;
  - (F) all paid invoices for credit report, filing, and any other closing costs;
  - (G) any credit insurance requests and insurance certificates;
  - (H) the assignment of the contract;
  - (I) phone log or any correspondence with associated notes detailing each contact with the consumer;
  - (J) all other agreements for products or services charged in connection with each transaction by the licensee, person filing notification, or third party, including guaranteed asset protection (GAP) and warranties; and
  - (K) any other disclosures or statements required by law; and
- (2) the following documents, as applicable, in any transaction in which the licensee or person filing notification owns the account and directly or indirectly undertakes collection of payments or enforcement of rights against debtors, for at least 36 months after the final entry to each account:
- (A) A complete payment history, including the following:
    - (i) An explanation of transaction codes, if used;
    - (ii) the principal balance;
    - (iii) the payment amount;
    - (iv) the payment date;
    - (v) the distribution of the payment amount to interest, principal, and late fees or other fees; and
    - (vi) any other amounts that have been added to, or deducted from, a consumer's account;
  - (B) any other statements, disclosures, invoices, or information for each account, including the following:
    - (i) Documentation supporting any amounts added to a consumer's account or evidence that a service was actually performed in connection with these amounts, or both, including costs of collection, attorney's fees, skip tracing, retaking, or repossession fees;

- (ii) loan modification agreements;
- (iii) forbearance or any other repayment agreements;
- (iv) subordination agreements;
- (v) surplus or deficiency balance statements;
- (vi) default-related correspondence or documents;
- (vii) evidence of sale of repossessed collateral;
- (viii) the notice of the consumer's right to cure;
- (ix) property insurance advance disclosure;
- (x) force-placed property insurance;
- (xi) notice and evidence of credit insurance premium refunds;
- (xii) deferred interest;
- (xiii) suspense accounts;
- (xiv) phone log or any correspondence with associated notes detailing each contact between the servicer and the consumer; and
- (xv) any other product or service agreements; and

(C) documents related to the general servicing activities of the licensee, including the following:

- (i) Historical records for all adjustable rate indices used;
- (ii) a log of all accounts sold, transferred, or assigned that details to whom the accounts were sold, transferred, or assigned;
- (iii) a log of all accounts in which repossession activity has been initiated;
- (iv) a log of all credit insurance claims and accounts paid by credit insurance; and
- (v) a schedule of servicing fees and charges imposed by the licensee or a third party.

(b) In any loan secured by an interest in real estate, the licensee shall retain the following:

(1) The following documents, as applicable, in any mortgage loan in which the licensee does not close the transaction in the licensee's name, for at least 36 months following the closing date or, if the transaction is not closed, the application date:

- (A) The application;
- (B) the good faith estimate;
- (C) the early truth-in-lending disclosure statement;
- (D) any written agreements with the borrower that describe rates, fees, broker compensation, and any other similar fees;
- (E) an appraisal performed by a Kansas-licensed or Kansas-certified appraiser completed within 12 months before the loan closing date, the total appraised value of the real estate as reflected in the most recent records of the tax assessor of the county in which the real estate is located,

or, for a nonpurchase money real estate transaction, the estimated market value as determined through an automated valuation model, pursuant to K.S.A. 16a-1-301(6) and amendments thereto, acceptable to the administrator;

(F) the adjustable rate mortgage (ARM) disclosure;

(G) the home equity line of credit (HELOC) disclosure statement;

(H) the affiliated business arrangement disclosure;

(I) evidence that the special information booklet, consumer handbook on adjustable rate mortgages, home equity brochure, reverse mortgage booklet, or any suitable substitute was delivered in a timely manner;

(J) the certificate of counseling for home equity conversion mortgages (HECMs);

(K) the loan cost disclosure statement for HECMs;

(L) the notice to the borrower for HECMs;

(M) phone log or any correspondence with associated notes detailing each contact with the consumer;

(N) any documentation that aided the licensee in making a credit decision, including a credit report, title work, verification of employment, verification of income, bank statements, payroll records, and tax returns;

(O) the settlement statement; and

(P) all paid invoices for appraisal, title work, credit report, and any other closing costs;

(2) the following documents, as applicable, in any transaction in which the licensee provides any money to fund the loan or closes the mortgage loan in the licensee's name, for at least 36 months from the closing date of the transaction:

(A) The high loan-to-value notice required by K.S.A. 16a-3-207 and amendments thereto;

(B) the final truth-in-lending disclosure statement, including an itemization of the amount financed and an itemization of any prepaid finance charges;

(C) any credit insurance requests and insurance certificates;

(D) the note and any other applicable contract addendum or rider;

(E) a copy of the filed mortgage or deed;

(F) a copy of the title policy or search;

(G) the assignment of the mortgage and note;

(H) the initial escrow account statement or escrow account waiver;

(I) the notice of the right to rescind or waiver of the right to rescind;

(J) the special home ownership and equity protection act disclosures required by regulation Z in 12 CFR 226.32(c) and 226.34(a)(2), if applicable;

(K) the mortgage servicing disclosure statement and applicant acknowledgement;

(L) the notice of transfer of mortgage servicing;

(M) any interest rate lock-in agreement or float agreement; and

(N) any other disclosures or statements required by law; and

(3) the following documents, as applicable, in any mortgage transaction in which the licensee owns the mortgage loan or the servicing rights of the mortgage loan and directly or indirectly undertakes collection of payments or enforcement of rights against debtors, for at least 36 months from the final entry to each account:

(A) A complete payment history, including the following:

(i) An explanation of transaction codes, if used;

(ii) the principal balance;

(iii) the payment amount;

(iv) the payment date;

(v) the distribution of the payment amount to interest, principal, late fees or other fees, and escrow; and

(vi) any other amounts that have been added to, or deducted from, a consumer's account;

(B) any other statements, disclosures, invoices, or information for each account, including the following:

(i) Documentation supporting any amounts added to a consumer's account or evidence that a service was actually performed in connection with these amounts, including costs of collection, attorney's fees, property inspections, property preservations, and broker price opinions;

(ii) annual escrow account statements and related escrow account analyses;

(iii) notice of shortage or deficiency in escrow account;

(iv) loan modification agreements;

(v) forbearance or any other repayment agreements;

(vi) subordination agreements;

(vii) foreclosure notices;

(viii) evidence of sale of foreclosed homes;

(ix) surplus or deficiency balance statements;

(x) default-related correspondence or documents;

(xi) the notice of the consumer's right to cure;

(xii) property insurance advance disclosure;

(xiii) force-placed property insurance;

(xiv) notice and evidence of credit insurance premium refunds;

(xv) deferred interest;

(xvi) suspense accounts;

(xvii) phone log or any correspondence with associated notes detailing each contact between the servicer and the consumer; and

(xviii) any other product or service agreements; and

(C) documents related to the general servicing activities of the licensee, including the following:

(i) Historical records for all adjustable rate mortgage indices used;

(ii) a log of all accounts sold, transferred, or assigned that details to whom the accounts were sold, transferred, or assigned;

(iii) a log of all accounts in which foreclosure activity has been initiated;

(iv) a log of all credit insurance claims and accounts paid by credit insurance; and

(v) a schedule of servicing fees and charges imposed by the licensee or a third party.

(c) In addition to meeting the requirements specified in subsections (a) and (b), each licensee or person filing notification shall retain for at least the previous 36 months the documents related to the general business activities of the licensee or person filing notification, which shall include the following:

(1) Advertising records, including copies of printed advertisements or solicitations and those by internet or other electronic means;

(2) the business account check ledger or register;

(3) all financial statements, balance sheets, or statements of condition;

(4) a detailed list of all transactions originated, closed, purchased, or serviced; and

(5) a schedule of the licensee's fees and charges.

(Authorized by K.S.A. 16a-6-104, as amended by 2009 SB 240, §21; implementing K.S.A. 16a-2-304, as amended by 2009 SB 240, §19; effective Oct. 2, 2009.)

#### **Article 7.—FAIR CREDIT REPORTING ACT**

**75-7-1 to 75-7-3.** (Authorized by K.S.A. 50-721; effective, E-74-17, April 5, 1974; effective May 1, 1975; revoked May 1, 1980.)

#### **Article 8.—KANSAS INVESTMENT CERTIFICATE ACT**

**75-8-1.** (Authorized by and implementing K.S.A. 16-601(6); effective, E-82-23, Dec. 9, 1981; effective May 1, 1982; revoked Aug. 9, 1996.)

**75-8-2.** (Authorized by and implementing K.S.A. 16-629(c); effective, E-82-23, Dec. 9, 1981; effective May 1, 1982; revoked Aug. 9, 1996.)

**75-8-3.** (Authorized by and implementing K.S.A. 16-629(b); effective, E-82-23, Dec. 9, 1981; effective May 1, 1982; amended, T-83-16, July 1, 1982; amended May 1, 1983; revoked Aug. 9, 1996.)

**75-8-4.** (Authorized by and implementing K.S.A. 16-629(b); effective, E-82-23, Dec. 9, 1981; effective May 1, 1982; revoked Aug. 9, 1996.)

**75-8-5.** (Authorized by K.S.A. 16-629 (a); implementing K.S.A. 16-602(b); effective, E-82-23, Dec. 9, 1981; effective May 1, 1982; revoked Aug. 9, 1996.)

**75-8-6 and 75-8-7.** (Authorized by and implementing K.S.A. 16-629(b); effective, E-82-23, Dec. 9, 1981; effective May 1, 1982; revoked Aug. 9, 1996.)

**75-8-8.** (Authorized by K.S.A. 16-629(a); implementing K.S.A. 16-602(b); effective, E-82-23, Dec. 9, 1981; effective May 1, 1982; revoked Aug. 9, 1996.)

**75-8-9.** (Authorized by K.S.A. 16-629(a); implementing K.S.A. 16-601(8); effective, E-82-23, Dec. 9, 1981; effective May 1, 1982; revoked Aug. 9, 1996.)

**75-8-10.** (Authorized by and implementing K.S.A. 16-629(b); effective, E-82-23, Dec. 9, 1981; effective May 1, 1982; revoked Aug. 9, 1996.)

**75-8-11.** (Authorized by K.S.A. 16-629(a); implementing K.S.A. 16-602(b); effective, E-82-23, Dec. 9, 1981; effective May 1, 1982; amended May 1, 1983; revoked Aug. 9, 1996.)

**75-8-12.** (Authorized by K.S.A. 16-629(a); implementing K.S.A. 16-601(30); effective, E-82-23, Dec. 9, 1981; effective May 1, 1982; revoked May 1, 1983.)

#### **Article 26.—REFUNDS; SALES FINANCE**

**75-26-1.** (Authorized by K.S.A. 16-506(a); effective Jan. 1, 1966; revoked, E-77-27, May 21, 1976; revoked Feb. 15, 1977.)

#### **Article 27.—INSURANCE; SALES FINANCE**

**75-27-1.** (Authorized by K.S.A. 16-506(a); effective Jan. 1, 1966; revoked, E-77-27, May 21, 1976; revoked Feb. 15, 1977.)

#### **Article 28.—CONTRACTS; SALES FINANCE**

**75-28-1 and 75-28-2.** (Authorized by K.S.A. 16-506(a); effective Jan. 1, 1966; revoked, E-77-27, May 21, 1976; revoked Feb. 15, 1977.)

#### **Article 29.—RECORDS; SALES FINANCE**

**75-29-1 and 75-29-2.** (Authorized by K.S.A. 16-506(a); effective Jan. 1, 1966; revoked, E-77-27, May 21, 1976; revoked Feb. 15, 1977.)



# Agency 76

## Board of Basic Science Examiners

**Editor's Note:**

The statute establishing the Board of Basic Science Examiners was repealed by L. 1969, Ch. 299. Regulations of the board were revoked May 1, 1980 by L. 1980, Ch. 347. For current regulations see Agency 100, Board of Healing Arts.

*Articles*

- 76-1. *GENERAL QUALIFICATIONS OF CERTIFICANTS. (Not in active use.)*
- 76-2. *CERTIFICATION BY EXAMINATION. (Not in active use.)*
- 76-3. *CERTIFICATION BY ENDORSEMENT. (Not in active use.)*
- 76-4. *EXAMINATIONS. (Not in active use.)*
- 76-5. *DUPLICATE CERTIFICATES. (Not in active use.)*
- 76-6. *RE-EXAMINATIONS. (Not in active use.)*

**Article 1.—GENERAL QUALIFICATIONS  
OF CERTIFICANTS**

**76-1-1.** (Authorized by K.S.A. 65-2117; effective Jan. 1, 1966; revoked May 1, 1980.)

**Article 2.—CERTIFICATION  
BY EXAMINATION**

**76-2-1.** (Authorized by K.S.A. 65-2117; effective Jan. 1, 1966; revoked May 1, 1980.)

**Article 3.—CERTIFICATION  
BY ENDORSEMENT**

**76-3-1.** (Authorized by K.S.A. 65-2117; effective Jan. 1, 1966; revoked May 1, 1980.)

**Article 4.—EXAMINATIONS**

**76-4-1.** (Authorized by K.S.A. 65-2117; effective Jan. 1, 1966; revoked May 1, 1980.)

**Article 5.—DUPLICATE CERTIFICATES**

**76-5-1.** (Authorized by K.S.A. 65-2117; effective Jan. 1, 1966; revoked May 1, 1980.)

**Article 6.—RE-EXAMINATIONS**

**76-6-1.** (Authorized by K.S.A. 65-2117; effective Jan. 1, 1966; revoked May 1, 1980.)



# Agency 80

## Kansas Public Employees Retirement System

### Articles

- 80-1. MEMBERSHIP.
- 80-2. MULTIPLE ENROLLMENT.
- 80-3. CREDIT AND BREAKS IN SERVICE.
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- 80-45. STATE SCHOOL RETIREMENT SYSTEM; RETIREMENT CREDIT.
- 80-50. POLICE AND FIREMEN; GENERAL.
- 80-51. POLICE AND FIREMEN; MEMBERSHIP.
- 80-52. *POLICE AND FIREMEN; EMPLOYER ACCOUNT. (Not in active use.)*
- 80-53. POLICE AND FIREMEN; CREDIT AND BREAKS IN SERVICE.
- 80-54. *POLICE AND FIREMEN; MEMBERS' ACCOUNTS. (Not in active use.)*
- 80-55. POLICE AND FIREMEN; RETIREMENT.
- 80-56. *POLICE AND FIREMEN; ACTUARIAL TABLES. (Not in active use.)*

### Article 1.—MEMBERSHIP

#### **80-1-1. Year of service; commencement.**

For the purpose of determining membership in the system under K.S.A. 74-4911 of the act, and amendments thereto, the year of service required for coverage under the retirement system shall commence with the first day the employee commences work with the employer in a covered position as defined by K.S.A. 74-4902(13), and amendments thereto. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4911, as amended by L. 1998, ch. 201, §15; effective Jan. 1, 1966; amended Sept. 10, 1999.)

**80-1-2. Year of service before entry date; service defined.** For the purpose of determining membership in the system under K.S.A. 74-4911 (1) of the act, and amendments thereto, for an employee in employment on the employer's entry date, these definitions shall apply. (a) The word "service" as used in the "year of service" requirement shall mean all service for that employer before the employer's entry date; this service need not be continuous.

(b) After the entry date of the employer, "service" for this employee shall mean service in a cov-

ered position as defined by K.S.A. 74-4902(13), and amendments thereto, for that employer; this service shall be continuous.

However, when this employee becomes a member, the provisions of the act relating to the crediting of prior service and participating service shall apply. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4911, as amended by L. 1998, ch. 201, § 15; effective Jan. 1, 1966; amended Sept. 10, 1999.)

**80-1-3. Year of service after entry date; service defined.** For the purpose of determining membership in the system under K.S.A. 74-4911 (2) of the act, and amendments thereto, when a person becomes an employee after the employer's entry date, the "year of service" required shall be in a position that is neither temporary nor seasonal and that requires at least 1,000 hours of work per year; this service shall be continuous. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4911, as amended by L. 1998, ch. 201, §15; effective Jan. 1, 1966; amended Sept. 10, 1999.)

**80-1-4.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; revoked Sept. 10, 1999.)

**80-1-5. Military service; year of service.**

(a) For the purpose of determining membership in the system under K.S.A. 74-4911 (4) of the act, and amendments thereto, employees in military service on the employer's entry date shall not become members of the retirement system until they return to the employment of a participating employer. In the case of any employee whose combined public employment and military service does not equal one year at the time of the employee's return to employment, the date of membership shall be the first day of the payroll period coinciding with or following the completion of one combined (public employment and military service) year of service.

(b) Employees who enter the military service from their employment after the employer's entry date, who are eligible for crediting of military service pursuant to K.S.A. 74-4913(1)(b), and amendments thereto, and who have not completed one year of service at the time of their entry into the military service shall not become members of the retirement system until they return to the employment of a participating employer. In the case of an employee whose combined public employment and military service does not equal one year at the time of the employee's return to employment, the date of membership shall be the first day of the payroll period coinciding with or following the completion of one combined (public employment and military service) year of service.

(c) In each of the above instances, the member shall be granted service credit for the period of military service. The partial year of service actually worked before or after military service may be purchased pursuant to K.S.A. 74-4919a, and amendments thereto. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4911, as amended by L. 1998, ch. 201, §15, 74-4913, as amended by L. 1998, ch. 201, §16; effective Jan. 1, 1966; amended Sept. 10, 1999.)

**80-1-6. Active military duty; terminal leave.** For the purpose of determining membership in the system under K.S.A. 74-4911 of the act, and amendments thereto, in the cases involving military service leaves, return to public employment shall be deemed to be immediate if it occurs within the provisions of K.S.A. 74-4902

(22), and amendments thereto, after the termination of active military duty. "Active military duty," as used in this regulation, shall include terminal leave. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4911, as amended by L. 1998, ch. 201, §15; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Sept. 10, 1999.)

**80-1-7. Employee, defined.** For the purpose of determining membership in the system under K.S.A. 74-4902 (13) and 74-4902 (14) of the act, the term "employee" shall be construed to mean an individual who is covered by social security, who is employed by an employer in an office or position, which position or office requires a period of at least 1,000 hours per year and for which compensation is actually paid. (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966.)

**80-1-8. Year of service; no compensation; effect of.** For the purpose of determining membership in the system, a member will not be granted service credits for periods of holding public office, employment or position for which no "compensation," as defined in the act, was payable under statute, ordinance or regulation existing at the time he held such office, position, or employment. (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966.)

**80-1-9. Employer's entry date; employees affected.** For the purpose of determining the employees' membership in the system and the employer's entry date for specific employees, those court decisions and attorney general opinions that establish the employer of employees in specific positions shall apply. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4910, as amended by L. 1998, ch. 201, §14 and 74-4911, as amended by L. 1998, ch. 201, §15; effective Jan. 1, 1966; amended Sept. 10, 1999.)

**80-1-10. Eligible employers.** (a) For the purpose of determining whether or not an entity is an "eligible employer" under K.S.A. 74-4902(13) and K.S.A. 74-4910 of the act, and amendments thereto, the entity shall qualify under the standards controlling the system's governmental-plan status as provided in 26 U.S.C. §414(d) of the federal internal revenue code, which is defined in K.S.A. 74-4902(35), and amendments thereto, requiring that only governmental units, or agencies

or instrumentalities of governmental units, shall be eligible employers. The following factors shall be considered when determining whether an employer constitutes an instrumentality of a governmental unit:

(1) The existence of any specific legislation authorizing the employer;

(2) the source of funds for the employer;

(3) the manner in which the trustees or operating board members of the employer are selected;

(4) the governmental unit's consideration of the employees to be employees of the governmental unit; and

(5) the degree of control that the state or local government has over the employer.

(b) Any employer that is a current or prospective participant in the retirement system may be required by the retirement system to obtain a ruling from the internal revenue service as to the employer's status as a governmental instrumentality or as to the impact of the employer's participation in the retirement system. (Authorized by K.S.A. 1998 Supp. 74-4909; implementing K.S.A. 1998 Supp. 74-4910; effective Jan. 1, 1966; amended, E-74-5, Nov. 7, 1973; amended May 1, 1975; amended Sept. 10, 1999.)

**80-1-11. Continuous employment construed; reorganization.** The consolidation, reorganization, combination, or separation of a participating employer from one unit into two or more units, or from two or more units into a smaller number of units, shall not result in an interruption of an employee's continuous employment in a covered position for the same employer, for purposes of determining credited service under K.S.A. 74-4913, and amendments thereto, when the employee's position is or was continuously under the control of one of the units so consolidated, reorganized, combined, or separated. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4913, as amended by L. 1998, ch. 201, §16; effective Jan. 1, 1966; amended Sept. 10, 1999.)

**80-1-12.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; revoked Sept. 10, 1999.)

**80-1-13. Employee of employer; construed.** For the purpose of determining membership in the system, an employee will be considered to be the employee of the employer from whom his compensation is or was received. (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966.)

## Article 2.—MULTIPLE ENROLLMENT

**80-2-1. Multiple employment; definition and requirements.** Except for members of the legislature covered by K.S.A. 74-4994(5), and amendments thereto, in any case in which an individual holds more than one position, office, or employment with different participating employers that is covered by the retirement system, the following provisions shall apply to the individual's membership. (a) "Dual employee" means any employee who holds covered positions with two or more participating employers and who meets the eligibility requirements for membership at each position. For each dual employee, coverage under each position shall be determined separately, in accordance with the provisions of the act and the membership rules and regulations.

(b) "Concurrent employee" means any school employee who holds more than one position with different participating school employers but who does not qualify for membership under any one participating school employer. Each concurrent employee shall qualify for membership if the total required hours of all positions equal or exceed 630 hours per year. The burden of electing coverage under the concurrent employee provisions shall be on the employee.

(c) Contributions shall be deducted from the salary of all positions that qualify for coverage, and service shall be credited pursuant to K.A.R. 80-2-2.

(d) "Totality of employment" means that employee and employer contributions shall be remitted on the compensation of all positions filled by an employee with the same participating employer, if at least one position meets the definition of employee in K.S.A. 74-4902(14) or K.S.A. 74-4932(4), and amendments thereto. All state of Kansas agencies, including board of regents institutions, shall constitute one employer. An employee of any state agency in a covered position who also works in a non-covered position for the same or another state agency shall have contributions withheld from compensation for all positions. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4911, as amended by L. 1998, ch. 201, §15, K.S.A. 74-4919, as amended by L. 1998, ch. 64, §37, K.S.A. 1997 Supp. 74-4920, as amended by L. 1998, ch. 201, §26, 74-4965, as amended by L. 1998, ch. 64, §79, and 74-4967; effective Jan. 1, 1966; amended Sept. 10, 1999.)

**80-2-2. Multiple employment prior service credit; contributions; termination; retirement; construed.** For all service credit purposes, all multiple employment shall be combined as though it were for a single employer.

(a) Prior service credits shall be given for all periods of prior service in all covered positions: Provided, That no more than one month of credit shall be given for any one specific calendar month of service. Participating service credits shall be given for all periods of participating service in all covered positions as reported by the employer: Provided, That no more than one quarter of credit shall be given for any one specific calendar quarter of service.

(b) For all claims purposes a multiple enrollment account shall be treated as though the individual were in one position.

(1) Refunds of accumulated contributions shall be made only in the event of termination of employment in all positions covered by the retirement system.

(2) Eligibility for a retirement benefit shall only be reached upon termination of all employment in positions covered by the retirement system.

(3) In the event of retirement, benefits shall be based upon the combined credited service and compensation from all positions covered under the retirement system. For the purposes of determining "final average salary," only the compensation upon which contributions are received shall be used. (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; amended Jan. 1, 1969.)

**80-2-3. Multiple employment, designation of beneficiary.** An individual in multiple employment may for administrative reasons complete enrollment and other forms prescribed by the board of trustees, and if different designations of beneficiary are received, the board will recognize only the last one filed with the retirement system. (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966.)

**80-2-4. Multiple employment; prior service annual salary.** An individual who is in multiple employment on the entry date of one of his employers and at a later date another of his employers becomes a participating employer, his prior service annual salary shall be determined by adding the compensation the member received from all participating employers in any one of the three years immediately prior to the entry date of the first employer. (Authorized by K.S.A. 74-4909; effective Jan. 1, 1969.)

### Article 3.—CREDIT AND BREAKS IN SERVICE

**80-3-1.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; amended Jan. 1, 1969; revoked Sept. 10, 1999.)

**80-3-2.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; amended Jan. 1, 1969; revoked Sept. 10, 1999.)

**80-3-3. Prior service credit, break in service; defined.** For prior service credit purposes, any period in which the employee was off the payroll of his entry date employer, except when on military leave or leave of absence, shall constitute a break in service. This rule shall not apply to members coming within the purview of rule 80-3-1. For prior service credit purposes, military leave credit shall not be given under rule 80-3-3 if the employee does not return to employment with the employer from whose employment he went on military leave and who was his employer on the employer's entry date. (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966.)

**80-3-4. Participating service credit; granted when; leaves of absence; military leave; contributions.** For the purpose of determining participating service credit, if an employee is on leave of absence, without pay, the employee shall be identified as being in this category by the employer on the remittance report. Military leave shall be creditable at the rate of one quarter of credit for each calendar quarter of military leave. For the purpose of determining participating service credit, these military leave credits shall not apply if the employee does not return to employment in accordance with K.S.A. 74-4902(22), and amendments thereto, with a participating employer. No contributions shall be made by the member or the member's employer specifically for the period of military leave. All participating employers shall share in the liabilities created by the granting of service credits for military leave. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4913, as amended by L. 1998, ch. 201, §16; effective Jan. 1, 1966; amended Sept. 10, 1999.)

**80-3-5 to 80-3-6.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; revoked Sept. 10, 1999.)

**80-3-7. Participating service, recording of, compensation.** Participating service shall be

recorded for a member for each calendar quarter for which contributions based on compensation for service are reported by the employer. No more than one quarter of credit shall be given for any calendar quarter: *Provided*, This rule shall not modify or change the provisions of rule and regulation 80-3-4. (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966.)

**80-3-8.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; revoked Sept. 10, 1999.)

**80-3-9. Withdrawal of contributions; payment of interest on account.** (a) Any member formally challenging termination of employment by means of any administrative or judicial review process shall not be eligible to apply for withdrawal until the process has been concluded. The “administrative or judicial review process” shall mean any proceeding under the civil service act, K.S.A. 75-2925 et seq.; the administrative procedure act, K.S.A. 77-501 et seq.; and the act for judicial review and civil enforcement of agency actions, K.S.A. 77-601 et seq. Any member who succeeds in a challenge and is returned to employment by the employer shall have no break in service if the member is awarded back wages or salary. Payments of back wages or salary that result from a successful challenge shall be subject to employer and employee contributions.

(b) Each member who is not employed by a participating employer shall be deemed to have withdrawn that member’s accumulated contributions and to have terminated membership in the retirement system and forfeited all membership rights, except the right to receive a refund of accumulated contributions, at the time the application for withdrawal is received in the office of the retirement system. Submission of this application shall be irrevocable.

(c) A member account for which a valid application for withdrawal is received in the office of the retirement system before June 30 shall not be credited with interest on June 30 as provided in K.S.A. 74-4922(a), and amendments thereto; this ineligibility for interest crediting shall include any member account for which a valid application for withdrawal is received before June 30 and is required to be held for processing for up to 90 days pending spousal consent pursuant to K.S.A. 74-4917b(2)(b), and amendments thereto. A valid application for withdrawal shall be fully completed according to the instructions on the KPERS withdrawal application form.

(d) Payment by the retirement system of the accumulated contributions shall be deemed final at the time the payment is made, and neither shall additional contributions be accepted from nor rebates be made to former employers of the withdrawn member after the retirement system makes the payment. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4917, as amended by L. 1998, ch. 201, §19; effective Jan. 1, 1966; amended May 1, 1978; amended Sept. 10, 1999.)

**80-3-10.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; revoked, E-69-2, Oct. 17, 1968; revoked Jan. 1, 1969.)

**80-3-11. Prior service credit, proof of.** In the event that a member making claim for prior service credit finds that such prior service cannot be verified by the employer from official records of the employer due to the nonexistence of the records of said employer, the member shall submit proof of such prior service such as may be required by the board of trustees of the retirement system. (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966.)

**80-3-12. Military service credit, time for claiming.** An employee who returns from military service to the employment of a participating employer must provide the employer and retirement system with the original or a certified copy of his military discharge or separation papers within three months after his re-employment with said participating employer when it is his desire to claim his military service credit. In the event that such employee fails to file, within the time hereinbefore prescribed, it shall be presumed he has waived service credit for the period of military service. However, if any person shall present evidence satisfactory to the board that his failure to file such military separation papers within said time period was due to lack of knowledge or incapacity on his part, said military service credit may be re-established at a later date. (Authorized by K.S.A. 74-4909; effective Jan. 1, 1970.)

**80-3-13.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; revoked Sept. 10, 1999.)

**80-3-14. Years of service; early retirement or vested benefit; computation of.** For the purpose of computing the number of years of service to determine the eligibility of a member

for an early retirement or a vested benefit, the years and months of credited prior service and the years and quarters of credited participating service shall be combined before rounding to the nearest whole year. (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966.)

**80-3-15. Participating service; purchase of year of service.** If an individual has a year of service followed by a period of participating service that has been forfeited because of termination of employment and withdrawal of contributions, this member shall first have the forfeited participating service reinstated under the provisions of K.S.A. 74-4919, and amendments thereto, before participating service credit for the year of service preceding the forfeited service may be purchased. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 74-4919, as amended by L. 1998, ch. 64, §37; effective, E-71-37, Sept. 8, 1971; effective Jan. 1, 1972; amended Sept. 10, 1999.)

**80-3-16. Military service; purchase of credit for.** (a) For the purpose of purchasing participating service credit under K.S.A. 74-4919h, and amendments thereto, active service in the armed forces shall not include periods of active duty for training. Periods of reserve time to fulfill the initial service requirements of 10 U.S.C. §651(a) as in effect on the date the member's service commenced, including active duty for training, may be purchased at the rate of one quarter for each year of service in active or inactive reserves.

For the purpose of determining the amount of participating service credit that may be purchased, the member's military service shall be converted to months and divided by three to determine the number of quarters that may be purchased. Any fractional remainder shall constitute a quarter that may be purchased.

(b) Notwithstanding subsection (a) of this regulation, all requirements of the uniformed services employment and reemployment rights act of 1994, chapter 43 of title 38 U.S.C., as defined in K.S.A. 74-4902(36), and amendments thereto, shall be observed by the retirement system. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4919h, as amended by L. 1998, ch. 201, §21; effective, E-74-38, July 2, 1974; effective May 1, 1975; amended Sept. 10, 1999.)

#### Article 4.—MEMBERS' ACCOUNTS

**80-4-1. Members' accounts; identification of.** Members' accounts during active service shall be maintained on the basis of social security numbers. In addition, special identifying retirement system numbers may be assigned at the time of claim, termination of service, or death. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4911, as amended by L. 1998, ch. 201, §15; effective Jan. 1, 1966; amended Sept. 10, 1999.)

**80-4-2.** (Authorized by K.S.A. 1977 Supp. 74-4909; effective Jan. 1, 1966; amended May 1, 1978; revoked Sept. 10, 1999.)

**80-4-3.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; revoked Sept. 10, 1999.)

**80-4-4. Members' accounts; reconciliation of.** In order to facilitate the reconciliation of members' accounts upon withdrawal, death, or retirement, no rebates or additional contributions shall be made if these adjustments involve amounts of \$25 or less. Any internal adjustments that may be required shall be made from time to time by transfer from and to the retirement benefit accumulation reserve. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4916, as amended by L. 1998, ch. 64, §34, 74-4917, as amended by L. 1998, ch. 201, §19, 74-4918, as amended by L. 1998, ch. 64, §36, 74-4958, as amended by L. 1998, ch. 64, §69, 74-4958a, as amended by L. 1998, ch. 64, §70, 74-4959, as amended by L. 1998, ch. 64, §71, 74-4963, as amended by L. 1998, ch. 201, §40, and 74-4963a, as amended by L. 1998, ch. 201, §41; effective Jan. 1, 1966; amended Sept. 10, 1999.)

**80-4-5.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; revoked Sept. 10, 1999.)

**80-4-6.** (Authorized by K.S.A. 1977 Supp. 74-4909; effective May 1, 1978; revoked Sept. 10, 1999.)

#### Article 5.—RETIREMENT

**80-5-1. Retirement allowance calculation; basis of.** The following procedures shall be used for the purpose of determining the basis of the retirement allowance calculation. (a) (1) Months of prior service credited to a mem-

ber shall be divided by 12 to arrive at the total number of years. If the remainder is less than six months, it shall be disregarded. If the remainder is six months or more, it shall be counted as an additional year.

(2) Quarters of participating service credited to a member shall be divided by four to arrive at the total number of years. All quarters of purchased service shall be combined with other service before calculation of total years. If the remainder is two quarters or more, it shall be counted as an additional year; if the remainder is less than two quarters, it shall be disregarded.

(b) For the determination of "final average salary," a year shall consist of four quarters of credited service whether continuous or not.

(c) The last quarter of compensation before the member's retirement date may be excluded if the member's retirement benefit would be adversely affected by including this quarter of compensation. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4915; effective Jan. 1, 1966; amended, E-72-27, Sept. 29, 1972; amended Jan. 1, 1973; amended Sept. 10, 1999.)

**80-5-2.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; revoked Sept. 10, 1999.)

**80-5-3.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1970; revoked Sept. 10, 1999.)

**80-5-6. Compensation; defined.** (a) For the purpose of determining contributions to the retirement system for participating service, the compensation of the member shall include the following, with exceptions as noted in subsection (b):

(1) All amounts upon which the employer withholds and pays federal withholding, social security tax, or medicare tax. These amounts shall include the imputed taxable value of any economic advantage, opportunity, or privilege granted to the member by the employer;

(2) to the extent not included in paragraph (1) above, all amounts sheltered from income taxation under 26 U.S.C. §§125, 403(b), and 457 of the federal internal revenue code, as defined in K.S.A. 74-4902(35), and amendments thereto; and

(3) to the extent not included in paragraphs (1) and (2) above, all amounts that represent the value of maintenance, board, lodging, laundry, tuition assistance, goods and services, and other allowances to members by employers in lieu of money; and

(4) for members who were first employed in a covered position before July 1, 1993, the amount of lump-sum termination payments for vacation, sick leave, and compensatory time.

(b) For the purpose of determining contributions to the retirement system for participating service, the compensation of the member shall not include the following:

(1) Any amounts that are not counted, according to any law or regulation of the state of Kansas, in a member's final average salary for calculations of retirement benefits;

(2) the imputed taxable amount for life insurance coverage above \$50,000;

(3) reimbursement for actual expenses;

(4) payments under any early retirement incentive program paid before the retirement of the member; and

(5) for those first hired after July 1, 1996, any compensation above \$150,000 per year, as indexed, in accordance with 26 U.S.C. §401(a)(17) of the federal internal revenue code, as defined in K.S.A. 74-4902(35), and amendments thereto.

(c) Notwithstanding any rule and regulation or other provision of law to the contrary, the sum of contributions shall not exceed the limits under 26 U.S.C. §415(c) of the federal internal revenue code, as defined in K.S.A. 74-4902(35), and amendments thereto. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4915; effective Jan. 1, 1966; amended Sept. 10, 1999.)

**80-5-7.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked Sept. 10, 1999.)

**80-5-9. Date of birth; proof of.** (a) Retirement benefits shall be approved for payment to a member only after proof of the date of birth of the member. A member making application for retirement benefits shall present any evidence of date of birth that may be required by the board of trustees of the public employees retirement system.

(b) Additional proof of date of birth may be required by the board of trustees if the document or documents submitted are not, in the opinion of the board of trustees, sufficient evidence of proof of date of birth. A photocopy of the proof of date of birth shall be attached to or made a part of the application for retirement benefits. Listed below are materials that may be used as proof of date of birth, the first item on the list being the most

acceptable and the following items listed in the order of preference:

- (1) A birth certificate;
  - (2) a baptismal certificate or a statement as to the date of birth shown by a church record, certified by the custodian of this record;
  - (3) notification of registration of birth in a public registry of vital statistics;
  - (4) certification of record of age by the U.S. census bureau;
  - (5) hospital birth record, certified by the custodian of this record;
  - (6) a foreign church or government record;
  - (7) a signed statement by the physician or midwife who was in attendance at birth, as to the date of birth shown on these records;
  - (8) naturalization record; or
  - (9) immigration papers.
- (c) If proof in accordance with paragraphs (b) (1) through (b)(9) above cannot be provided, then the member shall submit proof for at least TWO of the items listed below:
- (1) Military record;
  - (2) passport;
  - (3) school record, certified by the custodian of this record;
  - (4) vaccination record, certified by the custodian of this record;
  - (5) an insurance policy showing the age or date of birth;
  - (6) marriage records showing date of birth or age (application for marriage license or church records, certified by the custodian of this record, or marriage certificate); or
  - (7) other evidence, including signed statements from persons who have knowledge of the date of birth. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4915; effective Jan. 1, 1966; amended Sept. 10, 1999.)

**80-5-10. Designation of beneficiaries.**

A member may designate any natural person or persons, trust, or estate as beneficiary. This designation may be made on the designation of beneficiary form or a written document filed with the system. Any documents other than the forms furnished by the system shall state the name, address, relationship, and date of birth or other information of sufficiency to establish the identification of the individual so designated. The written notice shall be dated and signed by the member, and the signature shall be witnessed by an individual other

than a designated beneficiary. Attorneys-in-fact, conservators, and guardians shall not change any designation of beneficiary. (Authorized by K.S.A. 1998 Supp. 74-4909; implementing K.S.A. 1998 Supp. 74-4902(7); effective Jan. 1, 1970; amended Sept. 10, 1999.)

**80-5-11. Designation of beneficiary; recognition upon receipt.** Except as applicable under K.A.R. 80-5-18, only those designations of beneficiary that are received in the retirement system office shall be recognized by the board of trustees. Eligible employees who are in their year of service shall file the beneficiary form with the employer. The employer shall keep the form on file until the employee becomes a member or dies. At that time, any completed beneficiary forms received by the designated agent shall be sent to the retirement system office, along with all other appropriate forms. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4902(7), as amended by L. 1998, ch. 201, §9; effective Jan. 1, 1966; amended Sept. 10, 1999.)

**80-5-12.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; revoked Sept. 10, 1999.)

**80-5-13. Designation of beneficiary; multiple; recognition of.** When more than one designation of beneficiary has been made by a member, the latest one received in the retirement system office, or employer office as provided in K.A.R. 80-5-11, shall be recognized by the board of trustees. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4902(7), as amended by L. 1998, ch. 201, §9; effective Jan. 1, 1966; amended Sept. 10, 1999.)

**80-5-14.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; revoked Sept. 10, 1999.)

**80-5-15. Retirement date; leaves of absence and vacations, break in service requirement.** (a) Unless otherwise specified in the retirement act, the retirement date shall be no earlier than the later of the first day of the month following the member's last day on payroll or the first day of the month following receipt of the retirement application in the retirement system office. For the purpose of administration of the act, a member shall not be deemed to have retired while the member is on vacation leave, terminal leave, sick leave, or any other leaves of absence.

Payment for these leaves shall be considered compensation for employment within the meaning of the act.

(b) For the purpose of retirement, a member shall terminate employment with all participating employers and shall not return to employment with a participating employer in a covered position until the member has a break in service. A break in service shall be a period of time during which the member is not employed by any participating employer and shall include the first day of the retirement month. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4914, as amended by L. 1998, ch. 201, §17, K.S.A. 74-4914a, 74-4914b, 74-4914c, and 74-4914d, K.S.A. 1997 Supp. 74-4937, as amended by L. 1998, ch. 201, §31, 74-4957, as amended by L. 1998, ch. 201, §36, and 74-4957a, as amended by L. 1998, ch. 201, §37; effective Jan. 1, 1966; amended, E-66-15, Sept. 20, 1966; amended Jan. 1, 1967; amended Sept. 10, 1999.)

**80-5-16. Retirement life certain options; designation of beneficiary.** In the event of the death of a retired member who has selected one of the life certain retirement options (life annuity with 5, 10, or 15 years certain), and in the further event of the death of the designated beneficiary after the death of the retirant but before the 5-, 10-, or 15-year certain period has elapsed, the balance of the monthly benefit payments due under this option shall be paid to the person designated by the beneficiary, otherwise to the beneficiary's estate. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4918, as amended by L. 1998, ch. 64, §36, 74-4964, as amended by L. 1998, ch. 64, §77, and 74-4964a, as amended by L. 1998, ch. 64, §78; effective Jan. 1, 1966; amended Sept. 10, 1999.)

**80-5-17. Child, defined.** For the purposes of K.S.A. 74-4902 (11) of the act, the word "child" as used therein shall be deemed to include a son or daughter irrespective of age; an adopted son or daughter, an illegitimate son or daughter provided the member parent is its mother or in the case of the member parent being its father, the acknowledged son or daughter of said member. Said word "child" shall not be deemed to include step-children of the member, grandchildren, nor unacknowledged illegitimate children of a male member. Nor shall the

fact that a member stands *in loco parentis* to a person be construed as bringing said person within the meaning of the word "child" except as herein specifically provided. (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966.)

**80-5-18. Designation of beneficiary; filing with institution.** (a) Members of the faculty and other persons employed by educational institutions under the management of the state board of regents and the state board of education who are receiving assistance in the purchase of a retirement annuity as set out in K.S.A. 74-4925, and amendments thereto, and who are members for the purpose of having provided the "insured death benefit" and "long-term disability benefit" as prescribed in K.S.A. 74-4927, and amendments thereto, shall designate beneficiaries on forms provided by the system and shall file the designation of beneficiary with the designated agent for the institution. The designation of beneficiary shall become effective upon the filing of a properly completed form with the designated agent and shall cancel any and all other designations of beneficiaries that may have been made for payments of benefits under the Kansas public employees retirement system. If a member described above who has previously attained membership in the Kansas public employees retirement system files a designation of beneficiary as provided above, the designated agent of the institution shall immediately forward the designation of beneficiary to the retirement system.

(b) K.A.R. 80-5-10 through 80-5-14 shall apply to employees of the educational institutions specified above, as appropriate. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4925; effective Jan. 1, 1974; amended Sept. 10, 1999.)

**80-5-19. Partial lump sum option; death of member.** (a) If a married member who has elected the partial lump sum option pursuant to K.S.A. 74-4918(3)(G), and amendments thereto, dies after the member's retirement date and before the distribution of the partial lump sum, the partial lump sum may be distributed to the member's surviving spouse.

(b) If an unmarried member who has elected the partial lump sum option pursuant to K.S.A. 74-4918(3)(G), and amendments thereto, dies after the member's retirement date and before the

distribution of the partial lump sum, the partial lump sum may be distributed to the member's beneficiary or beneficiaries.

(c) To the extent allowed under federal tax law, any lump sum that is distributed to a surviving spouse as specified in subsection (a) may be rolled over to a traditional individual retirement account (IRA). (Authorized by K.S.A. 2000 Supp. 74-4909; implementing K.S.A. 2000 Supp. 74-4918, as amended by L. 2001, Ch. 209, Sec. 15; effective Nov. 2, 2001.)

**80-5-20. Partial lump sum option; commencement of monthly benefits.** (a) If a member elects a partial lump sum option pursuant to K.S.A. 74-4918(3)(G) and amendments thereto, the member's monthly payments shall commence on the first regular monthly payment date after the system has paid the member the partial lump sum distribution according to the option chosen.

(b) The member's first monthly benefit payment shall include all monthly payments that are due and owing on the date the first monthly payment is made. (Authorized by K.S.A. 2000 Supp. 74-4909; implementing K.S.A. 2000 Supp. 74-4918, as amended by L. 2001, Ch. 209, Sec. 15; effective Nov. 2, 2001.)

**80-5-21. Partial lump sum option; recovery of debt owed by member to system.** If a member elects a partial lump sum option pursuant to K.S.A. 74-4918(3)(G) and amendments thereto, any debt owed by the member to the system may be recovered as an offset against the member's partial lump sum distribution. (Authorized by K.S.A. 2000 Supp. 74-4909; implementing K.S.A. 2000 Supp. 74-4918, as amended by L. 2001, Ch. 209, Sec. 15; effective Nov. 2, 2001.)

**80-5-22. Partial lump sum option; actuarial assumptions used in calculating partial lump sum distribution.** If a member elects a partial lump sum option pursuant to K.S.A. 74-4918(3)(G) and amendments thereto, the assumptions used in establishing the actuarial present value of the benefit shall consist of the following: (a) An assumed annual investment return of eight percent, compounded annually; and

(b) mortality rates in the "mortality table" adopted by the KPERS board of trustees on January 19, 2001, which is hereby adopted by reference. (Authorized by K.S.A. 2000 Supp. 74-4909; implementing K.S.A. 2000 Supp. 74-4918, as amended by L. 2001, Ch. 209, Sec. 15; effective Nov. 2, 2001.)

## Article 6.—ACTUARIAL TABLES

**80-6-1 and 80-6-2.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; revoked, E-72-27, Sept. 29, 1972; revoked Jan. 1, 1973.)

**80-6-3.** (Authorized by K.S.A. 74-4909; effective, E-66-4, April 26, 1966; effective Jan. 1, 1967; revoked Jan. 1, 1974.)

**80-6-4. Value of workmen's compensation benefits, determination of.** (a) For the purpose of determining the value of "any workmen's compensation benefits paid or payable to the recipient of an accidental total disability benefit" under K.S.A. 74-4916(3) (g) to be deducted from the amounts payable under the provisions of clause (a) of subsection (3) of said section, the amount paid for medical and hospital expenses shall be disregarded. In the case of any accidental total disability benefit approved on or after May 15, 1973, the amount of any attorney fees allowed under K.S.A. 1972 Supp. 44-536 and acts amendatory thereof and supplemental thereto shall be disregarded if the award for disability compensation is equal to 75% or more of the maximum award which could be made for disability compensation under the workmen's compensation act at the time disability commenced.

(b) In determining the amount of the annual benefit provided in K.S.A. 74-4916 (3) (a) in those cases where workmen's compensation benefits are paid or payable to the recipient of such annual benefit the following formula shall be used in making the calculation:

Present value of one-half ( $\frac{1}{2}$ ) of the member's final average salary less the present value of all workmen's compensation benefits paid or payable divided by the present value of one-half ( $\frac{1}{2}$ ) of the member's final average salary. This quotient is to be multiplied by one-half ( $\frac{1}{2}$ ) the final average salary. This formula may be expressed as:

$$\frac{\begin{array}{l} \text{(Present value of } \frac{1}{2} \text{ FAS) minus} \\ \text{(Present value Workmen's} \\ \text{Compensation Benefit)} \end{array}}{\text{(Present value of } \frac{1}{2} \text{ FAS)}} \times (\frac{1}{2} \text{ FAS)}$$

(Authorized by K.S.A. 74-4909; effective, E-66-8, July 13, 1966; effective Jan. 1, 1967; amended, E-73-17, May 25, 1973; amended Jan. 1, 1974.)

## Article 7.—INSURANCE

**80-7-1. Annual rate of compensation.** (a) "Annual rate of compensation" as used in K.S.A. 74-4927, and amendments thereto, shall mean ei-

ther the current annual rate of pay or the amount of compensation the member earned in the last 12 months before the date of the member's death or disability, whichever is higher.

(b) At the time of death or disability, the employer shall certify to the retirement system the current annual rate of pay of the member and the amount of compensation actually earned by the member in the 12-month period immediately preceding the month in which the member's death or disability occurred.

(c) If the member was employed fewer than 12 months at the time of death or disability, the employer shall certify the current annual rate of pay of the member and the amount of compensation actually earned by the member for the period of time during which the employee was actually employed.

(d) If an employer has designated, in writing, certain positions that are filled by employees who from time to time are not actively employed but who are permanent employees who will return to active employment at a date certain, not to exceed 92 days, these employees shall be considered active employees for insurance purposes during this period. No employer may designate any position or employee as provided above more than once in any 12-month period. The annual rate of compensation for these employees shall be certified by the employer at the time any claim for insurance benefits is made. Each member's "annual rate of compensation" during the period the member is not actively employed shall be computed as set forth above. This computation shall be as of the first day of the period in which the employee was so classified.

(e) The annual rate of compensation on or before the date of disability or death for members who are state of Kansas employees shall be based upon the records maintained by the division of personnel of the department of administration.

(f) If a member becomes disabled and subsequently dies without returning to active employment, the "annual rate of compensation" for any death benefits shall be the same compensation that was determined at the time the disability commenced or in the 12-month period immediately preceding the month in which the member's separation from the payroll occurred, whichever is higher. If the member is disabled for five years or more, the compensation shall be adjusted pursuant to K.S.A. 74-4927(2)(C), and amendments thereto.

(g) For the purpose of this regulation, retroactive changes made after the date of death or

disability shall be considered in determining the annual rate of compensation. In case of doubt, "annual rate of compensation" shall be determined by the board. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4927, as amended by L. 1998, ch. 201, §29; effective, E-68-3, Dec. 8, 1967; effective Jan. 1, 1969; amended, E-73-17, July 1, 1973; amended Jan. 1, 1974; amended, E-74-38, July 2, 1974; amended May 1, 1975; amended Sept. 10, 1999.)

## Article 8.—BOARD ELECTION

**80-8-1. Definitions.** (a) "Board" means the board of trustees of the Kansas public employees retirement system (KPERs).

(b) "Executive Secretary" means the executive secretary of the Kansas public employees retirement system (KPERs).

(c) "Member" means an active or retired member of the system.

(d) "System" means the Kansas public employees retirement system (KPERs), the Kansas police and firemen's retirement system, and the retirement system for judges. (Authorized by K.S.A. 1991 Supp. 74-4909, as amended by L. 1992, ch. 218, sec. 6; implementing K.S.A. 74-4905, as amended by L. 1992, ch. 218, sec. 1; effective, T-80-1-22-93, Jan. 22, 1993; effective Aug. 9, 1993.)

**80-8-2. Nominations.** Any member who desires to be a candidate for election to the board may have the member's name placed on the ballot by submitting a petition to the board that meets the following conditions. (a) Each petition shall be accompanied by the signatures of at least 100 members of the system who desire to have the petitioner's name on the ballot. Each signature shall include all or part of the signer's social security number as required by the system. The signature of each active member shall include the name of the member's current employer. The signature of each retired member shall include the name of the signer's employer at the time of retirement. The petition shall be in a form provided by the system.

(b) Each petitioner shall submit a resume of qualifications. The resume shall be limited to 150 words and shall contain only biographical data. The petitioner's views on issues and other election comments shall not be permitted. The resume shall be in a form acceptable to the board, which shall be provided to the petitioner following approval of a valid petition.

(c) Each petitioner's membership in the system and the signature and membership of at least 100 of the signers of each petition shall be verified by the executive secretary.

(d) The notice to submit petitions shall be distributed in the year preceding the year in which the term of an elected trustee expires. The notice shall announce the forthcoming election and shall contain any other information that the executive secretary deems appropriate.

(e) Each petition shall be received in the system's office on or before 5:00 p.m. central standard time of November 30 in the calendar year preceding the expiration of the term of an elected trustee and shall be verified only for the election announced in the notice described in subsection (d) above.

(f) When there is only one nomination for a vacancy, the candidate shall be declared to be elected to the board at the April meeting.

(g) System employees shall not be nominated and shall not stand for election to the KPERS board of trustees.

(h) School members may nominate and vote for only school members. Non-school members may nominate and vote for only non-school members. (Authorized by K.S.A. 1997 Supp. 74-4909(12), as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4905(a)(2), as amended by L. 1998, ch. 201, §11; effective, T-80-1-22-93, Jan. 22, 1993; effective Aug. 9, 1993; amended, T-80-9-11-96, Sept. 15, 1996; amended Dec. 20, 1996; amended Sept. 10, 1999.)

**80-8-3. Voting.** (a) Voice Response Voting.

(1) Contents.

(A) Candidate listings shall be prepared by the executive secretary and shall:

(i) List in alphabetical sequence the names of the candidates; and

(ii) contain a resume of not more than 150 words listing the qualifications of each candidate.

(B) Separate candidate listings shall be prepared for the board position for a school member and the board position for a non-school member, as necessary.

(2) Distribution.

(A) A candidate listing shall be distributed to each member in March of the calendar year in which the term of an elected trustee expires. Active member candidate listings shall be distributed to active members through the employers' designated agents. Retired member candidate listings

shall be distributed directly to retired members by mail.

(B) The system shall maintain a listing of the names and social security numbers of each member to whom a candidate listing was sent.

(3) Voting will be by voice response using touch-tone telephones.

(A) In accordance with subsection (a)(2)(B) of Section 7 of Pub. L. 93-579 (5 U.S.C. §552a note) and K.A.R. 80-4-1, because KPERS uses social security numbers for the purpose of maintaining member records, the member's social security number shall be the voter registration number for this election process. Use of the social security number in this process shall be mandatory. There shall be no public disclosure of the social security numbers.

(B) Each member shall have from receipt of the candidate listing until April 30 to vote by touch-tone telephone using a voice response system.

(C) The system shall keep a daily record of the number of votes received.

(b) Alternate voting method.

(1) The system shall set up an alternate method of voting for those individuals who may not have access to a touchtone telephone. Under the alternate method the member calling will be identified using the member's social security number. An alternate paper ballot shall be mailed to the member which the member shall return postmarked by 5:00 p.m. on April 30 as specified in paragraph (a)(3)(B) above.

(A) In accordance with subsection (a)(2)(B) of Section 7 of Pub. L. 93-579 (5 U.S.C. §552a note) and K.A.R. 80-4-1, because KPERS uses social security numbers for the purpose of maintaining member records, the member's social security number shall be the voter registration number for this election process. Use of the social security number in this process shall be mandatory. There shall be no public disclosure of the social security numbers.

(B) The postmark date on the return envelope shall determine whether the alternate paper ballot has been returned within the prescribed period. The system shall date stamp all envelopes which are either hand delivered, not postmarked or received by the system after the last day for the return of alternate paper ballots.

(C) Each alternate paper ballot received after the time prescribed for the return of ballots shall be kept separately for inspection and disposition by the election committee.

(D) The system shall keep a daily record of the number of alternate paper ballots received.

(2) Tallying of alternate paper ballots.

(A) The system may tally the number of alternate paper ballots not earlier than four days after the last day for the return of alternate paper ballots by mail.

(B) Votes shall not be counted for write-in candidates. Alternate paper ballots where the number of votes exceeds the number of positions available shall not be counted. No alternate paper ballot containing an erasure shall be counted. Alternate paper ballots shall be marked pursuant to the instructions contained on the ballot or as provided by the system. The election committee shall be the sole judge as to the validity of any questionable ballot.

(C) Each alternate paper ballot which has been tallied shall be held by the system for a period of at least 30 days following the day when the last successful candidate takes office.

(c) Tallying of total vote count. After the final alternate paper ballot votes are counted, the votes shall be combined with the voice response totals to determine the winning candidates.

(d) Recounts.

(1) A recount of an election may be ordered by the board when the election plurality of the winning candidate over the candidate with the next highest number of votes is less than one percent of the total number of votes cast for all candidates contesting for the vacancy.

(2) Any candidate may request a recount, providing the candidate pays the total cost of the recount in advance. (Authorized by K.S.A. 1995 Supp. 74-4909(12); implementing K.S.A. 1995 Supp. 74-4905(a)(2); effective, T-80-1-22-93, Jan. 22, 1993; effective Aug. 9, 1993; amended, T-80-9-11-96, Sept. 15, 1996; amended Dec. 20, 1996.)

**80-8-4. Election committee.** (a) The executive secretary shall appoint an election committee of three members who shall supervise the voting process. This supervision shall include the following:

(1) tallying the voice response votes;

(2) opening and tallying the alternate paper ballots; and

(3) certifying to the board the results of the election upon completion of the tally.

(b) The election committee shall also supervise the tallying of votes for any recount. (Authorized by K.S.A. 1995 Supp. 74-4909(12); implementing

K.S.A. 1995 Supp. 74-4905(a)(2); effective, T-80-1-22-93, Jan. 22, 1993; effective Aug. 9, 1993; amended, T-80-9-11-96, Sept. 15, 1996; amended Dec. 20, 1996.)

**80-8-5. Certification.** Upon receipt of the certified results of the election from the election committee, the board shall declare as elected the person receiving the highest number of votes for each vacancy. (Authorized by K.S.A. 1991 Supp. 74-4909, as amended by L. 1992, ch. 218, sec. 6; implementing K.S.A. 74-4905, as amended by L. 1992, ch. 218, sec. 1; effective, T-80-1-22-93, Jan. 22, 1993; effective Aug. 9, 1993.)

**80-8-6. Time computation.** In computing any period of time, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or holiday, in which case the last day shall be the next day following the Saturday, Sunday or holiday. (Authorized by K.S.A. 1991 Supp. 74-4909, as amended by L. 1992, ch. 218, sec. 6; implementing K.S.A. 74-4905, as amended by L. 1992, ch. 218, sec. 1; effective, T-80-1-22-93, Jan. 22, 1993; effective Aug. 9, 1993.)

**80-8-7. Vacancy.** In the case of a vacancy of a trustee elected by the members, the vacancy may be filled for the unexpired term by the appointment of a member by the remaining trustees of the board, in accordance with the standards for eligibility provided in K.S.A. 74-4905(a)(2), and amendments thereto. A vacancy by a trustee elected by school members shall be filled only with a school member, and a vacancy by a non-school trustee shall be filled only with a nonschool member. (Authorized by K.S.A. 1997 Supp. 74-4909(12), as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4905(a)(2), as amended by L. 1998, ch. 201, §11; effective, T-80-1-22-93, Jan. 22, 1993; effective Aug. 9, 1993; amended, T-80-9-11-96, Sept. 15, 1996; amended Dec. 20, 1996; amended Sept. 10, 1999.)

## Article 9.—INVESTMENTS

**80-9-1. Common stock investment program.** (a) The term “book value,” as used in K.S.A. 74-4921(5)(a) and amendments thereto, shall mean the original cost as adjusted according to generally accepted accounting principles, which shall be referred to as the “adjusted original cost.”

(b) Compliance with K.S.A. 74-4921(5)(a), and amendments thereto, shall be measured by dividing the adjusted original cost of the system's common stock investments by the adjusted original cost of the system's aggregate investments in all asset classes. (Authorized by K.S.A. 2000 Supp. 74-4909; implementing K.S.A. 2000 Supp. 74-4921, as amended by L. 2001, Ch. 1, Sec. 1 and as amended by L. 2001, Ch. 209, Sec. 20; effective Nov. 2, 2001.)

**80-9-2. Alternative investment program.**

(a) As used in K.S.A. 74-4921(5)(b), and amendments thereto, the following shall apply:

(1) The "total of such alternative investments" shall mean the total value of funds actually invested in alternative investments and shall not include amounts committed for future investment. The total value of funds actually invested in alternative investments shall be determined by using market-value methodology.

(2) The "total investment assets of the fund" shall be determined by using market-value methodology.

(b) Compliance with K.S.A. 74-4921(5)(b), and amendments thereto, shall be measured by dividing the market value of the system's alternative investments by the market value of the system's aggregate investments in all asset classes.

(c) The definition of "alternative investment" in K.S.A. 74-4921(b)(viii), and amendments thereto, shall not include securities traded pursuant to rule 144A of the general rules and regulations promulgated under the federal securities act of 1933. (Authorized by K.S.A. 2000 Supp. 74-4909; implementing K.S.A. 2000 Supp. 74-4921, as amended by L. 2001, Ch. 1, Sec. 1 and as amended by L. 2001, Ch. 209, Sec. 20; effective Nov. 2, 2001.)

**Article 45.—STATE SCHOOL  
RETIREMENT SYSTEM;  
RETIREMENT CREDIT**

**80-45-1. Certification of teachers required to receive service credit.** Any school employee performing service as a teacher in any school year must be the holder of a valid teaching certificate issued by the superintendent of public instruction on or before April 15 in order to receive service credit for such school year. (Authorized by K.S.A. 72-5506; effective Jan. 1, 1966.)

**80-45-2. Substitute school service defined.** For the purpose of construing and applying the provisions of K.S.A. 72-5512. A retired school

employee: (a) Shall be considered to be performing school service as a substitute employee when he temporarily replaces a regular employee or when temporarily employed for an unfilled position until such time as a permanent employee can be secured, and when paid a per diem or at an hourly, weekly or monthly rate; and (b) when performing such substitute service, any fractional part of a day of such performance shall be counted as one day of school service. (Authorized by K.S.A. 72-5506; effective Jan. 1, 1966.)

**80-45-3. Teaching day defined.** The term "teaching day" in K.S.A. 1965 Supp. 72-5512, is defined as one school day or any fractional part thereof. (Authorized by K.S.A. 72-5506; effective Jan. 1, 1966.)

**80-45-4. Participation of full-time school lunch employees required.** After September 1, 1965, any full-time school lunch employee on the regular payroll of a school district shall establish membership in the Kansas school retirement system unless exempted under the options provided in K.S.A. 72-5531. Such an employee shall be classified as full time when the job assignment requires 30 or more hours per week. (Authorized by K.S.A. 72-5506; effective Jan. 1, 1966.)

**Article 50.—POLICE AND  
FIREMEN; GENERAL**

**80-50-1.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; amended Jan. 1, 1969; revoked Sept. 10, 1999.)

**80-50-2. Application for participation.** (a) No application for participation by an eligible employer for current employees shall be accepted unless it includes coverage for future employees. A supplemental application to provide coverage for an additional group or groups of employees of the participating employer shall be accepted by the board, with the additional coverage becoming effective on January first of the succeeding year.

(b) The term "employee groups," as used in K.S.A. 74-4954(1), and amendments thereto, shall apply to only two groups of employees: police and firemen as defined in K.S.A. 74-4952, and amendments thereto. The provision for a supplemental application shall apply to any employer who has not applied for membership of both its police and firemen, and who wishes to add one of those groups after its initial application. (Autho-

rized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 74-4954, K.S.A. 1997 Supp. 74-4954a; effective Jan. 1, 1966; amended, E-66-16, Sept. 20, 1966; amended Jan. 1, 1967; amended Sept. 10, 1999.)

**80-50-3. Request for proposal for coverage.** (a) An eligible employer who desires to affiliate with the retirement system or a participating employer who wishes to file a supplemental application for coverage of an additional group or groups of employees, as provided in K.S.A. 74-4954, and amendments thereto, shall, before filing an application for affiliation or a supplemental application for coverage, request the board to submit a proposal for the coverage that the employer desires not less than 60 days before filing the applications, unless the time is shortened by the board. The request for a proposal shall be on the forms provided by the retirement system and shall furnish all necessary data from which the proposal may be prepared.

(b) The data shall be forwarded to the actuary of the retirement system, who shall prepare an estimate of the employer's contribution rate for the employer based on the data furnished and who shall furnish a written statement regarding its study to the board and to the employer. The cost of the study by the actuary shall be paid by the eligible employer requesting the study. The actuary shall prepare a written statement of the costs, and the employer shall make payment directly to the actuary. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 74-4954; effective Jan. 1, 1966; amended, E-66-16, Sept. 20, 1966; amended Jan. 1, 1967; amended Sept. 10, 1999.)

**80-50-4 to 80-50-5.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; revoked Sept. 10, 1999.)

**80-50-6. Benefit reduced by social security benefit.** In determining the amount of benefit payment reductions in the case of a member whose employment is covered by social security as provided in K.S.A. 74-4966, and amendments thereto, the following principles shall apply. (a) Full social security benefits, not including medicare benefits, shall be considered. These benefits shall include both primary and secondary benefits.

(b) The act recognizes that employment with a participating employer is the primary source of the employees' working-life income; therefore,

the determination of the amount of the reduction in benefits related to the social security benefits accruing from employment with the participating employer shall be based on the following formula:

$$\frac{1}{2} \text{ of } \frac{\text{total wages covered by social security from participating employers from January 1, 1956 to date of retirement or death}}{\text{total of all wages covered by social security from January 1, 1956}} \times \text{Social Security Benefit}$$

(c) The reduction in benefits shall be made as soon as the benefit recipient becomes eligible to receive social security benefits.

(d) The annual dividend payments pursuant to K.S.A. 74-49,111 shall be the same current reduced benefit as in subsections (a), (b), and (c) above, which shall include all current cost-of-living adjustments. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4966, as amended by L. 1998, ch. 201, §42; effective Jan. 1, 1966; amended, E-66-16, Sept. 20, 1966; amended Jan. 1, 1967; amended Sept. 10, 1999.)

**80-50-7. Application of Kansas public employees retirement system rules and regulations.** Except as otherwise provided by law or these rules and regulations, the rules and regulations of the Kansas public employees retirement system shall apply to the Kansas police and firemen's retirement system, insofar as the same are pertinent and applicable to the Kansas police and firemen's retirement system. (Authorized by K.S.A. 74-4909; amended, E-66-16, Sept. 20, 1966; effective Jan. 1, 1967.)

**80-50-8.** (Authorized by K.S.A. 74-4909; effective, E-66-16, Sept. 20, 1966; effective Jan. 1, 1967; revoked Sept. 10, 1999.)

**80-50-9. "Local police or firemen's pension system" defined.** The phrase "local police or firemen's pension system" will be defined as meaning a system established under the provisions of K.S.A. 13-14a01 to 13-14a14 or K.S.A. 14-10a01 to 14-10a15 or other pension systems specifically designated by the Kansas legislature. (Authorized by K.S.A. 74-4909; effective Jan. 1, 1969.)

## Article 51.—POLICE AND FIREMEN; MEMBERSHIP

**80-51-1 to 80-51-3.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; revoked Sept. 10, 1999.)

**80-51-4. Membership of a sheriff.** In accordance with K.S.A. 74-4955(4), and amendments thereto, to become a member, a sheriff shall file a written election on or before first taking office or the entry date of the sheriff's employer, whichever is later. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 74-4955; effective, E-66-16, Sept. 20, 1966; effective Jan. 1, 1967; amended Sept. 10, 1999.)

**80-51-5.** (Authorized by K.S.A. 74-4902; effective, E-66-16, Sept. 20, 1966; effective Jan. 1, 1967; amended Jan. 1, 1969; revoked Sept. 10, 1999.)

**80-51-6. Membership, leave of absence on entry date.** It shall be the participating employer's responsibility to file with the retirement system within fifteen (15) days after the entry date, a list of all employees on any officially authorized and approved leave of absence on entry date, giving the beginning date, the purpose, the period of time, and where available, copies of the documents authorizing or approving such leaves. Any former employee of a participating employer who returns to such employment and who is not listed on such a list shall be treated as a new employee for retirement system purposes. (Authorized by K.S.A. 74-4909; effective, E-66-16, Sept. 20, 1966; effective Jan. 1, 1967.)

**80-51-7.** (Authorized by K.S.A. 74-4909; effective, E-66-16, Sept. 20, 1966; effective Jan. 1, 1967; revoked Sept. 10, 1999.)

#### **Article 52.—POLICE AND FIREMEN; EMPLOYER ACCOUNT**

**80-52-1 to 80-52-3.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; revoked Sept. 10, 1999.)

#### **Article 53.—POLICE AND FIREMEN; CREDIT AND BREAKS IN SERVICE**

**80-53-1. Prior service credit.** (a) A member will receive prior service credit for service with his entry date employer whether as a policeman, a fireman or in some other capacity. For the purpose of determining service, employment in any part of a month shall be considered service for the month.

(b) Prior service credit for prior employment with the entry date employer other than as a po-

liceman or fireman will be granted on the following basis:

(1) For each 24 months of such employment 12 months of service credit;

(2) Such prior service credit will be granted only for blocks of 24 months of such employment. (Authorized by K.S.A. 74-4909; effective, E-66-16, Sept. 20, 1966; effective Jan. 1, 1967; amended Jan. 1, 1969.)

**80-53-2 to 80-53-5.** (Authorized by K.S.A. 74-4909; effective, E-66-16, Sept. 20, 1966; effective Jan. 1, 1967; revoked Sept. 10, 1999.)

**80-53-6.** (Authorized by K.S.A. 1977 Supp. 74-4909; effective May 1, 1978; revoked Sept. 10, 1999.)

#### **Article 54.—POLICE AND FIREMEN; MEMBERS' ACCOUNTS**

**80-54-1 to 80-54-2.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; revoked Sept. 10, 1999.)

**80-54-3.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; amended, E-66-16, Sept. 20, 1966; amended Jan. 1, 1967; amended Jan. 1, 1969; revoked Sept. 10, 1999.)

**80-54-4.** (Authorized by K.S.A. 1977 Supp. 74-4909; effective May 1, 1978; revoked Sept. 10, 1999.)

#### **Article 55.—POLICE AND FIREMEN; RETIREMENT**

**80-55-1.** (Authorized by K.S.A. 74-4909; effective Jan. 1, 1966; amended, E-66-16, Sept. 20, 1966; amended Jan. 1, 1967; revoked Sept. 10, 1999.)

**80-55-2 to 80-55-3.** (Authorized by K.S.A. 74-4909; effective, E-66-16, Sept. 20, 1966; effective Jan. 1, 1967; revoked Sept. 10, 1999.)

**80-55-4.** (Authorized by K.S.A. 74-4909; effective, E-66-16, Sept. 20, 1966; effective Jan. 1, 1967; amended Jan. 1, 1969; revoked Sept. 10, 1999.)

**80-55-5 and 80-55-6.** (Authorized by K.S.A. 74-4909; effective, E-66-16, Sept. 20, 1966; effective Jan. 1, 1967; revoked, E-69-2, Oct. 17, 1968; revoked Jan. 1, 1969.)

**80-55-7. Benefits, eligibility for, years of service.** For the purpose of computing the number of years of service to determine the eligibility of a member for any benefit, the years and months of credited prior service and the years and quarters of credited participating service shall be combined before rounding to the nearest whole year. (Authorized by K.S.A. 74-4909; effective, E-66-16, Sept. 20, 1966; effective Jan. 1, 1967.)

**80-55-8. Retirement allowance calculation; basis of.** The following procedure shall be used for the purpose of determining the basis of the retirement allowance calculation. (a) Months of prior service credited to a member shall be divided by 12 to arrive at the total number of years; any decimal remainder shall be converted to quarters. Quarters of participating service credited to a member shall be divided by four to arrive at the total number of years and quarters. Total prior service years and quarters shall be added to total participating service years and quarters, including all purchased service, to arrive at the total number of years and quarters available. If the remainder is two quarters or more, it shall be counted as an additional year; if the remainder is fewer than two quarters, it shall be disregarded.

(b) For the determination of "final average salary," a year shall consist of a four-quarter block of credited service in the last five years of service,

whether continuous or not. The four quarters selected shall be taken in sequence, as earned, not selected at random.

(c) The last quarter of compensation before the member's retirement date may be excluded if the member's retirement benefit would be adversely affected by including this quarter of compensation. (Authorized by K.S.A. 1997 Supp. 74-4909, as amended by L. 1998, ch. 64, §27; implementing K.S.A. 1997 Supp. 74-4958, as amended by L. 1998, ch. 64, §69, 74-4958a, as amended by L. 1998, ch. 64, §70; effective, E-66-16, Sept. 20, 1966; effective Jan. 1, 1967; amended Sept. 10, 1999.)

**80-55-9.** (Authorized by K.S.A. 74-4909; effective, E-66-16, Sept. 20, 1966; effective Jan. 1, 1967; revoked, E-69-2, Oct. 17, 1968; revoked Jan. 1, 1969.)

#### **Article 56.—POLICE AND FIREMEN; ACTUARIAL TABLES**

**80-56-1.** (Authorized by K.S.A. 74-4909; effective, E-66-16, Sept. 20, 1966; effective Jan. 1, 1967; revoked, E-72-27, Sept. 29, 1972; revoked Jan. 1, 1973.)

**80-56-2.** (Authorized by K.S.A. 74-4909; effective, E-66-16, Sept. 20, 1966; effective Jan. 1, 1967; amended Jan. 1, 1969; revoked, E-72-27, Sept. 29, 1972; revoked Jan. 1, 1973.)



# Agency 81

## Office of the Securities Commissioner

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- 81-2. FILING, FEES AND FORMS.
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- 81-36. *ECONOMIC DEVELOPMENT BY CITIES; REVENUE BONDS. (Not in active use.)*

### **Article 1.—DEFINITIONS OF TERMS**

**81-1-1. Definition of terms.** As used in the act, these regulations, and the forms, instructions, and orders of the administrator, each of the following terms shall have the meaning specified in this regulation, unless the context indicates otherwise:

(a) “The act” means the Kansas uniform securities act, K.S.A. 17-12a101 et seq., and amendments thereto.

(b) “Administrator” means the securities commissioner of Kansas, appointed pursuant to K.S.A. 75-6301 and amendments thereto, or the commissioner’s designee.

(c) “Affiliate” means a person who directly or in-

directly controls, is controlled by, or is under common control with another person, or who aids and abets or is aided and abetted by another person.

(d) “AICPA” means the American institute of certified public accountants.

(e) “Branch office” means any location where one or more agents or investment adviser representatives regularly conduct business on behalf of a broker-dealer or investment adviser, or that is held out as such a location, with the exception of the following locations:

(1) Any location that is established solely for customer service or back office-type functions, where no sales activities are conducted, and that is not held out to the public as a branch office;

(2) any location that is the agent's or investment adviser representative's primary residence if all of the following conditions are met:

(A) Only agents or investment adviser representatives who reside at the location and are members of the same immediate family conduct business at the location;

(B) the location is not held out to the public as an office, and the agent or investment adviser representative does not meet with customers at the location;

(C) neither customer funds nor securities are handled at the location;

(D) the agent or investment adviser representative is assigned to a designated branch office, and the designated branch office is reflected on all business cards, stationery, advertisements, and other communications to the public by the agent or investment adviser representative;

(E) the agent's or investment adviser representative's correspondence and communications with the public are subject to the supervision of the broker-dealer or investment adviser with which the individual is associated;

(F) electronic communications are made through the electronic system of the broker-dealer or investment adviser;

(G) all orders for securities are entered through the designated branch office or an electronic system established by a broker-dealer or investment adviser;

(H) written supervisory procedures pertaining to supervision of activities conducted at residence locations are maintained by the broker-dealer or investment adviser; and

(I) a list of all residence locations is maintained by the broker-dealer or investment adviser;

(3) any location, other than a primary residence, that is used for securities or investment advisory business for less than 30 business days in any one calendar year, if the broker-dealer or investment adviser complies with the provisions of paragraphs (e) (2)(B) through (H). For purposes of this paragraph, a business day shall not include any partial business day if the agent or investment adviser representative spends at least four hours of the business day at the agent's or investment adviser representative's designated branch office during the hours that the office is normally open for business;

(4) any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, that is not held out to the public as an office;

(5) any location that is used primarily to engage in non-securities activities and from which the agents or investment adviser representatives effect no more than 25 securities transactions in any one calendar year, if any advertisement or sales literature identifying the location also sets forth the address and telephone number of the location from which the agents or investment adviser representatives conducting business at the non-branch locations are directly supervised;

(6) the floor of a registered national securities exchange where a broker-dealer conducts a direct access business with public customers; and

(7) a temporary location established in response to the implementation of a business continuity plan.

(f) "Close family relationship" means either a person within the third degree of relationship, by blood or adoption, or a spouse, stepchild, or fiduciary of a person within the third degree of relationship.

(g) "Commission" means any consideration, compensation, fee, or other remuneration that is directly or indirectly incurred, paid, or given in exchange for services in connection with the offer, sale, or purchase of securities, the rendering of investment advice, or the solicitation of prospective purchasers or clients.

(h) "Control" means the possession of the power to direct or influence the direction of the management or policies of a person, directly or indirectly, through the ownership of voting securities, by contract, or by other means.

(i) "Controlling person" means a person who has control of any other person. Either of the following persons shall be presumed to be a controlling person:

(1) An officer, director, partner, or trustee or an individual occupying similar status or performing similar functions; or

(2) a person owning 10 percent or more of the outstanding shares of any class or classes of securities.

(j) "CPA" means certified public accountant or a firm of certified public accountants.

(k) "CRD" means the central registration depository jointly administered by FINRA and NASAA.

(l) "Designated security" means any equity security other than the following:

(1) A security registered, or approved for registration upon notice of issuance, on a national securities exchange;

(2) a security authorized, or approved for authorization upon notice of issuance, for listing on the Nasdaq stock market;

(3) a security issued by an investment company registered under the investment company act of 1940;

(4) a security that is a put option or call option issued by the options clearing corporation; or

(5) a security whose issuer has net tangible assets in excess of \$4,000,000 as demonstrated by financial statements dated within the previous 15 months that the broker-dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person, if either of the following conditions is met:

(i) The issuer is other than a foreign private issuer, and the financial statements are the most recent financial statements for the issuer that have been audited and reported on by a CPA in accordance with the provisions of 17 C.F.R. 210.2-02, as adopted by reference in K.A.R. 81-2-1; or

(ii) the issuer is a foreign private issuer, and the financial statements are the most recent financial statements for the issuer that have been filed with the SEC; published electronically in English pursuant to 17 C.F.R. 240.12g3-2(b), as adopted by reference in K.A.R. 81-2-1; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

(m) "EFD" means the electronic filing depository administered by NASAA.

(n) "FINRA" means the financial industry regulatory authority, inc., a self-regulatory organization registered with the SEC pursuant to section 15A of the securities exchange act of 1934, 15 U.S.C. § 78o-3, as adopted by reference in K.A.R. 81-2-1, that was organized upon consolidation with NASD, its predecessor, and the regulatory functions of the New York stock exchange.

(o) "GAAP" means generally accepted accounting principles in the United States.

(p) "General solicitation" means an offer to one or more persons by any of the following means or as a result of contact initiated through any of these means:

(1) Television, radio, or any broadcast medium;

(2) newspaper, magazine, periodical, or any other publication of general circulation;

(3) poster, billboard, internet posting, or other communication posted for the general public;

(4) brochure, flier, handbill, or similar communication, unless the offeror has a substantial

preexisting business relationship or close family relationship with each of the offerees;

(5) seminar or group meeting, unless the offeror has a substantial preexisting business relationship or close family relationship with each of the offerees; or

(6) telephone, facsimile, mail, delivery service, social media, or electronic communication, unless the offeror has a substantial preexisting business relationship or close family relationship with each of the offerees.

(q) "IARD" means the investment adviser registration depository jointly administered by the SEC and NASAA and operated by FINRA in conjunction with the CRD system.

(r) "NASAA" means the North American securities administrators association, inc.

(s) "NASD" means the national association of securities dealers, inc., a self-regulatory organization that was registered with the SEC pursuant to section 15A of the securities exchange act of 1934, 15 U.S.C. § 78o-3, as adopted by reference in K.A.R. 81-2-1, until its consolidation with the regulatory functions of the New York stock exchange upon organization of its successor, FINRA.

(t) "Nasdaq" means the Nasdaq stock market, which is comprised of the Nasdaq global select market; the Nasdaq global market, formerly the Nasdaq national market; and the Nasdaq capital market, formerly the Nasdaq smallcap market.

(u) "Officer" means a person charged with managerial responsibility or control over a person, including the president, vice president, secretary, treasurer, partner, and any other controlling person.

(v) "Parent" means an affiliate who controls another person.

(w) "PCAOB" means the public company accounting oversight board.

(x) "Predecessor" means a person, a major portion of whose business, assets, or control has been acquired by another.

(y) "Promoter" means a person who, acting alone or in conjunction with one or more other persons, directly or indirectly founds, organizes, reorganizes, or controls the business, financing, or operations of an issuer.

(z) "Prospectus" means any prospectus defined in section 2(a)(10) of the securities act of 1933, 15 U.S.C. 77b(a)(10), as adopted by reference in K.A.R. 81-2-1. This term shall not include any communication meeting the requirements of K.S.A. 17-12a202(16), and amendments thereto,

or SEC rule 134, 17 C.F.R. 230.134, as adopted by reference in K.A.R. 81-2-1.

(aa) "Registrant" means a person registered under the act.

(bb) "SCOR" means small company offering registration.

(cc) "SEC" means the United States securities and exchange commission.

(dd) "Subsidiary" means an affiliate who is controlled by another person. (Authorized by and implementing K.S.A. 17-12a605(a); effective Jan. 1, 1966; amended, T-85-45, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended May 31, 1996; amended Jan. 19, 2007; amended Jan. 4, 2016.)

## Article 2.—FILING, FEES AND FORMS

**81-2-1. Forms and adoptions by reference.** (a) Forms. Whenever any of these regulations requires the filing of any of the following forms, the filer shall use the form as issued or approved by the administrator:

### (1) Uniform forms:

FORM	TITLE
ADV	Uniform application for investment adviser registration
ADV-W	Notice of withdrawal from registration as investment adviser
BD	Uniform application for broker-dealer registration
BDW	Uniform request for broker-dealer withdrawal
D	Notice of exempt offering of securities
NF	Uniform investment company notice filing
U-1	Uniform application to register securities
U-2	Uniform consent to service of process
U-2A	Uniform form of corporate resolution
U-4	Uniform application for securities industry registration or transfer
U-5	Uniform termination notice for securities industry registration
U-7	Disclosure document Model accredited investor exemption uniform notice of transaction

### (2) Kansas forms:

FORM	TITLE
IKE	Notice of reliance on the invest Kansas exemption
KSC-1	Sales report or renewal application
KSC-15	Solicitation of interest form for issuers organized or based in Kansas

### (3) SEC forms:

FORM	TITLE
1-A	Regulation A offering statement under the securities act of 1933

S-1	Registration statement under the securities act of 1933
X-17A-5	FOCUS report (financial and operational combined uniform single report)

(b) Federal statutes. The following federal statutes, as in effect on May 12, 2015, are hereby adopted by reference:

(1) Sections 2, 3, and 17 of the securities act of 1933, 15 U.S.C. §§ 77b, 77c, and 77q;

(2) sections 9, 10, 13, 15, and 15A of the securities exchange act of 1934, 15 U.S.C. §§ 78i, 78j, 78m, 78o, and 78o-3;

(3) sections 203, 204A, 205, and 215 of the investment advisers act of 1940, 15 U.S.C. §§ 80b-3, 80b-4a, 80b-5, and 80b-15; and

(4) sections 3, 5, 8, and 54 of the investment company act of 1940, 15 U.S.C. §§ 80a-3, 80a-5, 80a-8, and 80a-53.

(c) SEC rules and regulations. The following rules and regulations of the securities and exchange commission, as in effect on May 12, 2015, except as otherwise specified, are hereby adopted by reference:

(1) 17 C.F.R. 210.2-02;

(2) rule 134, 17 C.F.R. 230.134;

(3) rule 147, 17 C.F.R. 230.147;

(4) regulation A, 17 C.F.R. 230.251 through 230.263, as amended by 80 fed. reg. 21895-21902 (2015) and effective June 19, 2015;

(5) rules 501, 504, 505, and 506 of regulation D, 17 C.F.R. 230.501, 230.504, 230.505, and 230.506;

(6) rule 8c-1, 17 C.F.R. 240.8c-1;

(7) rule 10b-10, 17 C.F.R. 240.10b-10;

(8) rule 12g3-2(b), 17 C.F.R. 240.12g3-2(b);

(9) rule 15c2-1, 17 C.F.R. 240.15c2-1;

(10) rules 15c3-1, 15c3-1a through 15c3-1g, 15c3-3, and 15c3-3a, 17 C.F.R. 240.15c3-1, 240.15c3-1a through 240.15c3-1g, 240.15c3-3, and 240.15c3-3a;

(11) rules 17a-3, 17a-4, and 17a-5, 17 C.F.R. 240.17a-3, 240.17a-4, and 240.17a-5;

(12) rule 17a-11, 17 C.F.R. 240.17a-11;

(13) regulation M, 17 C.F.R. 242.100 through 242.105;

(14) regulation SHO, 17 C.F.R. 242.200 through 242.204;

(15) regulation FD, 17 C.F.R. 243.100 through 243.103;

(16) regulation S-P, 17 C.F.R. 248.1 through 248.18 and 248.30;

(17) rule 12b-1, 17 C.F.R. 270.12b-1;

(18) rule 204-4, 17 C.F.R. 275.204-4;

(19) rule 205-3, 17 C.F.R. 275.205-3; and

(20) rule 206(4)-1, 17 C.F.R. 275.206(4)-1.

(d) FINRA, NASD, and New York stock exchange rules. The following rules in the “FINRA manual,” dated September 2014 and published by the financial industry regulatory authority, inc., are hereby adopted by reference:

(1) NASD “conduct rules” within the series of rules 2300, 2400, 2500, 2700, 2800, 3000, and 3100;

(2) FINRA rules within the series of rules 2100, 2200, 2300, 3100, 3200, 3300, 5100, 5200, and 5300; and

(3) rule 472 of the New York stock exchange, “communications with the public.”

(e) Whenever terms within the context of statutes, rules, or documents adopted by reference in these regulations are in conflict with definitions under the act and this regulation, the definition within the statutes, rules, and documents adopted by reference shall apply.

(f) Nothing within these regulations shall be construed to require the SEC, FINRA, or any other regulatory organizations to comply, administer, or enforce the statutes, rules, or policies under their jurisdiction that are adopted by reference under these regulations, or to require the administrator to act on behalf of the SEC, FINRA, or any other regulatory organizations to enforce the statutes, rules, or policies under their jurisdiction. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a608; effective Jan. 1, 1966; amended, E-70-15, Feb. 4, 1970; amended Jan. 1, 1971; amended, E-77-40, Aug. 12, 1976; amended Feb. 15, 1977; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-88-29, Aug. 19, 1987; amended May 1, 1988; amended March 25, 1991; amended Oct. 7, 1991; amended April 17, 1995; amended May 31, 1996; amended Dec. 19, 1997; amended Aug. 18, 2006; amended Aug. 12, 2011; amended Jan. 4, 2016.)

### Article 3.—LICENSING; BROKER-DEALERS AND AGENTS

**81-3-1. Registration procedures for broker-dealers and agents.** (a) General provisions. Each applicant shall be at least 18 years of age. If the applicant is not an individual, then the directors, officers, managing partners, or managing members of the applicant shall be at least 18 years of age.

(b) Registration requirements for broker-dealers.

(1) Initial application.

(A) CRD filing requirements. Each applicant for initial registration as a broker-dealer shall complete form BD in accordance with the form instructions and shall file the form with the CRD, unless the applicant is not required to file with the CRD for FINRA membership or SEC registration. Each application filed with the CRD shall include the following:

(i) The registration fee specified in K.A.R. 81-3-2(a);

(ii) any reasonable fee charged by FINRA for filing through the CRD system; and

(iii) a current list of the addresses of all branch offices and the names of all branch supervisors.

(B) Direct filing requirements. Each applicant for initial registration as a broker-dealer that is required to file with the CRD pursuant to paragraph (b)(1)(A) shall file either of the following, as applicable, directly with the administrator:

(i) The annual report for the applicant’s last fiscal year pursuant to SEC rule 17a-5(d), 17 C.F.R. 240.17a-5(d), as adopted by reference in K.A.R. 81-2-1, unless the applicant was not required to file an annual report with FINRA and the SEC, and part II of the applicant’s most recent FOCUS report on form X-17A-5 that includes a statement of financial condition dated within 90 days of filing for registration, unless the applicant was not required to file a FOCUS report with FINRA and the SEC; or

(ii) a statement of financial condition with notes to the statement presented in conformity with GAAP dated within 90 days of filing for registration, including disclosure of the applicant’s net capital or a supplemental schedule of net capital pursuant to K.A.R. 81-3-7(d).

(C) Filing requirements for an applicant that is not required to file with CRD for FINRA membership or SEC registration. An applicant that is not required to file with CRD shall file the following directly with the administrator:

(i) A printed form BD, completed in accordance with the form instructions;

(ii) the registration fee specified in K.A.R. 81-3-2(a); and

(iii) the statement of financial condition specified in paragraph (b)(1)(B)(ii).

(2) Effective date of registration. Each registration shall become effective the 45th day after a completed application is filed unless approved earlier by the administrator. If the administrator or the administrator’s staff has given written no-

tice of deficiencies in the application, the application shall not be considered complete until an amendment is filed to resolve the deficiencies.

(3) Expiration and annual renewal of registration. Each broker-dealer registration shall expire on December 31, and each application for renewal of registration shall be filed as follows:

(i) If the initial application for registration was filed with the CRD, the renewal application shall be filed with the CRD not later than the deadline established by the CRD. Each application for renewal of registration shall include the fee specified in K.A.R. 81-3-2(a) and any reasonable fee charged by FINRA for filing through the CRD system. Each applicant for renewal shall also update information in the CRD system as necessary, on or before December 31, including the addresses of all branch offices and the names of all branch supervisors.

(ii) If the initial application for registration was filed directly with the administrator pursuant to paragraph (b)(1)(C), the renewal application shall be filed directly with the administrator and shall include the fee specified in K.A.R. 81-3-2(a). Each application for renewal filed directly with the administrator shall include an updated form BD with amendments for material changes, if any, as specified in paragraph (b)(4).

(4) Updates and amendments. Each registered broker-dealer shall promptly file an amendment to form BD, in accordance with the instructions to form BD, whenever there is any material change in any information, exhibits, or schedules submitted, or circumstances disclosed in its last filed form BD. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of an amendment. Material changes shall include the following:

(A) A change in firm name, ownership, management, or control of a broker-dealer, or a change in any of its controlling persons; a change of business address; or the creation or termination of a branch office in Kansas;

(B) a change in the type of entity, general plan, or nature of a broker-dealer's business, method of operation, or type of securities in which it is dealing or trading;

(C) insolvency, dissolution, liquidation, or a material adverse change or impairment of working capital, or noncompliance with the minimum net capital as required by K.A.R. 81-3-7;

(D) termination of business or discontinuance of activities as a broker-dealer;

(E) the filing of a criminal charge or civil action against a registrant, or a controlling person, in which a fraudulent, dishonest, or unethical act is alleged or a violation of a securities law is involved; or

(F) the entry of an order or proceeding by any court or administrative agency against a registrant denying, suspending, or revoking a registration, or threatening to do so, or enjoining the registrant from engaging in or continuing any conduct or practice in the securities business.

(5) Withdrawal and termination of registration.

(A) Each application that has been on file for six months without any action taken by the applicant shall be considered withdrawn.

(B) If a broker-dealer desires to withdraw and terminate registration or registration is terminated by the administrator, the broker-dealer shall immediately file a completed form BDW either with the CRD or, if the broker-dealer was registered pursuant to paragraph (b)(1)(C), directly with the administrator.

(c) Registration requirements for agents.

(1) Initial application. Each applicant for registration as an agent shall complete form U-4 in accordance with the form instructions. The form for an agent of a broker-dealer shall be filed electronically with the CRD. A form U-4 shall be filed directly, in either paper or electronic form, with the administrator for an agent who is associated solely with an issuer or with an intrastate broker-dealer registered pursuant to paragraph (b)(1)(C). Each application for initial registration shall include the following items:

(A) The registration fee specified in K.A.R. 81-3-2(b);

(B) any reasonable fee charged by FINRA for filing through the CRD system; and

(C) proof of completion of the series 63 or series 66 examination with a passing score, in addition to successful completion of one other examination approved by the administrator and required for registration with FINRA. This examination requirement may be waived by the administrator for an applicant who has previously passed the required written examinations and whose last effective registration was not more than two years before the date of the filing of the present registration application. Additional examination requirements may be imposed by the administrator, or any applicant may be exempted from examination requirements pursuant to K.S.A. 17-12a412(e), and amendments thereto.

(2) Effective date of registration.

(A) Initial registration. Each registration shall become effective the 45th day after a completed application is filed unless the application is approved earlier by the administrator. If the administrator or the administrator's staff has given written notice of deficiencies in the application, the application shall not be considered complete until an amendment is filed to resolve the deficiencies.

(B) Transfer of employment or association. If an agent terminates employment by or association with a broker-dealer and begins employment by or association with another broker-dealer, and the second broker-dealer files an application for registration for the agent within 30 days after the termination, the application shall become effective pursuant to K.S.A. 17-12a408(b), and amendments thereto.

(3) Expiration and annual renewal of registration. Each agent registration shall expire on December 31, and each application for renewal of registration shall be filed not later than the deadline established by the CRD or the administrator, if filed directly with the administrator. Each application for renewal of registration shall include the fee specified in K.A.R. 81-3-2(b) and any reasonable fee charged by FINRA for filing through the CRD system.

(4) Updates and amendments. Each agent's employing or associated broker-dealer or issuer shall promptly file with the CRD or the administrator an amendment to form U-4, in accordance with the instructions to form U-4, whenever there is any material change in any information, exhibits, or schedules submitted, or circumstances disclosed in the agent's last filed form U-4. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of an amendment. Material changes shall include any change in the registrant's name, residential address, office of employment address, and matters disclosed in the "disclosure questions" portion of form U-4.

(5) Withdrawal and termination of registration.

(A) Each application that has been on file for six months without any action taken by the applicant shall be considered withdrawn.

(B) If an agent's employment by or association with a broker-dealer or issuer is discontinued or terminated, the broker-dealer or issuer shall file a notice of termination within 30 days. If the agent commences employment by or association with another broker-dealer or issuer, that broker-dealer or issuer shall file an original application for registration.

(C) Termination of a broker-dealer's or issuer's registration for any reason shall automatically constitute cancellation of all associated agents' registrations. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a406, 17-12a407, 17-12a408, and 17-12a412(e); effective Jan. 1, 1966; amended, E-70-15, Feb. 4, 1970; amended Jan. 1, 1971; amended, E-77-40, Aug. 12, 1976; amended Feb. 15, 1977; amended May 1, 1987; amended Oct. 7, 1991; amended June 28, 1993; amended May 31, 1996; amended Oct. 26, 2001; amended Aug. 18, 2006; amended Jan. 4, 2016.)

**81-3-2. Broker-dealer and agent registration fees.** (a) The fee for initial registration or renewal of the registration of each broker-dealer shall be \$200.

(b) The fee for initial registration or renewal of the registration of each agent shall be \$60.

(c) The CRD shall be authorized to receive and store filings and to collect the fees specified in this regulation from broker-dealers and agents on behalf of the administrator. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a410; effective, E-82-24, Dec. 9, 1981; effective May 1, 1982; amended, T-87-41, Dec. 8, 1986; amended May 1, 1987; amended, T-81-9-12-88, Sept. 12, 1988; amended Oct. 25, 1988; amended Jan. 15, 1990; amended Oct. 7, 1991; amended Dec. 19, 1997; amended Oct. 26, 2001; amended Aug. 18, 2006; amended Dec. 19, 2008; amended Oct. 9, 2015.)

**81-3-3.** (Authorized by K.S.A. 1992 Supp. 17-1270(f); implementing K.S.A. 17-1253; effective, T-87-28, Oct. 1, 1986; effective May 1, 1987; amended June 28, 1993; revoked Oct. 26, 2001.)

**81-3-4.** (Authorized by K.S.A. 1992 Supp. 17-1270(d); implementing K.S.A. 1992 Supp. 17-1270(d); effective June 28, 1993; revoked May 31, 1996.)

**81-3-5. Sales of securities at financial institutions.** (a) Definitions. For purposes of this regulation, the following definitions shall apply:

(1) "Affiliate" means a company that controls, is controlled by, or is under common control with a broker-dealer as defined in FINRA rule 5121, which is adopted by reference in K.A.R. 81-2-1.

(2) "Broker-dealer services" means the investment banking or securities business that is conducted by a broker-dealer or a municipal or government securities broker or dealer other than

a financial institution or department or division of a financial institution and consists of any of the following:

(A) Underwriting or distributing issues of securities;

(B) purchasing securities and offering the securities for sale as a dealer; or

(C) purchasing and selling securities upon the order and for the account of others.

(3) "Financial institution" means any federal-chartered or state-chartered bank, savings and loan association, savings bank, credit union, and any service corporation of these institutions located in Kansas.

(4) "Networking arrangement" and "brokerage affiliate arrangement" mean a contractual or other arrangement between a broker-dealer and a financial institution pursuant to which the broker-dealer conducts broker-dealer services on the premises of the financial institution where retail deposits are taken.

(b) Applicability. This regulation shall apply exclusively to broker-dealer services conducted by any broker-dealer on the premises of a financial institution where retail deposits are taken. This regulation shall not alter or abrogate a broker-dealer's obligations to comply with other applicable laws or regulations that may govern the operations of broker-dealers and their agents, including supervisory obligations. This regulation shall not apply to broker-dealer services provided to nonretail customers.

(c) Standards for broker-dealer conduct. No broker-dealer shall conduct broker-dealer services on the premises of a financial institution where retail deposits are taken unless the broker-dealer complies initially and continuously with the following requirements:

(1) Setting. Broker-dealer services shall be conducted in a physical location distinct from the area in which the financial institution's retail deposits are taken. In all situations, the broker-dealer shall identify its services in a manner that clearly distinguishes those services from the financial institution's retail deposit-taking activities. The broker-dealer's name shall be clearly displayed in the area in which the broker-dealer conducts its broker-dealer services.

(2) Networking and brokerage affiliate arrangements and program management. Networking and brokerage affiliate arrangements shall be governed by a written agreement that sets forth the responsibilities of the parties and the com-

penensation arrangements. Networking and brokerage affiliate arrangements shall stipulate that supervisory personnel of the broker-dealer and representatives of state securities authorities, where authorized by state law, will be permitted access to the financial institution's premises where the broker-dealer conducts broker-dealer services in order to inspect the books and records and other relevant information maintained by the broker-dealer with respect to its broker-dealer services. The broker-dealer shall be responsible for ensuring that the networking and brokerage affiliate arrangement clearly outlines the duties and responsibilities of all parties.

(3) Customer disclosure and written acknowledgment.

(A) When or before a customer's securities brokerage account is opened by a broker-dealer on the premises of a financial institution where retail deposits are taken, the broker-dealer shall perform the following:

(i) Disclose, orally and in writing, that the securities products purchased or sold in a transaction with the broker-dealer are not insured by the federal deposit insurance corporation ("FDIC") or the national credit union share insurance fund ("NCUSIF"), as applicable, are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution, and are subject to investment risks, including possible loss of the principal invested; and

(ii) make reasonable efforts to obtain from each customer during the account opening process a written acknowledgment of the disclosures required by paragraph (c)(3)(A)(i).

(B) If broker-dealer services include any written or oral representations concerning insurance coverage other than FDIC or NCUSIF insurance coverage, then clear and accurate written or oral explanations of the coverage shall also be provided to the customers when these representations are first made.

(4) Communications with the public.

(A) All of the broker-dealer's written confirmations and account statements shall indicate clearly that the broker-dealer services are provided by the broker-dealer.

(B) Recommendations by a broker-dealer concerning nondeposit investment products with a name similar to that of the financial institution shall occur only pursuant to a sales program designed to minimize the risk of customer confusion.

(C) Advertisements and sales literature.

(i) Advertisements and sales literature that announce the location of a financial institution where broker-dealer services are provided by the broker-dealer, or that are distributed by the broker-dealer on the premises of a financial institution, shall disclose that the securities products are not insured by the FDIC or the NCUSIF, as applicable, are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution, and are subject to investment risks, including possible loss of the principal invested.

(ii) To comply with the requirements of paragraph (c)(4)(C)(i), the following logo format disclosures may be used by a broker-dealer in advertisements and sales literature, including material published or designed for use in radio or television broadcasts, internet sites, automated teller machine screens, billboards, signs, posters, and brochures, if these disclosures, as applicable, are displayed in a conspicuous manner: “not FDIC insured,” “no bank guarantee,” “not NCUSIF insured,” “no credit union guarantee,” and “may lose value.”

(iii) If the omission of the disclosures required by paragraph (c)(4)(C)(i) would not cause the advertisement or sales literature to be misleading in light of the context in which the material is presented, the disclosures shall not be required with respect to messages contained in radio broadcasts of 30 seconds or less; signs, including banners and posters, when used only as location indicators; and electronic signs, including billboard-type signs that are electronic, time and temperature signs, and ticker tape signs. However, the requirements of paragraph (c)(4)(C)(i) shall apply to messages contained in other media, including television, online computer services, and automated teller machines.

(5) Notification of termination. The broker-dealer shall promptly notify the financial institution if any agent of the broker-dealer who is employed by the financial institution is terminated for cause by the broker-dealer.

(d) “Dishonest or unethical practices,” as used in K.S.A. 17-12a412(d)(13) and amendments thereto, shall include any conduct that violates subsection (c). (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a412; effective Oct. 26, 2001; amended Aug. 18, 2006; amended Jan. 4, 2016.)

**81-3-6. Dishonest or unethical practices of broker-dealers and agents.** (a) Unethical conduct. “Dishonest or unethical practices,” as

used in K.S.A. 17-12a412(d)(13) and amendments thereto, shall include the conduct prohibited in this regulation and the failure to adhere to standards of conduct specified in this regulation.

(b) Fraudulent conduct. “An act, practice, or course of business that operates or would operate as a fraud or deceit,” as used in K.S.A. 17-12a501(3) and amendments thereto, shall include the conduct prohibited in paragraphs (e)(9)(A), (9)(B), (10), (11), (14) through (18), (20), (21), (24), and (27), paragraphs (f)(1) through (6), and subsections (g) and (i).

(c) General standard of conduct. A person registered as a broker-dealer or agent under the act shall not fail to observe high standards of commercial honor and just and equitable principles of trade in the conduct of the person’s business.

(d) FINRA, NASD, New York stock exchange, and SEC rules and laws. Failure by a person registered as a broker-dealer or agent under the act to comply with any of the following rules and laws, as adopted by reference in K.A.R. 81-2-1, shall constitute unethical conduct in violation of this regulation:

(1) NASD conduct rules within the series of rules 2300, 2400, 2500, 2700, 2800, 3000, and 3100 and FINRA rules within the series of rules 2100, 2200, 2300, 3100, 3200, 3300, 5100, 5200, and 5300;

(2) rule 472 of the New York stock exchange, “communications with the public”;

(3) section 17 of the securities act of 1933, 15 U.S.C. § 77q;

(4) sections 9 and 10 of the securities exchange act of 1934, 15 U.S.C. §§ 78i and 78j;

(5) SEC regulation M, 17 C.F.R. 242.100 through 242.105;

(6) SEC regulation SHO, 17 C.F.R. 242.200 through 242.203; and

(7) SEC regulation FD, 17 C.F.R. 243.100 through 243.103.

(e) Prohibited conduct: sales and business practices. Each person registered as a broker-dealer or agent under the act shall refrain from the following practices in the conduct of the person’s business. For purposes of this subsection, a security shall include any security as defined by K.S.A. 17-12a102, and amendments thereto, including a federal covered security as defined by K.S.A. 17-12a102, and amendments thereto, or section 2 of the securities act of 1933, 15 U.S.C. § 77b, as adopted by reference in K.A.R. 81-2-1.

(1) Delays in delivery or payment. A broker-dealer shall not engage in a pattern of unreasonable and unjustifiable delays in the delivery of se-

curities purchased by any of the broker-dealer's customers or in the payment upon request of free credit balances reflecting completed transactions of any of its customers.

(2) Excessive trading. A broker-dealer or agent shall not induce trading in a customer's account that is excessive in size or frequency in view of the financial resources and character of the account.

(3) Unsuitable recommendations. A broker-dealer or agent shall not recommend to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer or agent.

(4) Unauthorized trading. A broker-dealer or agent shall not execute a transaction on behalf of a customer without authorization to do so.

(5) Improper use of discretionary authority. A broker-dealer or agent shall not exercise any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders.

(6) Failure to obtain margin agreement. A broker-dealer or agent shall not execute any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.

(7) Failure to segregate. A broker-dealer shall not hold securities carried for the account of any customer that have been fully paid for or that are excess margin securities, unless the securities are segregated and identified by a method that clearly indicates the interest of the customer in those securities.

(8) Improper hypothecation. A broker-dealer shall not hypothecate a customer's securities without having a lien on the securities unless the broker-dealer has secured from the customer a properly executed written consent, except as permitted by SEC rule 8c-1, 17 C.F.R. 240.8c-1, or SEC rule 15c2-1, 17 C.F.R. 240.15c2-1, as adopted by reference in K.A.R. 81-2-1.

(9) Unreasonable charges. A broker-dealer or agent shall not engage in any of the following conduct:

(A) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security;

(B) receiving an unreasonable commission or profit; or

(C) charging unreasonable and inequitable fees for services performed, including the collection of monies due for principal, dividends, or interest; exchange or transfer of securities; appraisals; safe-keeping or custody of securities; and other miscellaneous services related to the broker-dealer's securities business.

(10) Failure to timely deliver prospectus. A broker-dealer or agent shall not fail to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document that together include all information set forth in the final prospectus.

(11) Contradicting prospectus. A broker-dealer or agent shall not contradict or negate the importance of any information contained in a prospectus or any other offering materials with the intent to deceive or mislead.

(12) Non-bona fide offers. A broker-dealer shall not offer to buy from or sell to any person any security at a stated price, unless the broker-dealer is prepared to purchase or sell at the price and under the conditions that are stated at the time of the offer to buy or sell.

(13) Misrepresentation of market price. A broker-dealer shall not represent that a security is being offered to a customer "at the market" or at a price relevant to the market price, unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than a market made, created, or controlled by the broker-dealer, any person for whom the broker-dealer is acting or with whom the broker-dealer is associated in the distribution of securities, or any person controlled by, controlling, or under common control with the broker-dealer.

(14) Market manipulation. A broker-dealer or agent shall not effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, including the following:

(A) Effecting any transaction in a security that involves no change in its beneficial ownership;

(B) entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of the same security for substantially the same volume, time, and price have been or will be entered for the purpose of creating a

false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. However, nothing in this paragraph shall prohibit a broker-dealer from entering bona fide agency cross transactions for the broker-dealer's customers;

(C) effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security for the purpose of inducing the purchase or sale of the security by others;

(D) engaging in general solicitation and using aggressive, high-pressure, or deceptive marketing tactics to affect the market price of the security; and

(E) using fictitious or nominee accounts.

(15) Guarantees against loss. A broker-dealer shall not guarantee a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer.

(16) Deceptive advertising. A broker-dealer or agent shall not use any advertising or sales presentation in a manner that is deceptive or misleading, including the following:

(A) Using words, pictures, or graphs in an advertisement, brochure, flyer, or display to present any nonfactual data or material; any conjecture, unfounded claims or assertions, or unrealistic claims or assertions; or any information that supplements, detracts from, supersedes or defeats the purpose or effect of any prospectus or disclosure; and

(B) publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind that purports to report any transaction as a purchase or sale of any security unless the broker-dealer or agent believes that the transaction was a bona fide purchase or sale of the security or that purports to quote the bid price or asked price for any security unless the broker-dealer or agent believes that the quotation represents a bona fide bid for or offer of the security.

(17) Failure to disclose conflicts of interest. A broker-dealer shall not fail to disclose to any customer that the broker-dealer is controlled by, controlling, affiliated with, or under common control with the issuer of a security that is offered or sold to the customer. The disclosure shall be made before entering into any contract with or for the

customer for the purchase or sale of the security, and if the disclosure is not made in writing, the disclosure shall be supplemented by the giving or sending of written disclosure before the completion of the transaction.

(18) Withholding securities. A broker-dealer shall not fail to make a bona fide public offering of all of the securities allotted to the broker-dealer for distribution, whether acquired as an underwriter, as a selling group member, or from a member participating in the distribution as an underwriter or selling group member, by engaging in conduct including the following:

(A) Parking or withholding securities; and

(B) transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or the broker-dealer's nominees.

(19) Failure to respond to customer. A broker-dealer shall not fail or refuse to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint.

(20) Misrepresenting the possession of nonpublic information. A broker-dealer or agent shall not falsely lead a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information that would impact the value of a security.

(21) Contradictory recommendations. A broker-dealer or agent shall not engage in a pattern or practice of making contradictory recommendations to different investors of similar investment objectives for some to sell and others to purchase the same security, at or about the same time, if not justified by the particular circumstances of each investor.

(22) Lending, borrowing, or maintaining custody. An agent shall not lend or borrow money or securities from a customer, or act as a custodian for money, securities, or an executed stock power of a customer.

(23) Selling away. An agent shall not effect a securities transaction that is not recorded on the regular books or records of the broker-dealer that the agent represents, unless the transaction is authorized in writing by the broker-dealer before the execution of the transaction.

(24) Fictitious account information. An agent shall not establish or maintain an account containing fictitious information.

(25) Unauthorized profit-sharing. An agent shall not share directly or indirectly in the profits or losses

in the account of any customer without the written authorization of the customer and the broker-dealer that the agent represents.

(26) Commission splitting. An agent shall not divide or otherwise split the agent's commissions, profits, or other compensation from the purchase or sale of securities with any person who is not also registered as an agent for the same broker-dealer or a broker-dealer under direct or indirect common control.

(27) Misrepresenting solicited transactions. A broker-dealer or agent shall not mark any order ticket or confirmation as unsolicited if the transaction was solicited.

(28) Failure to provide account statements. A broker-dealer or agent shall not fail to provide to each customer, for any month in which activity has occurred in a customer's account and at least every three months, a statement of account that contains a value for each over-the-counter non-Nasdaq equity security in the account based on the closing market bid on a date certain, if the broker-dealer has been a market maker in the security at any time during the period covered by the statement of account.

(f) Prohibited conduct: over-the-counter transactions. A broker-dealer or agent shall not engage in the following conduct in connection with the solicitation of a purchase or sale of an over-the-counter, unlisted non-Nasdaq equity security:

(1) Failing to disclose to a customer, at the time of solicitation and on the confirmation, any and all compensation related to a specific securities transaction to be paid to the agent, including commissions, sales charges, and concessions;

(2) in connection with a principal transaction by a broker-dealer that is a market maker, failing to disclose to a customer, both at the time of solicitation and on the confirmation, the existence of a short inventory position in the broker-dealer's account of more than three percent of the issued and outstanding shares of that class of securities of the issuer;

(3) conducting sales contests in a particular security;

(4) failing or refusing to promptly execute sell orders after a solicited purchase by a customer in connection with a principal transaction;

(5) soliciting a secondary market transaction if there has not been a bona fide distribution in the primary market;

(6) engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security; and

(7) failing to promptly provide the most current prospectus or the most recently filed periodic report filed under section 13 of the securities exchange act of 1934 when requested to do so by the customer.

(g) Prohibited conduct: designated security transactions.

(1) Except as specified in paragraph (g)(2), a broker-dealer or agent shall not engage in the following conduct in connection with the solicitation of a purchase of a designated security:

(A) Failing to disclose to the customer the bid and ask price at which the broker-dealer effects transactions of the security with individual retail customers, as well as the price spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; and

(B) failing to include with the confirmation a written explanation of the bid and ask price.

(2) Exceptions. Paragraph (g)(1) shall not apply to the following transactions:

(A) Transactions in which the price of the designated security is five dollars or more, exclusive of costs or charges. However, if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities shall be five dollars or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security shall have an exercise price or conversion price of five dollars or more;

(B) transactions that are not recommended by the broker-dealer or agent;

(C) transactions by a broker-dealer whose commissions, commission equivalents, and mark-ups from transactions in designated securities during each of the immediately preceding three months, and during 11 or more of the preceding 12 months, did not exceed five percent of its total commissions, commission-equivalents, and mark-ups from transactions in securities during those months and who has not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the immediately preceding 12 months; and

(D) any transaction or transactions that, upon prior written request or upon the administrator's own motion, the administrator conditionally or unconditionally exempts as not encompassed within the scope of paragraph (g)(1).

(h) Prohibited conduct: investment company shares.

(1) A broker-dealer or agent shall not engage in the following conduct in connection with the solicitation of a purchase or sale of investment company shares:

(A) Failing to adequately disclose to a customer all sales charges, including asset-based and contingent deferred sales charges, that could be imposed with respect to the purchase, retention, or redemption of investment company shares;

(B) stating or implying to a customer, either orally or in writing, that the shares are sold without a commission, are “no load,” or have “no sales charge” if there is associated with the purchase of the shares a front-end charge; a contingent deferred sales charge; a fee pursuant to SEC rule 12b-1, 17 C.F.R. § 270.12b-1, as adopted by reference in K.A.R. 81-2-1, or a service fee that in total exceeds .25 percent of average net fund assets per year; or, in the case of closed-end investment company shares, underwriting fees, commissions, or other offering expenses;

(C) failing to disclose to a customer any relevant sales charge discount on the purchase of shares in dollar amounts at or above a breakpoint, or failing to disclose any relevant letter of intent feature, if available, that will reduce the sales charges;

(D) recommending to a customer the purchase of a specific class of investment company shares in connection with a multiclass sales charge or fee arrangement without reasonable grounds to believe that the sales charge or fee arrangement associated with the class of shares is suitable and appropriate based on the customer’s investment objectives, financial situation, other securities holdings, and the associated transaction or other fees;

(E) recommending to a customer the purchase of investment company shares that results in the customer’s simultaneously holding shares in different investment company portfolios having similar investment objectives and policies without reasonable grounds to believe that the recommendation is suitable and appropriate based on the customer’s investment objectives, financial situation, other securities holdings, and any associated transaction charges or other fees;

(F) recommending to a customer the liquidation or redemption of investment company shares for the purpose of purchasing shares in a different investment company portfolio having similar investment objectives and policies without reasonable grounds to believe that the recommen-

dation is suitable and appropriate based on the customer’s investment objectives, financial situation, other securities holdings, and any associated transaction charges or other fees;

(G) stating or implying to a customer the fund’s current yield or income without disclosing the fund’s average annual total return, as stated in the fund’s most recent form N-1A filed with the SEC, for one-year, five-year, and 10-year periods and without fully explaining the difference between current yield and total return. However, if the fund’s registration statement under the securities act of 1933 has been in effect for less than one, five, or 10 years, the time during which the registration statement was in effect shall be substituted for the periods otherwise prescribed;

(H) stating or implying to a customer that the investment performance of an investment company portfolio is comparable to that of a savings account, certificate of deposit, or other bank deposit account without disclosing to the customer the fact that the shares are not insured or otherwise guaranteed by the federal deposit insurance corporation (“FDIC”) or any other government agency and the relevant differences regarding risk, guarantees, fluctuation of principal or return or both, and any other factors that are necessary to ensure that the comparisons are fair, complete, and not misleading;

(I) stating or implying to a customer the existence of insurance, credit quality, guarantees, or similar features regarding securities held, or proposed to be held, in the investment company’s portfolio without disclosing to the customer the other kinds of relevant investment risks, including interest rate, market, political, liquidity, and currency exchange risks, that could adversely affect investment performance and result in loss or fluctuation of principal despite the creditworthiness of the portfolio securities;

(J) stating or implying to a customer that the purchase of shares shortly before an ex dividend date is advantageous to the customer unless there are specific, clearly described tax or other advantages to the customer, or stating or implying that a distribution of long-term capital gains by an investment company is part of the income yield from an investment in the shares; and

(K) making projections of future performance, statements not warranted under existing circumstances, or statements based upon nonpublic information.

(2) In connection with the solicitation of investment company shares, the delivery of a prospectus shall not be dispositive that the broker-dealer

or agent has given the customer full and fair disclosure or has otherwise fulfilled the duties specified in this subsection.

(i) Prohibited conduct: use of senior-specific certifications and professional designations.

(1) A broker-dealer or agent shall not use a senior-specific certification or designation that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in any way that misleads any person. This prohibition shall include the following:

(A) The use of a certification or professional designation by a person who has not earned or is otherwise ineligible to use the certification or designation;

(B) the use of a nonexistent or self-conferred certification or professional designation;

(C) the use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(D) the use of a certification or professional designation that was obtained from a designating or certifying organization that meets any of the following conditions:

(i) Is primarily engaged in the business of instruction in sales or marketing;

(ii) does not have reasonable standards or procedures for ensuring the competency of its designees or certificate holders;

(iii) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificate holders for improper or unethical conduct; or

(iv) does not have reasonable continuing education requirements for its designees or certificate holders to maintain the professional designation or certification.

(2) There shall be a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph (i)(1) (D) if the organization has been accredited by any of the following:

(A) The American national standards institute;

(B) the national commission for certifying agencies; or

(C) an organization that is on the United States department of education's list titled "accrediting agencies recognized for title IV purposes," if the designation or credential does not primarily apply to sales or marketing, or both.

(3) In determining whether a combination of words or an acronym or initialism standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, the factors to be considered shall include the following:

(A) The use of one or more words including "senior," "retirement," "elder," or similar words, combined with one or more words including "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or similar words, in the name of the certification or professional designation; and

(B) the manner in which the words are combined.

(4) For purposes of this subsection, the terms "certification" and "professional designation" shall not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, including an agency that regulates broker-dealers, investment advisers, or investment companies, if that job title indicates seniority or standing within the organization or specifies an individual's area of specialization within the organization. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a412(d)(13), 17-12a501(3), and 17-12a608; effective Aug. 18, 2006; amended May 22, 2009; amended Jan. 4, 2016.)

**81-3-7. Supervisory, financial reporting, recordkeeping, net capital, and operational requirements for broker-dealers.** (a) Supervision.

(1) Annual review. Each broker-dealer shall conduct a review, at least annually, of the businesses in which it engages. The review shall be reasonably designed to assist in detecting and preventing violations of and achieving compliance with the act, these regulations, and other applicable laws, regulations, and rules of self-regulatory organizations.

(2) Supervisory procedures. Each broker-dealer shall establish and maintain supervisory procedures that shall be reasonably designed to assist in detecting violations of, preventing violations of, and achieving compliance with the act, these regulations, and other applicable laws, regulations, and rules of self-regulatory organizations. In determining whether supervisory procedures are reasonably designed, relevant factors including the following may be considered by the administrator:

- (A) The firm's size;
- (B) the organizational structure;
- (C) the scope of business activities;
- (D) the number and location of offices;
- (E) the nature and complexity of products and services offered;
- (F) the volume of business done;
- (G) the number of agents assigned to a location;
- (H) the presence of an on-site principal at a location;
- (I) the specification of the office as a non-branch location; and
- (J) the disciplinary history of the registered agents.

(3) Supervision of non-branch offices. The procedures established and the reviews conducted shall provide sufficient supervision at remote offices to ensure compliance with all applicable securities laws and regulations and self-regulatory organization rules. Based on the factors specified in paragraph (a)(2), certain non-branch offices may require more frequent reviews or more stringent supervision.

(4) Failure to supervise. If a broker-dealer fails to comply with this subsection, the broker-dealer may be deemed to have "failed to reasonably supervise" its agents under K.S.A. 17-12a412(d)(9), and amendments thereto.

(b) Annual reports. Each broker-dealer registered under the act shall make and maintain an annual report for the broker-dealer's most recent fiscal year.

(1) Filing. Each broker-dealer shall file the annual report with the administrator within five days of a request by the administrator or the administrator's staff.

(2) Contents of annual report. Each annual report shall contain financial statements that include the following:

(A) A statement of financial condition and notes to the statement of financial condition presented in conformity with GAAP; and

(B) disclosure of the broker-dealer's net capital, which shall be calculated in accordance with subsection (c).

(3) Auditing. Unless otherwise permitted, an independent CPA shall audit the financial statements in accordance with generally accepted auditing standards.

(4) Recognition of federal standards. For purposes of uniformity, a copy of audited financial statements in compliance with SEC rule 17a-5(d), 17 C.F.R. 240.17a-5(d), as adopted by reference

in K.A.R. 81-2-1, shall be deemed to comply with paragraphs (b)(2) and (b)(3).

(c) Books and records. Each registered broker-dealer shall maintain and preserve records in compliance with SEC rule 17a-3, 17 C.F.R. 240.17a-3, and SEC rule 17a-4, 17 C.F.R. 240.17a-4, which are adopted by reference in K.A.R. 81-2-1.

(d) Minimum net capital requirements.

(1) Each broker-dealer registered under the act shall comply with SEC rule 15c3-1, 17 C.F.R. 240.15c3-1, SEC rule 15c3-3, 17 C.F.R. 240.15c3-3, and SEC rule 15c3-3a, 17 C.F.R. 240.15c3-3a, as applicable, as adopted by reference in K.A.R. 81-2-1.

(2) Each registered broker-dealer shall comply with SEC rule 17a-11, 17 C.F.R. 240.17a-11, as adopted by reference in K.A.R. 81-2-1, and shall simultaneously file with the administrator copies of notices and reports required by that rule.

(e) Confirmations. At or before completion of each transaction with a customer, the broker-dealer shall give or send to the customer a written notification that conforms with SEC rule 10b-10, 17 C.F.R. 240.10b-10, as adopted by reference in K.A.R. 81-2-1. (Authorized by K.S.A. 2014 Supp. 17-12a411 and K.S.A. 17-12a605(a); implementing K.S.A. 2014 Supp. 17-12a411, K.S.A. 17-12a412(d)(9), 17-12a605(c), and 17-12a608; effective Aug. 18, 2006; amended Jan. 4, 2016.)

#### Article 4.—REGISTRATION OF SECURITIES

**81-4-1. Registration of securities.** (a) Original applications. The following documents and fee shall be required with each original application submitted for registration of securities:

(1) Forms U-1 and U-2;

(2) form U-2A, if applicable;

(3) the documents and exhibits required for registration by coordination as specified in K.S.A. 17-12a303(b), and amendments thereto, or registration by qualification as specified in K.S.A. 17-12a304(b), and amendments thereto, if not already included as required by form U-1;

(4) any other document or information requested by the administrator; and

(5) a registration fee of .05 percent (one twentieth of one percent) of the maximum aggregate offering price at which the securities are to be offered in this state, but not less than \$100 and not more than \$1,500 for each year that the registration is effective. If a regis-

tration statement or application is withdrawn before the effective date or a pre-effective stop order is issued under K.S.A. 17-12a306 and amendments thereto, the administrator shall retain the full amount of the registration fee.

(b) Regulation A tier 1 offerings. Each registration application for which an offering statement on form 1-A has been filed with the SEC under regulation A for a tier 1 offering pursuant to SEC rule 251, 17 C.F.R. 230.251, as adopted by reference in K.A.R. 81-2-1, shall be filed by qualification under K.S.A. 17-12a304, and amendments thereto.

(c) Post-effective amendments. If a post-effective amendment for material changes in information or documents is required by K.S.A. 17-12a305(j) and amendments thereto, the amendment shall be filed within two business days after an amendment is filed with the SEC for securities registered by coordination, or within five business days after a material change occurs for securities registered by qualification.

The amendment filing shall include a cover letter that explains the nature of the material changes and copies of all amended documents that are clearly marked to identify the material changes. The registrant shall provide further explanation or information upon request by the administrator. Upon approval by the administrator, the amendment may be filed electronically.

(d) Extensions of registration. The effective period of a registration statement may be extended for an additional year after the original or previously extended registration period expires, or for less than one year if the registered offering is completed and terminated in compliance with subsection (f).

(1) The following documents and fee shall be required with each application submitted to extend the effective period of a registration statement:

(A) Form KSC-1 or a uniform form or document that includes the information required by form KSC-1;

(B) a registration fee as specified in paragraph (a)(5), based on the aggregate amount of securities to be offered during the extended effective period; and

(C) one copy of the prospectus to be delivered to prospective investors for offers during the extended period of effectiveness, which shall include audited financial statements for the most recent fiscal year of the issuer, unless a prospectus meeting this requirement is already on file with

the administrator. If the extension application is filed before the most recent audited financial statements are available, the issuer shall undertake to file an updated prospectus containing the statements no later than 90 days after the end of the issuer's fiscal year.

(2) The effective date of each extended registration shall be one year after the previous effective date.

(3) The due date for filing each extension application shall be 10 business days before the date on which the registration is due to expire.

(e) Abandoned applications. If an applicant for registration of securities does not respond in writing within six months after receiving a written inquiry or deficiency letter from the administrator or the applicant takes no action on a pending application and fails to communicate in writing with the administrator for six months, the application shall be deemed abandoned. Each abandoned application shall be disregarded, and a notice of abandonment shall be issued by the administrator. To obtain further consideration of an abandoned application, the applicant shall file a new, complete application.

(f) Final report. Upon completion of a registered offering or upon expiration of the effective period of a registration statement that is not being extended, the registrant shall file with the administrator a final report of sales of securities in this state on form KSC-1 or a document that includes the information required by form KSC-1. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a303, 17-12a304, and 17-12a305; effective Jan. 1, 1966; amended, E-70-15, Feb. 4, 1970; amended Jan. 1, 1971; amended, T-88-29, Aug. 19, 1987; amended May 1, 1988; amended, T-81-8-23-91, Aug. 23, 1991; amended Oct. 7, 1991; amended May 31, 1996; amended Jan. 19, 2007; amended Jan. 4, 2016.)

**81-4-2. Small company offering registration (SCOR).** (a) Any application for registration of securities by qualification may be filed using form U-7 as the disclosure document if the issuer complies with the statement of policy regarding small company offering registration ("SCOR statement of policy") adopted by NASAA on April 28, 1996, which is hereby adopted by reference.

(b) Any SCOR application may be reviewed by the administrator in coordination with one or more securities administrators in other states where the issuer has filed a SCOR application.

(c) A form of disclosure in a SCOR application other than form U-7 may be allowed by the administrator, including an application for coordinated review under subsection (b), as provided under K.A.R. 81-6-1(b)(2). (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a304, 17-12a307, and 17-12a608; effective March 25, 1991; amended Jan. 19, 2007.)

**81-4-3.** (Authorized by K.S.A. 17-1270(f); implementing K.S.A. 17-1270(f); effective Nov. 12, 1991; revoked Oct. 26, 2001.)

**81-4-4. Registration requirements for not-for-profit issuers.** Before the offer or sale of any note, bond, debenture, or other evidence of indebtedness by a not-for-profit issuer specified in K.S.A. 17-12a201(7) and amendments thereto, the issuer shall register the security pursuant to K.S.A. 17-12a304 and amendments thereto, unless one of the following conditions is met:

(a) The security or transaction is exempt under any provision of the Kansas uniform securities act other than K.S.A. 17-12a201(7), and amendments thereto.

(b) The issuer is excluded from the definition of an investment company, and the security is issued in exchange for assets contributed to a fund pursuant to section 3(c)(10)(B) of the investment company act of 1940, 15 U.S.C. section 80a-3(c)(10)(B), as adopted by reference in K.A.R. 81-2-1. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a201(7)(C); effective, T-81-8-22-05, Aug. 22, 2005; effective Dec. 16, 2005; amended Jan. 4, 2016.)

## Article 5.—EXEMPTIONS

**81-5-1.** (Authorized by K.S.A. 1982 Supp. 17-1270(f); implementing K.S.A. 1982 Supp. 17-1261(g); effective Jan. 1, 1966; amended E-77-40, Aug. 12, 1976; amended Feb. 15, 1977; amended, E-80-23, Dec. 12, 1979; amended May 1, 1980; amended May 1, 1983; revoked May 31, 1996.)

**81-5-2.** (Authorized by K.S.A. 1984 Supp. 17-1270(f); implementing K.S.A. 1984 Supp. 17-1261(h); effective May 1, 1983; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986; revoked May 31, 1996.)

**81-5-3. Exemption for isolated nonissuer transactions.** (a) An “isolated nonissuer transaction” under K.S.A. 17-12a202(1), and amend-

ments thereto, shall mean an offer or sale of a security that meets both of the following conditions:

(1) No 12-month period in which the date of the sale can be included contains more than three sales of the security in Kansas by the seller or affiliates.

(2) No person offers or sells the security by means of a general solicitation, except as permitted under subsection (c).

(b) For purposes of this regulation, a husband and wife shall be considered as one purchaser. A corporation, partnership, limited liability company, association, joint stock company, trust, or unincorporated organization shall be considered as one purchaser unless the entity was organized for the purpose of acquiring the purchased securities. If that is the case, each beneficial owner of equity interest or equity securities in the entity shall be considered a separate purchaser.

(c) For purposes of this regulation, if an offer or sale is conducted through an issuer-controlled trading system maintained in an electronic form or another form for the purpose of facilitating trades of that issuer’s securities between nonissuers, the offer or sale shall not be considered to have been made by general solicitation. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a202, as amended by L. 2006, Ch. 47, § 2(1); effective, T-83-40, Nov. 23, 1982; effective May 1, 1983; amended, T-87-41, Dec. 8, 1986; amended May 1, 1987; amended June 28, 1993; amended May 31, 1996; amended Jan. 19, 2007.)

**81-5-4.** (Authorized by K.S.A. 17-1270(f); implementing K.S.A. 17-1262(c); effective, T-83-40, Nov. 23, 1982; effective May 1, 1983; amended May 1, 1987; amended May 31, 1996; revoked Jan. 19, 2007.)

**81-5-5.** (Authorized by K.S.A. 1982 Supp. 17-1270(f); implementing K.S.A. 1982 Supp. 17-1262(f); effective, T-83-40, Nov. 23, 1982; effective May 1, 1983; revoked Jan. 19, 2007.)

**81-5-6. Uniform limited offering exemption for rule 505 offerings.** (a) Exemption. Each transaction made in compliance with SEC regulation D, rule 505, 17 C.F.R. 230.505, as adopted by reference in K.A.R. 81-2-1, shall be exempt from the registration requirements of K.S.A. 17-12a301 through 17-12a306 and K.S.A. 17-12a504, and amendments thereto, if all of the following requirements are met:

(1) No commission, finders fee, or other remuneration shall be paid or given, directly or indirectly, for soliciting any prospective purchaser, or in connection with the sale of securities in reliance on this exemption, unless the recipient is appropriately registered in this state as a broker-dealer or agent.

(2) No later than 15 days after the first sale of the security in this state, the issuer shall pay the fee specified in K.A.R. 81-5-8 and file a notice on form D, including the appendix. The form D shall be manually signed on part E by a person authorized by the issuer.

(3) Each sale to a non-accredited investor shall be suitable for the investor, or the issuer and any person acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that the investment is suitable for the investor. Suitability shall be based upon the facts disclosed by the investor concerning the investor's other security holdings, financial situation, and needs. For the limited purpose of this exemption only, it may be presumed that the investment is suitable if it does not exceed 10 percent of the investor's liquid net worth.

(b) Disqualifications.

(1) The exemption under subsection (a) shall not be available if the issuer, any one of the issuer's directors, officers, or general partners, any beneficial owner of 10 percent or more of any class of the issuer's equity securities, any promoter currently connected with the issuer in any capacity, or any other person, other than a broker-dealer currently registered under the act, who has been or will be paid or given any commission or similar remuneration in connection with an offer or sale of the security meets any of the following conditions:

(A) Has filed a registration statement that is subject to a currently effective stop order entered pursuant to any state law within five years before the commencement of the offering;

(B) has been convicted, within five years before commencement of the offering, of any felony or misdemeanor in connection with the purchase or sale of any security or any felony involving fraud or deceit, including forgery, embezzlement, obtaining money under false pretenses, larceny, and conspiracy to defraud;

(C) is subject to any current state administrative order or judgment entered by a state securities administrator within five years before the commencement of the offering or is subject to any state administrative order or judgment in which

fraud or deceit was found and the order or judgment was entered within five years before the commencement of the offering;

(D) is subject to any current state administrative order or judgment that prohibits the use of any exemption from registration in connection with the purchase or sale of securities; or

(E) is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining the person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state, or is subject to any order, judgment, or decree of any court of competent jurisdiction entered within five years before the commencement of the offering permanently restraining or enjoining the person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state.

(2) Upon application by the issuer, disqualification from the exemption specified in paragraph (b)(1) may be waived in writing by the administrator under any of the following conditions:

(A) The issuer demonstrates that it did not know and in the exercise of reasonable care could not have known that a disqualification existed.

(B) The person subject to a disqualifying order under paragraph (b)(1)(A) through (b)(1)(C) is currently licensed to conduct securities-related business in the state in which the administrative order or judgment was entered against the person.

(C) The agency that created the basis for disqualification determines, upon a showing of good cause, that it is not necessary under the circumstances to disqualify the person from use of the exemption, and the administrator concurs with that determination.

(D) The issuer demonstrates good cause that a disqualification should be waived by the administrator.

(c) Effect of noncompliance. Each failure to comply with a requirement of subsection (a) shall constitute grounds for denying or revoking the exemption for a security or transaction and shall be grounds for other relief and sanctions under K.S.A. 17-12a603 and 17-12a604, and amendments thereto. However, upon application by the offeror, the failure to comply shall not result in loss of the exemption for any offer or sale to a particular individual or entity if the administrator determines that all of the following conditions are met:

(1) The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity.

(2) The failure to comply was insignificant with respect to the offering as a whole.

(3) A good faith and reasonable attempt was made to comply with all applicable requirements of subsection (a).

(d) Stacking of exemptions. Offers and sales that are exempt under this regulation shall not be combined with offers and sales exempt under any other provision of the act or these regulations.

(e) Intrastate offerings. The exemption in subsection (a) shall be available to each issuer offering and selling securities in reliance upon the federal exemption for intrastate offerings in section 3(a)(11) of the federal securities act of 1933, 15 U.S.C. § 77c(a)(11), as adopted by reference in K.A.R. 81-2-1, if the issuer complies with the requirements of this regulation.

(f) Technical compliance insufficient. The exemption in subsection (a) shall not be available for any transaction that technically complies with this regulation but is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this regulation.

(g) Recordkeeping. The issuer shall maintain, for at least five years, a written record of all information furnished by it to all offerees, and the issuer shall file copies of the record with the administrator upon written request. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a203; effective, T-83-40, Nov. 23, 1982; effective May 1, 1983; amended May 1, 1984; amended, T-87-28, Oct. 1, 1986; amended May 1, 1987; amended, T-81-2-23-89, Feb. 23, 1989; amended March 20, 1989; amended, T-81-12-28-89, Dec. 28, 1989; amended Jan. 15, 1990; amended Jan. 19, 2007.)

**81-5-7. Exchange exemption.** A security shall be exempt under K.S.A. 17-12a201(6)(B), and amendments thereto, if the security is listed or authorized for listing on either of the following exchanges or if the security has seniority equal to or greater than the seniority of a security of the same issuer that is listed or authorized for listing on either of the following exchanges:

(a) Tier I of the Chicago stock exchange; or

(b) tier II of the NYSE Arca, inc. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a201(6)(B); effective, T-87-28, Oct. 1, 1986; amended May 1, 1987; amended Oct. 24, 1994;

amended May 31, 1996; amended Oct. 26, 2001; amended Jan. 19, 2007; amended Aug. 15, 2008; amended Jan. 4, 2016.)

**81-5-8. Fees for exemption filings and interpretive opinions.** (a) A fee of \$250 shall be remitted with each form D or notice filed in connection with the following exemptions:

(1) The uniform limited offering exemption for rule 505 offerings as specified in K.A.R. 81-5-6;

(2) the accredited investor exemption as specified in K.A.R. 81-5-13; and

(3) the exemption for securities of agricultural associations as specified in K.A.R. 81-5-18.

(b) A fee of \$250 shall be remitted with each request for a no-action letter or interpretive opinion letter from the administrator. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a205 and 17-12a605(d); effective, T-88-29, Aug. 19, 1987; amended May 1, 1988; amended Oct. 7, 1991; amended June 28, 1993; amended Dec. 19, 1997; amended Jan. 19, 2007.)

**81-5-9.** (Authorized by K.S.A. 17-1270(f); implementing K.S.A. 17-1261(g) and 17-1259; effective Nov. 12, 1991; amended June 28, 1993; amended May 31, 1996; revoked Dec. 19, 1997.)

**81-5-10. Oil and gas exemptions.** (a) Definitions. For purposes of this regulation, the following definitions shall apply:

(1) "Commission" shall be defined as specified in K.A.R. 81-1-1. However, the term shall not include any interest in the oil and gas estate being sold, including any overriding royalty interest and any interest in the production from the oil and gas estate, if the identity of the person or persons owning or holding the interest and the extent of the interest are fully disclosed to all purchasers.

(2) "Public auction" means the public sale of an interest in an oil and gas royalty, lease, or mineral deed to the highest bidder when the offer of the interest and the bids are communicated through open, public outcry and the sale is complete when the auctioneer so announces by the fall of the hammer or other customary manner.

(3) "Purchaser" means any individual, corporation, limited liability company, partnership, association, joint stock company, trust, or unincorporated organization. However, if an entity was organized for the specific purpose of acquiring the oil or gas interests offered, each beneficial owner

of an equity interest or equity security in the entity shall count as a separate purchaser.

(b) Oil and gas transactions.

(1) K.S.A. 17-12a301 through 17-12a306 and K.S.A. 17-12a401, 17-12a402, and 17-12a504, and amendments thereto, shall not apply to any offer or sale of any limited partnership interest, fractional undivided interest, or certificate based upon any fractional undivided interest involving any oil or gas royalty, lease, or deed, including subsurface gas storage and payments out of production, if the land subject to the interest or certificate is located in Kansas and all sales are made in accordance with one of the following conditions:

(A) Each sale is made to a person who is or has been during the preceding two years engaged primarily in the business of drilling for, producing, or refining oil or gas or whose corporate predecessor, for a corporation, has been so engaged or whose officers and two-thirds of the directors, for a corporation having an existence of less than two years, have each been so engaged.

(B) Sales are made to not more than a total of 32 purchasers without regard to whether the purchasers reside within or without the state of Kansas; the seller reasonably believes that every purchaser is purchasing the interest or certificate for investment purposes and not for resale; no general solicitation is used in connection with the offer or sale of the interest or certificate to any person; and no commission is paid or given for the offer or sale of the interest or certificate or the solicitation of prospective purchasers.

(C) Each sale involves property that produces oil, gas, or petroleum products in paying quantities on the date of sale, and the seller, after the sale, does not retain any ownership interest in or control over the lease or the interest or interests that are being sold.

(2) The exemption provided by this subsection shall not be cumulative to or used in conjunction with any other exemption provided under K.S.A. 17-12a202, and amendments thereto.

(c) Oil and gas auctions. The offer and sale of any interest in an oil and gas royalty, lease, or mineral deed shall be exempt from the requirements of K.S.A. 17-12a301 through 17-12a306 and K.S.A. 17-12a401, 17-12a402, and 17-12a504, and amendments thereto, if the interest is sold at a public auction. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a203; effective June 28, 1993; amended Jan. 19, 2007.)

**81-5-11.** (Authorized by and implementing K.S.A. 17-1270(f); effective Jan. 31, 1994; revoked Jan. 19, 2007.)

**81-5-12. Solicitations of interest before the filing of the registration statement.** (a) Exemption. Each offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus for the security shall be exempt from the requirements of K.S.A. 17-12a301 through 17-12a306 and K.S.A. 17-12a504 and amendments thereto, if all of the following requirements are met:

(1) The issuer shall be a business entity organized under the laws of the state of Kansas having, both before and upon completion of the offering, its principal office and a majority of its full-time employees located in this state.

(2) At least 80 percent of the net proceeds from the offering shall be used in connection with the operations of the issuer in this state.

(3) The issuer shall not be engaged in or propose to engage in petroleum exploration or production, mining, or other extractive industries and shall not be a development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in merger or acquisition with an unidentified company or companies or other entity or person.

(4) The offeror shall intend to register the security in this state and conduct its offering pursuant to one of the following federal laws or regulations, as adopted by reference in K.A.R. 81-2-1:

(A) Section 3(a)(11) of the securities act of 1933;

(B) SEC regulation A, 17 C.F.R. 230.251 et seq.; or

(C) rule 504 of SEC regulation D, 17 C.F.R. 230.504.

(5) Ten business days before the initial solicitation of interest under this regulation, the offeror shall file with the administrator a solicitation of interest form KSC-15 along with any other materials to be used to conduct solicitations of interest, including the script of any broadcast to be made and a copy of any notice to be published.

(6) Five business days before usage, the offeror shall file with the administrator any amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree.

(7) No solicitation of interest form, script, advertisement, or other material shall be used to

solicit indications of interest if the administrator has instructed the offeror not to distribute the material.

(8) Except for scripted broadcasts and published notices, the offeror shall not communicate with any offeree about the contemplated offering, unless the offeree is provided with the most current solicitation of interest form at or before the time of the communication or within five days after the communication.

(9) During the solicitation of interest period, the offeror shall not solicit or accept money or a commitment to purchase securities.

(10) No sale shall be made until seven days after the delivery of a prospectus to the purchaser.

(b) Each offeror shall comply with each of the following requirements:

(1) Each published notice or script for broadcast shall contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:

(A) "NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED."

(B) "NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF AN OFFERING CIRCULAR THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING."

(C) "AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND."

(D) "THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS REGISTERED IN THIS STATE."

(2) All communications with prospective investors made in reliance on this regulation shall cease after a registration statement is filed in Kansas, and no sale may be made until at least 20 calendar days after the last communication made in reliance on this regulation.

(3) A preliminary prospectus or its equivalent may be used only in connection with an offering for which indications of interest have been solicited under this regulation if the offering is conducted by a registered broker-dealer.

(c) Disqualifications. The exemption specified in subsection (a) shall not be available to an offeror who knows, or in the exercise of reasonable care should know, that the issuer or any one of its officers, directors, 10 percent shareholders, or promoters meets any of the following conditions:

(1) Has filed a registration statement that is subject to a currently effective registration stop order entered pursuant to any federal or state securities law within five years before the filing of the solicitation of interest form;

(2) has been convicted, within five years before the filing of the solicitation of interest form, of any felony or misdemeanor in connection with the offer, purchase, or sale of any security, or any felony involving fraud or deceit, including forgery, embezzlement, obtaining money under false pretenses, larceny, and conspiracy to defraud;

(3) is subject to any current federal or state administrative enforcement order or judgment entered by any state securities administrator or the securities and exchange commission within five years before the filing of the solicitation of interest form;

(4) is subject to any federal or state administrative enforcement order or judgment entered within five years before the filing of the solicitation of interest in which fraud or deceit was found;

(5) is subject to any federal or state administrative enforcement order or judgment that prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities; or

(6) is subject to any current order, judgment, or decree of any court of competent jurisdiction that temporarily, preliminarily, or permanently restrains or enjoins the party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, or involves the making of any false filing with the state, entered within five years before the filing of the solicitation of interest form.

(d) Effect of noncompliance.

(1) Failure to comply with any condition of subsection (a) shall constitute grounds for denying or revoking the exemption for a specific security or transaction and shall be grounds for other relief and sanctions under K.S.A. 17-12a603 and 17-12a604, and amendments thereto. However, upon application by the offeror, the failure to comply shall not result in the loss of the exemption for any offer to a particular individual or entity if the administrator determines that all of the following conditions are met:

(A) The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity.

(B) The failure to comply was insignificant with respect to the offering as a whole.

(C) A good faith and reasonable attempt was made to comply with all applicable conditions of subsection (a).

(2) Failure to comply with any requirement in subsection (b) shall constitute grounds for denying or revoking the exemption for a specific security or transaction and shall be grounds for other relief and sanctions under K.S.A. 17-12a603 and 17-12a604, and amendments thereto, but shall not result in the loss of the exemption for the entire offering.

(e) Waivers.

(1) Upon application by the offeror and the showing of good cause, any condition of this exemption may be waived in writing by the administrator.

(2) Upon application by the offeror and the showing of good cause, the disqualification specified in subsection (c) may be waived in writing by the administrator under any of the following circumstances:

(A) The person subject to the disqualification is currently licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against the person.

(B) The broker-dealer employing the person is registered in Kansas, and the form BD filed in Kansas discloses the order, conviction, judgment, or decree relating to the person.

(C) The agency that created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied, and the administrator concurs with that determination.

(3) The absence of any objection or order by the administrator with respect to any offer of securities undertaken pursuant to this regulation shall not be deemed to be a waiver of any condition of the regulation and shall not be deemed to be a confirmation by the administrator of compliance with this regulation.

(f) Integration. An offer made in reliance on this regulation shall not result in a violation of the registration requirements by virtue of being integrated with subsequent offers or sales of securities, unless the subsequent offers and sales would be integrated under federal securities laws.

(g) Effect on other exemptions. Issuers on whose behalf indications of interest are solicit-

ed under this regulation shall not make offers or sales in reliance on K.S.A. 17-12a202(1) or 17-12a202(14) and amendments thereto, or K.A.R. 81-5-6, until six months after the last communication with a prospective investor made pursuant to this regulation. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a202, as amended by L. 2006, Ch. 47, §2(17) and K.S.A. 2005 Supp. 17-12a203; effective April 17, 1995; amended Jan. 19, 2007.)

### **81-5-13. Accredited investor exemption.**

(a) Exemption. Each offer or sale of a security by an issuer shall be exempt from the registration requirements of K.S.A. 17-12a301 through 17-12a306 and K.S.A. 17-12a504, and amendments thereto, if each of the following requirements is met:

(1) Sales shall be made only to persons who are or whom the issuer reasonably believes to be accredited investors, as defined in SEC regulation D, rule 501(a), 17 C.F.R. § 230.501(a), as adopted by reference in K.A.R. 81-2-1.

(2) The issuer shall reasonably believe that all purchasers are purchasing for investment and not with the view to or for resale in connection with a distribution of the security. Each resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under K.S.A. 17-12a305(h) and amendments thereto or a resale to an accredited investor pursuant to an exemption available under the act.

(3) Each communication with a prospective investor shall meet the requirements of subsection (d).

(4) Within 15 days after the first sale in this state, the issuer shall file with the administrator a notice of transaction on form D or the NASAA model accredited investor exemption uniform notice of transaction, a copy of the general announcement, and the fee specified in K.A.R. 81-5-8.

(b) Disqualifications. The exemption specified in subsection (a) shall not be available to an issuer under either of the following conditions:

(1) The issuer is in the development stage and either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(2) The issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of

10% or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of the underwriter meets any of the following conditions:

(A) Has filed a registration statement that is subject to a currently effective registration stop order entered by any state securities administrator or the SEC within the last five years;

(B) has been convicted within the last five years of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;

(C) is subject to any current state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(D) is subject to any current order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining the party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(c) Waivers. Upon application by the issuer, any disqualification specified in paragraph (b)(2) may be waived in writing by the administrator if one of the following conditions is met:

(1) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against the party.

(2) Before the first offer under this exemption, the court or regulatory authority that entered the order, judgment, or decree waives the disqualification, and the administrator determines that there was good cause for the waiver.

(3) The issuer establishes that it did not know and, in the exercise of reasonable care and based on a factual inquiry, could not have known that a disqualification existed.

(d) Communication with prospective investors.

(1) A general announcement of a proposed offering may be made and may be disseminated to persons who are not accredited investors. However, the general announcement shall include only the following information, unless additional information is specifically authorized in writing by the administrator:

(A) The name, address, and telephone number of the issuer of the securities;

(B) the name, a brief description, and the price, if known, of any security to be issued;

(C) a brief description of the business of the issuer in 25 or fewer words;

(D) the type, number, and aggregate amount of securities being offered;

(E) the name, address, and telephone number of the person to contact for additional information; and

(F) the following statements:

(i) Sales will be made only to accredited investors;

(ii) no money or other consideration is being solicited or will be accepted by way of this general announcement; and

(iii) the securities have not been registered with or approved by any state securities agency or the United States securities and exchange commission and are being offered and sold pursuant to an exemption from registration.

(2) The issuer, in connection with an offer, may provide information in addition to the general announcement under paragraph (d)(1) if the information meets either of the following conditions:

(A) The information is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors.

(B) The information is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(3) No telephone solicitation shall be permitted, unless, before placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a203; effective Dec. 19, 1997; amended Jan. 19, 2007.)

**81-5-14. Notice filings and fees for offerings of investment company securities.**

(a) Before the initial offer in this state of a security that is a federal covered security as described in K.S.A. 17-12a302(a) and amendments thereto, an investment company shall file the following for each portfolio or series:

(1) A notice of intention to sell on form NF, completed in accordance with the instructions to the form; and

(2) a filing fee of \$500 for a unit investment trust or \$750 for a portfolio or series of an investment company other than a unit investment trust.

(b) Upon written request of the administrator and within the time period specified in the request, an investment company that has filed a registration statement under the securities act of 1933 shall file a form U-2 and a copy of any other requested document that is part of the registration statement or an amendment to the registration statement filed with the SEC.

(c) Each notice filed under subsection (a) shall be effective for one year as provided by K.S.A. 17-12a302(b), and amendments thereto. The notice may be renewed on or before expiration by filing a form NF and the appropriate fee as specified under paragraph (a)(2).

(d) If an investment company has filed a notice under subsection (a) and the name of the investment company, portfolio, or series changes, the investment company shall file an additional form NF and pay a fee of \$100 for each portfolio or series of the investment company that is affected by a name change before the initial offer in this state of a security under the new name. The investment company shall indicate the former name of the investment company, portfolio, or series on the new form NF.

(e) If an investment company desires confirmation of filing or effectiveness of a form NF, the investment company shall file an additional copy of form NF with an addressed return envelope or shall obtain confirmation through an electronic filing system as provided under subsection (f).

(f) Any investment company may file notice filings and fees electronically through a centralized securities registration depository or other electronic filing system, in accordance with the procedures and controls established by that depository or system and approved by the administrator. (Authorized by and implementing K.S.A. 17-12a302 and K.S.A. 17-12a605(a); effective Dec. 19, 1997; amended Jan. 19, 2007; amended May 15, 2009.)

**81-5-15. Notice filings and fees for rule 506 offerings.** (a) Each issuer of a security under SEC rule 506, 17 C.F.R. 230.506, as adopted by reference in K.A.R. 81-2-1, shall file a notice of sale on form D with the administrator within 15 days after the first sale of the security in Kansas. The form D shall be completed in accordance with the instructions for the form and shall be filed either through the EFD system electronically or on a paper form D that is mailed to the administrator.

(b)(1) Each issuer of a security specified in subsection (a) shall pay a fee of \$250 to the administrator with each timely filing under subsection (a).

(2) If a form D is not filed as required by subsection (a) within 15 days after the first sale of the security in Kansas, the issuer of the security shall pay to the administrator the greater of the following amounts, unless the administrator agrees to assess a lesser fee pursuant to K.S.A. 17-12a307, and amendments thereto:

(A) \$500; or

(B) one-tenth of one percent of the dollar value of the securities that were sold to Kansas residents before the date on which the form D is filed, not to exceed \$5,000.

(3) For each electronic filing of form D, the fee shall be remitted to the EFD.

(c) This regulation shall not apply if the security or transaction is otherwise exempt from registration under any provision of the Kansas uniform securities act. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 2014 Supp. 17-12a302(c) and K.S.A. 17-12a307; effective, T-81-8-22-05, Aug. 22, 2005; effective Dec. 20, 2005; amended Jan. 4, 2016.)

**81-5-16. Exemption for internet communication.** (a) General communication. Communication concerning a security directed generally to anyone having access to the internet shall not be deemed an offer under K.S.A. 17-12a301, and amendments thereto, based solely on the internet communication if all of the following conditions are met:

(1) The internet communication indicates that the security is not being offered to residents of Kansas.

(2) The internet communication is not specifically directed to any person in Kansas, and the internet communication contains a mechanism, including technical firewalls or other implemented policies and procedures, designed reasonably to prevent direct communication with residents of Kansas.

(3) No sale of the security is made in Kansas as a direct or indirect result of the internet communication until the security is registered under the act or unless the security is exempt from registration. For the purpose of determining whether the security is exempt, each sale made in Kansas as a direct or indirect result of the internet communication shall be deemed to be made through a general solicitation.

(b) Communication by broker-dealers, agents, investment advisers and investment adviser representatives. A person who distributes information on available products and services through internet

communications directed generally to anyone having access to the internet shall not be deemed to be transacting business in Kansas for purposes of K.S.A. 17-12a401 through 17-12a404, and amendments thereto, based solely on the internet communication if all of the following conditions are met:

(1) The internet communication contains a legend in which the following information is clearly stated:

(A) The person cannot transact business in this state as a broker-dealer, agent, investment adviser, or investment adviser representative unless the person is properly registered under the act or exempt from registration.

(B) The person cannot provide individualized communications or responses to prospective customers or clients in this state to effect or attempt to effect transactions in securities, or to render personalized investment advice for compensation, unless the person is properly registered under the act or exempt from registration.

(2) The internet communication contains a mechanism, which may include technical firewalls or other implemented policies and procedures, designed reasonably to ensure that before any direct communication with prospective customers or clients in this state, the person is properly registered under the act or exempt from registration.

(3) The internet communication is limited to the dissemination of general information on products and services and does not involve effecting or attempting to effect transactions in securities or the rendering of personalized investment advice in this state.

(4) For an agent or investment adviser representative, the following conditions are met:

(A) The affiliation of the agent or investment adviser representative with a broker-dealer or investment adviser is prominently disclosed within the internet communication.

(B) The broker-dealer or investment adviser with whom the agent or investment adviser representative is associated retains responsibility for reviewing and approving the content of any internet communication by the agent or investment adviser representative.

(C) The broker-dealer or investment adviser with whom the agent or investment adviser representative is associated first authorizes the distribution of information on the particular products and services through the internet communication.

(D) In disseminating information through the internet communication, the agent or investment

adviser representative acts within the scope of the authority granted by the broker-dealer or investment adviser.

(c) "Other electronic communication" under K.S.A. 17-12a610(e), and amendments thereto, shall not include internet communication.

(d) Nothing in this regulation shall create an exemption from the antifraud provisions of K.S.A. 17-12a501 and 17-12a502, and amendments thereto, or from the requirements of any other provision of the act or these regulations. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a301, 17-12a401, 17-12a402, 17-12a403, 17-12a404, 17-12a608(c)(9) and 17-12a610(e); effective Jan. 19, 2007.)

#### **81-5-17. Standard manuals exemption.**

The following printed or electronic versions of securities manuals shall be designated by the administrator for use under K.S.A. 17-12a202(2)(A)(iv), and amendments thereto:

(a) "S&P capital IQ standard corporation descriptions"; and

(b) "mergent's manuals." (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a202; effective Jan. 19, 2007; amended Jan. 4, 2016.)

#### **81-5-18. Notice filing requirements for securities of agricultural associations.**

(a) Exemption. The sale of a security of a cooperative organized under K.S.A. 17-1601 et seq., and amendments thereto, to a person who is not a member pursuant to K.S.A. 17-1606, and amendments thereto, shall be exempt from the requirements of K.S.A. 17-12a301 through 17-12a306 and K.S.A. 17-12a504, and amendments thereto, if the following requirements are met:

(1) The cooperative shall file a notice with the administrator that includes the following items:

(A) A filing fee as specified in K.A.R. 81-5-8;

(B) a copy of any underwriting or selling agreements;

(C) a copy of the cooperative's bylaws, operating agreement, or similar document;

(D) a copy of a prospectus that discloses all material facts concerning the investment, including the following information:

(i) The name and address of the cooperative;

(ii) a description of the security being offered;

(iii) the total amount of securities being issued;

(iv) a brief summary of key aspects of the offering;

(v) a description of the material risks associated with the offering, which may include risk factors

related to unprofitable operations, unsound financial condition, absence of a market for the cooperative's securities, inexperience of management, and dependence upon a particular customer or group of customers; risks affecting the industry as a whole; and any other facts that tend to make the offering more risky;

(vi) a description of the business or proposed business;

(vii) a description of the proposed use of proceeds, in an itemized format;

(viii) a description of the responsibilities, experience, and compensation of directors, officers, and any other persons having similar status or performing similar functions for the cooperative;

(ix) a description of the plan of distribution for the securities;

(x) a summary of the cooperative's capitalization;

(xi) a description of any pending litigation, action, or proceeding to which the cooperative is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities;

(xii) a description of the general federal and state tax consequences of owning the security; and

(xiii) the historical financial statements for the past three fiscal years or since the cooperative's inception, whichever period is shorter, that are in conformity with GAAP, the most recent of which have been audited by a CPA. If the balance sheet in the financial statements is more than 120 days old on the date the notice is filed with the administrator, then interim financial statements made in conformity with GAAP and not more than 120 days old shall be included in the prospectus;

(E) a copy of any advertising materials or any summaries of the offering document to be used in the offer or sale of the securities in Kansas;

(F) a copy of the subscription agreement;

(G) the name, business address, and a brief description of the employment responsibilities of each agent who will represent the cooperative in the offer or sale of the securities in Kansas;

(H) a copy of the trust indenture if the offering involves debt securities; and

(I) any other relevant information or document requested by the administrator.

(2) If the security is a debt instrument, the cooperative shall sell no more securities than it can reasonably repay in the ordinary course of its operations. The cooperative shall demonstrate, to the administrator, its ability to repay the debt as it comes due.

(3) If the security is a debt instrument issued to finance the purchase or improvement of real property, the cooperative shall demonstrate that the project can be completed with the proposed proceeds from the offering and other available funds. The debt shall be secured by a trust indenture that obligates the cooperative to make payments and to pledge properties owned or to be acquired by the cooperative. The cooperative shall provide an independent appraisal report to the administrator and shall demonstrate that the value of the pledged property is sufficient to secure the debt.

(4) If the security is not subject to a firm underwriting agreement, the proceeds shall be deposited and held in an escrow account until a specified minimum amount of proceeds has been deposited so that the cooperative can accomplish the primary purpose of its financing plan or complete a specified stage of a construction project in which a mortgage can be recorded to secure the debt.

(b) Review. Within 30 days after the notice is filed under subsection (a), the notice filing and related documents shall be reviewed by the administrator, and a letter shall be issued by the administrator either to advise the cooperative that the administrator has no objection to the cooperative's claim of exemption under this regulation or to inform the cooperative that the filing is incomplete or fails to meet the requirements for this exemption. In reviewing the issuer's compliance with the conditions specified in subsection (a), the analogous provisions of the statement of policy regarding church bonds, as adopted by reference in K.A.R. 81-7-2, may be applied by the administrator.

(c) Waivers. For good cause shown, the requirements of this regulation may be waived, in whole or in part, by the administrator. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a201(8); effective Jan. 19, 2007.)

**81-5-19. Cross-border trading exemption.** (a) Exemption from broker-dealer registration. Each broker-dealer that is a resident of Canada and has no place of business in Kansas shall be exempt from registration under K.S.A. 17-12a401, and amendments thereto, if the broker-dealer meets each of the following conditions:

(1) It is registered with or is a member of a self-regulatory organization, stock exchange, or the *bureau des services financiers* in Canada.

(2) It maintains in good standing its provincial or territorial registration and its registration with or membership in a self-regulatory organization, stock exchange, or the *bureau des services financiers* in Canada.

(3) It effects or attempts to effect transactions in securities only with or for the following individuals:

(A) An individual who is a permanent resident of Canada and who is temporarily resident in or visiting Kansas, with whom the broker-dealer had a bona fide customer relationship before the individual entered the state; or

(B) an individual who is present in this state and whose transactions are in a Canadian self-directed tax advantaged retirement account of which the individual is the holder or contributor.

(b) Exemption from agent registration. Each agent who represents a Canadian broker-dealer meeting the conditions specified in subsection (a) shall be exempt from the registration requirements of K.S.A. 17-12a402, and amendments thereto, if the agent maintains in good standing the agent's provincial or territorial registration and the agent effects or attempts to effect transactions in Kansas only as permitted for a broker-dealer under subsection (a).

(c) Transactional exemption from securities registration. Each offer or sale of a security effected by a Canadian broker-dealer or agent who is exempt from registration under subsection (a) or (b) shall be exempt from the requirements of K.S.A. 17-12a301 through 17-12a306 and 17-12a504, and amendments thereto. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a203 and 17-12a401(d); effective Jan. 19, 2007.)

**81-5-20. Kansas venture capital, inc. exemption.** The offer or sale of any security issued by Kansas venture capital, inc. (KVCII) or its successors shall be exempt from the registration requirements of K.S.A. 17-12a301 through 17-12a306 and K.S.A. 17-12a504, and amendments thereto. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a203; effective Jan. 19, 2007.)

**81-5-21. Invest Kansas exemption.** (a) Exemption from registration requirements. The offer or sale of a security by an issuer shall be exempt from the requirements of K.S.A. 17-12a301 through 17-12a306 and K.S.A. 17-12a504, and

amendments thereto, if the offer or sale is conducted in accordance with each of the following requirements:

(1) The issuer of the security shall be a business or organization formed under the laws of the state of Kansas and registered with the secretary of state.

(2) The transaction shall meet the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the securities act of 1933, 15 U.S.C. § 77c(a)(11), and SEC rule 147, 17 C.F.R. 230.147, as adopted by reference in K.A.R. 81-2-1.

(3) The sum of all cash and other consideration to be received for all sales of securities in reliance upon this exemption shall not exceed \$1,000,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon this exemption.

(4) The issuer shall not accept more than \$5,000 from any single purchaser unless the purchaser is an accredited investor as defined by rule 501 of SEC regulation D, 17 C.F.R. 230.501, as adopted by reference in K.A.R. 81-2-1. Two or more individual purchasers residing at the same primary residence who are not accredited investors and have a close family relationship shall be treated as a single purchaser for purposes of the \$5,000 limit.

(5) A commission or other remuneration shall not be paid or given, directly or indirectly, for any person's participation in the offer or sale of securities for the issuer unless the person is registered as a broker-dealer or agent under the act.

(6) All funds received from investors shall be deposited into a bank or depository institution authorized to do business in Kansas, and all the funds shall be used in accordance with representations made to investors.

(7) Before the use of any general solicitation, the issuer shall file a notice with the administrator on form IKE, providing the names and addresses of the following persons:

(A) The issuer;

(B) all persons who will be involved in the offer or sale of securities on behalf of the issuer; and

(C) the bank or other depository institution in which investor funds will be deposited.

(8) The issuer shall not be, either before or as a result of the offering, an investment company as defined in section 3 of the investment company act of 1940, 15 U.S.C. § 80a-3, or subject to the reporting requirements of section 13 or 15(d) of the se-

curities exchange act of 1934, 15 U.S.C. § 78m and 78o(d), as adopted by reference in K.A.R. 81-2-1.

(9) The issuer shall inform all purchasers that the securities have not been registered under the act and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under K.S.A. 17-12a202 and amendments thereto, K.A.R. 81-5-3, or another regulation. In addition, the issuer shall make the disclosures required by subsection (f) of SEC rule 147, 17 C.F.R. 230.147(f), as adopted by reference in K.A.R. 81-2-1.

(b) Interaction with other exemptions and sales to controlling persons. This exemption shall not be used in conjunction with any other exemption under these regulations. Sales to controlling persons shall not count toward the limitation in paragraph (a)(3).

(c) Disqualifications. This exemption shall not be available if the issuer is subject to a disqualifying event specified in K.A.R. 81-5-13(b), except as permitted under K.A.R. 81-5-13(c). (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a203; effective Aug. 12, 2011; amended Jan. 4, 2016.)

#### Article 6.—PROSPECTUS

**81-6-1. Prospectus.** (a) Filing. Each application for the registration of securities shall include the prospectus to be used in connection with the proposed securities offering.

(b) Form and content.

(1) Registration by coordination. Each prospectus for a securities offering filed for registration by coordination under K.S.A. 17-12a303, and amendments thereto, shall contain the information required in part I of the registration statement filed by the issuer under the securities act of 1933, unless the administrator modifies or waives the requirements pursuant to K.S.A. 17-12a307, and amendments thereto.

(2) Registration by qualification. Each prospectus for a securities offering filed for registration by qualification under K.S.A. 17-12a304, and amendments thereto, shall contain the information required by that statute unless the administrator modifies or waives the requirements pursuant to K.S.A. 17-12a304 or 17-12a307, and amendments thereto. The prospectus may be submitted on one of the following forms that is applicable to the type of securities offering, in accordance with the instructions to the form:

(A) Part II of SEC form 1-A, regulation A offering statement under the securities act of 1933;

(B) part I of SEC form S-1, registration statement under the securities act of 1933;

(C) form U-7 if the issuer meets the requirements of K.A.R. 81-4-2; or

(D) any other form allowed by the administrator, if the prospectus is filed in compliance with the applicable requirements of the securities act of 1933.

(c) Delivery requirements. As a condition of registration under K.S.A. 17-12a304 and amendments thereto, the issuer shall deliver a copy of the entire prospectus to each person to whom an offer is made, before or concurrently, with the earliest of the events specified in K.S.A. 17-12a304, and amendments thereto. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a303 and 17-12a304; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1987; amended March 25, 1991; amended May 31, 1996; amended Jan. 19, 2007; amended Jan. 4, 2016.)

#### Article 7.—POLICY RELATING TO REGISTRATION

**81-7-1. General statements of policy for registration of securities.** (a) NASAA statements of policy. Each registration statement shall meet the requirements of each NASAA statement of policy that is applicable to the issuer, registration statement, type of security, or other circumstances of the offering. The following NASAA statements of policy are hereby adopted by reference:

(1) “Statement of policy regarding corporate securities definitions,” as amended on March 31, 2008;

(2) “statement of policy regarding the impoundment of proceeds,” as amended on March 31, 2008;

(3) “statement of policy regarding loans and other material transactions,” as amended on March 31, 2008;

(4) “statement of policy regarding options and warrants,” as amended on March 31, 2008;

(5) “statement of policy regarding preferred stock,” as amended on March 31, 2008;

(6) “statement of policy regarding promoter’s equity investment,” as amended on March 31, 2008;

(7) “statement of policy regarding promotional shares,” as amended on March 31, 2008;

(8) “statement of policy regarding specificity in use of proceeds,” as amended on March 31, 2008;

(9) “statement of policy regarding underwriting expenses, underwriter’s warrants, selling expenses and selling security holders,” as amended on March 31, 2008;

(10) “statement of policy regarding unsound financial condition,” as amended on March 31, 2008; and

(11) “statement of policy regarding unequal voting rights,” as amended on March 31, 2008.

(b) Financial statements. Each registration statement shall meet the requirements for financial statements under K.A.R. 81-7-3, unless the administrator waives or modifies the requirements for good cause shown under one of the following circumstances:

(1) The registration statement contains financial statements that meet specific requirements of a statement of policy adopted under subsection (a) or another regulation, and the administrator determines that the financial statements are sufficient in light of the issuer, registration statement, type of security, or other circumstances of the offering.

(2) The registration statement was filed for registration by coordination under K.S.A. 17-12a303, and amendments thereto, and contains financial statements that meet SEC requirements.

(3) The registration statement was submitted for coordinated review under K.S.A. 17-12a608(c) (7), and amendments thereto, and the administrator determines that a waiver or modification would promote uniformity with other states.

(c) Whenever terms within the context of NASAA statements of policy adopted by reference in this regulation are in conflict with definitions under the act and these regulations, the definitions in the NASAA statements of policy shall apply. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a306(b) and 17-12a608(c); effective Jan. 1, 1966; amended, E-70-15, Feb. 4, 1970; amended Jan. 1, 1971; amended Jan. 1, 1972; amended, T-88-65, Dec. 30, 1987; amended May 1, 1988; amended Oct. 24, 1988; amended June 28, 1993; amended Jan. 19, 2007; amended Jan. 4, 2016.)

**81-7-2. Statements of policy for specific types of securities offerings.** (a) If one of the NASAA guidelines or statements of policy adopted in subsection (b) applies to a securities offering, the registration statement shall meet the requirements of the applicable NASAA guideline or statement of policy.

(b) The following NASAA guidelines and statements of policy are hereby adopted by reference, except as modified in paragraph (b)(13):

(1) “Registration of asset-backed securities,” as amended on May 6, 2012;

(2) “registration of publicly offered cattle-feeding programs,” as adopted on September 17, 1980;

(3) “statement of policy regarding church bonds” and the related “cross reference sheet,” as adopted on April 14, 2002;

(4) “statement of policy regarding church extension fund securities,” as amended on April 18, 2004;

(5) “registration of commodity pool programs,” as amended on May 6, 2012;

(6) “statement of policy regarding debt securities,” as adopted on April 25, 1993;

(7) “equipment programs,” as amended on May 6, 2012;

(8) “NASAA mortgage program guidelines,” as amended on May 7, 2007;

(9) “registration of oil and gas programs,” as amended on May 6, 2012;

(10) “omnibus guidelines,” as amended on May 7, 2007;

(11) “statement of policy regarding real estate investment trusts,” as revised and adopted on May 7, 2007;

(12) “statement of policy regarding real estate programs,” as revised on May 7, 2007; and

(13) “guidelines regarding viatical investments,” including appendix A, as in effect on January 1, 2006, which shall be modified as follows:

(A) In section I.B.14.a of the guidelines, the phrase “[reference to state statute or most recent version of the National Association of Insurance Commissioners (“NAIC”) Model Viatical Settlement Act]” shall be replaced with “K.S.A. 40-5002(o), and amendments thereto”;

(B) in section I.B.16, the phrase “[broker dealer]” shall be replaced with “broker-dealer,” the term “[agent]” shall be replaced with “agent,” and the phrase “[reference to statutory definition of issuer]” shall be replaced with “K.S.A. 17-12a102(17), and amendments thereto”;

(C) in section I.B.17, the phrase “[reference to state statute or most recent version of the NAIC Model Viatical Settlement Act]” shall be replaced with “K.S.A. 40-5002(n), and amendments thereto”;

(D) in section III.B, the brackets shall be removed, and the bracketed amounts shall remain in effect;

(E) in section VI.14, the phrase “[NAIC Model Viatical Settlement Act or similar viatical regulatory act of the particular state]” shall be replaced with “viatical settlement act of 2002, K.S.A. 40-5002 et seq., and amendments thereto”; and

(F) in the last sentence of section VI, the phrase “[statutory reference]” shall be replaced with “K.S.A. 17-12a411(d), and amendments thereto.”

(c) The omnibus guidelines adopted in paragraph (b)(10) shall be applied to limited partnership programs or other entities for which more specific guidelines or statements of policy have not been adopted by NASAA, unless the administrator waives or modifies the requirements of the omnibus guidelines or applies other NASAA guidelines or statements of policy for good cause shown.

(d) In addition to the income and net worth standards and other suitability requirements contained within the NASAA guidelines and statements of policy adopted under subsection (b), the administrator may require that the registration statement include a statement that recommends or requires each purchaser to limit the purchaser’s aggregate investment in the securities of the issuer and other similar investments to not more than 10 percent of the purchaser’s liquid net worth. For purposes of this subsection, liquid net worth shall be defined as that portion of the purchaser’s total net worth that is comprised of cash, cash equivalents, and readily marketable securities, as determined in conformity with GAAP.

(e) Each registration statement subject to a guideline or statement of policy adopted under subsection (b) shall meet the requirements for financial statements under K.A.R. 81-7-3, unless the administrator waives or modifies the requirements for good cause shown under any of the following circumstances:

(1) The registration statement contains financial statements that meet the specific requirements of another guideline or statement of policy adopted under subsection (b) or another regulation, and the administrator determines that the financial statements are sufficient for the particular type of securities registration.

(2) The registration statement was filed for registration by coordination under K.S.A. 17-12a303, and amendments thereto, and contains financial statements that meet the SEC requirements.

(3) The registration statement was submitted for coordinated review under K.S.A. 17-12a608(c) (7) and amendments thereto, and the adminis-

trator determines that a waiver or modification would promote uniformity with other states.

(f) Each application for registration subject to a guideline or statement of policy adopted under subsection (b) shall include a cross-reference table to indicate compliance with the various sections of the applicable guideline or statement of policy.

(g) Whenever terms within the context of NASAA guidelines or statements of policy adopted by reference in this regulation are in conflict with definitions under the act and these regulations, the definitions in the NASAA guidelines or statements of policy shall apply. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a306(b) and 17-12a608(c); effective June 28, 1993; amended May 31, 1996; amended Jan. 19, 2007; amended Aug. 15, 2008; amended Jan. 4, 2016.)

**81-7-3. Financial statements required for securities registration.** (a) The historical financial statements in each registration statement or prospectus required under the act shall be presented in conformity with GAAP. In addition, each of the financial statements shall be audited by an independent CPA in accordance with standards of the PCAOB, or in accordance with generally accepted auditing standards in the United States if the audit is not subject to standards of the PCAOB, except under either of the following circumstances:

(1) If an issuer complies with K.A.R. 81-4-2 or K.A.R. 81-7-2(b)(3), as applicable, the financial statements in a registration statement filed by qualification under K.S.A. 17-12a304, and amendments thereto, may be reviewed by an independent CPA rather than audited.

(2) Interim financial statements in a registration statement may be unaudited.

(b) Prospective financial statements may be included in a registration statement or prospectus if the prospective financial statements are presented in the form of financial forecasts, conform with guidelines established by the AICPA, and are accompanied by an examination report of an independent CPA prepared in accordance with standards established by the AICPA. Prospective financial statements shall not be delivered in connection with an offer of securities, unless they are included in the prospectus. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a605(c); effective Jan. 19, 2007.)

### Article 8.—EFFECTIVENESS AND POST-EFFECTIVE REQUIREMENTS

**81-8-1.** (Authorized by K.S.A. 1986 Supp. 17-1270(f); implementing K.S.A. 17-1256; 17-1257; 17-1264; effective Jan. 1, 1966; amended, T-88-29, Aug. 19, 1987; amended May 1, 1988; revoked May 31, 1996.)

### Article 9.—ANNUAL REPORTS

**81-9-1.** (Authorized by K.S.A. 17-1270(f); implementing K.S.A. 17-1259 as amended by SB 66; effective Jan. 1, 1966; amended, E-70-15, Feb. 4, 1970; amended Jan. 1, 1971; amended, T-88-29, Aug. 19, 1987; amended May 1, 1988; revoked May 31, 1996.)

### Article 10.—ADVERTISING

**81-10-1. Advertising.** (a) Definitions. For purposes of this regulation, the following definitions shall apply:

(1) “Sales and advertising literature” shall mean the following, if intended for distribution to prospective investors:

(A) Any advertisement, pamphlet, circular, brochure, form letter, or other written or electronic sales literature or material; and

(B) any script for an oral advertisement or promotional effort.

(2) “Tombstone advertisement” shall mean sales and advertising literature in which the content is limited to the information specified in subsection (a) of SEC rule 134, as adopted by reference in K.A.R. 81-2-1.

(b) Filing requirement. Except as provided in subsection (d), all sales and advertising literature proposed to be used in connection with the sale of securities in Kansas shall be filed with the administrator at least five days before its proposed use.

(c) False or misleading advertisements. Sales and advertising literature shall not contain any statement that is false or misleading in a material respect or that is inconsistent with information contained in a registration statement or offering document. In addition, the sales and advertising literature shall not omit to state any material fact necessary to make a statement made, in the light of the circumstances under which the statement was made, not false or misleading. Sales and advertising literature shall be deemed to be false and misleading if it contains any exaggerated statements, emphasizes positive information while minimiz-

ing negative information, or compares alternative investments without disclosing all material differences between the investments, including expenses, liquidity, safety, and tax features.

(d) Exception. A tombstone advertisement placed in a newspaper, periodical, or other medium shall not be subject to the requirements of subsection (b) if the tombstone advertisement contains the following information:

(1) A statement that the advertisement does not constitute an offer to sell or the solicitation of an offer to buy a security; and

(2) the name and address of a person from whom a written prospectus can be obtained. (Authorized by K.S.A. 2005 Supp. 17-12a504 and 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a504 and 17-12a505; effective Jan. 1, 1966; amended, E-70-15, Feb. 4, 1970; amended Jan. 1, 1971; amended Jan. 19, 2007.)

### Article 11.—ADMINISTRATIVE PROCEDURE

**81-11-1.** (Authorized by K.S.A. 17-1270(f); effective Jan. 1, 1966; revoked May 1, 1984.)

**81-11-2. Scope of administrative procedure regulations.** (a) This article is supplemental to the Kansas administrative procedures act and to administrative procedures otherwise provided by the Kansas securities act.

(b) If it is in the interest of promoting substantial justice, the commissioner may waive any provision of this article. (Authorized by K.S.A. 1984 Supp. 17-1270 and K.S.A. 17-1282; implementing K.S.A. 17-1254, as amended by L. 1985, Ch. 88, Sec. 1, K.S.A. 17-1254a, K.S.A. 17-1260, as amended by L. 1985, Ch. 88, Sec. 2, K.S.A. 1984 Supp. 17-1261, K.S.A. 1984 Supp. 17-1262, as amended by L. 1985, Ch. 89, Sec. 1, K.S.A. 1984 Supp. 17-1265, K.S.A. 17-1266a, as amended by L. 1985, Ch. 88, Sec. 4, K.S.A. 17-1277, and K.S.A. 17-1281; effective May 1, 1984; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986.)

**81-11-3. Form of pleadings.** (a) Except as otherwise provided by K.A.R. 81-2-1(d), each written request, motion, notice, and other pleading filed in any proceeding shall contain the caption “BEFORE THE SECURITIES COMMISSIONER OF THE STATE OF KANSAS,” the title of the proceeding, the docket number and the name of the pleading, and shall be in substantial compliance with K.S.A. 1984 Supp. 60-2702a, Rule No. 111.

(b) Any oral statement or request not given on the record during a proceeding and any letter, memo, or note not in substantial compliance with subsection (a) above shall not constitute a filing in the proceeding. (Authorized by K.S.A. 1984 Supp. 17-1270 and K.S.A. 17-1282; implementing K.S.A. 17-1254, as amended by L. 1985, Ch. 88, Sec. 1, K.S.A. 17-1254a, K.S.A. 17-1260, as amended by L. 1985, Ch. 88, Sec. 2, K.S.A. 1984 Supp. 17-1261, K.S.A. 1984 Supp. 17-1262, as amended by L. 1985, Ch. 89, Sec. 1, K.S.A. 17-1266a, as amended by L. 1985, Ch. 88, Sec. 4, K.S.A. 17-1277, and K.S.A. 17-1281; effective May 1, 1984; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986.)

**81-11-4. Summary adjudicative proceedings.** The commissioner may grant an application, registration, certification, license, exemption or effectiveness by summary adjudicative proceeding. (Authorized by K.S.A. 1984 Supp. 17-1270 and K.S.A. 17-1282; implementing K.S.A. 17-1254, as amended by L. 1985, Ch. 88, Sec. 1, K.S.A. 17-1254a, K.S.A. 17-1256, K.S.A. 17-1257, K.S.A. 17-1258, K.S.A. 1984 Supp. 17-1261, K.S.A. 1984 Supp. 17-1262, as amended by L. 1985, Ch. 89, Sec. 1, K.S.A. 17-1277, K.S.A. 17-1281, as amended by L. 1984 Ch. 313, Sec. 13, and L. 1984, Ch. 313, Sec. 37; effective May 1, 1984; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986.)

**81-11-5. Request for hearing.** (a) When the commissioner has entered any emergency or summary order or given notice of intent to issue any order, an aggrieved party may file a written request for a hearing. The request shall be filed in the office of the commissioner within 30 days of service of the order or notice of intent.

(b) The request for hearing shall contain the following:

(1) the title of the matter as written on the commissioner's order or notice;

(2) the docket number of the matter;

(3) a request for a hearing and if allegations of the commissioner's staff are disputed and the aggrieved party desires a formal adjudicatory proceeding, a statement to that effect;

(4) a detailed statement of what allegations in the staff's pleadings are disputed by the aggrieved party. All allegations not disputed in the request shall be found to be admitted by the aggrieved party;

(5) the name, address, and phone number of any local and any foreign counsel; and

(6) a sworn verification by the requesting party that the contents of the request are true. If the aggrieved party is an individual, the verification shall be signed by the individual. If the aggrieved party is a corporation, the verification shall be signed by the president or the chairman of the board of directors. If the aggrieved party is a partnership, the verification shall be signed by a general partner. If the aggrieved party is a governmental unit, the verification shall be signed by the highest official in the unit or a deputy.

(c) Failure of an aggrieved party to file a request for hearing in substantial compliance with this section shall constitute grounds for denial of the request.

(d) No hearing shall be granted to an aggrieved party unless a timely request for hearing has been filed, but the commissioner may grant a hearing upon the commissioner's own motion or upon the request of the commissioner's staff. (Authorized by K.S.A. 1984 Supp. 17-1270 and K.S.A. 17-1282; implementing K.S.A. 17-1254, as amended by L. 1985, Ch. 88, Sec. 1, K.S.A. 17-1254a, K.S.A. 17-1260, as amended by L. 1985, Ch. 88, Sec. 2, K.S.A. 1984 Supp. 17-1261, K.S.A. 1984 Supp. 17-1262, as amended by L. 1985, Ch. 89, Sec. 1, K.S.A. 17-1266a, as amended by L. 1985, Ch. 88, Sec. 4, K.S.A. 17-1277, and K.S.A. 17-1281; effective May 1, 1984; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986.)

**81-11-6. Conference adjudicative proceedings.** Unless an aggrieved party has requested a formal adjudicatory proceeding in accordance with K.A.R. 81-11-5(b)(3) and has disputed staff allegations in accordance with K.A.R. 81-11-5(b)(4), or unless another type of proceeding is ordered or otherwise required, any proceeding granted shall be a conference adjudicative proceeding. (Authorized by K.S.A. 1984 Supp. 17-1270 and K.S.A. 17-1282; implementing K.S.A. 17-1254, as amended by L. 1985, Ch. 88, Sec. 1, K.S.A. 17-1254a, K.S.A. 17-1260, as amended by L. 1985, Ch. 88, Sec. 2, K.S.A. 1984 Supp. 17-1261, K.S.A. 1984 Supp. 17-1262, as amended by L. 1985, Ch. 89, Sec. 1, K.S.A. 17-1266a, as amended by L. 1985, Ch. 88, Sec. 4, K.S.A. 17-1277, K.S.A. 17-1281, as amended by L. 1984, Ch. 313, Sec. 13, and L. 1984, Ch. 313, Sec. 33; effective May 1, 1984; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986.)

**81-11-7. Appearances.** (a) The filing of a request for hearing shall constitute a general appearance before the commissioner by the requesting party and shall act as an acknowledgment that service of the order or notice was complete upon the requesting party. No special appearance shall be recognized.

(b) If an aggrieved party appears in any proceeding with an attorney, service upon the aggrieved party is complete upon service of the attorney.

(c) Any attorney who will appear with an aggrieved party and who was not named in the request for hearing, shall file a written appearance stating the attorney's name, address and telephone number, and specifying whom the attorney will represent in the proceeding.

(d) The person who signed the verification on the request for hearing shall appear personally at the hearing. Failure to so appear shall constitute grounds for default against the aggrieved party who filed the request for hearing. Appearance by attorney only or by another controlling person shall be insufficient unless permitted by the commissioner for good cause shown. Any person so permitted to appear shall verify an amended request for hearing. (Authorized by K.S.A. 1984 Supp. 17-1270; and K.S.A. 17-1282; implementing K.S.A. 17-1254, as amended by L. 1985, Ch. 88, Sec. 1, K.S.A. 17-1254a, K.S.A. 17-1260, as amended by L. 1985, Ch. 88, Sec. 2, K.S.A. 1984 Supp. 17-1261, K.S.A. 1984 Supp. 17-1262, as amended by L. 1985, Ch. 89, Sec. 1, K.S.A. 17-1266a, as amended by L. 1985, Ch. 88, Sec. 4, K.S.A. 17-1277, and K.S.A. 17-1281; effective May 1, 1984; amended, T-86-38, Dec 11, 1985; amended May 1, 1986.)

**81-11-8. Formal adjudicative proceedings.** (a) Formal adjudicative proceedings shall be conducted on a trial format unless the presiding officer finds that deviation from a trial format is necessary to aid in ascertaining the facts or for the convenience of the presiding officer, a witness or a party.

(b) No witness shall testify by telephone or other electronic means unless by agreement of the parties. (Authorized by K.S.A. 1984 Supp. 17-1270 and K.S.A. 17-1282; implementing K.S.A. 17-1254, as amended by L. 1985, Ch. 88, Sec. 1, K.S.A. 17-1254a, K.S.A. 17-1260, as amended by L. 1985, Ch. 88, Sec. 2, K.S.A. 1984 Supp. 17-1261, K.S.A. 1984 Supp. 17-1262, as amended by L. 1985, Ch. 89, Sec. 1, K.S.A. 17-1266a, as amended by L. 1985, Ch. 88, Sec. 4, K.S.A. 17-

1277, and K.S.A. 17-1281; effective May 1, 1984; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986.)

**81-11-9. Subpoenas.** (a) Subpoenas may be served upon any party or upon any controlling person of any party by serving the attorney for the party.

(b) If any party or any controlling person of any party fails to testify or produce items when so subpoenaed and the presiding officer finds that the evidence would be relevant to the proceeding, the presiding officer may make such orders as are provided for by paragraphs (A), (B) and (C) of K.S.A. 60-237(b)(2). (Authorized by K.S.A. 1984 Supp. 17-1270 and K.S.A. 17-1282; implementing K.S.A. 17-1254, as amended by L. 1985, Ch. 88, Sec. 1, K.S.A. 17-1254a, K.S.A. 17-1260, as amended by L. 1985, Ch. 88, Sec. 2, K.S.A. 1984 Supp. 17-1261, K.S.A. 1984 Supp. 17-1262, as amended by L. 1985, Ch. 89, Sec. 1, K.S.A. 17-1266a, as amended by L. 1985, Ch. 88, Sec. 4, K.S.A. 17-1277, and K.S.A. 17-1281; effective May 1, 1984; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986.)

**81-11-10. Evidence.** The presiding officer may relax the rules of evidence if it will aid in ascertaining the facts. The presiding officer shall admit hearsay evidence not otherwise admissible:

(a) unless a party objects to the proffered evidence and states that;

(1) the party knows that a fact contained therein and offered to prove the truth of the matter is false; or

(2) the party does not know whether a fact contained therein and offered to prove the truth of the matter is true and the presiding officer finds that after being given a reasonable time the party has been unable to ascertain the truth of the matter and has made a diligent effort to do so; or

(b) if the presiding officer finds that the evidence will aid in ascertaining the facts; or

(c) if the evidence proffered consists of answers to questionnaires directed to persons allegedly solicited to purchase or sell securities who are so numerous that it is impractical to call them as witnesses, all answers to questionnaires which were returned to the questioning party are proffered, and the evidence is offered to show a pattern in the alleged solicitations or in the class of persons allegedly solicited. The presiding officer may allow any other party a reasonable time to direct

cross-examination questionnaires to and receive answers from such or similar persons allegedly solicited. (Authorized by K.S.A. 1984 Supp. 17-1270 and K.S.A. 17-1282; implementing K.S.A. 17-1254, as amended by L. 1985, Ch. 88, Sec. 1, K.S.A. 17-1254a, K.S.A. 17-1260, as amended by L. 1985, Ch. 88, Sec. 2, K.S.A. 1984 Supp. 17-1261, K.S.A. 1984 Supp. 17-1262, as amended by L. 1985, Ch. 89, Sec. 1, K.S.A. 17-1266a, as amended by L. 1985, Ch. 88, Sec. 4, K.S.A. 17-1277, and K.S.A. 17-1281; effective May 1, 1984; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986.)

**81-11-11. Hearing officers.** (a) In any proceeding initiated under a provision of the Kansas securities act which requires a final determination by the commissioner, a hearing officer may be appointed by the commissioner to conduct the proceeding.

(b) Upon the written request of a party, any interim ruling of the hearing officer may be modified by the commissioner, but no hearing on the request is required to be provided. (Authorized by K.S.A. 1992 Supp. 17-1270; implementing K.S.A. 1992 Supp. 17-1254, K.S.A. 17-1260 and 17-1266a; effective May 1, 1984; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986; amended June 28, 1993.)

**81-11-12. Immunity.** Any person claiming privilege against self-incrimination in matters described by K.S.A. 1984 Supp. 17-1265 shall do so personally and not by attorney or other person. No person after claiming the privilege shall be considered compelled unless the claimant is first granted immunity by the commissioner or the commissioner's designee. A hearing officer shall not have the power to grant immunity. (Authorized by K.S.A. 1984 Supp. 17-1270 and K.S.A. 17-1282; implementing K.S.A. 1984 Supp. 17-1265 and K.S.A. 17-1281; effective May 1, 1984; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986.)

#### **Article 12.—NON-PROFIT CORPORATIONS**

**81-12-1.** (Authorized by K.S.A. 17-1261(h); effective, E-70-15, Feb. 4, 1970; effective Jan. 1, 1971; revoked May 1, 1983.)

#### **Article 13.—INSTRUCTION PROGRAMS FOR AGENT LICENSING**

**81-13-1.** (Authorized by K.S.A. 17-1270(f); effective Jan. 1, 1972; revoked May 31, 1996.)

#### **Article 14.—INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES**

**81-14-1. Registration procedures for investment advisers and investment adviser representatives.** (a) General provisions.

(1) Each applicant shall be at least 18 years of age. If the applicant is not an individual, then the directors, officers, managing partners, or managing members of the applicant shall be at least 18 years of age.

(2) Each applicant shall be registered or qualified to engage in business as an investment adviser or investment adviser representative in the state of the applicant's principal place of business.

(3) Each registered investment adviser shall maintain registration under the act for at least one investment adviser representative.

(b) Application requirements for investment advisers.

(1) Initial application.

(A) IARD filing requirements. Each applicant for initial registration as an investment adviser shall complete form ADV in accordance with the form instructions and shall file the form, including parts 1 and 2 and all applicable schedules, with the IARD. In addition, the applicant shall submit to the IARD the fee required by K.A.R. 81-14-2 and any reasonable fee charged by FINRA for filing through the IARD system.

(B) Direct filing requirements. Each applicant for initial registration as an investment adviser shall file the following documents with the administrator, unless the documents are filed electronically with the IARD:

(i) The proposed client contract written in accordance with K.A.R. 81-14-5(d)(13);

(ii) a privacy policy written in accordance with K.A.R. 81-14-5(d)(12)(B);

(iii) supervisory procedures written in accordance with K.A.R. 81-14-4(b)(19);

(iv) financial statements that demonstrate compliance with the requirements of K.A.R. 81-14-9(d);

(v) a brochure written in accordance with K.A.R. 81-14-10(b), unless the applicant intends to use part 2 of form ADV as its brochure; and

(vi) any other document related to the applicant's business, if requested by the administrator.

(2) Annual renewal. The application for annual renewal registration as an investment adviser shall be filed with the IARD. The application for annual

renewal registration shall include the fee required by K.A.R. 81-14-2 and any reasonable fee charged by FINRA for filing through the IARD system.

(3) Updates and amendments.

(A) Each investment adviser shall file with IARD, in accordance with the instructions in form ADV, any amendments to the investment adviser's form ADV. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

(B) Within 90 days after the end of an investment adviser's fiscal year, the investment adviser shall file with the IARD an annual updating amendment to form ADV.

(c) Application requirements for investment adviser representatives.

(1) Initial application. Each applicant for initial registration as an investment adviser representative under the act shall complete form U-4 in accordance with the form instructions and shall file the form U-4 with the CRD, except as otherwise provided by order of the administrator. The application for initial registration shall include the following items:

(A) Proof of compliance by the investment adviser representative with the examination requirements of subsection (e);

(B) the fee required by K.A.R. 81-14-2; and

(C) any reasonable fee charged by FINRA for filing through the CRD system.

(2) Annual renewal. The application for annual renewal registration as an investment adviser representative shall be filed with the CRD. The application for annual renewal registration shall include the fee required by K.A.R. 81-14-2 and any reasonable fee charged by FINRA for filing through the CRD system.

(3) Updates and amendments. Each investment adviser representative shall be under a continuing obligation to update the information required by form U-4 as changes occur. Each investment adviser representative and any associated investment adviser shall file promptly with the CRD any amendments to the representative's form U-4. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

(d) Effective date of registration.

(1) Initial registration. Each registration shall become effective on the 45th day after the completed application is filed, unless the application is

approved earlier by the administrator. However, if the administrator or the administrator's staff has notified the applicant of deficiencies in the application, the application shall not be considered complete until an amendment is filed to resolve the deficiencies.

(2) Transfer of employment or association. If an investment adviser representative terminates employment by or association with an investment adviser registered under the act or a federal covered investment adviser who has filed a notice under K.S.A. 17-12a405, and amendments thereto, and begins employment by or association with another investment adviser registered under the act or a federal covered investment adviser who has filed a notice under K.S.A. 17-12a405, and amendments thereto, and the successor investment adviser or federal covered investment adviser files an application for registration for the investment adviser representative within 30 days after the termination, then the application shall become effective in accordance with K.S.A. 17-12a408(b), and amendments thereto.

(e) Examination requirements.

(1) General requirements. Each individual applying to be registered as an investment adviser or investment adviser representative under the act shall provide the administrator with proof of obtaining a passing score on either of the following:

(A) The series 65 uniform investment adviser law examination; or

(B) the series 7 general securities representative examination and the series 66 uniform combined state law examination.

(2) Requirements for individuals registered on January 1, 2000. An individual who was registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on January 1, 2000, shall not be required to meet the examination requirements for continued registration, except under either of the following conditions:

(A) If the administrator requires examinations for any individual found to have violated any state or federal securities law; or

(B) if the administrator requires examinations for any individual whose registration has lapsed, as specified in paragraph (e)(3).

(3) Lapsed registration. If an individual has met the examination requirements of paragraph (e)(1) but has not been registered as an agent or investment adviser representative in any jurisdiction for the previous two years, the individual shall be

required to comply with the examination requirements of paragraph (e)(1) again before applying for registration.

(4) Waivers. The examination requirement may be waived or modified by the administrator pursuant to K.S.A. 17-12a412(e), and amendments thereto, and the examination requirement shall not apply to any individual who currently holds one of the following professional designations:

(A) Certified financial planner (CFP), awarded by the certified financial planner board of standards, inc.;

(B) chartered financial consultant (ChFC), awarded by the American college, Bryn Mawr, Pennsylvania;

(C) personal financial specialist (PFS), awarded by the American institute of certified public accountants;

(D) chartered financial analyst (CFA), awarded by the institute of chartered financial analysts;

(E) chartered investment counselor (CIC), awarded by the investment counsel association of America, inc.; or

(F) any other professional designation that the administrator may by regulation or order recognize.

(f) Expiration, renewal, withdrawal, and termination.

(1) Each registration shall expire on December 31, and each application for renewal shall be filed not later than the deadline established by the IARD or CRD.

(2) If an investment adviser representative's association with an investment adviser is discontinued or terminated, the investment adviser shall immediately file a form U-5 with the CRD. If the investment adviser representative commences association with another investment adviser, that investment adviser shall file an initial application for registration for the investment adviser representative.

(3) If an investment adviser desires to withdraw from registration or if registration is terminated by the administrator, the investment adviser shall immediately file a form ADV-W with the IARD. The form ADV-W shall be completed in accordance with the instructions to the form.

(4) Termination of an investment adviser's registration for any reason shall automatically constitute cancellation of the registration of each investment adviser representative that is affiliated with the investment adviser.

(5) Each application that has been on file for six months without any action taken by the applicant shall be considered withdrawn. (Authorized

by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a406, 17-12a407, 17-12a408, and 17-12a412(e); effective Oct. 26, 2001; amended Aug. 18, 2006; amended Aug. 15, 2008; amended Jan. 4, 2016.)

**81-14-2. Investment advisers, investment adviser representatives, and federal covered investment advisers; registration fees.** (a) The fee for initial registration or renewal of the registration of an investment adviser shall be \$100.

(b) The fee for initial registration or renewal of the registration of an investment adviser representative shall be \$60.

(c) The fee for an initial notice filing or a renewal notice filing for a federal covered investment adviser shall be \$100.

(d) The IARD and the CRD shall be authorized to receive and store filings and to collect the fees specified in this regulation from investment advisers, investment adviser representatives, and federal covered investment advisers on behalf of the administrator. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a410; effective Oct. 26, 2001; amended Aug. 18, 2006; amended Dec. 19, 2008; amended Oct. 9, 2015.)

**81-14-3.** (Authorized by K.S.A. 2000 Supp. 17-1270; implementing K.S.A. 2000 Supp. 17-1253; effective Oct. 26, 2001; revoked Aug. 18, 2006.)

**81-14-4. Recordkeeping requirements for investment advisers.** (a) Definitions. For purposes of this regulation, the following definitions shall apply:

(1) "Control" means the power to exercise a controlling influence over the management or policies of a company, unless the power is solely the result of an official position with the company. Each person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control the company.

(2) "Discretionary power" shall not include discretion regarding the price or the time at which a transaction is to be effected if the client has directed or approved the purchase or sale of a definite amount of a particular security before the order is given by the investment adviser.

(3) "Investment supervisory services" means the giving of continual advice about the investment of funds on the basis of each client's individual needs.

(4) “Solicitor” means any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.

(b) Except as otherwise provided in subsection (j) of this regulation, each investment adviser registered or required to be registered under the act shall make and keep true, accurate, and current all of the following books, ledgers, and records:

(1) Each investment adviser shall maintain a journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(2) Each investment adviser shall maintain general and auxiliary ledgers or other comparable records reflecting asset, liability, equity, capital, income, and expense accounts.

(3)(A) Each investment adviser shall maintain memoranda concerning orders, instructions, modifications, or cancellations, including memoranda of the following:

(i) Each order given by the investment adviser for the purchase or sale of any security;

(ii) any instruction received by the investment adviser from the client concerning the purchase, sale, receipt, or delivery of a particular security; and

(iii) any modification or cancellation of an order or instruction.

(B) Each memorandum shall show the following information:

(i) The terms and conditions of the order, instruction, modification, or cancellation;

(ii) the name of the person connected with the investment adviser who recommended the transaction to the client and the name of the person who placed the order;

(iii) the account for which the order, instruction, modification, or cancellation was entered;

(iv) the date of entry; and

(v) the bank, broker, or dealer by or through whom the transaction was executed, if appropriate.

(C) Each order entered pursuant to the exercise of discretionary power shall be so designated.

(4) Each investment adviser shall maintain all checkbooks, bank statements, canceled checks, and cash reconciliations.

(5) Each investment adviser shall maintain all bills or statements, paid or unpaid, relating to the adviser’s business as an investment adviser.

(6) Each investment adviser shall maintain all trial balances, financial statements, and internal audit working papers relating to the adviser’s business as an investment adviser. For purposes of

this paragraph, “financial statements” shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement, and a net worth computation if a net worth computation is required by K.A.R. 81-14-9.

(7)(A) Each investment adviser shall maintain originals of all written communications received and copies of all written communications sent by the investment adviser relating to the following:

(i) Any recommendation made or proposed to be made and any advice given or proposed to be given;

(ii) any receipt, disbursement, or delivery of funds or securities; and

(iii) the placing or execution of any order to purchase or sell any security.

(B) The investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser.

(C) If the investment adviser sends any notice, circular, or other advertisement offering any report, analysis, publication, or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom the notice, circular, or advertisement was sent. However, if the notice, circular, or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular, or advertisement a memorandum describing the list and its source.

(8) Each investment adviser shall maintain a list or other record of all accounts that identifies the accounts in which the adviser is vested with any discretionary power with respect to the funds, securities, or transactions of any client.

(9) Each investment adviser shall maintain a copy of all powers of attorney and other evidence of the granting of any discretionary authority by any client to the investment adviser.

(10) Each investment adviser shall maintain a copy in writing of each agreement entered into by the adviser with any client, and all other written agreements otherwise relating to the adviser’s business as an investment adviser.

(11) Each investment adviser shall maintain a file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication that the adviser circulates or distributes, directly or indirectly, in-

cluding by electronic media, to two or more persons who are not connected with the investment adviser. If the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, the file shall contain a memorandum of the investment adviser indicating the reasons for the recommendation.

(12)(A) For purposes of paragraph (b)(12), the term “advisory representative” shall mean any of the following:

(i) Any partner, officer, or director of the investment adviser;

(ii) any employee who participates in any way in the determination of which recommendations shall be made;

(iii) any employee who, in connection with the employee’s duties, obtains any information concerning which securities are being recommended before the effective dissemination of the recommendations; or

(iv) any person in a control relationship to the investment adviser, any affiliated person of a controlling person, or any affiliated person of an affiliated person who obtains information concerning securities recommendations being made by the investment adviser before the effective dissemination of the recommendations.

(B) Each investment adviser shall maintain a record of every transaction in a security, except as provided in paragraph (b)(12)(E), in which the adviser or any advisory representative of the adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership. Each record shall state the following:

(i) The title and amount of the security involved;

(ii) the date and nature of the transaction, including whether it is a purchase, sale, or other acquisition or disposition;

(iii) the price at which the transaction was effected; and

(iv) the name of the broker-dealer or bank with or through whom the transaction was effected.

(C) The record may contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security.

(D) A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(E) A record shall not be required for either of the following:

(i) Any transaction effected in an account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; or

(ii) any transaction in a security that is a direct obligation of the United States.

(F) An investment adviser shall not be deemed to have violated the provisions of paragraph (b)(12) because of the failure to record securities transactions of any advisory representative if the adviser establishes that it instituted adequate procedures and used reasonable diligence to promptly obtain reports of all transactions required to be recorded.

(13)(A) For purposes of this paragraph (b)(13), the term “advisory representative,” when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean either of the following:

(i) Any partner, officer, director, or employee of the investment adviser who participates in any way in the determination of which recommendations shall be made, or whose functions or duties relate to the determination of which securities are being recommended before the effective dissemination of the recommendations; or

(ii) any person in a control relationship to the investment adviser, any affiliated person of a controlling person, or any affiliated person of an affiliated person who obtains information concerning securities recommendations being made by the investment adviser before the effective dissemination of the recommendations or of the information concerning the recommendations.

For purposes of this paragraph (b)(13), an investment adviser shall be deemed to be “primarily engaged in a business or businesses other than advising investment advisory clients” if, for each of its most recent three fiscal years or for the period of time since organization, whichever is less, the investment adviser derived, on an unconsolidated basis, more than 50 percent of total sales and revenues, and more than 50 percent of income or loss before income taxes and extraordinary items, from other business or businesses that did not primarily involve the giving of investment advice.

(B) Notwithstanding the provisions of paragraph (b)(12), if the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, the adviser

shall maintain a record of every transaction in a security, except as provided in paragraph (b)(13)(E), in which the adviser or any advisory representative of the adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership. The record shall state the following:

- (i) The title and amount of the security involved;
- (ii) the date and nature of the transaction, including whether it is a purchase, sale, or other acquisition or disposition;
- (iii) the price at which the transaction was effected; and
- (iv) the name of the broker-dealer or bank with or through whom the transaction was effected.

(C) The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security.

(D) Each transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(E) A record shall not be required for either of the following:

- (i) Any transaction effected in an account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; or
- (ii) any transaction in a security that is a direct obligation of the United States.

(F) An investment adviser shall not be deemed to have violated the provisions of paragraph (b)(13) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that the adviser instituted adequate procedures and used reasonable diligence to promptly obtain reports of all transactions required to be recorded.

(14) Each investment adviser shall maintain the following records:

(A) A copy of each written statement and each amendment or revision given or sent to any client or prospective client of the adviser in accordance with the provisions of K.A.R. 81-14-10(b);

(B) any summary of material changes that is required by part 2 of form ADV but is not contained in the written statement; and

(C) a record of the date that each written statement, each amendment or revision to the written statement, and each summary of material changes was given or offered to any client or prospective client who subsequently became a client.

(15)(A) Each investment adviser shall maintain the following documents for each client that was obtained for the adviser by means of a solicitor to whom a cash fee was paid by the investment adviser:

(i) Evidence of any written agreement in which the investment adviser agrees to pay a fee to the solicitor;

(ii) a signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and the written disclosure statement of the solicitor; and

(iii) a copy of the solicitor's written disclosure statement.

(B) The written agreement, acknowledgment, and solicitor disclosure statement shall satisfy the requirements of paragraph (b)(15)(A) if the documents are in compliance with K.A.R. 81-14-5(f).

(16) Each investment adviser shall maintain all accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication that the investment adviser circulates or distributes, directly or indirectly, including electronic media, to two or more persons other than persons connected with the investment adviser. With respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and the retention of all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts, shall satisfy the requirements of this paragraph.

(17) Each investment adviser shall maintain a file containing a copy of all communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any customer or client complaint.

(18) Each investment adviser shall maintain written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to the client.

(19) Each investment adviser shall maintain written procedures to supervise the activities of employees and investment adviser representatives

that are reasonably designed to achieve compliance with the act and these regulations.

(20) Each investment adviser shall maintain a file containing a copy of each document, other than any notice of general dissemination, that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives. The file shall contain all applications, amendments, renewal filings, and correspondence.

(21) Each investment adviser shall retain copies, with the original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial form U-4 and each amendment to the disclosure reporting pages filed on behalf of an investment advisor representative. The copies shall be made available for inspection upon request by the administrator or the administrator's staff.

(22) If the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or has forwarded third-party checks within 24 hours, the adviser shall keep the following records relating to the inadvertent custody:

(A) The issuer, type of security and series, and date of issue;

(B) for debt instruments, the denomination, interest rate, and maturity date;

(C) the certificate number, including alphabetical prefix or suffix;

(D) the name in which the securities are registered, the date given to the adviser, the date sent to the client or sender, the form of delivery to the client or sender, and a copy of proof of delivery to the client or sender; and

(E) the mail confirmation number, if applicable, or confirmation by the client or sender of the return of the funds or securities.

(23) If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or series of transactions that meets the requirements of the exception from custody under K.A.R. 81-14-9(b)(2)(B), the adviser shall keep the following records:

(A) A record showing the issuer's or current transfer agent's name, address, phone number, and other applicable contact information pertaining to the party responsible for recording client interests in the securities; and

(B) a copy of any legend, shareholder agreement, or other agreement showing that those

securities are transferable only with the prior consent of the issuer or holders of the outstanding securities of the issuer.

(c)(1) If an investment adviser has custody, as that term is defined in K.A.R. 81-14-9, the records required to be made and kept by the investment adviser shall include the following:

(A) A copy of any and all documents executed by the client, including a limited power of attorney, under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian;

(B) a journal or other record showing all purchases, sales, receipts, and deliveries of securities, including certificate numbers, for all accounts and all other debits and credits to the accounts;

(C) a separate ledger account for each client showing all purchases, sales, receipts, and deliveries of securities, the date and price of each purchase and sale, and all debits and credits;

(D) copies of confirmations of all transactions effected by or for the account of any client;

(E) a record for each security in which any client has a position that shows the name of each client having any interest in each security, the amount or interest of each client, and the location of each security;

(F) a copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain a copy of each statement along with the date the statement was sent to the client;

(G) if applicable to the adviser's situation, a copy of the auditor's report and financial statements and letter verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination;

(H) a record of any finding by the independent certified public accountant of any material discrepancies found during the examination; and

(I) if applicable, evidence of the client's designation of an independent representative.

(2) If an investment adviser has custody because it advises a pooled investment vehicle, the adviser shall also keep the following records:

(A) True, accurate, and current account statements;

(B) if the adviser qualifies for the exception in K.A.R. 81-14-9(b)(2)(C), the date of each audit, a

copy of the financial statements, and evidence of the mailing of the audited financial statements to all limited partners, members, or other beneficial owners within 120 days of the end of the adviser's fiscal year; and

(C) if the adviser complies with K.A.R. 81-14-9(b)(1)(G), a copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party, and copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

(3) If an investment adviser has custody because it is acting as the trustee for a beneficial trust but qualifies for the exception in K.A.R. 81-14-9(b)(2)(E), the adviser shall also keep the following records until the account is closed or the adviser is no longer acting as the trustee:

(A) A copy of the written statement given to each beneficial owner setting forth a description of the requirements of K.A.R. 81-14-9(b)(1) and the reason why the adviser will not be complying with those requirements; and

(B) a written acknowledgement signed and dated by each beneficial owner, evidencing receipt of the statement required under paragraph (c)(3)(A).

(d) Each investment adviser subject to subsection (b) who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, perform the following:

(1) Make and keep true, accurate, and current records showing separately for each client the securities purchased and sold, and the date, amount, and price of each purchase and sale; and

(2) make and keep true, accurate, and current information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client, for each security in which any client has a current position.

(e) Any books or records required by this regulation may be maintained by the investment adviser so that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or a similar designation.

(f) Each investment adviser subject to subsection (b) of this regulation shall preserve the following records in the manner prescribed:

(1) All books and records required to be made under the provisions of subsection (b) through

paragraph (d)(1), except for books and records required to be made under the provisions of paragraphs (b)(11) and (b)(16) through (b)(20), shall be maintained and preserved in an easily accessible place for at least five years from the end of the fiscal year during which the last entry was made on the record. The records shall be maintained during the first two years in the principal office of the investment adviser.

(2) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and any predecessor shall be maintained in the principal office of the investment adviser until termination of the enterprise, and then preserved in an easily accessible place until at least three years after termination of the enterprise.

(3) The books and records required to be made under the provisions of paragraphs (b)(11) and (b)(16) shall be maintained and preserved in an easily accessible place for at least five years from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including by electronic media. The records shall be maintained during the first two years in the principal office of the investment adviser.

(4) The books and records required to be made under the provisions of paragraphs (b)(17) through (b)(20) shall be maintained and preserved in an easily accessible place for at least five years from the end of the fiscal year during which the last entry was made on the record, with the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in this state, whichever is less.

(5) Notwithstanding any other record preservation requirements of this regulation, the following records or copies shall be maintained, for the periods described in this subsection, at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(A) The records required to be preserved under paragraphs (b)(3), (b)(7) through (b)(10), (b)(14), (b)(15), (b)(17) through (b)(19), and subsections (c) and (d); and

(B) the records or copies required under paragraphs (b)(11) and (b)(16) that identify the name of the investment adviser representative provid-

ing investment advice from that business location, or that identify the business location's physical address, mailing address, electronic mailing address, or telephone number.

(g) Before ceasing to conduct or discontinuing business as an investment adviser, each investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this regulation for the remainder of each period specified in this regulation, and shall notify the administrator in writing of the exact address where the books and records will be maintained.

(h) The records required by this regulation may be maintained and preserved by electronic imaging or by photograph on film. Any investment adviser may also maintain and preserve records on computer tape, disk, or other computer storage medium if, in the ordinary course of the adviser's business, the records are created by the adviser on electronic media or received by the adviser solely on electronic media or by electronic data transmission. In whatever form, the records shall be maintained and preserved for the time required by this regulation. If records are produced or reproduced by photographic film, electronic imaging, or computer storage medium, the investment adviser shall meet the following criteria:

(1) Arrange the records and index the films, electronic images, or computer storage media to permit the immediate location of any particular record;

(2) be ready at all times to promptly provide a facsimile enlargement of film, a computer print-out, or a copy of the electronic images or computer storage medium that the administrator by its examiners or other representatives may request;

(3) store, separately from the original, one other copy of each film, electronic image, or computer storage medium for the time required;

(4) with respect to electronic images and records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records in order to reasonably safeguard these records from loss, alteration, or destruction; and

(5) with respect to records stored on photographic film, at all times have facilities available for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

(i) Any book or other record made, kept, maintained, and preserved in compliance with SEC

rule 17a-3, 17 C.F.R. 240.17a-3, and SEC rule 17a-4, 17 C.F.R. 240.17a-4, both of which are adopted by reference in K.A.R. 81-2-1, that is substantially the same as the book or other record required to be made, kept, maintained, and preserved under this regulation, shall be deemed to comply with this regulation.

(j) Each investment adviser that is registered or required to be registered in this state and that has its principal place of business in a state other than this state shall be exempt from the requirements of this regulation, if the investment adviser is licensed in that state and is in compliance with that state's recordkeeping requirements. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a411; effective Oct. 26, 2001; amended Aug. 18, 2006.)

**81-14-5. Dishonest and unethical practices of investment advisers, investment adviser representatives, and federal covered investment advisers.** (a) Unethical conduct. "Dishonest or unethical practices," as used in K.S.A. 17-12a412(d)(13) and amendments thereto, shall include the conduct prohibited in this regulation.

(b) Fraudulent conduct. "An act, practice, or course of business that operates or would operate as a fraud or deceit," as used in K.S.A. 17-12a502(a)(2) and amendments thereto, shall include the conduct prohibited in paragraphs (d) (6), (9), (10), and (11) and subsections (e), (f), (g), and (h).

(c) General standard of conduct. Each person registered as an investment adviser or investment adviser representative under the act shall not fail to observe high standards of commercial honor and just and equitable principles of trade in the conduct of the person's business. An investment adviser or investment adviser representative is a fiduciary and shall act primarily for the benefit of its clients.

(d) Prohibited conduct: sales and business practices. Each person registered as an investment adviser or investment adviser representative under the act shall refrain from the practices specified in this subsection in the conduct of the person's business. For purposes of this subsection, a security shall include any security as defined by K.S.A. 17-12a102, and amendments thereto, including a federal covered security as defined by K.S.A. 17-12a102, and amendments thereto, or section 2 of the securities act of 1933, 15 U.S.C. § 77b, as adopted by reference in K.A.R. 81-2-1.

(1) Unsuitable recommendations. An investment adviser or investment adviser representative shall not recommend to any client to whom investment supervisory, management, or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative.

(2) Improper use of discretionary authority. An investment adviser or investment adviser representative shall not exercise any discretionary power in placing an order for the purchase or sale of securities for any client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power is limited to the price at which and the time when an order shall be executed for a definite amount of a specified security.

(3) Excessive trading. An investment adviser or investment adviser representative shall not induce trading in a client's account that is excessive in size or frequency in light of the financial resources, investment objectives, and character of the account.

(4) Unauthorized trading. An investment adviser or investment adviser representative shall not perform either of the following:

(A) Place an order to purchase or sell a security for the account of a client without authority to do so; or

(B) place an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(5) Borrowing from or loaning to a client. An investment adviser or investment adviser representative shall not perform either of the following:

(A) Borrow money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds; or

(B) loan money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(6) Misrepresenting qualifications, services, or fees. An investment adviser or investment adviser representative shall not misrepresent to any advisory client or prospective client the qualifications

of the investment adviser, investment adviser representative, or any employee of the investment adviser, or misrepresent the nature of the advisory services being offered or fees to be charged for the service. An investment adviser or investment adviser representative shall not omit to state a material fact that is necessary to make any statements made regarding qualifications, services, or fees, in light of the circumstance under which the statements are made, not misleading.

(7) Failure to disclose source of report. An investment adviser or investment adviser representative shall not provide a report or recommendation to any advisory client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition shall not apply to a situation in which the adviser uses published research reports or statistical analyses to render advice or in which an adviser orders a research report in the normal course of providing service.

(8) Unreasonable fee. An investment adviser or investment adviser representative shall not charge a client an unreasonable advisory fee.

(9) Failure to disclose conflicts of interest. An investment adviser or investment adviser representative shall not fail to disclose to a client, in writing and before any advice is rendered, any material conflict of interest relating to the investment adviser, investment adviser representative, or any of the investment adviser's employees that could reasonably be expected to impair the rendering of unbiased and objective advice, including the following:

(A) Compensation arrangements connected with advisory services to the client that are in addition to compensation from the client for the advisory services; and

(B) charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to the advice will be received by the investment adviser, investment adviser representative, or any of the adviser's employees.

(10) Guaranteeing performance. An investment adviser or investment adviser representative shall not guarantee a client that a specific result will be achieved with advice that is rendered.

(11) Deceptive advertising. An investment adviser or investment adviser representative shall not publish, circulate, or distribute any advertisement that does not comply with SEC rule 206(4)-1, 17 C.F.R. 275.206(4)-1, as adopted by reference

in K.A.R. 81-2-1, despite the fact that the adviser may be exempt from federal registration pursuant to section 203(b) of the investment advisers act of 1940, 15 U.S.C. § 80b-3(b) as adopted by reference in K.A.R. 81-2-1.

(12) Failure to protect confidential information.

(A) An investment adviser or investment adviser representative shall not disclose the identity, affairs, or investments of any client unless required by law to do so or unless the client consents to the disclosure.

(B) An investment adviser shall not fail to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of section 204A of the investment advisers act of 1940, 15 U.S.C. § 80b-4a, as adopted by reference in K.A.R. 81-2-1, despite the fact that the adviser may be exempt from federal registration pursuant to section 203(b) of the investment advisers act of 1940, 15 U.S.C. § 80b-3(b), as adopted by reference in K.A.R. 81-2-1.

(13) Improper advisory contract. An investment adviser shall not engage in the following conduct, even though the adviser may be exempt from federal registration pursuant to section 203(b) of the investment advisers act of 1940, 15 U.S.C. § 80b-3(b), as adopted by reference in K.A.R. 81-2-1:

(A) Enter into, extend, or renew any investment advisory contract unless the contract is in writing, discloses the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, and an indication of whether the contract grants discretionary power to the adviser, and contains a provision that no assignment of the contract shall be made by the investment adviser without the consent of the other party to the contract;

(B) enter into, extend, or renew any advisory contract containing performance-based fees contrary to the provisions of section 205 of the investment advisers act of 1940, 15 U.S.C. § 80b-5, as adopted by reference in K.A.R. 81-2-1, except as permitted by SEC rule 205-3, 17 C.F.R. 275.205-3, as adopted by reference in K.A.R. 81-2-1; and

(C) include in an advisory contract any indication of a condition, stipulation, or provision binding a person to waive compliance with any provision of the act or of the investment advisers act of 1940, or engage in any other practice con-

trary to the provisions of section 215 of the investment advisers act of 1940, 15 U.S.C. § 80b-15, as adopted by reference in K.A.R. 81-2-1.

(14) Indirect misconduct. An investment adviser or investment adviser representative shall not engage in any conduct or any act, indirectly or through or by any other person, that would be unlawful for the person to do directly under the provisions of the act or these regulations.

(e) Prohibited conduct: failure to disclose financial condition and disciplinary history.

(1) Definitions. For purposes of this subsection, the following definitions shall apply:

(A) “Found” means determined or ascertained by adjudication or consent in a final self-regulatory organization proceeding, administrative proceeding, or court action.

(B) “Investment-related” means pertaining to securities, commodities, banking, insurance, or real estate, including acting as or being associated with a broker, dealer, investment company, investment adviser, government securities broker or dealer, municipal securities broker or dealer, bank, savings and loan association, commodities broker or dealer, or fiduciary.

(C) “Involved” means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

(D) “Management person” means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an investment adviser that is a company or to determine the general investment advice given to clients.

(E) “Self-regulatory organization” means any national securities or commodities exchange, registered association, or registered clearing agency.

(2) An investment adviser registered or required to be registered under the act shall not fail to disclose to any client or prospective client all material facts with respect to either of the following:

(A) A failure to meet the positive net worth requirements of K.A.R. 81-14-9(d); or

(B) any financial condition of the investment adviser or legal or disciplinary event that is material to an evaluation of the investment adviser’s integrity or ability to meet contractual commitments to clients.

(3) It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the investment adviser or a management person of the investment adviser are material to an

evaluation of the adviser's integrity for a period of 10 years from the date of the event, unless the legal or disciplinary event was resolved in the investment adviser's or management person's favor or was subsequently reversed, suspended, or vacated:

(A) A criminal or civil action in a court of competent jurisdiction resulting in any of the following:

(i) The individual was convicted of a felony or misdemeanor, or is the named subject of a pending criminal proceeding, for a crime involving an investment-related business or fraud, false statements, omissions, wrongful taking of property, bribery, forgery, counterfeiting, extortion, or crimes of a similar nature;

(ii) the individual was found to have been involved in a violation of an investment-related statute or regulation; or

(iii) the individual was the subject of any order, judgment, or decree permanently or temporarily enjoining the person or otherwise limiting the person from engaging in any investment-related activity;

(B) any administrative proceedings before any federal or state regulatory agency resulting in any of the following:

(i) The individual was found to have caused an investment-related business to lose its authorization to do business; or

(ii) the individual was found to have been involved in a violation of an investment-related statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business, or otherwise significantly limiting the person's investment-related activities; and

(C) any self-regulatory organization proceeding resulting in either of the following:

(i) The individual was found to have caused an investment-related business to lose its authorization to do business; or

(ii) the individual was found to have been involved in a violation of the self-regulatory organization's rules and was the subject of an order by the self-regulatory organization barring or suspending the person from association with other members, expelling the person from membership, fining the person more than \$2,500, or otherwise significantly limiting the person's investment-related activities.

(4) The information required to be disclosed by paragraph (e)(2) shall be disclosed to clients

before further investment advice is given to the clients. The information shall be disclosed to prospective clients at least 48 hours before entering into any written or oral investment advisory contract, or no later than the time of entering into the contract if the client has the right to terminate the contract without penalty within five business days after entering into the contract.

(5) For purposes of calculating the 10-year period during which events shall be presumed to be material under paragraph (e)(3), the date of a reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.

(6) Compliance with this subsection shall not relieve any investment adviser from any other disclosure requirement under any federal or state law.

(f) Prohibited conduct: cash payment for client solicitations. An investment adviser registered or required to be registered under the act shall not pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless the solicitation arrangement meets all of the requirements of paragraphs (f)(2) through (f)(7).

(1) Definitions. For the purposes of this subsection, the following definitions shall apply:

(A) "Client" shall include any prospective client.

(B) "Impersonal advisory services" means investment advisory services provided solely by means of any of the following:

(i) Written materials or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;

(ii) statistical information containing no expression of opinion as to the investment merits of a particular security; or

(iii) any combination of the materials, statements, or information specified in paragraphs (f)(1)(B)(i) and (ii).

(C) "Solicitor" means any person or entity who, for compensation, directly or indirectly solicits any client for, or refers any client to, an investment adviser.

(2) The investment adviser shall be properly registered under the act.

(3) The solicitor shall not be a person who meets any of the following conditions:

(A) Is subject to an order by any regulatory body that censures or places limitations on the person's activities or that suspends or bars the person from association with an investment adviser;

(B) was convicted within the previous 10 years of any felony or misdemeanor involving the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, misappropriation of funds or securities, or conspiracy to commit any such act;

(C) has been found to have engaged in the willful violation of any provision of these regulations, the act, the federal securities act of 1933, the federal securities exchange act of 1934, the federal investment company act of 1940, the federal investment advisers act of 1940, the federal commodity exchange act, the federal rules under any of these federal acts, or the rules of the NASD, FINRA, or the municipal securities rulemaking board; or

(D) is subject to an order, judgment, or decree by which the person has been convicted anytime during the preceding 10-year period of any crime that is punishable by imprisonment for one or more years or a substantially equivalent crime by a foreign court of competent jurisdiction.

(4) The cash fee shall be paid pursuant to a written agreement to which the investment adviser is a party.

(5) The cash fee shall be paid to a solicitor only under any of the following circumstances:

(A) The cash fee is paid to the solicitor with respect to solicitation activities for the provision of impersonal advisory services only;

(B) the cash fee is paid to a solicitor who is a partner, officer, director, or employee of the investment adviser, or a partner, officer, director, or employee of a person who controls, is controlled by, or is under common control with the investment adviser, if the status of the solicitor as a partner, officer, director, or employee of the investment adviser or other person, and any affiliation between the investment adviser and the other person, is disclosed to the client at the time of the solicitation or referral; or

(C) the cash fee is paid to a solicitor other than a solicitor specified in paragraph (f)(5)(A) or (B), if all of the following conditions are met:

(i) The written agreement required by paragraph (f)(4) describes the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received, contains an undertaking by the solicitor to perform the solicitor's duties under the agree-

ment in a manner consistent with the instructions of the investment adviser and the provisions of the act and the implementing regulations, and requires the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, to provide the client with a current copy of the investment adviser's written disclosure statement required under the brochure delivery requirements of K.A.R. 81-14-10(b) and a separate written disclosure document described in paragraph (f)(6).

(ii) The investment adviser receives from the client, before or when entering into any written or oral investment advisory contract with the client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document.

(iii) The investment adviser makes a bona fide effort to ascertain whether the solicitor has complied with the written agreement required by paragraph (f)(4), and the investment adviser has a reasonable basis for believing that the solicitor has complied with the agreement.

(6) The separate written disclosure document required to be furnished by the solicitor to the client shall contain the following information:

(A) The name of the solicitor;

(B) the name of the investment adviser;

(C) the nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

(D) a statement that the solicitor will be compensated for the solicitation services by the investment adviser;

(E) the terms of the compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

(F) the amount in addition to the advisory fee that the client will be charged for the costs of the solicitor's services, and any difference in fees paid by clients if the difference is attributable to the existence of any arrangement in which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

(7) Nothing in this subsection shall be deemed to relieve any person of any fiduciary or other obligation to which a person may be subject under any law.

(g) Prohibited conduct: agency cross transactions.

(1) For the purposes of this subsection, "agency cross transaction for an advisory client" shall mean

a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with the investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. Each person acting in this capacity shall be required to be registered as a broker-dealer in this state unless excluded from the definition of broker-dealer under K.S.A. 17-12a102, and amendments thereto.

(2) An investment adviser shall not effect an agency cross transaction for an advisory client unless all of the following conditions are met:

(A) The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for the client.

(B) Before obtaining this written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for both parties to the transaction, receive commissions from both parties, and have a potentially conflicting division of loyalties and responsibilities.

(C) At or before the completion of each agency cross transaction, the investment adviser sends the client a written confirmation. The written confirmation shall include all of the following information:

- (i) A statement of the nature of the transaction;
- (ii) the date the transaction took place;
- (iii) an offer to furnish, upon request, the time when the transaction took place; and
- (iv) the source and amount of any other remuneration that the investment adviser received or will receive in connection with the transaction.

For a purchase in which the investment adviser was not participating in a distribution, or a sale in which the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has received or will receive any other remuneration and that the investment adviser will furnish the source and amount of remuneration to the client upon the client's written request.

(D) At least annually, the investment adviser sends each client a written disclosure statement identifying the total number of agency cross transactions during the period since the date of the last disclosure statement and the total amount of all commissions or other remuneration that the in-

vestment adviser received or will receive in connection with agency cross transactions for the client during the period.

(E) Each written disclosure and confirmation required by this subsection includes a conspicuous statement that the client may revoke the written consent required under paragraph (g)(2)(A) at any time by providing written notice to the investment adviser.

(F) No agency cross transaction in which the same investment adviser recommended the transaction to both any seller and any purchaser is effected.

(3) Nothing in this subsection shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling fiduciary duties with respect to the best price and execution for the particular transaction for the client, nor shall this subsection relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the act or the regulations under the act.

(h) Prohibited conduct: use of senior-specific certifications and professional designations.

(1) An investment adviser or investment adviser representative shall not use a senior-specific certification or designation that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in any way that misleads any person. This prohibition shall include the following:

(A) The use of a certification or professional designation by a person who has not earned or is otherwise ineligible to use that certification or designation;

(B) the use of a nonexistent or self-conferred certification or professional designation;

(C) the use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(D) the use of a certification or professional designation that was obtained from a designating or certifying organization that meets any of the following conditions:

(i) Is primarily engaged in the business of instruction in sales or marketing;

(ii) does not have reasonable standards or procedures for ensuring the competency of its designees or certificate holders;

(iii) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificate holders for improper or unethical conduct; or

(iv) does not have reasonable continuing education requirements for its designees or certificate holders to maintain the professional designation or certification.

(2) There shall be a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph (h) (1)(D) if the organization has been accredited by any of the following:

(A) The American national standards institute;

(B) the national commission for certifying agencies; or

(C) an organization that is on the United States department of education's list titled "accrediting agencies recognized for title IV purposes," if the designation or credential does not primarily apply to sales or marketing, or both.

(3) In determining whether a combination of words or an acronym or initialism standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, the factors to be considered shall include the following:

(A) The use of one or more words including "senior," "retirement," "elder," or similar words, combined with one or more words including "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or similar words, in the name of the certification or professional designation; and

(B) the manner in which the words are combined.

(4) For purposes of this subsection, the terms "certification" and "professional designation" shall not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, including an agency that regulates broker-dealers, investment advisers, or investment companies, if that job title indicates seniority or standing within the organization or specifies an individual's area of specialization within the organization.

(i) Applicability to federal covered investment advisers. To the extent permitted by federal law, the provisions of this regulation governing investment advisers shall also apply to federal covered investment advisers. (Authorized by K.S.A.

17-12a605(a); implementing K.S.A. 17-12a412(d) (13) and 17-12a502(a)(2) and (b); effective Oct. 26, 2001; amended Aug. 18, 2006; amended Aug. 15, 2008; amended May 22, 2009; amended Jan. 4, 2016.)

**81-14-6. Electronic filing for investment advisers and investment adviser representatives.** (a) Designated entity. The IARD and CRD shall be authorized to receive and store filings and collect related fees from investment advisers and investment adviser representatives, respectively, on behalf of the administrator.

(b) Electronic filing. Unless otherwise required by this regulation, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings, and fees required to be filed with the administrator pursuant to the act and these regulations shall be filed electronically with and transmitted to the IARD and the CRD.

(c) Electronic signatures. When a signature is required on any filing to be made through the IARD or CRD, the applicant or a duly authorized officer of the applicant shall affix an electronic signature to the filing by typing the individual's name in the appropriate field and submitting the filing to the IARD or CRD. Submission of a filing in this manner shall constitute a legal signature by any individual whose name is typed on the filing.

(d) Exception to electronic filing. Any documents or fees required to be filed with the administrator that are not permitted to be filed with or cannot be accepted by the IARD or CRD shall be filed directly with the administrator.

(e) Hardship exemptions.

(1) Temporary hardship exemption.

(A) Criterion for exemption. Investment advisers registered or required to be registered under the act who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD or CRD may request a temporary hardship exemption from the requirements to file electronically.

(B) Application for exemption. To apply for a temporary hardship exemption, the investment adviser shall file a written request with the securities administrator in the state where the investment adviser's principal place of business is located. The request shall be submitted in a form approved by the securities administrator, and the request shall be filed no later than one business day after the due date for the filing that is the sub-

ject of request. The investment adviser shall also submit the filing that is the subject of the request in electronic format to IARD or CRD no later than seven business days after the filing was due.

(C) Effective date: upon filing. If the request is in proper form, the temporary hardship exemption shall be deemed effective upon receipt by the securities administrator. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the securities administrator.

(2) Continuing hardship exemption.

(A) Criterion for exemption. A continuing hardship exemption shall not be granted unless the investment adviser is able to demonstrate that the electronic filing requirements of this regulation are prohibitively burdensome.

(B) Application for exemption. To apply for a continuing hardship exemption, the investment adviser shall file a written request with the securities administrator in the state where the investment adviser's principal place of business is located. The request shall be submitted in a form approved by the securities administrator, and the request shall be filed no later than 20 business days before the due date for the filing that is the subject of the request. If the investment adviser's principal place of business is located in Kansas and the request is filed with the administrator in a form approved by the administrator, the request shall be either granted or denied by the administrator within 10 business days after the filing of the request.

(C) Effective date: upon approval. The exemption shall be effective upon approval by the securities administrator in the state where the investment adviser's principal place of business is located. The time period of the exemption shall be no longer than one year after the date on which the request is filed. If the securities administrator approves the request, the investment adviser shall, no later than five business days after the exemption approval date, submit filings to the IARD or CRD in paper form, along with the appropriate processing fees, for the period of time for which the exemption is granted.

(3) Recognition of exemption. The decision to grant or deny a request for a hardship exemption shall be made by the securities administrator in the state where the investment adviser's principal place of business is located, and the decision shall be adhered to by the administrator. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing

K.S.A. 2005 Supp. 17-12a105 and 17-12a608(c); effective Oct. 26, 2001; amended Aug. 18, 2006.)

**81-14-7. Notice filing requirements for federal covered investment advisers.** (a) Initial notice filing. The notice filing for a federal covered investment adviser pursuant to K.S.A. 17-12a405, and amendments thereto, shall be filed on form ADV with the IARD. A notice filing of a federal covered investment adviser shall be deemed filed when the fee required by K.A.R. 81-14-2 and the form ADV are filed with and accepted by the IARD on behalf of the administrator.

(b) Part 2 of form ADV. Until the IARD accepts the electronic filing of part 2 of form ADV, part 2 shall be deemed by the administrator to be filed if a federal covered investment adviser provides part 2 to the administrator within five business days of a request by the administrator.

(c) Renewal notice filing. The annual renewal of the notice filing for a federal covered investment adviser pursuant to K.S.A. 17-12a405, and amendments thereto, shall be filed with the IARD. The renewal of the notice filing for a federal covered investment adviser shall be deemed filed when the fee required by K.A.R. 81-14-2 is filed with and accepted by the IARD on behalf of the administrator.

(d) Updates and amendments. Each federal covered investment adviser shall file with the IARD, in accordance with the instructions in the form ADV, any amendments to the federal covered investment adviser's form ADV. (Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a405(c); effective Oct. 26, 2001; amended Aug. 18, 2006.)

**81-14-8.** (Authorized by K.S.A. 2000 Supp. 17-1270; implementing K.S.A. 2000 Supp. 17-1252(m)(2); effective Oct. 26, 2001; revoked Aug. 18, 2006.)

**81-14-9. Custody of client funds or securities; safekeeping; financial reporting.** (a) Definitions. For the purposes of this regulation, the following definitions shall apply:

(1) "Custody" means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them or the ability to appropriate them.

(A) Each of the following circumstances shall be deemed to constitute custody:

(i) Possession of client funds or securities unless received inadvertently and returned to the send-

er promptly, but in any case within three business days of receiving the funds or securities;

(ii) any arrangement, including a general power of attorney, under which an investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the adviser's instruction to the custodian; and

(iii) any arrangement that gives an investment adviser or its supervised person legal ownership of or access to client funds or securities, which may include an arrangement in which the investment adviser or its supervised person is the trustee of a trust, the general partner of a limited partnership, the managing member of a limited liability company, or a comparable position for a pooled investment vehicle.

(B) Receipt of a check drawn by a client and made payable to an unrelated third party shall not meet the definition of custody if the investment adviser forwards the check to the third party within three business days of receipt and the adviser maintains the records required under K.A.R. 81-14-4(b)(22).

(2) "Independent party" means a person that meets the following conditions:

(A) Is engaged by an investment adviser to act as a gatekeeper for the payment of fees, expenses, and capital withdrawals from a pooled investment;

(B) does not control, is not controlled by, and is not under common control with the investment adviser; and

(C) does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(3) "Independent representative" means a person who meets the following conditions:

(A) Acts as an agent for an advisory client, which may include a person who acts as an agent for limited partners of a pooled investment vehicle structured as a limited partnership, members of a pooled investment vehicle structured as a limited liability company, or other beneficial owners of another type of pooled investment vehicle;

(B) is obliged by law or contract to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;

(C) does not control, is not controlled by, and is not under common control with the investment adviser; and

(D) does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(4) "Qualified custodian" means any of the following independent institutions or entities:

(A) A bank or savings association that has deposits insured by the federal deposit insurance corporation;

(B) a broker-dealer registered under the act who holds client assets in customer accounts and complies with K.A.R. 81-3-7(d);

(C) a futures commission merchant registered under section 6f of the commodity exchange act, 7 U.S.C. § 6f, who holds client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity and options of the commodity for future delivery; and

(D) a foreign financial institution that customarily holds financial assets for its customers, if the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

(b) Safekeeping of client funds and securities.

(1) Requirements. An investment adviser registered or required to be registered under the act shall not have custody of client funds or securities unless the investment adviser meets each of the following conditions. "An act, practice, or course of business that operates or would operate as a fraud or deceit," as used in K.S.A. 17-12a502 and amendments thereto, shall include any violation of this subsection.

(A) Notice to administrator. The investment adviser shall notify the administrator promptly on form ADV that the investment adviser has or will have custody.

(B) Qualified custodian. A qualified custodian shall maintain the funds and securities in a separate account for each client under each client's name, or in accounts that contain only funds and securities of the investment adviser's clients under the name of the investment adviser as agent or trustee for each client.

(C) Notice to clients. If an investment adviser opens an account with a qualified custodian on behalf of its client, either under the client's name or under the investment adviser's name as agent, the investment adviser shall notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained. The notice shall be given promptly when the account is opened and following any changes to the information.

(D) Account statements. The investment adviser shall ensure that account statements are sent to each client for whom the adviser has custody of funds or securities.

(i) Statements sent by the qualified custodian. If a qualified custodian maintains accounts containing funds or securities, the qualified custodian may send account statements to clients if the investment adviser has a reasonable basis for believing that the qualified custodian sends an account statement at least quarterly to each of the adviser's clients for whom the custodian maintains funds or securities and that the account statement sets forth all transactions in the account during the period and identifies the amount of funds and amount of each security in the account at the end of the period.

(ii) Statements sent by the adviser. If account statements are not sent by the qualified custodian in accordance with paragraph (b)(1)(D)(i), the investment adviser shall send an account statement at least quarterly to each client for whom it has custody of funds or securities. The account statement shall set forth all transactions in the account during the period and identify the amount of funds and amount of each security of which it has custody at the end of the period.

At least once during each calendar year, a CPA firm that is registered and authorized to provide attest services in compliance with requirements of the state where the investment adviser is domiciled shall be engaged by the investment adviser to attest to the accuracy, in all material respects, of the account statements sent to clients by the investment adviser based on a comparison with records of transactions and balances of funds and securities maintained by the qualified custodian. The attest engagement shall be performed in accordance with attestation standards established by the AICPA and contained in the "AICPA professional standards," as specified in K.A.R. 74-5-2. The CPA firm shall perform the attest engagement without prior notice or announcement to the adviser on a date that changes from year to year as chosen by the CPA firm. The CPA firm shall file a copy of its independent accountant's report with the administrator within 30 days after the completion of the attest engagement. The CPA firm, upon finding any material exceptions during the course of the engagement, shall notify the administrator of the finding within two business days by means of a facsimile transmission or electronic mail, followed by first-class mail, directed to the attention of the administrator.

(iii) Special rule for pooled investment vehicles. If the investment adviser is a general partner of a pooled investment vehicle structured as a limited partnership, is a managing member of a pooled

investment vehicle structured as a limited liability company, or holds a comparable position for another type of pooled investment vehicle, the account statements required under this subsection shall be sent to each limited partner, member, or other beneficial owner or that person's independent representative.

(E) Independent representatives. A client may designate an independent representative to receive, on the client's behalf, notices and account statements as required under paragraphs (b)(1)(C) and (b)(1)(D). Thereafter, the investment adviser shall send all notices and statements to the independent representative.

(F) Direct fee deduction. Each investment adviser who has custody, as defined in paragraph (a)(1)(A)(ii), by having fees directly deducted from client accounts held by a qualified custodian shall obtain prior written authorization from the client to deduct advisory fees from the account held with the qualified custodian.

(G) Pooled investments. Each investment adviser who has custody, as defined in paragraph (a)(1)(A)(iii), and who does not meet the exception provided under paragraph (b)(2)(C) shall comply with each of the following requirements:

(i) Engage an independent party. The investment adviser shall hire an independent party to review all fees, expenses, and capital withdrawals from the pooled accounts.

(ii) Review of fees. The investment adviser shall send all invoices or receipts to the independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation so that the independent party can determine that the payment is in accordance with the agreement governing the pooled investment vehicle and so that the independent party can forward to the qualified custodian approval for payment of an invoice with a copy to the investment adviser.

(iii) Notice of safeguards. The investment adviser shall notify the administrator on form ADV that the investment adviser intends to use the safeguards specified in this subsection.

(2) Exceptions.

(A) Shares of mutual funds. With respect to shares of a mutual fund that is an open-end company as defined in section 5(a)(1) of the investment company act of 1940, 15 U.S.C. 80a-5(a)(1), as adopted by reference in K.A.R. 81-2-1, any investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with paragraph (b)(1).

(B) Certain privately offered securities. An investment adviser shall not be required to comply with paragraph (b)(1) with respect to securities that meet the following conditions:

(i) Are acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(ii) are uncertificated, with ownership of the securities recorded only on the books of the issuer or its transfer agent in the name of the client; and

(iii) are transferable only with the prior consent of the issuer or holders of the outstanding securities of the issuer.

(C) Limited partnerships subject to annual audit. An investment adviser shall not be required to comply with paragraph (b)(1) with respect to the account of a limited partnership, limited liability company, or other type of pooled investment vehicle that is subject to audit at least annually and that distributes its audited financial statements presented in conformity with GAAP to all limited partners, members, or other beneficial owners within 120 days after the end of its fiscal year. The investment adviser shall notify the administrator on form ADV that the investment adviser intends to distribute audited financial statements.

(D) Registered investment companies. An investment adviser shall not be required to comply with paragraph (b)(1) with respect to the account of an investment company registered under the investment company act of 1940, 15 U.S.C. 80a-1 et seq.

(E) Beneficial trusts. An investment adviser shall not be required to comply with the safekeeping requirements of paragraph (b)(1) if the investment adviser has custody solely because the investment adviser or an investment adviser representative is the trustee for a beneficial trust, if all of the following conditions are met for each trust:

(i) The beneficial owner of the trust is a parent, grandparent, spouse, sibling, child, or grandchild of the investment adviser representative, including "step" relationships.

(ii) The investment adviser provides a written statement to each beneficial owner of each account setting forth a description of the requirements of paragraph (b)(1) and the reasons why the investment adviser will not be complying with those requirements.

(iii) The investment adviser obtains from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement.

(iv) The investment adviser maintains a copy of both documents described in paragraphs (b)(2)(E)(ii) and (iii) until the account is closed or the investment adviser or investment adviser representative is no longer trustee.

(F) Upon written request and for good cause shown, the requirement to use a qualified custodian may be waived by the administrator. As a condition of granting a waiver, the investment adviser may be required by the administrator to perform the duties of a qualified custodian as specified in paragraph (b)(1).

(c) Financial reporting requirements for investment advisers.

(1) Balance sheet. Each registered investment adviser shall prepare and maintain a balance sheet, as required by K.A.R. 81-14-4(b)(6), each month. The balance sheet shall be dated the last day of the month and shall be prepared within 10 business days after the end of the month. The investment adviser shall file the balance sheet with the administrator, for any month specified by the administrator, within five days after a request by the administrator.

(2) Exemptions. An investment adviser shall be exempt from the requirements of this subsection if the investment adviser has its principal place of business in a state other than Kansas, is properly registered in that state, and satisfies the financial reporting requirements of that state.

(d) Positive net worth requirement.

(1) Each investment adviser that is registered or required to be registered under the act shall maintain at all times a positive net worth.

(2) Notification. Each investment adviser registered or required to be registered under the act shall, by the close of business on the next business day, notify the administrator if the investment adviser is insolvent because its net worth is negative as determined in conformity with GAAP. The notification of insolvency shall include the investment adviser's balance sheet that states the insolvent financial condition on the date the insolvency occurred. Upon receiving the balance sheet, the administrator may require the investment adviser to file additional information by a specified date.

(3) Exception for out-of-state advisers. If an investment adviser has its principal place of business in a state other than Kansas and is properly registered in that state, the investment adviser shall be required to maintain the minimum capital required by the state in which the investment adviser maintains its principal place of business. (Authorized by K.S.A. 17-12a502(b) and 17-12a605(a);

implementing K.S.A. 17-12a411, as amended by L. 2013, ch. 65, sec. 3, and 17-12a502(a)(2); effective Aug. 18, 2006; amended Aug. 15, 2008; amended Oct. 25, 2013.)

**81-14-10. Operational requirements for investment advisers; supervisory procedures; brochure delivery.** (a) Supervision of investment adviser representatives and employees.

(1) Annual review. Each investment adviser shall conduct a review, at least annually, of the businesses in which the adviser engages, which shall be reasonably designed to assist in detecting and preventing violations of and achieving compliance with the act, these regulations, and other applicable laws and regulations.

(2) Supervisory procedures. Each investment adviser shall establish and maintain supervisory procedures that shall be reasonably designed to assist in detecting and preventing violations of and achieving compliance with the act, these regulations, and other applicable laws, regulations, and rules of self-regulatory organizations. In determining whether the supervisory procedures are reasonably designed, factors including the following may be considered by the administrator:

- (A) The firm's size;
- (B) the organizational structure;
- (C) the scope of business activities;
- (D) the number and location of the offices;
- (E) the nature and complexity of products and services offered;
- (F) the volume of business done;
- (G) the number of investment adviser representatives assigned to a location;
- (H) the specification of the office as a non-branch location; and
- (I) the disciplinary history of the registered investment adviser representatives.

(3) Supervision of non-branch offices. The procedures established and the reviews conducted shall provide sufficient supervision at remote offices to ensure compliance with applicable securities laws and regulations. Based on the factors specified in paragraph (a)(2), certain non-branch offices may require more frequent reviews or more stringent supervision.

(4) Failure to supervise. If an investment adviser fails to comply with this subsection, the investment adviser shall be deemed to have "failed to reasonably supervise" its investment adviser representatives under K.S.A. 17-12a412(d)(9), and amendments thereto.

(b) Brochure delivery requirements.

(1) Definitions. For purposes of this subsection, the following definitions shall apply:

(A) "Current brochure" and "current brochure supplement" mean the most recent versions of the brochure or brochure supplements, including all sticker amendments.

(B) "Entering into," in reference to an investment advisory contract, shall not include an extension or renewal unless the extension or renewal involves a material change to the contract.

(C) "Sponsor" of a wrap fee program means an investment adviser that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting or providing advice to clients regarding the selection of other investment advisers in the program.

(D) "Wrap fee program" means an advisory program under which one or more specified fees, not based directly upon transactions in a client's account, are charged for investment advisory services and the execution of client transactions. The investment advisory services may include portfolio management or advice concerning the selection of other investment advisers.

(2) General requirements. Unless otherwise provided in this subsection, each investment adviser registered or required to be registered under the act shall provide to each client and prospective client a firm brochure and one or more supplements as required by this subsection. The brochure and supplements shall contain all information required by part 2 of form ADV and any other relevant information that the administrator may require.

(3) Offer and delivery requirements.

(A) Each investment adviser shall deliver a current firm brochure to each client or prospective client. Each investment adviser shall also deliver current brochure supplements for each investment adviser representative who will provide advisory services to the client. For purposes of this subsection, an investment adviser representative shall be deemed to provide advisory services to a client if the investment adviser representative does any of the following:

- (i) Regularly communicates investment advice to the client;
- (ii) formulates investment advice for assets of the client;
- (iii) makes discretionary investment decisions for assets of the client; or
- (iv) sells investment advisory services or solicits, offers, or negotiates for the sale of investment advisory services.

(B) The documents required in paragraph (b) (3)(A) shall be delivered to the client at least 48 hours before entering into any investment advisory contract with the client or prospective client, or at the time of entering into a contract if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

(C) An investment adviser shall, at least once a year and without charge, deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplements required by this subsection. If a client accepts the written offer, the investment adviser shall send the current brochure and supplements to that client within seven days after the investment adviser is notified of the acceptance.

(4) Delivery to limited partners. If the investment adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this subsection the investment adviser shall treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners as a client. For purposes of this subsection, a limited liability partnership or limited liability limited partnership shall be deemed to be a limited partnership.

(5) Wrap fee program brochures.

(A) If the investment adviser is a sponsor of a wrap fee program, then the brochure required to be delivered to a client or prospective client of the wrap fee program shall be a wrap fee brochure containing all information required by form ADV. Any additional information in a wrap fee brochure shall be limited to information applicable to wrap fee programs that the investment adviser sponsors.

(B) The investment adviser shall not be required to offer or deliver a wrap fee brochure to the client or prospective client of the wrap fee program if another sponsor of the wrap fee program offers or delivers a wrap fee program brochure containing all the information that the investment adviser's wrap fee program brochure is required to contain.

(C) A wrap fee brochure shall not take the place of any brochure supplements that the investment adviser is required to deliver under paragraph (b) (3)(A).

(6) Delivery of updates and amendments. The investment adviser shall amend its brochure and any brochure supplements and deliver the amendments to clients promptly if information

contained in the brochure or brochure supplements becomes materially inaccurate. The investment adviser shall follow the updating and delivery instructions for part 2 of form ADV. An amendment shall be considered to be delivered promptly if the amendment is delivered within 30 days of the event that requires the filing of the amendment.

(7) Multiple brochures. If an investment adviser renders substantially different types of investment advisory services to different clients, the investment adviser may provide them with different brochures, if each client receives all applicable information about services and fees. The brochure delivered to a client may omit any information required by part 2 of form ADV if this information is applicable only to a type of investment advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(8) Other disclosure obligations. Nothing in this subsection shall relieve any investment adviser from any obligation to disclose any information to its advisory clients or prospective advisory clients pursuant to any state or federal law. (Authorized by K.S.A. 2005 Supp. 17-12a411(g) and 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a411(g) and 17-12a412(d)(9), as amended by L. 2006, Ch. 47, § 6; effective Aug. 18, 2006.)

**81-14-11. Kansas private adviser exemption.** (a) Exemption from registration. An investment adviser shall be exempt from the registration requirements of K.S.A. 17-12a403, and amendments thereto, if both of the following requirements are met:

(1) The investment adviser shall meet each of the following conditions:

(A) Maintain its principal place of business in Kansas;

(B) provide investment advice solely to fewer than 15 clients;

(C) not hold itself out generally to the public as an investment adviser; and

(D) not act as an investment adviser to any investment company registered pursuant to section 8 of the investment company act of 1940, 15 U.S.C. § 80a-8, as adopted by reference in K.A.R. 81-2-1, or a company that has elected and has not withdrawn its election to be a business development company pursuant to section 54 of the investment company act of 1940, 15 U.S.C. § 80a-54, as adopted by reference in K.A.R. 81-2-1.

(2) Neither the investment adviser nor any of its advisory affiliates or associated investment adviser representatives shall be subject to a disqualification provision as described in rule 262 of SEC regulation A, 17 C.F.R. 230.262, as adopted by reference in K.A.R. 81-2-1.

(b) Notice filing. Each investment adviser that qualifies for exemption under subsection (a) shall be subject to or exempt from filing a notice with the administrator as follows:

(1) Notice filing requirement. Each investment adviser that manages assets of no more than \$25 million on December 31 each year shall complete the identifying information required by item 1 of form ADV, part 1A and file the printed form with the administrator on or before February 1 of the following year. No fee shall be required with the notice filing required by this subsection.

(2) Exemption from notice filing requirement.

(A) Each investment adviser that manages assets in excess of \$25 million and is registered with the SEC shall be exempt from the notice filing requirements of K.S.A. 17-12a405, and amendments thereto, and of paragraph (1) of this subsection.

(B) Each investment adviser that manages assets in excess of \$25 million, is an exempt reporting adviser, and files reports with the IARD system pursuant to SEC rule 204-4, 17 C.F.R. 275.204-4, as adopted by reference in K.A.R. 81-2-1, shall be exempt from the notice filing requirements of paragraph (1) of this subsection.

(c) Exemption for investment adviser representatives. An investment adviser representative shall be exempt from the registration requirements of K.S.A. 17-12a404, and amendments thereto, if the individual meets the following requirements:

(1) Is employed by or associated with an investment adviser that meets the exemption requirements under subsection (a);

(2) is not subject to a disqualification as described in rule 262 of SEC regulation A, 17 C.F.R. 230.262; and

(3) does not otherwise act as an investment adviser representative.

(d) Transition. Each investment adviser or investment adviser representative who becomes ineligible for the exemption specified in this regulation shall comply with the registration or notice filing requirements under the act within 90 days after the date of ineligibility. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a403(b)(3), 17-12a404(b)(2), and

17-12a405(b)(3); effective Oct. 25, 2013; amended Jan. 4, 2016.)

#### KANSAS LAND SALES PRACTICE ACT

### Article 20.—GENERAL PURPOSE AND APPLICABILITY

**81-20-1.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; amended, E-77-40, Aug. 12, 1976; amended Feb. 15, 1977; revoked July 1, 2011.)

**81-20-2.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-77-40, Aug. 12, 1976; amended Feb. 15, 1977; revoked July 1, 2011.)

### Article 21.—DEFINITION OF TERMS

**81-21-1.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-77-40, Aug. 12, 1976; amended Feb. 15, 1977; revoked Oct. 9, 2015.)

### Article 22.—PROCEDURES FOR REGISTRATION

**81-22-1.** (Authorized by K.S.A. 58-3310(a); implementing K.S.A. 58-3305; effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; amended Jan. 1, 1972; amended July 1, 2011; revoked Oct. 9, 2015.)

**81-22-2.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked July 1, 2011.)

**81-22-3.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked Oct. 9, 2015.)

### Article 23.—FEES, MAXIMUM REGISTRATION AND FORMS

**81-23-1, 81-23-2.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked July 1, 2011.)

**81-23-3.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked Oct. 9, 2015.)

**Article 24.—STANDARDS  
FOR APPROVAL**

**81-24-1.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked July 1, 2011.)

**81-24-2 and 81-24-3.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked Oct. 9, 2015.)

**Article 25.—PUBLIC  
OFFERING STATEMENTS**

**81-25-1 through 81-25-3.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked July 1, 2011.)

**81-25-4.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked Oct. 9, 2015.)

**Article 26.—CONTRACTS,  
DEEDS AND TITLE**

**81-26-1 and 81-26-2.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked Oct. 9, 2015.)

**81-26-3.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked July 1, 2011.)

**Article 27.—ADVERTISING**

**81-27-1.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked Oct. 9, 2015.)

**81-27-2.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked Oct. 9, 2015.)

**Article 28.—EFFECTIVENESS  
AND INSPECTIONS**

**81-28-1.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked July 1, 2011.)

**81-28-2.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; amended, E-77-40, Aug. 12, 1976; amended Feb. 15, 1977; revoked July 1, 2011.)

**Article 29.—REPORTING  
REQUIREMENTS**

**81-29-1.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked Oct. 9, 2015.)

**81-29-2.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked Oct. 9, 2015.)

**Article 30.—ADMINISTRATIVE  
PROCEDURE**

**81-30-1.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked July 1, 2011.)

**Article 36.—ECONOMIC DEVELOPMENT  
BY CITIES; REVENUE BONDS**

**81-36-1.** (Authorized by K.S.A. 1977 Supp. 12-1744b; effective, E-79-5, Jan. 19, 1978; effective May 1, 1978; revoked May 1, 1986.)

**81-36-2.** (Including Appendix) (Authorized by K.S.A. 1977 Supp. 12-1744b; effective, E-79-5, Jan. 19, 1978; effective May 1, 1978; revoked May 1, 1986.)

## Agency 82

# Kansas Corporation Commission

### Articles

- 82-1. RULES OF PRACTICE AND PROCEDURE.
  - COMPENSATION TO CONSUMER INTERVENORS PURSUANT TO PURPA.
- 82-2. OIL AND GAS CONSERVATION. (*Not in active use.*)
  - OIL CONSERVATION. (*Not in active use.*)
  - GAS CONSERVATION. (*Not in active use.*)
  - DRILLING AND PLUGGING OF OIL OR GAS WELLS AND SEISMIC CORE OR EXPLORATORY HOLES. (*Not in active use.*)
  - UNDERGROUND DISPOSAL OF SALT WATER. (*Not in active use.*)
  - FLUID REPRESSURING AND WATER FLOODING OF OIL AND GAS PROPERTIES. (*Not in active use.*)
  - COMMINGLING. (*Not in active use.*)
  - PLUGGING OF ABANDONED OIL OR GAS WELLS. (*Not in active use.*)
  - NATURAL GAS WELL CLASSIFICATION. (*Not in active use.*)
- 82-3. PRODUCTION AND CONSERVATION OF OIL AND GAS.
- 82-4. MOTOR CARRIERS OF PERSONS AND PROPERTY.
  - MOTOR CARRIERS.
  - INSURANCE.
  - APPLICATIONS AND OTHER GENERAL PROVISIONS.
  - RULES APPLICABLE ONLY TO PUBLIC CARRIERS.
  - COMMON CARRIER TARIFFS.
  - RULES APPLICABLE ONLY TO CONTRACT CARRIERS.
  - RULES APPLICABLE TO COMMON CARRIERS AND CONTRACT CARRIERS.
  - COLLECTIVE RATES.
- 82-5. RAILROAD SAFETY.
- 82-6. SUPPRESSION OF DIESEL LOCOMOTIVE ORIGINATED FIRES ON RAILROAD RIGHT OF WAY.
- 82-7. RAILROAD GRADE CROSSING PROTECTION RULES. (*Not in active use.*)
- 82-8. SITING OF NUCLEAR GENERATION FACILITIES.
- 82-9. RAILROAD RATES.
- 82-10. OIL AND NATURAL GAS LIQUID PIPELINES.
- 82-11. NATURAL GAS PIPELINE SAFETY.
- 82-12. WIRE-STRINGING RULES.
- 82-13. TELECOMMUNICATIONS.
- 82-14. THE KANSAS UNDERGROUND UTILITY DAMAGE PREVENTION ACT.
- 82-15. VIDEO SERVICE AUTHORIZATION.
- 82-16. ELECTRIC UTILITY RENEWABLE ENERGY STANDARDS.
- 82-17. NET METERING.

**Article 1.—RULES OF PRACTICE  
AND PROCEDURE**

**82-1-201.** (Authorized by and implementing K.S.A. 1989 Supp. 55-604, K.S.A. 55-704, 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990; revoked Oct. 10, 2003.)

**82-1-202. Conducting business before the commission.** (a) Unless otherwise required by law, the requirements of these regulations may be waived by the commission if good cause is shown and if it is in the public interest to do so.

(b) Upon request, any person having business before the commission may receive all reasonable and proper assistance from personnel of the commission, including advice as to the form of any application, complaint, motion, answer, or other paper necessary to be filed in any proceeding before the commission and the furnishing of any blank forms or other information from its records that will provide the appropriate assistance. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1987; amended July 23, 1990; amended Oct. 10, 2003.)

**82-1-203.** (Authorized by K.S.A. 55-604, 55-704, 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; revoked May 1, 1985.)

**82-1-204. Definitions.** As used in these regulations, the following definitions shall apply: (a) “Applicant” means any party on whose behalf an application for authority or permission that the commission is authorized by law to grant or deny is made.

(b) “Attorney” shall include any licensed attorney currently admitted to practice before the supreme court of the state of Kansas and any attorney at law authorized to enter an appearance under K.A.R. 82-1-228.

(c) “Commission” and “commissioner” mean the state corporation commission of Kansas, and a member of the commission, respectively.

(d) “Complainant” means any party who complains to the commission of either of the following:

(1) Anything done or failed to be done in contravention or violation of either of the following:

(A) The provisions of any statute or other delegated authority administered by the commission; or

(B) any orders or regulations issued or promul-

gated by the commission under statute or delegated authority; or

(2) any other alleged wrong over which the commission may have jurisdiction.

(e) “Document” means any original, copy, or draft of any handwritten, typewritten, printed, graphic, or electronically recorded material, and shall include the following:

- (1) Correspondence;
- (2) notes;
- (3) memoranda;
- (4) studies;
- (5) reports;
- (6) records;
- (7) charts;
- (8) invoices;
- (9) bills;
- (10) diaries;
- (11) calendars;
- (12) books;
- (13) statements;
- (14) appointment books;
- (15) tape recordings;
- (16) videos;
- (17) faxes;
- (18) computer printouts and software;
- (19) electronically recorded media; and
- (20) any other writing or tangible record of any kind, type, or nature, however produced.

(f) “Formal record” or “record” shall include the following, when filed with the commission:

(1) All applications, complaints, petitions, and other papers seeking commission action;

(2) all answers, replies, responses, objections, protests, motions, stipulations, exceptions, other pleadings, notices, depositions, certificates, proofs of service, transcripts of oral arguments, and briefs in any matter or proceeding;

(3) all exhibits, all attachments to exhibits, all appendices to exhibits, amendments of exhibits, corrections of exhibits, supplements to exhibits, and all letters of transmittal or withdrawal of any items mentioned in this subsection;

(4) any notice or commission order initiating the matter or proceeding;

(5) any commission order designating a hearing examiner, attorney, or other employee, for any purpose;

(6) the official transcript of the hearing made and transcribed by the reporter;

(7) all exhibits received in evidence;

(8) all prefled testimony or proposed exhibits offered but not received in evidence; however,

any prefiled testimony or proposed exhibit which was not offered in evidence shall not be included in the record;

(9) all offers of proof; and

(10) all motions, stipulations, subpoenas, proofs of service, and anything else ordered by the commission or presiding officer to be made a part of the record.

(g) "Intervenor" means any party petitioning to intervene as provided by K.A.R. 82-1-225, if admitted by the commission as a participant in any proceeding. Admission as an intervenor shall not be construed as recognition by the commission that the intervenor might be aggrieved by any order of the commission in the proceeding.

(h) "KAPA" means the Kansas administrative procedure act found at K.S.A. 77-501 *et seq.* and amendments thereto.

(i) (1) "Party" means a person with an articulated interest in a particular commission proceeding who meets any of the following conditions:

(A) An order is specifically directed to the person.

(B) The person is named as a party to a commission proceeding.

(C) The person is allowed to intervene as a party in the proceeding.

(2) No unincorporated association shall obtain party status in a proceeding without identifying its membership.

(3) Except as provided in K.A.R. 82-1-207, technical staff and staff counsel participating in a proceeding shall be deemed a party for all purposes except the right of appeal of commission orders.

(j) "Person" means any individual, partnership, corporation, association, political subdivision or unit of a political subdivision, or private organization or entity of any other character, including another state agency.

(k) "Petitioner" means any party seeking relief who is not otherwise designated under these regulations.

(l) "Presiding officer" means the chairperson of the commission or the commissioner or other person appointed by the commission who is actively conducting the hearing.

(m) "Protestant" means any party objecting on the ground of private or public interest to the approval of an application, petition, motion, or other matter that the commission may have under consideration.

(1) Each protestant protesting the granting of any application under the motor carrier act shall comply with the provisions of K.A.R. 82-4-65.

(2) Each protestant protesting the granting of any application or permit under the oil and gas conservation act shall comply with the provisions of K.A.R. 82-3-135.

(3) Any protestant desiring to become an intervenor in any other proceeding before the commission may file a petition for intervention as provided by K.A.R. 82-1-225.

(4) Admission of a party as a protestant shall not be construed as recognition by the commission that the protestant might be aggrieved by any order of the commission in the proceeding.

(n) "Respondent" means any party who is subject to any statute, order, rule or regulation or other delegated authority administered, issued, or promulgated by the commission and who meets either of the following conditions:

(1) The party receives an order or notice issued by the commission in a proceeding or investigation instituted on the commission's own initiative.

(2) Any complaint, motion to compel, or other such pleading is filed against the party.

(o) "Restricted mail" shall have the same meaning as set forth in K.S.A. 60-103, and amendments thereto.

(p) "Staff counsel" means the general counsel of the commission, any assistant general counsel of the commission, and any special counsel retained by the commission, participating in a proceeding before the commission.

(q) "Technical staff" means commission employees with technical expertise and any special assistants or consultants retained by the commission. This term shall not include staff counsel. Technical staff may conduct investigations and otherwise evaluate issues raised, and may testify and offer exhibits on behalf of the general public.

(r) "Test year" means any consecutive 12-month period selected for the purpose of determining or justifying rates. (Authorized by and implementing K.S.A. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1985; amended July 23, 1990; amended Oct. 10, 2003.)

**82-1-204a. Classification of public utilities for filing purposes.** Public utilities shall be classified as follows for the purposes of filing with the commission.

(a) Electric and gas utilities:

(1) Class A, if the annual operating revenues are \$1 million or more; and

(2) class B, if the annual operating revenues are less than \$1 million;

(b) water utilities:

(1) Class A, if the annual operating revenues are \$750,000 or more; and

(2) class B, if the annual operating revenues are less than \$750,000; and

(c) telecommunications utilities:

(1) Class A, if the annual operating revenues are \$1 million or more; and

(2) class B, if the annual operating revenues are less than \$1 million. (Authorized by and implementing K.S.A. 66-106; effective Oct. 10, 2003.)

**82-1-205. Office hours.** All offices of the state corporation commission shall be open to the public from 8:00 a.m. to 5:00 p.m. each day other than Saturday and Sunday, except as otherwise provided by law or by order of the governor. Meetings and exercise of powers may be held at any location by the commission. Any inquiry, investigation, or other proceeding necessary to the performance of the commission's duties and functions may be conducted at any location, and any person or persons may be designated or appointed to do so on behalf of and by the commission. (Authorized by and implementing K.S.A. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990; amended Oct. 10, 2003.)

**82-1-206. Communications.** (a) All written communications to the commission shall be addressed to the executive director of the commission at its Topeka office, unless otherwise specifically directed by the commission or any commissioner.

(b) Except as otherwise provided in article 3 of these regulations, all pleadings, exhibits and other papers required to be filed with the commission shall meet the following requirements:

(1) Be filed within the time limits provided by KAPA unless otherwise specified by these regulations or by order of the commission, for such filing; and

(2) be accompanied by appropriate fees in cases in which fees are required.

(c) All communications and documents properly addressed or filed shall be deemed to be officially received by the commission when actually delivered at the office of the executive director of the commission. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990; amended Oct. 10, 2003.)

**82-1-207. Ex parte communications in non-KAPA proceedings.** (a) (1) After the commission has determined and announced that a hearing shall be conducted in a proceeding and before the issuance of a final order, no parties to the proceeding, or their attorneys, shall discuss the merits of the proceeding with the commissioners or the presiding officer unless reasonable notice that allows attendance is given to all parties to the proceeding.

(2) After the commission has determined and announced that a hearing shall be conducted in a proceeding and before the issuance of a final order, each party shall mail copies of any written communications regarding the proceeding that are directed to the commission or any member of its staff, to all parties of record. Each party shall furnish proof that service of the written communication was made to all parties to the proceeding.

(3) The person or persons to whom any ex parte communication is made shall promptly and fully inform the full commission of the substance and circumstances of the communication to enable the commission to take appropriate action.

(b) For purposes of this regulation only, no member of the technical staff shall be considered a party to any proceeding before the commission, regardless of participation in staff investigations in the proceeding or of participation in the proceeding as a witness. Any staff member may be conferred with at any time by the commissioners. However, no facts that are outside the record and that reasonably could be expected to influence the decision in any matter pending before the commission shall be furnished to any commissioner unless all parties to the proceeding are likewise informed and afforded a reasonable opportunity to respond. The rule against ex parte communications shall apply to staff counsel in regard to any adjudicative proceeding before the commission.

(c) All letters and written communications in the nature of ex parte communications received by the commission, or any commissioner, from interested parties and members of the general public shall be made a part of the file in the docket and shall be made available to all persons who desire to see them. The deposit of these written communications and letters in the file shall not make them a part of the official transcript of the case. (Authorized by and implementing K.S.A. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1985; amended July 23, 1990; amended Oct. 10, 2003.)

**82-1-208. Sessions.** (a) Public sessions of the commission for hearing evidence, oral arguments, public conferences, and public hearings before the commission, a commissioner, or an examiner shall be held at the time and place ordered by the commission. Unless otherwise provided by statute, notice of these public sessions may be mailed, published by the commission, or delegated to an applicant by the commission.

(b) General sessions of the commission for the transaction of business shall be held at its offices in Topeka, Kansas, or elsewhere in Kansas, on regular business days, as scheduled by the chairperson of the commission. Special sessions of the commission for consultation or conferences, or for the transaction of other business may be held at any time and place, as scheduled by the chairperson of the commission. (Authorized by K.S.A. 66-106; effective Jan. 1, 1966; amended Oct. 10, 2003.)

**82-1-209 to 82-1-211.** (Authorized by K.S.A. 55-604, 55-704, 66-106; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

**82-1-212. Dockets.** Each matter coming before the commission and requiring a decision by the commission shall be known as a docket and shall receive a docket number and a descriptive title. The docket number and title shall be used on all papers filed in the docket, and shall appear in all correspondence relating to the docket. (Authorized by K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended Oct. 10, 2003.)

**82-1-213.** (Authorized by K.S.A. 55-604, 55-704, 66-106; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

**82-1-214. Commencement of a proceeding.** A proceeding shall be commenced either by the filing of an application, a complaint, or a petition, or by the issuance of an order of the commission initiating a proceeding on its own motion. However, an application filed by an investor-owned utility for permission to make changes in its rates and tariffs shall not commence a proceeding under these regulations unless the commission has received written notification of the intent to file the application no fewer than 30 and not more than 90 days before the application filing date. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-106; effective Jan. 1, 1966; amended

Feb. 15, 1977; amended, E-82-1, Jan. 21, 1981; amended May 1, 1981; amended May 1, 1986; amended July 23, 1990; amended Oct. 10, 2003.)

**82-1-215. Copies of pleadings and pre-filed testimony.** (a) Except as otherwise provided in K.A.R. 82-1-231, K.A.R. 82-3-101 through K.A.R. 82-3-399, and K.A.R. 82-4-27, 82-4-28, 82-4-29, 82-4-30, and 82-4-65, each party filing any application, complaint, prefiled testimony, or other pleading shall file an original and at least seven copies for the commission. The filing of additional copies, as may be necessary, may be required by the commission. In the case of an application to serve an annexed area pursuant to K.S.A. 66-1,176, and amendments thereto, the applicant shall contemporaneously serve a copy of the application upon the currently certified retail electric supplier.

(b) Upon filing, the original shall be placed by the executive director of the commission in the official records of the commission, and the duplicate copies shall be distributed as directed by the commission. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1985; amended July 23, 1990; amended Oct. 10, 2003.)

**82-1-216. Service of pleadings.** (a) Manner of service of papers. Notices, motions, pleadings, or other papers may be served by any of the following means:

- (1) Hand delivery;
- (2) United States mail;
- (3) restricted mail;
- (4) overnight courier;
- (5) facsimile machine if the original of the facsimile document is also served; or

(6) electronic delivery in a format acceptable to the commission, if a signed, original hard copy of the document delivered electronically is also served.

(b) Who shall be served. All parties and attorneys who have entered their appearances in any proceeding shall be served with all notices, motions, pleadings, orders, or other papers filed in this matter. Service upon an attorney of record shall be deemed to be service upon the party represented by the attorney.

(1) Service by commission. Orders, formal complaints to which a docket number has been assigned, supplemental complaints that have been

permitted by the commission, and amended complaints that have been permitted by the commission, shall be served by the commission. Each complainant shall supply the commission with a sufficient number of copies of the complaint to enable the commission to serve one copy upon each defendant and retain the signed original and seven copies for its own use, together with any other copies that may be required by the commission. Notices shall be served either by the commission or as directed by the commission.

(2) Service by parties. Pursuant to K.S.A. 77-519 and amendments thereto, except as stated above in paragraph (b)(1), parties shall be required to serve all documents in accordance with the procedures outlined in subsection (a). (Authorized by and implementing K.S.A. 66-106 and 77-519; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990; amended Oct. 10, 2003.)

**82-1-217. Computation and extension of time.** (a) Computation; legal holiday defined. In computing any period of time prescribed or allowed by these rules or by an applicable statute in which the method of computing such time is not otherwise specifically provided, the day of the act, event, 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 it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday. "Legal holiday" includes any day designated as a holiday by the congress of the United States, or by the legislature of this state.

(b) Enlargement. When by these rules or by a notice given under them an act is required or allowed to be done at or within a specified time, the time for doing such act may be extended for good cause shown by the commission in its discretion, or the act may be done subsequent to the expiration of the prescribed time where the failure to act within such time was the result of excusable neglect, as permitted by the commission.

(c) Additional time after service by mail. Service is complete upon mailing. Three days shall be added to the prescribed period for any action

required of the recipient. (Authorized by and implementing K.S.A. 1989 Supp. 55-604, K.S.A. 55-704, 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990.)

**82-1-218. Form and contents of pleadings.** All applications, formal complaints, supplemental complaints, amended complaints, petitions, replies, answers, protests, motions, petitions in intervention, and all amendments of these pleadings shall comply with the provisions of K.A.R. 82-1-219 relating to general requirements for all of these pleadings. The form and contents of the numbered paragraphs in the various kinds of pleadings shall be as follows:

(a) Applications. All applications for the approval, determination, consent, permission, certificate or authorization of the commission in cases for which this approval, determination, consent, permission, certificate, or authorization is required by law, shall be made in writing in a document entitled "application."

In matters before the utilities division and transportation division of the commission, the filing of certified copies of the charter or articles of incorporation of every corporation directly affected by the proposed action and certified copies of all certificates, statements, or records that modify or extend the purpose or powers of such corporations, may be required. However, until so required, the applicant may incorporate the items by reference rather than by actually filing the copies.

The application shall set forth the facts upon which the application is based, in numbered paragraphs, and reference to the particular provision of the law or regulations of the commission requiring or providing for the same shall be made in the application.

The application shall contain further statements of fact and of law as may be required by any provision of law or these regulations.

(b) Complaints. Complaints shall comply with the provisions of K.A.R. 82-1-220.

(c) Petitions. All petitions for relief shall meet the following criteria:

(1) Clearly and concisely state the interest of the petitioner in the subject matter and the relief sought;

(2) cite by appropriate reference the law, statute, or regulation relied upon by the petitioner for relief; and

(3) comply with the requirements of these regulations.

(d) Responsive pleadings. All responsive pleadings shall fully and completely advise the parties and the commission of the basis and nature of the response and of the rights of the respondent, and shall admit or deny, specifically and in detail, each material allegation of the pleading being answered.

Written responses to petitions for intervention shall not be required. However, if a responsive pleading is filed to a petition to intervene, the responsive pleading shall be served in accordance with K.S.A. 77-519, and amendments thereto, and these regulations.

Any party may file and serve a protest, motion, or other proper pleading within 10 days after service upon that party of any application, petition, notice, formal complaint, supplemental complaint, or amended complaint. However, protests to oil and gas conservation matters shall be filed with the conservation division within 15 days after publication of the notice of the application as required in K.A.R. 82-3-135a. Answers to formal complaints shall be filed as prescribed by K.A.R. 82-1-220 and these regulations.

(e) Protests. All protests shall set forth the position and interest of the protestant and shall advise the commission and the parties in detail of the basis of the protest. Protests against the granting of permits, certificates, extensions, abandonments, and transfers under the motor carrier act shall comply with K.A.R. 82-4-65. Protests against the granting of applications and permits under the oil and gas conservation act shall comply with K.A.R. 82-3-135b. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990; amended Oct. 10, 2003.)

**82-1-219. General requirements relating to pleadings and other papers.** Except as otherwise provided in K.A.R. 82-1-231, each pleading shall contain the formal parts and meet the requirements specified in this regulation.

(a) Caption. The caption of a pleading shall include the heading, the descriptive title of the docket, and the docket number assigned to the matter by the executive director of the commission.

(1) Heading. Each pleading shall contain the heading "BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS" which shall be centered at the top of the first page of the pleading.

(2) Descriptive title. Immediately beneath the heading, and to the left of the center of the page, shall be the descriptive title of the docket. This title shall begin with the words "In the matter of" and shall be followed by a concise statement of the matter presented to the commission for its determination, including, if appropriate, a brief description of the order, authorization, permission, or certificate sought by the party initiating the docket. The name of the party initiating the docket and the names of all other parties to whom the initial pleading is directed shall be stated in the descriptive title, followed by a designation of each party's status in the proceeding. These designations shall include applicant, complainant, defendant, and respondent.

(3) Docket number. Upon the filing of the initial pleading in a docket, a docket number shall be assigned by the executive director of the commission, which shall be placed immediately to the right of the docket title. All pleadings filed in the docket after the formal initiation of the matter shall bear the same caption as that of the original pleading.

(b) Pleading title. The title of the pleading shall be centered immediately beneath the caption and shall describe the pleading contained in the numbered paragraphs that follow.

(c) Numbered paragraphs. Following the title of the pleading, the pertinent allegations of fact and law, in compliance with these regulations, shall be set forth in numbered paragraphs.

(d) Numbered pages. Beginning with the second page of the pleading, each page of the pleading shall be numbered consecutively.

(e) The prayer. The numbered paragraphs of the pleading shall be followed by the prayer, which shall be a concise and complete statement of all relief sought by the pleader. The prayer shall be brief, but shall be complete so that an order granting the prayer includes all of the relief desired and requested by the pleader.

(f) Subscription. Each pleading shall be personally subscribed or executed by one of the following methods:

(1) By the party making the same or by one of the parties, if there is more than one party;

(2) by an officer of the party, if the party is a corporation or association; or

(3) for the party, by its attorney. The names and the addresses of all parties shall appear either in the subscription or elsewhere in the pleading. The name, address, telephone number, and telefac-

simile number of the attorney for the party who is the pleader shall appear either in the subscription or immediately below it. Abbreviations of names and addresses shall not be used.

(g) Verification. Each pleading shall be verified by the party or by the party's attorney, if the attorney has actual knowledge of the truth of the statements in the pleading or reasonable grounds to believe that the statements are true. Each pleading shall be verified upon affirmation that meets the requirements of K.S.A. 54-104, and amendments thereto. Any pleading by a corporation or an association may be verified by an officer or director of the corporation or association. Written verification may be waived by the commission by order at its discretion.

(h) Certificate of service. Whenever service of a pleading is required by these regulations, the party responsible for effecting service shall endorse a certificate of service upon the pleading to show compliance with these regulations. The certificate shall show service by any method authorized by K.A.R. 82-1-216.

(i) Form. Each pleading shall be typewritten on paper that is 8½" wide and 11" long. The left-hand margin shall not be less than one inch wide. The impression shall be on only one side of the paper and shall be double-spaced, except that lengthy quotations may be single-spaced and indented. Photocopies of the pleading may be filed.

(j) Rejection of document. Each document that contains defamatory, scurrilous, or unethical language shall be rejected and returned to the party filing the document. Papers, correspondence, or pleadings or any copies of papers, correspondence, or pleadings that are not clearly legible shall be rejected and returned to the party filing the document.

(k) Amendments. The amendment of any pleading may be allowed by the commission at its discretion, either by replacement of the original pleading with an amended version of it or by interlineations or deletion of material on the original pleading. (Authorized by and implementing K.S.A. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990; amended Oct. 10, 2003; amended July 23, 2010.)

**82-1-220. Complaints.** (a) Any person may initiate a complaint proceeding by filing a formal complaint with the commission in which the rates, joint rates, fares, tolls, charges, regulations, classifications, or schedules of any public utility, motor

carrier, or common carrier are alleged to be unreasonable, unfair, unjust, unjustly discriminatory, or unduly preferential, or that allege that any service performed or to be performed is illegal, unreasonably inadequate, inefficient, or unduly insufficient, or cannot be obtained.

(b) Formal complaints shall be submitted in writing and shall comply with the requirements of these regulations. Formal complaints shall meet the following conditions:

(1) Fully and completely advise each respondent and the commission as to the provisions of law or the regulations or orders of the commission that have been or are being violated by the acts or omissions complained of, or that will be violated by a continuance of acts or omissions;

(2) set forth concisely and in plain language the facts claimed by the complainant to constitute the violations; and

(3) state the relief sought by the complainant.

(c) Commission action required upon the filing of a formal complaint. A formal complaint shall, as soon as practicable, be examined by the commission to ascertain whether or not the allegations, if true, would establish a prime facie case for action by the commission and whether or not the formal complaint conforms to these regulations. If the commission determines that the formal complaint does not establish a prima facie case for commission action or does not conform to these regulations, the complainant or the complainant's attorney shall be notified of the defects, and opportunity shall be given to amend the formal complaint within a specified time. If the formal complaint is not amended to correct the defects within the time specified by the commission, it shall be dismissed. If the commission determines that the formal complaint, either as originally filed or as amended, establishes a prima facie case for commission action and conforms to these regulations, each public utility, motor carrier, or common carrier complained of shall be served by the commission a true copy of the formal complaint, and the respondent or respondents shall either satisfy the matter complained of or file a written answer within 10 days.

(d) A complainant may file an amended complaint on its own initiative upon leave granted by the commission. Each amended complaint shall set forth any new grounds for the complaint that have accrued in favor of the complainant and against the defendant subsequent to the filing of the original complaint. Each amended complaint

shall be served by the commission, as provided by K.A.R. 82-1-216. If practicable, an amended complaint shall be heard, considered, and disposed of in the same proceeding as that for the original formal complaint.

(e) Multiple complaints or multiple complainants may be joined as provided by K.A.R. 82-1-224.

(f) Before or after the hearing, the parties to the proceeding may, with the approval of the commission, enter into a voluntary settlement of the subject matter of the complaint if both of the following conditions are met:

(1) The matter in controversy affects only the parties involved.

(2) The issue has no direct or substantial impact upon the general public.

(g) In furtherance of a voluntary settlement, the parties may be invited by the commission to confer with a designated hearing officer or staff member. These settlement conferences shall be informal and without prejudice to the rights of the parties. No statement, admission, or offer of settlement made at an informal settlement conference shall be admissible in evidence in any formal hearing before the commission. (Authorized by and implementing K.S.A. 55-704, K.S.A. 2001 Supp. 55-604, 66-106; effective Feb. 15, 1977; amended May 1, 1985; amended July 23, 1990; amended Oct. 10, 2003.)

**82-1-220a. Expedited review of disputes between telecommunications service providers.** (a) The expedited review process shall be used to resolve disputes between competing telecommunications carriers in an expeditious manner. Except as specifically provided in this regulation, the provisions of K.A.R. 82-1-220 shall apply.

(b) This process may be used to bring expedited resolution to disputes under interconnection agreements entered into pursuant to 47 U.S.C. secs. 251 and 252 of the federal telecommunications act of 1996. This process shall be in addition to any dispute resolution process or procedure specified in the parties' interconnection agreement. Use of this process may be requested if a dispute directly affects the ability of a party to provide uninterrupted service to its customers or affects the provisioning of any service, functionality, or network element. This process shall not be used for disputes that involve consumer complaints against the carriers or requests for damages. The commission or its designated examiner

shall have the authority to shorten or lengthen the deadlines specified in this regulation if the circumstances warrant or if all parties agree.

(c) Each request for expedited review shall be filed at the same time and in the same document as those for a complaint filed in accordance with K.A.R. 82-1-220, but shall include the phrase "Request for Expedited Review" in the heading. Each complaint that includes a request for expedited review shall contain the following information:

(1) A description of the specific circumstances that make the dispute eligible for expedited review;

(2) a description of the particular service-affecting issue justifying the expedited review;

(3) a description of the parties' efforts to resolve each disputed issue, including any steps taken in accordance with the dispute resolution process contained within the parties' interconnection agreement;

(4) a list of cross-references to the area or areas of the interconnection agreement that are applicable to each disputed issue; and

(5) any proposed resolution of the dispute.

(d) On the same day on which any complaint or response to the complaint is filed with the commission in accordance with this regulation, the complaint or response shall be served on the other party, the commission legal staff, and the commission advisory counsel by hand delivery or by facsimile or electronic mail with telephonic confirmation of receipt.

(e) Within three business days after the filing of the complaint, the respondent shall respond to the issues that the complainant asserts justify the request for expedited review. If additional time is needed to respond to issues raised in the complaint, the respondent shall specifically designate which issues it will address in a later response, but the respondent shall respond to issues that the complainant has designated for expedited review.

(f) A member of the advisory counsel, legal staff, or technical staff may be designated by the commission to act as an examiner in this expedited proceeding. The designated examiner shall have the discretion to determine whether resolution of the complaint should be expedited in light of the complexity of the issues or other factors relevant to the need for a rapid and efficient decision. After reviewing the complaint and response, the examiner shall decide whether expedited review is warranted. If the examiner decides that an expedited review is warranted, the examiner shall schedule a

meeting as soon as practical considering the issues raised, but no more than 10 business days after the request for expedited review was filed.

(g) If the examiner determines that the complaint is not appropriate for expedited review, the examiner shall notify the parties in writing no more than 10 business days after the request for expedited review was filed. The complainant may appeal this decision to the commission within five business days of the written decision. A prompt ruling on the appeal shall be issued by the commission.

(h) Throughout the expedited review process, the examiner shall oversee the discussion between the parties and may act in the capacity of a mediator or negotiator. The examiner may issue an interim ruling that controls the actions of the parties until a formal hearing can be conducted or a subsequent written decision is filed. The interim ruling shall be in effect throughout the complaint process. Each interim ruling shall be considered as a nonfinal agency action.

(i) If the examiner determines that an informal resolution of the issues designated for expedited review is not possible, a hearing on the expedited issues shall commence no later than 15 business days after the complaint was filed. The examiner shall notify the parties not less than two business days before the hearing of the date, time, and location of the hearing.

(j) During the expedited review, each party shall refrain from taking action that would impair the other party's ability to offer service to its end users. Furthermore, both parties shall have at all meetings, unless otherwise agreed by the parties and the examiner, persons who are authorized to resolve the dispute.

(k) The examiner may require the parties to file decision point lists on or before the commencement of the hearing. The decision point lists shall identify all issues to be addressed in the expedited process, any witnesses who will be addressing each issue, and a synopsis of each witness's position on each issue. If the examiner requires the filing of decision point lists, the decision point lists shall be filed simultaneously. Except as provided in K.S.A. 66-1220a, and amendments thereto, relating to confidential information, all materials filed with the commission or provided to the examiner shall be subject to the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto.

(l) The examiner shall make written findings and recommendations on the expedited issues in the complaint within 10 business days after the

close of the hearing. The examiner shall notify the parties by facsimile or electronic mail that the decision has been issued. If necessary to fully advise the commission about the expedited review, the examiner may file supplemental findings and recommendations. The examiner shall designate a time for parties to file objections, if any, to the examiner's findings and recommendations. Pursuant to K.S.A. 77-526(i) and amendments thereto, an order shall be promptly issued by the commission on the examiner's findings and recommendations regarding the issues. (Authorized by and implementing K.S.A. 2001 Supp. 66-106; effective Jan. 24, 2003.)

**82-1-221. Exhibits and documentary evidence.** (a) (1) The applicant shall file an original and at least seven copies of all exhibits and documentary evidence unless otherwise provided in these regulations.

(2) If an applicant is required to file with its application any map, profile, certificate, statement, or other document that has already been filed with the commission, the applicant may reference rather than attach the document. The applicant shall include in its application the fact that the document has been previously filed, and the date and the proceeding in which, or occasion on which, the filing was made. The application may request that the previously filed document be incorporated by reference.

(3) Court records may be offered into evidence by reference, but shall not be received over the objection of any party unless opportunity for examination has been afforded to the objecting party.

(b) Unless otherwise directed by the commission or hearing examiner, an original and seven copies of any exhibit a party intends to offer into evidence, other than in rebuttal, shall be filed with the commission at least 10 days before the date of the hearing, and one copy of any such exhibit shall be furnished to every other party to the proceeding at least 10 days before the date of hearing. For conservation division matters, an original and four copies of any exhibit an applicant intends to offer in evidence, other than in rebuttal, shall be filed with the conservation division at least 20 days before the hearing; an original and four copies of any exhibit an intervenor or protestant intends to offer in evidence, other than in rebuttal, shall be filed with the conservation division at least 10 days before the hearing. Exceptions to these requirements may be granted only for good cause shown.

Each party desiring to introduce an exhibit during the course of the hearing shall furnish six copies to the commission and one copy to every other party to the proceeding. Any exhibit that is not filed within the required time limit may be refused by the commission.

(c) The presiding commissioner or hearing examiner shall assign numbers to the exhibits at the time they are marked for identification at the hearing.

(d) If relevant and material matter offered as documentary evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party offering the documentary evidence shall plainly designate the matter offered. If other matter is in a volume that would encumber the record, the book, paper, or document shall not be received in evidence. In this case, the voluminous matter may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record. Alternately, a true copy of the matter, in proper form, may be received as an exhibit if the presiding commissioner or examiner so directs.

(e) The party offering the exhibit shall deliver copies of the exhibit to opposing parties or their attorneys. The opposing parties or their attorneys shall be afforded an opportunity to examine the book, paper, or document, and to offer into evidence in like manner other material and relevant portions of the exhibit. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990; amended Oct. 10, 2003.)

**82-1-221a. Confidentiality.** (a) Any document, data, customer-specific contract, proprietary information, trade secret, or other commercial information filed with or furnished to the Kansas corporation commission (commission) as confidential shall, in addition to the requirements set forth in the Kansas statutes annotated and the Kansas administrative regulations, comply with the following requirements:

(1) The term “document” or “documents,” as used in this regulation, means any original, copy, or draft of any handwritten, typewritten, printed, graphic, or electronically recorded material, and shall include the following:

- (A) Correspondence;
- (B) notes;

- (C) memoranda;
- (D) studies;
- (E) reports;
- (F) records;
- (G) charts;
- (H) invoices;
- (I) bills;
- (J) diaries;
- (K) calendars;
- (L) books;
- (M) statements;
- (N) appointment books;
- (O) tape recordings;
- (P) videos;
- (Q) faxes;
- (R) computer printouts and software;
- (S) electronically recorded media; and
- (T) any other writing or tangible record of any kind, type, or nature, and however produced.

(2) The party seeking to classify documents as confidential shall file with or furnish to the executive director of the commission each document clearly marked “CONFIDENTIAL,” accompanied by a cover letter requesting confidential status.

(3) Confidential information contained on a floppy disk or other electronic device shall be filed or furnished separately from other devices containing nonconfidential information. The electronic device containing the confidential material shall be clearly marked “CONFIDENTIAL.”

(4) The information contained on floppy disks or other electronic devices shall also contain the “CONFIDENTIAL” designation on each page or other subdivision of information when printed.

(5) A written explanation of the confidential nature of each document shall accompany each page for which confidential status is sought. One written explanation may apply to more than one page of confidential information, if the identity and confidential nature of each individual page is clearly stated in the explanation. The explanation shall be specific to the document in question and shall state whether the information constitutes a trade secret or confidential commercial information. The explanation shall further specify the harm or potential harm that disclosure would cause to the entity seeking nondisclosure.

(b) Requests for information classified as confidential shall be made by filing a written request with the executive director of the commission and using a form provided by the commission for this purpose, or by motion from a party to the docket in which the information is sought.

(1) If a request for information classified as confidential is not filed as a motion in an active KCC docket, the entity seeking to maintain the confidential status of the information shall be notified by the commission of the request. The entity seeking to maintain the confidential status shall have five working days after service, plus three days if service is by mail, to respond to this request. Any response filed with the commission in opposition to a request shall substantiate the basis for nondisclosure and shall be served upon the commission and the entity requesting disclosure. The entity requesting disclosure may reply to the response within five working days after service, plus three days if service is by mail, by serving a reply upon the entity seeking to maintain nondisclosure and upon the commission.

(2) A request made by a party to a docket for disclosure of confidential documents or information contained within the docket shall be made by motion. No party shall request disclosure from the commission of information classified as confidential until the party has requested the information in writing from the party seeking to maintain its confidential nature and this request has been denied. The motion shall proceed in accordance with the Kansas corporation commission's rules of practice and procedure, K.A.R. 82-1-201 *et seq.*

(3) A determination of the confidential nature of the information and whether or not to require the disclosure of the confidential information requested under paragraphs (b)(1) and (b)(2) above shall be issued by the commission in accordance with K.S.A. 66-1220a and amendments thereto.

(c) Each person making a request pursuant to K.S.A. 45-215 *et seq.*, and amendments thereto, for nonconfidential information shall submit the request in writing and shall include the requester's name, address, telephone number, and the name of the business or entity represented.

(d) Confidential documents submitted to the corporation commission before the adoption of this regulation, including information required by statute, regulation, or order of the commission, shall be handled in accordance with statutes, regulations, and orders applicable at the time the document was submitted. Requests for access to any of this information shall be handled in accordance with the provisions of this regulation.

(e) Documents filed pursuant to K.A.R. 82-3-107 shall be exempt from the requirements of this regulation. (Authorized by and implementing K.S.A. 66-1220a; implementing K.S.A. 1997 Supp. 66-

101c, K.S.A. 1997 Supp. 66-117, K.S.A. 1997 Supp. 66-151, K.S.A. 1997 Supp. 66-2010, K.S.A. 1997 Supp. 66-1,190, K.S.A. 1997 Supp. 66-1,203 and K.S.A. 55-704; effective March 12, 1999.)

**82-1-221b.** (Authorized by and implementing K.S.A. 66-1220a; implementing K.S.A. 1997 Supp. 66-101c, K.S.A. 1997 Supp. 66-117, K.S.A. 1997 Supp. 66-151, K.S.A. 1997 Supp. 66-2010, K.S.A. 1997 Supp. 66-1,190, and K.S.A. 1997 Supp. 66-1,203; effective March 12, 1999; revoked Oct. 10, 2003.)

**82-1-222. Prehearing conferences; procedure.** (a) In any matter pending before the commission and not governed by the KAPA, the attorneys for the parties to appear before the commission for a prehearing conference may be directed by the commission at its discretion or on the request of any party to consider any of the following:

- (1) The simplification of the issues;
- (2) the trial of issues of law, the determination of which may eliminate or affect the trial of issues of fact;
- (3) the necessity or desirability of amendments to the pleadings;
- (4) the possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;
- (5) the limitation of the number of expert witnesses;
- (6) the advisability of a preliminary reference of issues of fact to an examiner or an investigator appointed by the commission; or
- (7) any other matters that may aid in the disposition of the proceeding.

(b) Preliminary reference. If in the course of a prehearing conference any issues are referred to a presiding officer or an investigator appointed by the commission, the findings of fact of the presiding officer or investigator shall be reduced to writing, filed as an exhibit, and admitted into evidence at the hearing.

(c) Prehearing order. A prehearing order shall be made to reflect the action taken at the prehearing conference, any amendments allowed to the pleadings, and any agreements by the parties relating to any of the matters considered at the prehearing conference. Any agreements by the parties or their attorneys that limit the issues for trial to those not disposed of by admissions or agreements of counsel shall be in writing and

shall be filed. The preliminary order, when entered, shall control the subsequent course of the proceeding, unless modified by the commission to prevent manifest injustice. A calendar on which proceedings may be placed for consideration at prehearing conferences may be published by the commission at its discretion, or the attorneys for the parties may be summoned, or the parties themselves, or both, to a prehearing conference upon notice as may be deemed reasonable by the commission. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1977; amended July 23, 1990; amended Oct. 10, 2003.)

**82-1-223.** (Authorized by and implementing K.S.A. 1989 Supp. 55-604, K.S.A. 55-704, 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; revoked July 23, 1990.)

**82-1-224. Joinder of proceedings and parties.** (a) For good cause shown, the joinder of any proceeding with another proceeding may be permitted by the commission. However, issues that are not germane to each other and that require separate and distinct proof shall not be joined in the same proceeding.

(b) Two or more dockets may be consolidated by the commission for hearing on a common record if the commission deems it to be in the public interest to do so.

(c) The broadening of issues may be permitted by the commission in any proceeding before the commission.

(d) Two or more grounds of complaint involving the same purposes, subjects, or statement of facts may be included in one complaint, but shall be separately stated and numbered.

(e) Two or more complainants may join in one complaint if their respective causes of complaint are against the same defendant or defendants and involve substantially the same purposes, subjects or subject matter and a similar statement of facts. (Authorized by K.S.A. 2001 Supp. 55-604, 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended Oct. 10, 2003.)

**82-1-225. Intervention.** This regulation shall apply to both KAPA and non-KAPA proceedings. (a) The presiding officer shall grant a petition for intervention if the following conditions are met:

(1) The petition is submitted in writing to the presiding officer, with copies mailed to all parties

named in the presiding officer's notice of the hearing, at least three days before the hearing.

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law.

(3) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

(b) The presiding officer may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

(c) If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. The conditions may include the following:

(1) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(2) limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(3) requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(d) The presiding officer, at least 24 hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification. The presiding officer shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990; amended Oct. 10, 2003.)

**82-1-226. Continuances and adjournment.** For good cause at any time, with or without motion, any hearing may be continued or adjourned by the commission. A hearing before

either the commission or a hearing examiner shall commence at the time and place fixed in the notice, but may be adjourned from time to time or from place to place by the presiding commissioner or the hearing examiner without further notice. Continuances and adjournments may be requested orally, and an oral request may be granted or denied at the discretion of the hearing examiner or the commission. (Authorized by K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended Oct. 10, 2003.)

**82-1-227. Subpoenas.** (a) Subpoenas may be issued by the commission or by any commissioner, or by the presiding officer, upon written petition by any party to the proceeding. Every subpoena shall contain the caption of the docket and shall command each person to whom it is directed to attend and give testimony at the time and place specified.

(b) A subpoena duces tecum shall be issued in the same manner and form as a subpoena for the attendance of a witness, and may command the person to whom it is directed to produce the books, papers, documents, or tangible items designated in the subpoena. Upon a prompt motion, and in any event at or before the time specified in the subpoena duces tecum for compliance, any of the following actions may be taken by the commission:

(1) Quash or modify the subpoena if it is unreasonable and oppressive; or

(2) condition denial of the motion upon the advancement by the party on whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible items.

(c) Service of a subpoena or subpoena duces tecum shall be made by delivering a copy of the subpoena or subpoena duces tecum to the person and by tendering to the person the fees for one day's attendance and the mileage allowed by law. A subpoena or subpoena duces tecum may be served by means of any of the following:

(1) Restricted mail;

(2) the sheriff;

(3) the sheriff's deputy; or

(4) any other person who is designated by the commission or the party requesting issuance thereof, who is not a party to the proceeding, and who is not less than 18 years of age.

(d) If the subpoena or subpoena duces tecum is not served by the sheriff or the sheriff's deputy,

proof of service shall be shown by affidavit or by return receipt of restricted mail.

(e) Each person who is ordered by commission subpoena to appear as a witness before the commission, or any person authorized by the commission to preside at a hearing, in answer to a subpoena or subpoena duces tecum shall receive fees and mileage as provided by law.

(f) The party petitioning for the subpoena or subpoena duces tecum shall forward to the commission, along with the written petition, fees made payable to the person being subpoenaed in an amount equal to the statutory fee for one day's attendance, plus mileage computed at the rate allowed by law for travel over the most direct route from the party's place of residence to the designated place for hearing and back. The subpoena or subpoena duces tecum and fees may then be issued by the commission as requested in the petition. The petitioning party shall be directly responsible for the payment of any and all costs incurred by the sheriff, the sheriff's deputy, or any other person in serving the subpoena or subpoena duces tecum. (Authorized by and implementing K.S.A. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990; amended Oct. 10, 2003.)

**82-1-228. Hearings.** (a) General provisions. Public hearings shall be held in the hearing rooms of the commission, in any district courtroom, at any other place in Kansas that the commission may deem appropriate, or at any place required by statute. All hearings before the commission shall be conducted by the commission or by a presiding officer, who may be a commissioner, a hearing examiner, or any other person duly authorized by the commission to conduct the hearing. The provisions of these regulations governing hearings before the commission shall be applicable to hearings conducted by the presiding officer.

(b) Convening of hearings. On the date and at the place and time stated in the notice of the hearing, the presiding officer conducting the hearing shall call the docket by announcing the docket number and by reading the caption of the case into the record. Commission hearings shall be opened in a formal way on each day upon which commission business is transacted.

(c) Scope of hearing. The presiding officer may make a concise statement of the scope and the purpose of the hearing and the issues involved at the beginning of the hearing.

(d) Appearances. Each attorney for a party, and any other representative authorized by the commission according to paragraph (3) of this subsection, shall enter an appearance by giving the attorney's or representative's name and address for the record.

(1) Except as otherwise specified in paragraph (2) of this subsection, any party may perform any of the following:

(A) Appear before the commission and be heard in person and on that party's own behalf;

(B) appear before the commission and be represented by an attorney who is regularly admitted to practice in the courts of record of the state of Kansas; or

(C) appear before the commission and be represented by any regularly admitted practicing attorney in the courts of record of another state of the United States, if the nonresident attorney complies with the requirements set forth in K.S.A. 7-104, and amendments thereto. The local counsel shall first enter the local counsel's own appearance and shall then orally move for the admission of the nonresident attorney with whom local counsel is associated. The oath required by K.S.A. 7-104, and amendments thereto, shall be administered to any nonresident attorneys by the presiding officer. An oral order admitting them as attorneys or representatives in the proceeding then pending shall be made by the presiding officer, and they shall enter their appearances on the record.

(2) Except as otherwise specified in paragraph (3) of this subsection, a corporation shall not be permitted to enter an appearance, except by its attorney.

(3) In any intrastate railroad proceeding that comes before the commission, a resident of the state of Kansas who is not an attorney-at-law may represent a party before the commission if both of these conditions are met:

(A) The person is a duly registered with the relevant federal agency as a non-attorney practitioner who is representing the person's permanent employer or is a duly elected officer of a union representing a group of employees of a railroad.

(B) The person has obtained the approval of the commission to appear as a representative upon a motion. The motion shall include the individual's qualifications, the name of the party, and the proceeding in which the individual wishes to appear.

(e) Preliminary matters. Preliminary matters shall be disposed of in the following order:

(1) Petitions for intervention;

(2) any other pending petitions or motions;

(3) stipulations of the parties by which parties may make written or oral stipulations in conformance with these regulations. These stipulations shall be regarded as evidence at the hearing and shall not be binding upon the commission; and

(4) opening statements of attorneys or other representatives for the parties, if requested by the commission. Opening statements, if any, shall be made immediately before the introduction of testimony.

(f) Hearing room conduct.

(1) The conduct of attorneys and other representatives during a hearing shall be the same as the conduct required of attorneys in the district courts of Kansas. Attorneys and other representatives shall examine witnesses from a position at the counsel table, except when handling exhibits. Anyone whose conduct before the commission is deemed inappropriate may be refused permission to appear by the commission.

(2) Smoking shall not be permitted on commission premises.

(3) The use of photographic equipment or recording devices shall not be prohibited during hearings, except that the presiding officer may regulate the use of this equipment or these devices to insure the orderly conduct of the proceedings. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 66-103, K.S.A. 2001 Supp. 66-106, K.S.A. 66-165; effective Jan. 1, 1966; amended Feb. 15, 1977; amended, T-83-12, June 9, 1982; amended May 1, 1983; amended July 23, 1990; amended March 22, 1993; amended March 12, 1999; amended Oct. 10, 2003.)

**82-1-229. Use of prefiled testimony.** (a) In lieu of oral examination, the examination of witnesses may be presented or, if required by the commission or by these regulations, shall be presented in written question-and-answer form. Presentation of prefiled testimony may be required by the commission in accordance with this regulation if it is deemed that doing so would be in the public interest and would be conducive to a fair and expeditious disposition of the proceeding. Any party may object to the use of prefiled testimony by a witness, and the objecting party shall have a right to be heard by the commission or the presiding officer at the hearing on the objection.

(b) All prefiled testimony shall be in typewritten form, double-spaced, on paper that is 8½ inches

wide and 11 inches long. The lines on each page shall be numbered consecutively down the left side of the page. The left-hand margin of each page shall be not less than 1¼ inches wide, and the remaining margins shall be not less than one inch wide.

(c) Prefiled testimony shall be filed 10 days before the hearing unless otherwise specified. For conservation division matters, an original and four copies of any prefiled testimony that an applicant intends to offer into evidence, other than rebuttal, shall be filed with the conservation division at least 20 days before the hearing. An original and four copies of any prefiled testimony that an intervenor or protestant intends to offer into evidence, other than rebuttal, shall be filed with the conservation division at least 10 days before the hearing.

(d) At the hearing, after any prefiled testimony has been properly identified and authenticated under oath by the witness, upon motion, the prefiled testimony may be incorporated into the record in the same way as if the questions had been asked of the witness and the answers had been given by the witness orally. The prefiled testimony shall be subject to the same rules of evidence as if given orally, and the witness presenting the prefiled testimony shall be subject to cross-examination. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended, E-82-1, Jan. 21, 1981; amended May 1, 1981; amended July 23, 1990; amended Oct. 10, 2003.)

**82-1-230. Hearings; evidence and procedure.** (a) Rules of evidence. The rules of evidence as stated in article four of the Kansas code of civil procedure shall be applied by the commission at all of its hearings. However, the presiding officer may relax the rules of evidence if the presiding officer believes that it is in the public interest to do so and will aid in ascertaining the facts. If an objection is made to the admissibility of evidence, the presiding officer may rule upon the objection or may receive the evidence subject to a subsequent ruling on the objection by the commission. The presiding officer may exclude inadmissible evidence on the presiding officer's own motion and may order cumulative evidence discontinued. All parties may note their exceptions on the record to any ruling or other action of the presiding officer.

(b) Order of procedure at hearings. The presiding officer shall determine the order of procedure at hearing.

(1) Unless otherwise ordered by the presiding officer, the following shall apply:

(A) The applicants shall open and close at hearings on applications.

(B) The complainant shall open and close at hearings on formal complaints.

(C) The staff counsel shall open and close at hearings on investigations initiated by the commission.

(2) In a hearing in which several proceedings have been consolidated for hearing on a common record, the presiding officer shall designate the party who may open and close.

(3) The presiding officer shall designate when each intervenor may be heard.

(4) In all hearings, the presiding officer may direct departures from the suggested order of procedure.

(c) Examination and cross-examination of witnesses.

(1) Subject to the provisions of K.A.R. 82-1-229, concerning the use of prefiled testimony, each witness shall be examined and cross-examined orally and under oath in the order determined by the presiding officer. The direct examination of each witness shall be followed by cross-examination of the witness. Redirect examination, if any, shall be limited in scope to the testimony upon cross-examination. Recross examination, if any, shall be limited in scope to the testimony upon redirect examination.

(2) 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. To facilitate the orderly and expedient conduct of hearings, the presiding officer may appoint a member of the commission's legal staff to assist any party not represented by counsel in cross-examining witnesses and in presenting evidence.

(d) Going off the record. All testimony shall be taken on the record unless permission to go off the record is first granted, upon request, by the presiding officer.

(e) Excluded evidence. If an objection to a question propounded to a witness is sustained by the presiding officer, the examining attorney 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 it was offered, the objection made, and the ruling made. Upon request, the excluded testimony

ny or evidence shall be marked and preserved for the record upon appeal.

(f) Further evidence. At any stage of the hearing, or after the close of the testimony, the presiding officer may call for further evidence upon any issue and may require such evidence to be presented by the party or parties concerned or by the staff counsel, either at the hearing or at a further hearing.

(g) "Late-filed" exhibits. The presiding officer may authorize any party to the proceeding to file, within a designated time period, specific documentary evidence as part of the record. Exhibit numbers may be assigned in advance at the hearing to these items of documentary evidence.

(h) Administrative notice. In addition to matters that are required or permitted to be judicially noticed by K.S.A. 60-409 and amendments thereto, the presiding officer may take administrative notice of commission files and records in deciding matters pending before it.

(i) Briefs. Submission of briefs by the parties may be authorized or required by the presiding officer or the commission. The period of time in which briefs and reply briefs shall be filed may be fixed by order setting the procedural schedule or at the close of the hearing by the presiding officer. Any brief required by an order setting the procedural schedule may be waived by the presiding officer at the close of the hearing or by further commission order. Briefs shall be served in the same manner and upon the same persons as required for other pleadings.

(j) Closing the record. A hearing shall be concluded and the matter shall be submitted to the commission when all parties have submitted any requested briefs and all parties have completed oral arguments. If the parties submit no briefs and make no oral arguments, the presiding officer shall announce that the record of exhibits and testimony is closed and that the matter is taken under advisement. The matter shall then be submitted to the commission.

(k) Reopening the record. After the record of testimony has been closed by the presiding officer, any party may apply to reopen the record for good cause shown. However, no record shall be reopened for further hearing except upon order of the commission. Any record of any hearing may be reopened by the commission on its own motion. (Authorized by and implementing K.S.A. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1985; amended July 23, 1990; amended Oct. 10, 2003.)

**82-1-230a. Settlement agreements.** (a) As used in this regulation, the following definitions shall apply:

(1) "Settlement agreement" means an agreement between parties to a proceeding submitted to the commission to dispose of all or any part of the issues pending for decision.

(2) "Unanimous settlement agreement" means an agreement that is entered into by all parties to the proceeding or an agreement that is not opposed by any party that did not enter into the agreement.

(3) "Nonunanimous settlement agreement" means an agreement that is entered into by fewer than all parties to the proceeding and is opposed by one or more parties.

(b) Unanimous settlement agreements and nonunanimous settlement agreements shall be filed as pleadings and may be approved, rejected, or modified by the commission. A settlement agreement may contain or refer to explanatory material or information in support of the justness and reasonableness of the settlement agreement. A hearing may be conducted by the commission for the purpose of receiving evidence or argument concerning the settlement agreement.

(c) Each party objecting to the settlement agreement shall file a written objection within 10 days after the filing of the settlement agreement or within a shorter time period as directed by the commission. Failure to object in a timely manner shall constitute a waiver of that party's right to object to the settlement agreement. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106, K.S.A. 2001 Supp. 74-616; effective Oct. 10, 2003.)

**82-1-231. Filing requirements for rate proceedings.** (a) Each electric, gas, telecommunications, or water utility whose rates are under review by the commission at the request of the utility shall comply with this regulation and shall be prepared to establish, by appropriate schedules and competent testimony, all relevant facts and data pertaining to its business and operations that will assist the commission in arriving at a determination of rates that are fair, just, and reasonable both to the utility and the public. However, a telecommunications utility subject to price cap regulation pursuant to K.S.A. 66-2005(b), and amendments thereto, shall not be required to file the information described in this regulation with applications requesting a change in rates pursuant

to K.S.A. 66-2005(g), (i), (j), (n), (o), (p), (r), and (s), and amendments thereto. Electric, gas, telecommunications, or water utilities whose rates are under review as a result of an investigation, complaint, or any other procedure may be required by the commission, on its own motion or by party request, to submit the same information described in subsection (c) of this regulation.

(b) Procedures for different classes of utilities.

(1) For filing purposes, each utility shall be classified according to K.A.R. 82-1-204a.

(2) Each class A electric, gas, water, and telecommunications utility that files a major rate application, on its own initiative or as directed by the commission, shall prepare and submit its application and schedules in conformity with subsection (c) of this regulation. Any rural electric cooperative distribution system providing service to fewer than 15,000 customers may elect to follow the procedures outlined in K.A.R. 82-1-231a. Electric, gas, water, and telecommunications utilities, other than class A, may elect to follow the procedures outlined in K.A.R. 82-1-231b.

(3) Any utility that proposes a change in rates within 12 months after a commission order following a general rate proceeding and investigation may submit schedules eliminating data that duplicates information provided in the original schedules if both of the following conditions are met:

(A) The utility is willing to adopt all the regulatory procedures, principles, and rate of return established by the commission in that order.

(B) The utility receives prior approval from the commission.

(4) An application by a class A utility shall be construed to be a major rate application if any of the following conditions is met:

(A) The application relates to a general increase in revenues for the purpose of obtaining an alleged fair rate of return.

(B) Material changes in operations, facilities, or cost of service occur subsequent to the test year employed in any major rate decision, except for proposals that are for the sole purpose of compensating for the increased production or purchase cost of a principal product.

(C) The application will, in the opinion of the commission, materially affect the public interest if it is granted.

(c) Class A utility rate proceedings: application and evidence.

(1) Each major rate application by a class A utility shall be accompanied by schedules that will in-

dicate to the commission the nature and extent of the relief requested.

(2) Each application shall be based upon data submitted for a test year. The test year selected by the applicant may be disapproved by the commission for cause.

(3) The original, nine photocopies, and one electronic copy of the application and supporting schedules shall be filed with the commission. The supporting schedules shall be organized by topical sections with page numbers for each schedule. Negative numbers shall be shown in parentheses. Amounts included in the application shall be cross-referenced between the appropriate summary schedule and supporting schedules as well as between the various sections. Referencing shall include allocation ratios. All items shall be self-explanatory, or additional information, cross-references or explanatory footnotes shall be presented on the schedule.

(A) Original and photocopies. The original and each photocopy of the application and schedule shall be bound together under one loose-leaf binder. If the bulk of the material would make such handling impractical, two or more volumes in loose-leaf form shall be filed. The size of print used in the application and schedules shall not be smaller than elite type reduced 25 percent. The application shall be assembled with index tabs for each section.

(B) Electronic copy. The electronic application and schedules shall be submitted in a format and type of disk that the applicant and staff have agreed upon. All formulas shall be imbedded in the schedule, and all schedules shall be linked where appropriate. Reports required by paragraphs (c)(4)(A), (B), (M) and (P) shall be exempted from the electronic filing requirement. A waiver may be granted from all or any part of the electronic filing requirement.

(4) The form, order, and titles of each section shall conform to the following requirements:

(A) Section 1: Application, letter of transmittal, and authorization. This section shall contain a copy of the application, a copy of the letter of transmittal, and the appropriate document or documents authorizing the filing of the application, if any.

(B) Section 2: General information and publicity. This section shall describe the means generally employed by the utility to acquaint the general public that would be affected by the proposed rate change with the nature and extent of the proposal.

This section may include statements concerning newspaper articles and advertisements, meetings with public officials, civic organizations, and citizen groups, and shall include general information concerning the application that will be of interest to the public and suitable for publication. This information shall include the following, if applicable:

(i) The aggregate annual revenue increase that the application proposes;

(ii) the names of communities affected;

(iii) the number and classification of customers to be affected;

(iv) the average, per customer increase sought in dollars and cents;

(v) a summary of the reasons for filing the application;

(vi) any other pertinent information that the applicant may desire to submit or that the commission may require; and

(vii) copies of any press releases issued by the applicant before or at the time of filing the application for a rate review that relate to that review.

(C) Section 3: Summary of rate base, operating income, and rate of return. This section shall contain schedules that show the components of the test year rate base, operating revenues, expenses, and income as well as the rate of return under the present and proposed tariff or tariffs. The schedules shall be presented as follows:

(i) The first schedule shall summarize, for each utility service for which the rate change is sought, the total Kansas and commission jurisdictional components of the rate base, operating revenues, expenses, net income, and rate of return.

(ii) Supporting schedules shall show the unadjusted commission jurisdictional figures and shall further set out each adjustment to arrive at the total adjustments. When added to the unadjusted total, the adjusted commission jurisdictional figures shall correspond with the commission jurisdictional figures presented on the first schedule of this section.

(iii) Additional schedules not applicable to other sections of the application may be set out in this section.

(D) Section 4: Plant investments. This section shall contain the items of plant investment, presented in the following manner:

(i) The first schedule shall detail, by functional classification, unadjusted amounts, adjustments to these amounts, and jurisdictional allocations.

(ii) Supplemental schedules, by primary account, shall set forth year-end plant investment

for the three calendar years preceding the test year, for the test year, and for the 12-month period preceding the test year. Additional schedules setting forth pertinent information related to the plant may be submitted under this section. "Primary account," as utilized in this regulation, shall mean the account classification provided in the uniform system of accounts prescribed by the commission for the utility.

(E) Section 5: Accumulated provision for depreciation, amortization, and depletion. This section shall contain schedules that shall show by functional classification, using dates corresponding with the dates of plant investment data submitted under section 4, the balances of the reserve accounts in which the credits representing provisions for depreciation, amortization, depletion, any adjustments thereto, and jurisdictional allocations are accumulated. Upon commission request, or if considered relevant by the utility, schedules may be submitted showing analysis of the activities of the reserve accounts relating to the plant in service, segregated by primary accounts, or other segregation as is required by the uniform system of accounts prescribed by the commission for that utility.

(F) Section 6: Working capital. This section shall set forth in detail each component of the working capital items the applicant proposes to submit as elements in the composition of the rate base. This section shall be presented as follows:

(i) The first schedule shall contain the components included in working capital, adjustments to this, and jurisdictional allocations.

(ii) The method of calculation for each component of working capital and a complete explanation of any pro forma adjustments shall be included in supporting schedules.

(G) Section 7: Capital and cost of money. This section shall contain the following:

(i) A schedule indicating the amounts of the major components of the capital structures of the utility, including long-term debt, preferred stock, and common equity, outstanding at the beginning and at the end of the test year. This schedule shall contain the ratios of each component to the total capital including the percentage cost and the requested overall rate of return. If only a portion of the capital serves the utility operations involved in the proceeding, as would be the case in a multiutility or multistate operation, the schedule shall show an appropriate allocation of the capital items;

(ii) a schedule disclosing the cost of each issue of debt and preferred stock outstanding, with due

allowance for premiums, discounts, and issuance expense. Data relating to the other components of capital as may be appropriate shall also be included;

(iii) a schedule displaying historical interest coverage for at least the three calendar years preceding the test year, the test year, and the 12-month period preceding the test year. The method used in the calculation shall be indicated and shall be consistent with the applicant's bond and indenture requirements; and

(iv) the consolidated capital structure, if the applicant is a part of a consolidated group or a division of another company.

(H) Section 8: Financial and operating data. This section shall contain the following, for each of the three calendar years immediately preceding the test year, the test year, and the 12-month period preceding the test year:

(i) A balance sheet by primary account;

(ii) comparative income and retained earnings statements. The primary account numbers shall be shown, and dividends paid, by class of stock, shall be indicated;

(iii) operating revenue and expenses by primary accounts;

(iv) operating statistics appropriate to the type of utility, including kwh or mcf sales by rate schedules and customer consumption, power cost per kwh, minutes of use identified by access or toll and toll, and recurring and nonrecurring, and maintenance cost per subscriber. The statistics shall be presented in at least the same detail as is required in the annual reports to the commission; and

(v) annual payrolls by primary account.

(I) Section 9: Test year and pro forma income statements. The first schedule shall present an operating income statement depicting the unadjusted test year operations, pro forma test year operations, and allocations to jurisdictions. Supporting schedules shall set forth a full and complete explanation of the purpose and rationale for the pro forma adjustments. These pro forma adjustments may include the following:

(i) Adjustments to reflect the elimination or normalization of nonrecurring and unusual items; and

(ii) adjustments for known or determinable changes in revenue and expenses.

(J) Section 10: Depreciation and amortization. This section shall include the schedules indicating depreciation rates by primary account, depreciation expense for the test year, and amounts charged to operations, clearing accounts, and construction. If items of amortization appear in the

income statements, schedules showing the basis for those items shall also be included in this section or made available. If new depreciation rates are proposed, a copy of the depreciation study shall be provided or made available.

(K) Section 11: Taxes. This section shall contain the following information:

(i) The first schedule shall detail the various taxes chargeable to operations, allocated jurisdictionally. Appropriate supporting schedules for taxes other than income taxes shall be provided if pro forma adjustments are presented.

(ii) A schedule disclosing the calculation of taxable income shall be included.

(iii) A description of adjustments to arrive at taxable income, including method of computation, shall be provided.

(iv) A schedule shall be provided depicting the calculation of income taxes, the jurisdictional allocation of those taxes, and a division of those taxes to reflect current and deferred taxes.

(v) A schedule shall also be included for deferred investment tax credits showing the annual charges, credits, and the balance to that account for a period of not less than 10 years. Furthermore, those schedules shall show the accumulated investment tax credits by the pertinent effective rate or rates for the test year and the 12-month period preceding the test year.

(vi) A schedule shall be included for deferred income taxes showing the annual charges, credits, and balance to the account for a period of not less than 10 years and for the test year and the year preceding the test year. For both the investment tax credits and deferred income tax schedules, the test year and the 12-month period preceding the test year balances shall be allocated to the jurisdictions.

(L) Section 12: Allocation ratios. This section shall contain a complete detail for all ratios used in the allocations between jurisdictions, areas of operations, departments, classes of customers, and other allocable items. In addition, this section shall include a narrative description of the rationale for each allocation ratio, the components included in the calculation of the ratio and their source, the allocation percentages applicable to jurisdictions or departments, and what is being allocated by the ratio.

(M) Section 13: Annual report to stockholders and the U.S. securities and exchange commission. This section shall contain the following:

(i) The most recent annual report of the utility to its stockholders and, if the utility is a subsidiary

of a parent corporation, the most recent annual report of the parent corporation to its stockholders; and

(ii) if applicable, a copy of the most recent form 10-K filed with the U.S. securities and exchange commission.

(N and O) Sections 14 and 15: Additional evidence. These sections shall include all other schedules, exhibits, and data deemed pertinent to the application that may not be properly included under the preceding sections. This additional evidence may be submitted at the option of the applicant and shall be submitted upon the direction of the commission.

(P) Section 16: Financial statements. This section shall include a copy of the financial statements for the most recent fiscal year. These financial statements shall have been audited by an independent certified public accountant and an opinion rendered thereupon.

(Q) Section 17: This section shall be applicable only to applications and schedules filed by or pertaining to the operations of gas or electric utilities. This section shall contain a summary schedule that provides, by general customer classification, the test year revenues utilizing the existing and proposed tariffs. The test year revenues under existing tariffs shall be adjusted if pro forma normalization or annualization adjustments are appropriate. Also, this section shall include a schedule detailing the following data for the test year, by tariff schedule:

- (i) The tariff number;
- (ii) a narrative description of that tariff number;
- (iii) the average number of customers served during the test year;
- (iv) the units sold;
- (v) the base revenue;
- (vi) the revenue from riders, fuel, or purchased power clauses;
- (vii) the total revenue, utilizing the existing tariff. The total revenue shall be shown as adjusted, if appropriate;
- (viii) revenue per unit sold;
- (ix) the proposed tariff revenue;
- (x) the proposed revenue per unit;
- (xi) the dollar increase; and
- (xii) the percentage increase.

(R) Section 18: This section shall contain the proposed rate change schedules. All new language or figures shall be designated by underlining or in another appropriate manner. All deleted language or figures shall be designated in a different man-

ner, such as italics. Upon request, and within the time limits determined by the commission, filing of the proposed rate schedule, or other materials required to be filed under this regulation, separate from the filing of the application and schedules may be permitted by the commission.

(d) Revisions of applications and schedules. If the applicant desires to make revisions to its application and schedules, other than minor corrections and insertions that require only interlineation and do not unduly prolong the hearing with respect to the application or schedules, the applicant shall file with the commission those revised schedules that are necessary to reflect the desired revisions, as follows:

(1) Each page of any such revised section or schedule shall bear the same section letter designation, schedule number, and page number as the original page with the word "Revised" and the date of the revision immediately below the original section, schedule, or page designation.

(2) The same number of copies of any revised sections, schedules, or pages shall be filed as the number of copies originally required to be filed.

(3) A copy of each revised section, schedule, or page shall also be served upon each party whose intervention has previously been permitted by the commission pursuant to K.S.A. 77-521, and amendments thereto, and K.A.R. 82-1-225.

(4) All revised sections, schedules, and pages shall be filed in accordance with the provisions of K.A.R. 82-1-221, unless otherwise ordered by the commission for good cause shown.

(5) Substantial revisions of the schedules, including changing to a different test year, may constitute grounds for a continuance of a scheduled hearing to a later date to be granted by the commission.

(e) Prefiled testimony shall be required in all utility rate proceedings filed according to subsection (c) of this regulation. The prefiled testimony shall be filed simultaneously with the filing of the application.

(f) Any data request issued by the technical staff shall be answered by the applicant within the time period stated on the data request. If the data request cannot be answered within the time period stated on the data request, applicant shall, before the due date, provide technical staff with a written explanation of the failure to comply.

(g) In any docket that constitutes a major rate application or that the commission determines is of sufficient public concern, one or more public information hearings may be ordered by the com-

mission to be held in the service territory affected by the application. The order shall require publication notice of the filing of the application. The publication notice shall give a concise description of the filing and advise the public of the date and location of each public information hearing. The public information hearing shall provide an opportunity for the applicant to explain its application and shall provide an opportunity for the public to address the commission concerning the application. A transcript shall be made of the public information hearing, but the transcript shall not become a part of the record in the proceeding.

(h) This regulation shall not apply to a change in rates for services by telecommunications utilities that are not subject to price regulation pursuant to K.S.A. 66-2005(v), and amendments thereto.

(i) For good cause shown, any of the requirements of this regulation may be waived by the commission. (Authorized by K.S.A. 2001 Supp. 66-106; implementing K.S.A. 2001 Supp. 66-106 and 2001 Supp. 66-117; effective Jan. 1, 1966; amended Feb. 15, 1977; amended, E-78-31, Nov. 9, 1977; amended May 1, 1978; amended, E-82-1, Jan. 21, 1981; amended May 1, 1981; amended, T-83-43, Dec. 8, 1982; amended May 1, 1983; amended May 1, 1987; amended May 1, 1988; amended July 23, 1990; amended Oct. 10, 2003.)

**82-1-231a. Filing requirements for rate proceedings by rural electric distribution cooperative systems providing service to fewer than 15,000 customers.** (a) In lieu of filing a rate case application according to K.A.R. 82-1-231, any rural electric distribution cooperative with memberships of fewer than 15,000 may elect to prepare a less extensive application with schedules that are more appropriate to the operations of smaller utilities.

(b) Applications and evidence.

(1) The application and schedules shall be in the form and substance permitted by the commission and shall include an electronic application as described in K.A.R. 82-1-231(c)(3). The application shall include the following:

(A) Supporting schedules as required by the commission;

(B) A copy of the financial statements of the rural electric distribution cooperative for a test year. These financial statements shall have been audited by an independent certified public accountant and an opinion rendered on them;

(C) a copy of the monthly REA form seven for the test year; and

(D) a copy of the most recent tariffs with penciled-in proposed changes. The test year selected by the applicant may be disapproved by the commission for cause.

(2) A rate case application shall not be considered under this regulation unless all of the following conditions are met:

(A) The commission has received written notice of the intent to file an application not less than 30 and not more than 90 days before the application filing date.

(B) The applicant has met with technical staff to inform the technical staff of the applicant's approximate revenue requirement, any proposed changes in the apportionment of the revenue requirement among rate classes, and any proposed rate design changes.

(C) The applicant has held a public meeting, for which adequate notice was given, to inform its membership of its intent to file an application and to allow its membership to comment. The applicant's public meeting notice shall include a statement of applicant's approximate revenue requirement, any proposed changes in the apportionment of the revenue requirement among rate classes, and any proposed rate design changes.

(3) Within 30 days of a third consecutive filing by an applicant under this regulation, a determination shall be made by the commission as to whether the filing may again be treated as an alternative filing under this regulation, or whether the filing warrants an extended investigation under K.A.R. 82-1-231.

(c) General procedure.

(1) The technical staff shall meet with applicant within 10 days after the application is filed to discuss the technical staff's preliminary review of the application and the appropriateness of addressing the application under this regulation.

(2) Any data request issued by the technical staff shall be answered by the applicant within seven calendar days of issuance. If the data request cannot be answered within seven calendar days, the applicant shall provide the technical staff with a written explanation of the failure to comply. The technical staff may conduct a field audit to verify any information that the technical staff considers essential to a rate proceeding.

(3) The technical staff shall complete the audit of the application and forward a written recommendation to the commission and to the applicant within 60 days after the application is filed.

(4) If the technical staff recommendation is to approve the application with modification or to deny the application, the applicant may submit written comments, which may include a request for hearing, to the commission within five days from receipt of the technical staff's recommendation.

(5) The application shall be considered by the commission within 15 days after receipt of the technical staff's recommendation. The application may be ruled upon by the commission in any of the following ways:

(A) Approved as filed;

(B) approved with modifications;

(C) suspended by the commission pending an order setting the matter for hearing and directing the technical staff to conduct a further investigation; or

(D) denied.

(6)(A) If the commission approves the application pursuant to paragraph (c)5(A) or (c)5(B), an interim order seeking comment shall be issued within 25 days after receipt of the technical staff's recommendation. The interim order shall be subject to a comment period of 90 days. The applicant shall notify its membership of the interim rates, interim rate design, and the comment period within 20 days after the commission's issuance of the interim order.

(B) If at the close of the 90-day comment period, substantial comment has not been received, a final order making the temporary rates permanent shall be issued by the commission. If at the close of the 90-day comment period, substantial comment has been received, further investigation and hearing may be ordered by the commission.

(7) If the commission orders a further investigation and hearing under paragraph (c)(5)(C) or (c)(6)(B), a hearing date and dates by which parties shall file written testimony shall be specified by the commission.

(d) Consideration of an application under this regulation may be suspended and converted to an application subject to K.A.R. 82-1-231 at any time during the proceeding and for good cause. Such a conversion may be made on the motion of the technical staff or the commission.

(e) For good cause shown, any requirements of this regulation may be waived by the commission. (Authorized by K.S.A. 2001 Supp. 66-106; implementing K.S.A. 2001 Supp. 66-106 and K.S.A. 2001 Supp. 66-117; effective May 1, 1988; amended July 23, 1990; amended Oct. 10, 2003.)

**82-1-231b. Filing requirements for rate proceedings by electric, gas, water, and telecommunications utilities other than class A.**

(a) In lieu of filing a rate case application according to K.A.R. 82-1-231, electric, gas, water, and telecommunications utilities, other than class A, may elect to prepare a less extensive application with schedules that are more appropriate to the operations of smaller utilities, unless otherwise directed by the commission. However, a telecommunications utility that is subject to price cap regulation pursuant to K.S.A. 66-2005(b), and amendments thereto, shall not be required to file the information described in this regulation with applications requesting a change in rates pursuant to K.S.A. 66-2005 (g), (i), (j), (n), (o), (p), (r), and (s), and amendments thereto.

(b) Applications and evidence.

(1) The application and schedules shall be in the form and substance permitted by the commission and shall include an electronic application as described in K.A.R. 82-1-231(c)(3). The application shall include the following:

(A) Supporting schedules as required by the commission;

(B) a copy of the financial statements of the utility for a test year. These financial statements shall have been audited by an independent certified public accountant and an opinion rendered thereupon.

(C) a copy of the most recent tariffs with penciled-in or red-lined proposed changes. The test year selected by the applicant may be disapproved by the commission for cause.

(2) A rate case application shall not be considered under this regulation unless all of the following conditions are met:

(A) The commission has received written notice of the intent to file an application not less than 30 and not more than 90 days before the application filing date.

(B) The applicant has met with technical staff to inform the technical staff of the applicant's approximate revenue requirement, any proposed changes in the apportionment of the revenue requirement among rate classes, and any proposed rate design changes.

(C) The applicant has held a public meeting, for which adequate notice was given, to inform its customers of its intent to file an application and to allow its customers to comment. The applicant's public meeting notice shall include a statement of the applicant's approximate revenue requirement,

any proposed changes in the apportionment of the revenue requirement among rate classes, and any proposed rate design changes.

(3) Within 30 days after a third consecutive filing by an applicant under this regulation, a determination shall be made by the commission as to whether the filing may again be treated as an alternative filing under this regulation, or whether the filing warrants an extended investigation under K.A.R. 82-1-231.

(c) General procedure.

(1) The applicant shall meet with technical staff after the application is filed to discuss the technical staff's preliminary review of the application and the appropriateness of addressing the application under this regulation.

(2) Any data request issued by the technical staff shall be answered by the applicant as expeditiously as possible. The technical staff may conduct a field audit to verify any information the technical staff considers essential to a rate proceeding.

(3) The technical staff shall complete the audit of the application and forward a written recommendation to the commission.

(4) A copy of the technical staff's recommendation shall be provided to the applicant. If the technical staff recommendation is to approve the application with modification or to deny the application, the applicant may submit written comments, which may include a request for hearing, to the commission.

(5) The application shall be considered by the commission. The application may be ruled upon by the commission in any of the following ways:

(A) Approved as filed;

(B) approved with modifications;

(C) suspended by the commission pending an order setting the matter for hearing and directing the technical staff to conduct a further investigation; or

(D) denied.

(6)(A) If the commission approves the application pursuant to paragraph 5(A) or 5(B), an interim order seeking comment shall be issued. The interim order shall be subject to a comment period of 90 days. The applicant shall notify its customers of the interim rates, interim rate design, and the comment period within 20 days after the commission's issuance of the interim order.

(B) If at the close of the 90-day comment period, substantial comment has not been received, a final order making the temporary rates permanent

may be issued by the commission. If at the close of the 90-day comment period, substantial comment has been received, further investigation and a hearing may be ordered by the commission.

(7) If the commission orders a further investigation and hearing under paragraph (5)(C) or (6)(B), a hearing date and dates by which parties shall file written testimony shall be specified by the commission.

(d) Consideration of an application under this regulation may be suspended and converted to an application subject to K.A.R. 82-1-231 at any time during the proceeding and for good cause. Such a conversion may be made on the motion of the technical staff or the commission on its own initiative.

(e) This regulation shall not apply to a change in rates for services by telecommunications utilities that are not subject to price regulation pursuant to K.S.A. 66-2005(v) and amendments thereto.

(f) For good cause shown, any requirements of this regulation may be waived by the commission. (Authorized by K.S.A. 2001 Supp. 66-106; implementing K.S.A. 2001 Supp. 66-106 and K.S.A. 2001 Supp. 66-117; effective July 23, 1990; amended Oct. 10, 2003.)

**82-1-232. Orders of the commission.** (a) Form and content. Unless otherwise specified, each order of the commission shall contain the following:

(1) A caption that complies with the requirements of paragraph (a)(1) of K.A.R. 82-1-219, except that the heading shall be "THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS" and shall be followed by a designation of the commissioners to whom the matter was submitted;

(2) if the order renders a final determination on a matter after hearing or prehearing conference, a recitation of the appearances, whether by attorney or pro se, and a summary of jurisdictional facts including those pertaining to the dates and places of hearings and notices;

(3) a concise and specific statement of the relevant law and basic facts that persuade the commission in arriving at its decision;

(4) the official signature of the commission, as provided in this regulation;

(5) the surnames of the commissioners who participated in the making of the order typed at the end of the order; and

(6) the date of mailing to the parties shown above the executive director's signature.

(b) Orders issued without a hearing.

(1) Non-KAPA proceeding. If the commission has not used KAPA to govern the conduct of a proceeding and a decision or order is rendered without a hearing, any party affected by the order or decision and deeming it to be improper, unreasonable, or contrary to law may apply, by petition, for a hearing on the matter before the commission. The petition shall contain a statement of every ground of objection that the petitioner will raise against the decision or order. The petition for a hearing may be granted or denied by the commission. If a hearing is granted, it shall be subject to the commission's rules and regulations. If a hearing is denied, the denial shall be construed as a denial of a petition for reconsideration on the matter for purposes of an application for judicial review of the order or decision.

(2) KAPA proceeding.

(A) Orders may be issued without hearing in summary proceedings pursuant to KAPA. Any order issued in a summary proceeding shall disclose that any party may file a petition requesting a hearing within 15 days after service of an order.

(B) (i) Interim emergency orders may be issued by the commission upon its own initiative, or upon a request, if there has been a showing of good cause.

(ii) An interim order may be issued by any commissioner. All parties affected by the order shall comply, except that as soon as possible after the order is issued, the order shall be approved or revoked by a majority of the commission.

(iii) Unless a different period of time is otherwise specified by statute, an interim order shall not be effective for a period longer than 30 days if the matter is determined and the order is issued without a hearing on the merits.

(c) Official signature of the commission. All orders, certificates, permissions, approvals, licenses, permits, warrants, subpoenas, or any process or instrument may be officially signed with the signature of the commission by subscribing the signature of the executive director of the commission and affixing the official seal of the commission. All orders or other instruments made and issued by the commission shall be in strict conformance with the action of the commission as shown by the official written minutes of the commission and signed by at least two commissioners, with the exception of orders suspending or cancelling the authority of a motor carrier for failure to maintain proof of insurance as required by K.S.A. 66-1,128, and amendments thereto. Orders suspending or

cancelling the authority of a motor carrier or reinstating the carrier for providing proof of insurance shall require the signature of one commissioner on the minutes, until signatures of the other two commissioners may be obtained.

(d) Filing, effective date. All orders of the commission shall be filed in the office of the commission in Topeka. Orders shall take effect and be in force upon service, as prescribed by K.A.R. 82-1-216, unless otherwise expressly provided in the order or by statute.

(e) Dating of orders. The date of mailing of each order of the commission shall be shown on each order by the executive director above the official signature of the commission, except that orders that are mailed from the office of the commission's conservation division shall have the date of mailing shown on each order by the administrator of the conservation division. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Feb. 15, 1977; amended July 23, 1990; amended March 22, 1993; amended Oct. 10, 2003.)

**82-1-233.** (Authorized by K.S.A. 55-604, 55-605, 55-704, 55-706, 66-106, 66-1,117, 66-1511; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

**82-1-234.** (Authorized by K.S.A. 55-704, 66-106, K.S.A. 1965 Supp. 55-604; effective Jan. 1, 1966; revoked May 1, 1985.)

**82-1-234a. Discovery.** (a) Discovery shall be limited to matters that are clearly relevant to the proceeding involved. Discovery may be further limited by the commission or presiding officer based on the discovering party's interest and participation in the proceeding. This regulation shall not diminish, alter, or modify in any way the authority of the commission staff to request information in the performance of its duties.

(b) Responses to data requests submitted by commission staff shall be furnished within seven days of the date on which the information was requested, unless otherwise directed. (Authorized by and implementing K.S.A. 1989 Supp. 55-604, K.S.A. 55-704, 66-106; effective May 1, 1985; amended July 23, 1990.)

**82-1-235. Petitions for reconsideration; compliance with orders.** (a) Any party aggrieved by any order or decision of the commission may file a petition for reconsideration before

the commission. All petitions for reconsideration shall be filed pursuant to the appropriate statutory provisions relating to them.

(b) If the petitioner relies on the ground that the commission, in making its determination, did not consider any of the evidence presented in the proceeding, the petition for reconsideration shall cite that portion of the transcript where the testimony appears, if the transcript is available on the date of the commission's order. The application shall specify by number the exhibits and the pertinent portion of those exhibits that is alleged not to have been considered by the commission.

(c) A party filing a petition for reconsideration shall serve a copy of the petition upon all parties to the proceeding in the manner prescribed by these regulations for the filing and service of pleadings.

(d) The burden of going forward with the evidence shall rest upon the applicant or applicants requesting reconsideration.

(e) All the evidence, rules and regulations, instruments, and other documents admitted or received in the original hearing or subsequent hearings shall, by operation of this regulation, become a part of the record in the reconsideration, unless otherwise directed by the commission.

(f) Each party desiring reconsideration shall file a petition for reconsideration. Each party that files a petition for reconsideration shall rely solely upon its own petition. A petitioner may withdraw its petition for reconsideration at any time by motion. All parties shall be entitled to cross-examine witnesses and be heard at the hearing in which facts or issues are given reconsideration. Direct testimony may be introduced only by the petitioner. Rebuttal testimony may be introduced by any party. If two or more petitions for reconsideration are granted, at the discretion of the commission, they may be consolidated for hearing and may be heard on a common record. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Feb. 15, 1977; amended July 23, 1990; amended March 12, 1999; amended Oct. 10, 2003.)

**82-1-236.** (Authorized by K.S.A. 17-1269, 66-106; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

**82-1-237. Investigation and hearing.** (a) Any public utility, common carrier, motor carrier, or any other party under the commission's

jurisdiction may be investigated and hearings or show cause proceedings may be ordered by the commission at any time, upon its own motion if the commission believes that the party under its jurisdiction is in violation of law or of any order of the commission.

(b) Other investigations as are required or authorized by law may be instituted by the commission as deemed necessary.

(c) Evidence considered necessary or desirable in any formal proceeding, in addition to the evidence presented by the parties, may be secured and presented by the commission if deemed necessary. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990; amended Oct. 10, 2003.)

**82-1-238. Transcripts.** (a) Transcripts of all testimony and proceedings may be ordered and purchased from the commission if the reporter is employed by the commission. Otherwise transcripts may be purchased directly from the reporter. Corrections to the official transcript may be made only to make it conform to the evidence presented at the hearing. Claimed errors and suggested corrections may be offered by any party within 10 days after the transcript is filed with the commission, unless the presiding officer grants an extension. Suggested corrections shall be served in writing upon each party of record, the official reporter, and the presiding officer. The presiding officer shall then determine what changes shall be made, if any. All parties shall be advised by the commission of any authorized corrections to the record.

(b) If any order, pleading brief or other document filed with the commission makes reference to a portion of the transcript of any hearing before the commission, that citation to the transcript shall be made as follows:

(1) If the party has access to the official transcript, the citation shall contain the following:

(A) The abbreviation "Tr.;"

(B) the abbreviation "Vol." followed by the appropriate volume number; and

(C) a reference to the appropriate page number or numbers in the transcript volume; or

(2) If the party does not have access to the official transcript, the citation shall contain the following:

(A) The witness name;

(B) an indication of whether the citation is to the witness's direct or rebuttal testimony; and

(C) a reference to the appropriate page number or numbers in the direct or rebuttal testimony.

(c) Citations to more than one volume of transcript or to more than one witness or speaker shall be separated by semicolons. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Feb. 15, 1977; amended May 1, 1985; amended July 23, 1990; amended Oct. 10, 2003.)

**COMPENSATION TO CONSUMER INTERVENORS PURSUANT TO PURPA**

**82-1-239. Definitions.** As used in this article, the following definitions shall apply: (a) "Attorney fees" means expenses incurred by an intervenor for an attorney with respect to a PURPA position.

(b) "Compensation" means reasonable attorneys' fees, reasonable expert witness fees, and other reasonable expenses incurred in preparation for and advocacy of a PURPA position.

(c) "Consumer" means any retail customer of an electric utility.

(d) "Expert witness fees" means expenses incurred by an intervenor for an expert with respect to a PURPA position.

(e) "Intervenor" means any retail consumer of an electric utility, any authorized representative of the consumer, any governmental instrumentality, or any representative of a group or organization authorized, pursuant to articles of incorporation or bylaws, to represent the interests of consumers.

(f) "Other reasonable expenses" means reasonable expenses incurred by an intervenor with respect to a PURPA position not exceeding 15 percent of the total of reasonable attorney and expert witness fees awarded.

(g) "PURPA" means the public utility regulatory policies act of 1978.

(h) "PURPA position" means a factual contention, legal contention or specific recommendation promoting one of the PURPA purposes and relating to one or more of the PURPA subtitle B standards.

(i) "Significant financial hardship" means a condition that shall be established by demonstrating that the intervenor does not have sufficient resources available to participate in the proceeding without an award of compensation or, in the case of a group or organization, by showing that the economic resources of the individual members of

the group or organization are small in comparison to the expense of effective preparation for and participation in the proceeding. (Authorized by K.S.A. 2001 Supp. 66-106, K.S.A. 66-1,185; implementing K.S.A. 66-1,185; effective, E-81-42, Dec. 17, 1980; effective May 1, 1981; amended Oct. 10, 2003.)

**82-1-240. General rule.** In the final order of electric utility proceedings in which a PURPA issue is considered, the commission may award compensation to consumer intervenors whom it determines eligible for compensation. (Authorized by K.S.A. 66-106, 66-1,185; implementing K.S.A. 66-1,185; effective, E-81-42, Dec. 17, 1980; effective May 1, 1981.)

**82-1-241. Application for compensation.** An intervenor who wishes to apply for an award of compensation shall file within thirty (30) days after filing of an application, a complaint, or an order of the commission initiating a proceeding:

(a) A petition to intervene.

(b) An application setting forth:

(1) A statement of the PURPA position which the intervenor intends to raise in the proceeding.

(2) A statement identifying the consumer interest represented by the intervenor, the relevance of the proceeding to that interest, and why participation is necessary for a full and fair determination of the issues.

(3) A statement of the intervenor's financial position and a showing that without compensation preparation for and participation in the proceeding in order to advocate a PURPA position will impose a significant financial hardship on the intervenor.

(4) A detailed schedule of expected expenses for attorneys' fees, expert witness fees, and other reasonable expenses of preparing for, and participating in the proceeding. (Authorized by K.S.A. 66-106, 66-1,185; implementing K.S.A. 66-1,185; effective, E-81-42, Dec. 17, 1980; effective May 1, 1981.)

**82-1-242. Preliminary hearing.** To determine eligibility for compensation, a preliminary hearing for the presentation of evidence by all parties to the proceeding shall be held within a reasonable time after the final date for intervenor filing of an application for compensation. (Authorized by K.S.A. 66-106, 66-1,185; implementing K.S.A. 66-1,185; effective, E-81-42, Dec. 17, 1980; effective May 1, 1981.)

**82-1-243. Preliminary commission determination.** The preliminary commission determination shall contain a ruling on the following: (a) Whether the intervenor has met its burden of showing significant financial hardship.

(b) A designation, if appropriate, to join as one (1) party all intervenors with the same or similar interests.

(c) Whether the intervenor has or represents an interest which would otherwise not be adequately represented in the proceeding and representation of which is necessary for a fair determination in the proceeding.

(d) A preliminary award of compensation to eligible intervenors based on the evidence presented of the cost to prepare for and participate in the proceeding in order to advocate the PURPA positions which the intervenor intends to raise, subject to evaluation and determination by the commission at the close of the hearing.

(e) No payment will be made prior to the final order in the proceeding. (Authorized by K.S.A. 66-106, 66-1,185; implementing K.S.A. 66-1,185; effective, E-81-42, Dec. 17, 1980; effective May 1, 1981.)

**82-1-244. Accounting of costs.** (a) Within ten (10) days after the close of the hearing any intervenor seeking compensation shall file with the secretary of the commission a complete itemized accounting of its actual costs.

(b) All records of the intervenor pertaining to costs for which compensation is sought shall be available for inspection at all reasonable times by the commission and the utility from which such compensation is sought. (Authorized by K.S.A. 66-106, 66-1,185; implementing K.S.A. 66-1,185; effective, E-81-42, Dec. 17, 1980; effective May 1, 1981.)

**82-1-245. Award of compensation.** (a) At the close of the hearing the commission shall permit all parties to submit written briefs commenting on intervenor compensation.

(b) The commission shall make a final award of compensation to eligible intervenors if in its opinion the intervenor substantially contributed to the approval, in whole or in part, of a position which relates to any subtitle B standard.

(c) The award of compensation shall be measured against the prevailing market rates for persons of comparable training and experience who are offering similar services. In no event shall the

fees exceed those paid by the commission or the utility, whichever is greater, for persons of comparable training who are offering similar services. (Authorized by K.S.A. 66-106, 66-1,185; implementing K.S.A. 66-1,185; effective, E-81-42, Dec. 17, 1980; effective May 1, 1981.)

**82-1-246. Payment of compensation.** (a) Costs of compensation shall be assessed against the utility or utilities participating in the proceeding.

(b) Payment shall be made by the affected utility or utilities directly to the intervenor within thirty (30) days after service of the commission's order determining the reasonable amount of compensation. (Authorized by K.S.A. 66-106, 66-1,185; implementing K.S.A. 66-1,185; effective, E-81-42, Dec. 17, 1980; effective May 1, 1981.)

**82-1-247. Relationship to other rules.** This article applies only to compensation of consumer intervenors of electric utilities subject to title I of PURPA. Nothing in this rule shall be construed to limit in any way the ability of a person to intervene under K.A.R. 82-1-225. (Authorized by K.S.A. 66-106, 66-1,185; implementing K.S.A. 66-1,185; effective, E-81-42, Dec. 17, 1980; effective May 1, 1981.)

**82-1-248. This article will apply to all hearings in which PURPA positions are raised and intervenors in dockets already opened shall be able to seek compensation as of the effective date of this rule.** (Authorized by K.S.A. 66-106, 66-1,185; implementing K.S.A. 66-1,185; effective, E-81-42, Dec. 17, 1980; effective May 1, 1981.)

**82-1-250. Consumer information and education; telephone preference service subscribership; information for telephone solicitors.** (a)(1) On or before September 1, 2001, Southwestern Bell Telephone Company shall coordinate an industrywide forum of all interested local exchange carriers and telecommunications carriers to collectively develop a method or methods for annually notifying residential subscribers of the information specified in K.S.A. 50-675a(a), and amendments thereto.

(2) The forum shall, within two weeks after its conclusion, submit a report to the commission for approval as to the form and content of the method or methods developed to ensure compliance with K.S.A. 50-675a, and amendments thereto.

(b) In addition to the information required to

be provided in paragraph (a)(1) above, the following information, to be provided to the forum by the Direct Marketing Association, shall also be provided to all residential subscribers by all local exchange carriers and telecommunications carriers using the method or methods developed:

(1) The procedure for registering with the Direct Marketing Association's telephone preference service;

(2) the frequency with which the Direct Marketing Association's database is updated;

(3) the types of calls residential subscribers should still expect to receive;

(4) the procedure for registration renewal if residential subscribers move or receive a new telephone number;

(5) the duration of the residential subscriber's registration period; and

(6) the procedure for registration renewal.

(c) Any of the following means may be used in attempting to inform telephone solicitors in Kansas of the criteria for membership in the Direct Marketing Association, the charges for members and nonmembers to access the Direct Marketing Association's database, and options for accessing Kansas-specific portions of the Direct Marketing Association's database:

(1) Beginning September 1, 2001, annual publication in the Kansas register by the commission of the criteria for telephone solicitors to become members of the Direct Marketing Association;

(2) inclusion by the commission of relevant information on its internet web site;

(3) inclusion of relevant information in a newsletter mailing by the Direct Marketing Association; or

(4) inclusion of relevant information by publishers of telephone directories in the consumer information pages in local telephone directories. (Authorized by and implementing K.S.A. 2000 Supp. 50-675a; effective July 20, 2001.)

## Article 2.—OIL AND GAS CONSERVATION

### OIL CONSERVATION

**82-2-100.** (Authorized by K.S.A. 55-604; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-101.** (Authorized by and implementing K.S.A. 1981 Supp. 55-128, 55-130, 55-134, 55-136, 55-137, 55-602, 55-604, 55-704, 55-901;

effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-102.** (Authorized by K.S.A. 55-601, 55-602; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1982.)

**82-2-103.** (Authorized by K.S.A. 55-603; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-104.** (Authorized by K.S.A. 55-604; implementing K.S.A. 55-603; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-105 and 82-2-106.** (Authorized by and implementing K.S.A. 55-604; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1979; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-107.** (Authorized by K.S.A. 55-604, 55-605; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1982.)

**82-2-108.** (Authorized by K.S.A. 55-603; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-109.** (Authorized by and implementing K.S.A. 55-604; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1979; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-110.** (Authorized by and implementing K.S.A. 55-604; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1981; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-111.** (Authorized by K.S.A. 55-604; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-112 and 82-2-113.** (Authorized by K.S.A. 55-603; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-114.** (Authorized by K.S.A. 55-512, 55-

604; implementing K.S.A. 55-512; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-115.** (Authorized by and implementing K.S.A. 55-604; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-116.** (Authorized by K.S.A. 55-604; implementing K.S.A. 55-131, 55-609; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended May 1, 1978; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-117.** (Authorized by K.S.A. 55-604; implementing K.S.A. 55-131, 55-609; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-118.** (Authorized by K.S.A. 55-602; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-119.** (Authorized by K.S.A. 55-602; implementing K.S.A. 55-118; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-120 and 82-2-121.** (Authorized by K.S.A. 55-602; implementing K.S.A. 55-115; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-122.** (Authorized by K.S.A. 55-602; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-123.** (Authorized by K.S.A. 55-136, 55-137; implementing K.S.A. 55-138; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-124.** (Authorized by K.S.A. 55-609a, 55-609b; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-125.** (Authorized by and implementing K.S.A. 55-604, 55-704, and K.S.A. 1981 Supp. 55-128; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-126.** (Authorized by and implementing K.S.A. 55-604; effective May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-127 to 82-2-130.** (Authorized by K.S.A. 55-604; implementing K.S.A. 55-603; effective May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

#### GAS CONSERVATION

**82-2-200.** (Authorized by K.S.A. 55-704; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1982.)

**82-2-201.** (Authorized by K.S.A. 55-704; effective, E-72-4, Jan. 1, 1972; effective, Jan. 1, 1973; revoked May 1, 1982.)

**82-2-203.** (Authorized by K.S.A. 55-703; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1979.)

**82-2-204.** (Authorized by and implementing K.S.A. 55-704; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-205.** (Authorized by K.S.A. 55-703a, 55-705a; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1979.)

**82-2-206.** (Authorized by K.S.A. 55-705a; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1979.)

**82-2-207.** (Authorized by K.S.A. 55-705b; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-209.** (Authorized by K.S.A. 1978 Supp. 55-711; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1979.)

**82-2-210.** (Authorized by and implementing K.S.A. 1981 Supp. 55-703; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-211.** (Authorized by and implementing K.S.A. 55-704; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-212.** (Authorized by K.S.A. 55-703; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-213.** (Authorized by K.S.A. 55-704; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-214.** (Authorized by K.S.A. 55-703; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-215.** (Authorized by K.S.A. 55-702; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-216.** (Authorized by K.S.A. 55-711; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, E-76-38, Sept. 1, 1975; amended May 1, 1976; amended, T-83-14, July 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-217.** (Authorized by K.S.A. 55-704; implementing K.S.A. 55-703; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-218.** (Authorized by K.S.A. 55-704; implementing K.S.A. 55-711; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-219.** (Authorized by K.S.A. 55-704; implementing K.S.A. 55-703; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-220.** (Authorized by K.S.A. 55-1203; effective, E-72-4, Jan. 1, 1972; effective, Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-221 to 82-2-224.** (Authorized by K.S.A. 55-704; implementing K.S.A. 55-703a,

55-704; effective May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-225.** (Authorized by K.S.A. 55-704; implementing K.S.A. 1981 Supp. 55-703; effective May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**DRILLING AND PLUGGING OF OIL OR  
GAS WELLS AND SEISMIC CORE OR  
EXPLORATORY HOLES**

**82-2-301.** (Authorized by K.S.A. 1978 Supp. 55-128; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1979.)

**82-2-302 and 82-2-303.** (Authorized by and implementing K.S.A. 1981 Supp. 55-128; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-304.** (Authorized by K.S.A. 55-128; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended Feb. 15, 1977; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-305 to 82-2-308.** (Authorized by and implementing K.S.A. 1981 Supp. 55-128; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-309.** (Authorized by K.S.A. 55-128; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, E-78-3, Nov. 10, 1976; amended May 1, 1978; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-310.** (Authorized by K.S.A. 1978 Supp. 55-128a; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1979.)

**82-2-311.** (Authorized by K.S.A. 55-128a; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1979; amended, T-83-14, July 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-312.** (Authorized by K.S.A. 55-128b; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-313.** (Authorized by K.S.A. 55-128b; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1979.)

**UNDERGROUND DISPOSAL OF SALT WATER**

**82-2-400.** (Authorized by K.S.A. 65-171d, K.S.A. 1981 Supp. 55-901; implementing K.S.A. 55-1003, 65-171d, and K.S.A. 1981 Supp. 55-901; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, E-77-3, Jan. 13, 1976; amended Feb. 15, 1977; amended, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-401.** (Authorized by K.S.A. 1981 Supp. 55-901; implementing K.S.A. 55-1003, K.S.A. 1981 Supp. 55-901; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-402.** (Authorized by K.S.A. 55-1003; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked Aug. 14, 2015.)

**82-2-403.** (Authorized by K.S.A. 1981 Supp. 55-901; implementing K.S.A. 55-1003; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-404.** (Authorized by K.S.A. 1981 Supp. 55-901; implementing K.S.A. 55-1003, K.S.A. 1981 Supp. 55-901; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-405.** (Authorized by and implementing K.S.A. 1981 Supp. 55-901; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-406 to 82-2-408.** (Authorized by K.S.A. 65-171d, 1981 Supp. 55-901; implementing K.S.A. 55-1003, 65-171d, K.S.A. 1981 Supp. 55-901; effective, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-409.** (Authorized by K.S.A. 1981 Supp. 55-901; implementing K.S.A. 55-1003, K.S.A. 1981 Supp. 55-901; effective, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-410.** (Authorized by K.S.A. 65-171d, 1981 Supp. 55-901; implementing K.S.A. 55-

1003, 65-171d, K.S.A. 1981 Supp. 55-901; effective, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-411.** (Authorized by K.S.A. 1981 Supp. 55-901; implementing K.S.A. 55-1003, K.S.A. 1981 Supp. 55-901; effective, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**FLUID REPRESSURING AND WATER FLOODING OF OIL AND GAS PROPERTIES**

**82-2-500.** (Authorized by K.S.A. 55-134, 65-171d; implementing, K.S.A. 55-133, 65-171d; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-501.** (Authorized by K.S.A. 55-134; implementing, K.S.A. 55-133; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-502.** (Authorized by K.S.A. 55-134, 65-171d; implementing, K.S.A. 55-133, 65-171d; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-503 and 82-2-504.** (Authorized by K.S.A. 55-134; implementing, K.S.A. 55-133; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-505.** (Authorized by and implementing K.S.A. 1981 Supp. 55-135; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-506.** (Authorized by K.S.A. 55-134, K.S.A. 1973 Supp. 55-133; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked Aug. 14, 2015.)

**82-2-507.** (Authorized by K.S.A. 55-135; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked Aug. 14, 2015.)

**82-2-508 to 82-2-510.** (Authorized by K.S.A. 55-134, 65-171d; implementing K.S.A. 55-133, 65-171d; effective, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-511.** (Authorized by K.S.A. 65-171d, K.S.A. 1981 Supp. 55-901; implementing K.S.A. 55-1003, 65-171d, K.S.A. 1981 Supp. 55-901; effective, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-512.** (Authorized by K.S.A. 55-134; implementing K.S.A. 55-133; effective, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**COMMINGLING**

**82-2-600.** (Authorized by K.S.A. 55-602; implementing K.S.A. 55-603; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**PLUGGING OF ABANDONED OIL OR GAS WELLS**

**82-2-700.** (Authorized by K.S.A. 55-141; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, May 1, 1978; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**NATURAL GAS WELL CLASSIFICATION**

**82-2-800.** (Authorized by K.S.A. 66-1,185; effective, E-80-3, March 8, 1979; effective, E-81-9, April 9, 1980; effective May 1, 1981; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-801.** (Authorized by and implementing K.S.A. 66-1,185; effective, E-80-3, March 8, 1979; effective, E-81-9, April 9, 1980; effective May 1, 1981; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**82-2-802 to 82-2-804.** (Authorized by K.S.A. 66-1,185; effective, E-80-3, March 8, 1979; effective, E-81-9, April 9, 1980; effective May 1, 1981; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

**Article 3.—PRODUCTION AND CONSERVATION OF OIL AND GAS**

**82-3-100. Applicability; exception.** (a) This article shall apply throughout Kansas unless specifically limited. Special orders may be issued by the commission. These special orders shall prevail over any conflicting regulations.

(b) An exception to the requirements of any regulation in this article may be granted by the commission, after considering whether the exception will prevent waste, protect correlative

rights, and prevent pollution. Each party requesting an exception shall file an application with the conservation division. The applicant shall publish notice of the application pursuant to K.A.R. 82-3-135a and notice of any hearing pursuant to K.A.R. 82-3-135. (Authorized by and implementing K.S.A. 2014 Supp. 55-152, K.S.A. 55-604, K.S.A. 55-704; effective T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended April 23, 1990; amended Aug. 14, 2015.)

**82-3-101. Definitions.** (a) As used in these regulations, the following definitions shall apply:

(1) "Acreage factor" means the quotient obtained by dividing the acreage attributable to a well by the basic acreage unit as defined in K.A.R. 82-3-207 and K.A.R. 82-3-312 or as decided by the commission on a case-by-case basis in the basic proration order for the common source of supply in which the well is located.

(2) "Allowable" means the amount of oil or gas authorized to be produced by order of the commission.

(3) "Allowable period" means the time in which the allowable may be produced.

(4) "Alternate cementing materials" means materials used in lieu of portland cement blends, as prescribed by commission order, dated March 29, 1985, Docket No. 34,780-C (C-1825), which is adopted by reference.

(5) "Artesian pressure" means groundwater under sufficient hydrostatic head to rise above the rock unit containing the aquifer.

(6) "Assessment" means any charge against the parties involved in any hearing, application, investigation, or the enforcement of an order, and the assessment on natural gas and oil produced to pay the costs associated with the administration of the oil or gas conservation act.

(7) "Attributable acreage" means the acreage assigned to a well in accordance with the well spacing program for each of the prorated fields.

(8) "Casing" means tubular materials used to line a well bore.

(9) "Casinghead gas" means gas produced that was in solution with oil in its original state in the reservoir.

(10) "Cement" means portland cement or a blend of portland cement used in the oil and gas industry to support and protect casing and to prevent the migration of subsurface fluids by the formation of an impermeable barrier.

(11) “Coalbed natural gas” means natural gas produced from either coal seams or associated shale.

(12) “Coarse ground bentonite” means a non-treated swelling sodium montmorillonite that exhibits the following properties:

(A) A moisture content between 13 and 17 percent by dry weight;

(B) a clay aggregate particle size between  $\frac{3}{8}$  and  $\frac{7}{8}$  of an inch;

(C) a pH of 9 or less; and

(D) an inert solid percentage of less than 0.15 percent.

(13) “Commingling” means the mixing of production from more than one common source of supply.

(14) “Commission” means the state corporation commission.

(15) “Common source of supply” means each geographic area or horizon separated from any other area or horizon that contains, or appears to contain, a common accumulation of oil, gas, or both.

(16) “Confining layer” means a formation that serves as a barrier between water-, oil-, or gas-bearing formations.

(17) “Conservation division” means the division of the commission in charge of the administration of the oil and gas conservation acts, the protection of fresh and usable water, well plugging, saltwater disposal, enhanced recovery, and surface ponds.

(18) “Contractor” means any person who acts as an agent for an operator as a drilling, plugging, service rig, or seismograph contractor in the operator’s oil and gas operations.

(19) “Core” means a continuous section of formation recovered during drilling.

(20) “Core hole” means a hole drilled with the intention of collecting geologic information by the recovery of cores.

(21) “Correlative rights” means the privilege of each owner or producer in a common source of supply to produce from that supply only in a manner or amount that will not have any of the following effects:

(A) Injure the reservoir to the detriment of others;

(B) take an undue proportion of the obtainable oil or gas; or

(C) cause undue drainage between developed leases.

(22) “Day” means a period of 24 consecutive hours.

(23) “Deliverability” means the amount of natural gas, expressed in Mcf per day, that a well is capable of producing into a pipeline, while maintaining a back pressure against the wellhead. The amount of back pressure to be maintained and the test procedure shall be specified by the commission in the basic proration order for the common source of supply in which the well is located.

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

(25) “Dike” means a permanent structure that meets the following conditions:

(A) Is constructed at or above the surface of the earth and totally encloses production facilities or lease equipment; and

(B) is used to temporarily contain fluids resulting from oil and gas activities and discharged as a result of unforeseen circumstances.

If there is any excavation below the surface of the earth within the containment area, the dike shall be considered an emergency pit and shall require a permit in accordance with K.A.R. 82-3-600.

(26) “Director” means the director of the conservation division of the commission.

(27) “Division order” means a dated, written statement, duly signed by the owners and delivered to the purchasers, certifying and guaranteeing the interests of ownership of production and directing payment according to those interests.

(28) “Drilling time log” means the chronological tabulation or plotting of the rate of penetration of subsurface rocks by the rotary bit.

(29) “Enhanced recovery” means any process involving the injection of fluids into a pool to increase the recovery of oil or gas.

(30) “Exploratory hole” means a hole drilled for the purpose of obtaining geological information in connection with the exploration for or production of oil or gas.

(31) “Field” means a geographic area containing one or more pools.

(32) “First purchaser” means the person holding the division order and issuing checks to pay any working or royalty interest.

(33) “Fluid” means a material or substance that flows or moves in a semisolid, liquid, sludge, or gas state.

(34) “Freshwater” means water containing not more than 1,000 milligrams of total dissolved solids per liter. This upper limit is approximately equivalent to 1,000 parts of salt per million or 500 parts of chlorides per million.

(35) "Gas" means the gas obtained from gas or combination wells, regardless of its chemical analysis.

(36) "Gas (cubic foot)" means the volume of gas contained in one cubic foot of space at a standard pressure base and at a standard temperature base. The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be 60 degrees Fahrenheit.

(37) "Gas-oil ratio" means the ratio of gas produced, in cubic feet, to one barrel of oil produced during the concurrent period.

(38) "Gas (sour)" means either of the following:

(A) Any natural gas containing more than 1½ grains of hydrogen sulfide per 100 cubic feet or more than 30 grains of total sulphur per 100 cubic feet; or

(B) gas that is found by the commission to be unfit for sale due to its hydrogen sulfide content.

(39) "Illegal production" means any production in violation of the statutes, rules, regulations, or orders of the commission.

(40) "Injection" means injection of fluids or natural gas for enhanced recovery, or disposal of brines or fluids into an injection well.

(41) "Liquid" means a solution or substance, excluding gas, that flows freely at standard temperature and pressure.

(42) "Mousehole" means a service hole drilled at a slight angle and normally about 30 feet deep on those wells drilled by rotary tools.

(43) "Mud-laden fluid," as the term is commonly used in the industry, means any commission-approved mixture of water and clay, and may include additional materials that will effectively seal a formation to which they are applied.

(44) "Multiple completion" means the completion of any well that permits production from two or more common sources of supply with the common sources of supply completely segregated.

(45) "Oil (crude)" means any petroleum hydrocarbon that is produced from a well in liquid phase and that existed in a liquid phase in the reservoir.

(46) "Oil (pipeline)" means oil free from water and basic sediment to the degree that it is acceptable for pipeline transportation and refinery use.

(47) "Open flow" means the volume of gas that a gas well is capable of producing at the wellhead during a period of 24 hours against atmospheric pressure, computed according to the standard procedure approved by the commission.

(48) "Operator" means a person who is responsible for the physical operation and control of a

well, gas-gathering system, or underground natural gas storage facility.

(49) "Overage" or "overproduction" means the oil or gas produced in excess of the allowable.

(50) "Person" means any natural person, corporation, association, partnership, governmental or political subdivision, receiver, trustee, guardian, executor, administrator, fiduciary, or any other legal entity.

(51) "Pipeline" means any pipes above or below the ground used or to be used for the transportation of oil or gas in either a liquid or gaseous state.

(52) "Pit" means any constructed, excavated, or naturally occurring depression upon the surface of the earth, which shall include surface ponds as referenced in K.S.A. 55-171 and amendments thereto.

(A) "Burn pit" means a pit used for the temporary confinement of oil leakage at a lease site or of materials commonly known as tank bottoms, basic sediment, bottom sediment, bottom settlings, or paraffin, for the purpose of burning these contents.

(B) "Containment pit" means a temporary pit constructed to aid in the cleanup and to temporarily contain fluids resulting from oil and gas activities that were spilled as a result of immediate, unforeseen, and unavoidable circumstances.

(C) "Drilling pit" means any pit, including working pits and reserve pits, used to temporarily confine fluid or exempt exploration and production waste resulting from oil and gas activities, or store spent drilling fluids generated during the drilling or completion of any oil and gas exploratory hole, service well, or storage well.

(D) "Emergency pit" means a permanent pit that is used for the emergency storage of oil or saltwater, or both, discharged as a result of any equipment malfunction.

(E) "Haul-off pit" means a pit used to store spent drilling fluids and cuttings transferred from working pits or steel pits at a well location whose surface geologic conditions or near surface geologic conditions, or both, preclude the use of an earthen reserve pit.

(F) "Reserve pit" means a pit used to store spent drilling fluids and cuttings transferred from working pits and permitted as a drilling pit.

(G) "Settling pit" means a pit used for the collection or treatment of fluids, or both, resulting from oil and gas activities.

(H) "Working pit" means a pit used to temporarily confine fluids or refuse resulting from oil and gas activities during the drilling or completion

of any oil, gas, exploratory, service, or storage well and permitted as a drilling pit.

(I) "Workover pit" means a pit used to contain fluids during the performance of remedial operations on a previously completed well.

(53) "Pool" means a single and separate natural reservoir of oil or gas characterized by a single pressure system.

(54) "Producer" means any person who owns, in whole or in part, a well capable of producing oil or gas, or both.

(55) "Production" means produced oil, gas, condensate, or casinghead gas.

(56) "Productivity of a well" means the daily capacity of a well to produce oil or gas.

(57) "Productivity of a pool" means the sum of the productivities of the wells completed in the pool.

(58) "Proration" means the regulation of the amount of allowed production to prevent waste or to prevent any of the following in a manner that would favor any one pool as compared to any other pool in this state:

(A) Undue drainage between developed leases;

(B) unratable taking; or

(C) unreasonable discrimination between or among operators, producers, and royalty owners who are within a common source of supply.

(59) "Purchaser" means any person who purchases production from a well, lease, or common source of supply.

(60) "Rathole" means the service hole drilled at a slight angle and normally about 40 feet deep on those wells drilled by rotary tools.

(61) "Reasonable market demand" means the amount of crude petroleum or natural gas that must be produced to satisfy current rates of consumption.

(62) "Recompletion" means that a well is reworked for the purpose of developing new zones after its initial well completion.

(63) "Refuse" means any exempt exploration and production waste, as defined in 40 C.F.R. 261.4(b)(5), published July 1, 2000, and hereby adopted by reference, generated from oil and gas activities, including produced or nonproduced accumulated water in a pit or dike.

(64) "Seismic shot hole" means the borehole in which an explosive is detonated for the purpose of generating a seismic signal.

(65) "Sensitive groundwater area" means a geographic area designated by the commission as having hydrogeologic, climatic, soil, and other

characteristics that make the area's fresh and usable groundwater vulnerable to pollution from oil and gas activities.

(66) "Shortage" means the amount by which the oil or gas legally produced and either sold or removed from the premises is less than the allowable.

(67) "Solid" means a material or substance that does not flow freely at standard temperature and pressure.

(68) "Special order" means an order directed to specifically named persons or to a group that does not constitute a general class and that is dispositive of a particular matter as applied to a specific set of facts.

(69) "Spill" means any escape of saltwater, oil, or refuse by overflow, seepage, or other means from the vicinity of oil, gas, injection, service, or gas storage wells, or from tanks, pipelines, dikes, or pits, if the wells, tanks, pipelines, dikes, or pits are involved in or related to any of the following:

(A) The exploration or drilling for oil or gas;

(B) the lease storage, treatment, or gathering of oil or gas; or

(C) the drilling, operating, abandonment, or postabandonment of wells. For purposes of this regulation, "vicinity" means the area within six feet of the wellhead.

(70) "Spud date" means the date of first actual penetration of the earth with a drilling bit.

(71) "Storage oil" means produced oil confined in tanks, reservoirs, or containers.

(72) "Storage oil (lease)" means produced oil in tanks, reservoirs, or containers on the lease where it was produced.

(73) "Stratigraphic hole" means a hole, normally of small diameter, that is drilled through subsurface strata for exploratory purposes, with no intent to produce hydrocarbons through the hole being drilled, and does not utilize a detonated explosive for generating a seismic signal.

(74) "Surface casing" is the first casing put in a well that is cemented into place. It serves to shut out shallow water formations. It also acts as a foundation or anchor for all subsequent drilling activity. For purposes of compliance with K.A.R. 82-3-106, additional strings of casing that are set and cemented in a well bore below the lowest fresh and usable water strata shall be deemed to be surface casing.

(75) "Tertiary recovery process" means the process or processes described in K.S.A. 79-4217, and amendments thereto.

(76) "Underage" and "under production" mean the difference between the assigned oil or gas allowable volume and the actual oil or gas production volume if the actual oil or gas production volume is less than the assigned oil or gas allowable volume.

(77) "Undue drainage" means the uncompensated migration of either oil or gas between or among developed leases within the same common source of supply caused by the unratable production of any well or wells located on one or more of the leases.

(78) "Usable water" means water containing not more than 10,000 milligrams of total dissolved solids per liter. This upper limit is approximately equivalent to 10,000 parts of salt per million or 5,000 parts of chlorides per million.

(79) "Waste oil" means any tank bottom; basic sediment; cut oil; reclaimed oil from pits, ponds, or streams; dead oil; emulsions; or other types of oil not defined as pipeline oil.

(80) "Waterflood" means the process of injecting fluids into one or more wells to enhance the recovery of oil.

(81) "Well" means any hole or penetration of the surface of the earth for geological, geophysical, or any oil and gas activity.

(A) "Combination well" means a well that produces both oil and gas, excluding casinghead gas, from the same common source of supply.

(B) "Discovery well" means the first well completed in a common source of supply that is not in communication with any other common source of supply.

(C) "Disposal well" means a well into which those fluids brought to the surface in connection with oil and natural gas production are injected, for purposes other than enhanced recovery.

(D) "Enhanced recovery injection well" means a well into which fluids are injected to increase the recovery of hydrocarbons.

(E) "Gas well" means a well that meets either of the following criteria:

(i) Produces gas not associated with oil at the time of production from the reservoir; or

(ii) produces more than 15,000 standard cubic feet of gas to each stock tank barrel of oil from the same common source of supply, as measured by the gas-oil ratio test prescribed by and reported on the form furnished by the commission.

(F) "Hardship well" means a well authorized by commission order to produce at a specified rate because reasonable cause exists to expect that

production below the specified rate would damage the well and cause waste.

(G) "Injection well" means a well that is used for any of the following:

(i) To inject brine or other fluids that are brought to the surface in connection with natural gas storage operations or oil or natural gas production and that may be commingled with waste waters from gas plants that are an integral part of production operations, unless those waste waters are classified as a hazardous waste at the time of injection;

(ii) to conduct enhanced recovery operations for oil or natural gas;

(iii) to store hydrocarbons that are liquid at standard temperature and pressure;

(iv) to conduct simultaneous injection operations; or

(v) to inject permitted fluids.

(H) "Minimum well" means any oil well that has a productivity of 25 barrels or less per day.

(I) "Oil well" means a well that has produced one stock tank barrel or more of crude oil to each 15,000 standard cubic feet of gas, as measured by the gas-oil ratio test prescribed by and reported on the form furnished by the commission. One stock tank barrel is equivalent to 42 U.S. gallons measured at 60° F.

(J) "Service well" means a well drilled for any of the following:

(i) The injection of fluids in enhanced recovery projects;

(ii) the supply of fluids for enhanced recovery projects; or

(iii) the disposal of saltwater.

(K) "Storage well" means a well used to inject or extract natural gas for storage purposes.

(82) "Wellhead working pressure" means the static pressure in the annulus while flowing through the tubing, or static pressure in the tubing while flowing through the annulus, except in cases in which the casinghead is not in open communication with the producing formation because of the presence of a packer or other obstruction in the annular space between the casing and tubing. In these cases, the wellhead working pressure shall be determined by adjusting the observed tubing pressure for the effect of friction caused by flow through the tubing, or by using a bottom-hole pressure bomb and correcting back to wellhead conditions.

(83) "Well history" means the chronological record of the development and completion of a well.

(84) “Well log” means the written record progressively describing the well’s down-hole development.

(b) Any term not defined in this regulation or in any applicable commission rule, regulation, or order shall be interpreted to be consistent with its common use in the industry. (Authorized by K.S.A. 55-152, 55-602, 55-604, 55-704, and 55-901; implementing K.S.A. 55-152, 55-171, 55-172, 55-602, 55-704, 55-901, and 74-623; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended, T-84-19, July 26, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-46, Dec. 19, 1986; amended May 1, 1987; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990; amended July 29, 1991; amended March 20, 1995; amended Oct. 25, 1996; amended March 19, 1999; amended April 23, 2004; amended Dec. 22, 2006.)

**82-3-101a. Procedures for determining location using global positioning system.**

Whenever an operator is required to report a location using a global positioning system (GPS), the operator shall obtain and report the GPS reading according to all of the following requirements:

(a)(1) The GPS unit shall be enabled by the wide area augmentation system (WAAS) when each GPS reading is taken; or

(2) if the GPS unit is not capable of using the WAAS system, the unit shall be rated by the manufacturer to be accurate to within 50 feet, at least 95 percent of the time.

(b) Each GPS reading shall be taken when the GPS unit indicates that the unit is in a stationary position for a sufficient amount of time to meet the accuracy requirement of paragraph (a)(1) or (2).

(c) Each GPS reading shall be expressed in the decimal form to the fifth place.

(d) A horizontal reference datum approved by the director shall be used and reported with each GPS reading. Acceptable horizontal reference datums shall include the following: North American datum (NAD) 27, North American datum (NAD) 83, and world geodetic system (WGS) 84. (Authorized by and implementing K.S.A. 55-152; effective Nov. 5, 2010.)

**82-3-102. Classification of wells; determining and naming common sources of supply; nomenclature committee.** Wells shall be classified by the common sources of supply from

which they produce. Common sources of supply shall be determined and named by the commission after considering the recommendations of the conservation division and the nomenclature committee of the Kansas geological society. In naming common sources of supply, preference shall be given to common usage and geographic names. Separate common sources of supply within the same field shall, if possible, be named according to the producing formation. The commission may redetermine a common source of supply whenever necessary. (Authorized by K.S.A. 55-604; implementing K.S.A. 55-603; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983.)

**82-3-103. Notice of intention to drill; penalty.** (a) Notice required.

(1) Intent to drill. Unless otherwise provided by K.A.R. 82-3-115a or K.A.R. 82-3-701, the owner, operator, or any other person responsible for a drilling operation shall submit written notice of the intention to drill to the conservation division for permit approval before the commencement of drilling operations for any of the following:

(A) Exploratory holes;

(B) a well to be drilled for the discovery or production of oil, gas, or other minerals, including re-entry of a previously plugged and abandoned well;

(C) a service well;

(D) a storage well; or

(E) a stratigraphic or core hole.

(2) Form and contents. The notice shall be submitted on a form prescribed by the commission. The notice shall be filled in completely and shall contain the following:

(A) The operator’s name, address, and commission license number;

(B) the contractor’s name, address, and commission license number;

(C) the date on which drilling is anticipated to begin;

(D) the lease name, quarter section, section, range, township, county, and the distance of the proposed drilling location from the section’s nearest corner, in exact footages;

(E) the distance to the nearest lease or unit boundary line;

(F) the estimated total depth of the well;

(G) the type of drilling equipment to be used;

(H) the depth to the bottom of the deepest freshwater at the drill site;

(I) the depth to the bottom of the deepest usable water formation at the drill site;

(J) for each exploratory hole, the estimated depth to water in each hole and to the top of the uppermost confined aquifer;

(K) for each well to be drilled into a common source of supply subject to a basic proration order of the commission, a plat map showing that the well will be located as specified in the basic proration order in relationship to other wells producing from the common source of supply, both within the area subject to proration and within one mile of the boundaries of the prorated area for gas wells and within one-half mile of the boundaries of the prorated area for oil wells;

(L) for each well to be drilled in locations not subject to a basic proration order, a plat map showing the well location; and

(M) any other relevant information that may be requested by the commission.

(b) District office notification. Before spudding the well, the operator shall notify the appropriate district office. Failure to notify the appropriate district office before spudding the well shall be punishable by a penalty of not less than \$250 and not more than \$1000.

(c) Surface casing and cementing. The conservation division shall give surface casing and cementing requirements to the operator along with the approved notice of the intention to drill. Unless otherwise provided, inadequate installation of or failure to install surface casing or failure to complete alternate II cementing pursuant to K.A.R. 82-3-106 shall each be punishable by a penalty of up to \$5000.

(d) Commencement of drilling. Drilling shall not commence until after commission approval has been received. The operator shall post a copy of the approved notice of intent to drill on each drilling rig. Drilling before receiving commission approval or drilling without an approved notice of intent to drill posted on the drilling rig shall be punishable by a \$1000 penalty.

(e) Plugging instructions. The conservation division shall give preliminary plugging instructions to the operator along with the approved notice of intention to drill.

(f) Expiration of approval. The approval of the notice of intent to drill shall expire one year from the date of approval.

(g) Extension. No extension of the one-year period shall be granted.

(h) Division of water resources information. The operator may be required by the commission to designate, on the written notice of intention to

drill, the source of drilling water and the vested right or permit file number assigned by the division of water resources of the state department of agriculture. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-151, 55-152, 55-164; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended April 23, 1990; amended Feb. 24, 1992; amended March 20, 1995; amended Oct. 25, 1996; amended Oct. 26, 2007.)

**82-3-103a. Deviated holes; horizontal drilling; notice and hearing required.** (a) The owner, operator, or persons responsible for a drilling operation shall submit written notice of the intention to drill for approval by the conservation division before the commencement of drilling operations, for any hole where intended deviation from the surface to the top of the producing formation exceeds 7°.

(b) Any hole drilled horizontally into a formation for production or deviated in the manner stated in subsection (a) may be permitted by the commission only after application to the conservation division and notice pursuant to K.A.R. 82-3-135a. The application may be set for hearing by the commission. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-151; effective May 8, 1989; amended April 23, 1990; amended Aug. 29, 1997.)

**82-3-104. Pollution; prevention.** Every person who drills a well or test hole, for any purpose, that penetrates formations containing oil, gas, fresh water, mineralized water, or valuable minerals shall case or seal off these formations to effectively prevent migration of oil, gas, or water from or into strata that would be damaged by this migration. The effectiveness of the casing or sealing off shall be tested in a manner prescribed or approved by an agent of the commission. (Authorized by K.S.A. 55-602; implementing K.S.A. 1982 Supp. 55-159; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983.)

**82-3-105. Well cementing.** The use of cement in setting casing or sealing off producing formations, underground porosity gas storage formations, or fresh and usable water formations shall be required.

This regulation shall be effective on and after October 29, 2002. (Authorized by K.S.A. 55-152 and K.S.A. 2001 Supp. 55-1,115 and 74-623; implementing K.S.A. 55-156 and K.S.A. 2001 Supp.

55-1,115 and 74-623; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 8, 1989; amended, T-82-6-27-02, July 1, 2002; amended Oct. 29, 2002.)

**82-3-106. Surface casing and cement.** (a)

Each operator shall set and cement surface casing pursuant to this regulation and the instructions on the notice of intent to drill approved pursuant to K.A.R. 82-3-103 before drilling to any depth to test for or produce oil or gas.

(b) Each operator shall set and cement surface casing in compliance with the following, which are hereby adopted by reference:

(1) Table I and appendix A, as incorporated in the commission order dated August 1, 1991, docket no. 34,780-C (C-1825); and

(2) appendix B, as incorporated in the commission order dated June 29, 1994, docket no. 133,891-C (C-20,079).

(c) Cementing alternatives.

(1) Alternate I cementing shall be performed as follows:

(A) A single string of surface casing shall be set from surface to the depth specified in the documents adopted in subsection (b).

(B) The surface casing shall be cemented continuously from the bottom of the surface casing string to the surface.

(2) Alternate II cementing, which includes a primary surface casing string and additional surface casing, shall be performed as follows:

(A) The primary surface casing string shall be set to a depth at least 20 feet below all unconsolidated material.

(B) The primary surface casing shall be cemented from the bottom of the primary surface casing string to the surface.

(C) All additional surface casing strings next to the borehole shall be set and cemented from the depth specified in the documents adopted in subsection (b) to the surface.

(i) The operator shall notify the appropriate district office before cementing the additional casing.

(ii) The additional cementing shall be completed within 120 days after the spud date unless otherwise provided in the documents adopted in subsection (b).

(iii) A backside squeeze shall be prohibited unless permitted by the appropriate district office with consideration of the cement evaluation method to be utilized and submitted as verification of cement placement. "Backside squeeze"

shall mean the uncontrolled placement of cement from the surface into the annular space between the primary surface casing and the additional casing.

(d) Methods and materials.

(1) The operator shall use a drill bit that is at least two and one-quarter inches larger in diameter than the surface casing, when measured from the outside of the casing.

(2) The annular space between the surface casing and the borehole shall be filled with a portland cement blend and maintained at surface level.

(3) If cement does not circulate, the operator shall notify the appropriate district office immediately and perform remedial cementing sufficient to prevent fluid migration. If the surface casing is perforated, the operator shall pressure-test the surface casing according to district office specifications to ensure mechanical integrity.

(4) The use of any material other than a portland cement blend shall be prohibited.

(5) The cemented casing string shall stand and further operations shall not begin until the cement has been in place for at least eight hours and has reached a compressive strength of 300 pounds per square inch.

(6) The operator shall install centralizers as follows:

(A) If the surface casing is 300 feet or less, a centralizer shall be installed at the top of the shoe joint.

(B) If the surface casing is more than 300 feet, a centralizer shall be installed at approximately 300 feet and at every fourth joint of casing to the bottom of the surface casing.

(7) When total depth has been reached during drilling operations, the operator or contractor shall not move the rig off of the well until the required casing has been run or the well has been plugged. All wells that are subject to the documents adopted in paragraph (b)(2) shall be exempt from the requirements in this paragraph.

(e) Each operator of a well not in compliance with this regulation shall shut the well in until compliance is achieved.

(f) Upon written, timely request by an operator, the director may provide an exception to any of the requirements of this regulation. In considering a request for an exception, the director may require the operator to provide financial assurance sufficient to cover the plugging costs for the well. Each request shall demonstrate that fresh and usable water will be protected by the proposed excep-

tion. (Authorized by K.S.A. 2014 Supp. 55-152; implementing K.S.A. 2014 Supp. 55-152, K.S.A. 55-159, K.S.A. 55-162; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended, T-85-1, Jan. 13, 1984; amended, T-85-51, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-46, Dec. 19, 1986; amended May 1, 1987; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990; amended Feb. 24, 1992; amended March 20, 1995; amended Aug. 14, 2015.)

**82-3-107. Preservation of well samples, cores, and logs; penalty.** (a) Each operator drilling or responsible for drilling service wells or drilling or recompleting holes for the purpose of the exploration or production of oil or gas, excluding seismic shot holes, shall preserve and retain samples or drill cuttings, cores, and all other information as required under subsection (d).

(b) All formation samples or drill cuttings normally saved in drilling or recompletion operations and any cores taken shall be retained by the operator for 120 days after the spudding of the well.

(c)(1) Upon request of the Kansas geological survey as specified in paragraph (c)(2), the samples shall be washed and cut into splits or sets. One set shall be placed in labelled sample envelopes and delivered, at the prepaid expense of the operator, to the Kansas geological survey, sample library, Wichita, Kansas. Upon request of the Kansas geological survey, all cores or core longitudinal sections not required by the operator for well evaluation purposes shall be placed in stratigraphic sequence in adequate boxes, labelled with the well name, location, and footage, and delivered, at the prepaid expense of the operator, to the Kansas geological survey, Lawrence, Kansas.

(2) The operator shall be given notice that samples or cores are required by a notice appended to or on a copy of the notice of intention to drill returned to the operator by the conservation division or the Kansas geological survey. Delivery of the processed samples or cores shall be made within 120 days of the spud date or date of commencement of recompletion of the well.

(3) If retention of the core is required by the operator, designated Kansas geological survey staff members shall be provided unrestricted access to the core at the operator's facility during the operator's normal business hours. This access shall be subject to any confidentiality requests made under subsection (e).

(4) Operators in physical possession of cores requested by the Kansas geological survey shall not dispose of the cores without permission of the Kansas geological survey.

(5) If the Kansas geological survey requests samples from portions of the hole that are not normally saved in drilling operations, the operator shall provide these samples. The sample library shall accept all washed and cut samples whether or not they were requested.

(d)(1) The following information shall be delivered to the conservation division, within 120 days of the spud date or date of commencement of recompletion of the well:

- (A) A copy of the affidavit of completion;
- (B) core analyses;
- (C) final drill stem data elements;
- (D) recorded drill stem fluid recoveries and charts;
- (E) final electric logs;
- (F) final radioactivity logs;
- (G) similar wireline logs or surveys run by operators on all boreholes, excluding seismic shot holes;
- (H) final logs run to obtain geophysical data;
- (I) geological well reports; and
- (J) if available, final electronic log files in a data format and medium approved by the director, including the following:

- (i) A log American standard code for information interchange standard (LAS) file, using version 2.0 or a newer version; and
- (ii) an image file.

If electronic log files are available, these files shall be delivered to the conservation division in lieu of the paper logs required by this regulation.

(2) For good cause shown, an extension of 60 days may be granted by the supervisor of the production department or the supervisor's designated agent for the submission of the required information. The request for extension shall be submitted in writing and received before the expiration of the 120-day period.

(3) The conservation division shall deposit the information with the Kansas geological survey.

(4) Failure to deliver the information to the conservation division shall be punishable by a \$500 penalty and operator license review.

(e)(1) If a written request for confidentiality is made to the conservation division within 120 days of the spud date or the date of commencement of recompletion of the well, all information, samples, or cores filed as required in subsections (c) or (d)

shall be held in confidential custody for an initial period of one year from the written request.

(2) All rights to confidentiality shall be lost if the filings are not timely, as provided in subsections (c) and (d), or if the request for confidentiality is not timely, as provided in paragraph (e)(1).

(3) Samples, cores, or information may be released before the expiration of the one-year period only upon written approval of the operator.

(4) If a request for an extension is made at least 30 days before the expiration of the initial one-year period, the period of confidentiality may be extended for one additional year.

(f) Each wire line service company shall furnish to the conservation division, on a form prescribed by the commission, a list of all logging services performed on each hole serviced in the state of Kansas each month by the twentieth day of the month following the month in which the services were performed. Failure to submit or timely submit the list shall be punishable by a \$250 penalty. (Authorized by K.S.A. 55-152 and 55-164; implementing K.S.A. 55-604 and 55-704; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990; amended June 6, 1994; amended Oct. 24, 2008.)

**82-3-108. Well location; exception.** (a) General setback requirement. Except as provided by subsection (b) or (c), an oil well or gas well shall not be drilled nearer than 330 feet from any lease or unit boundary line.

(b) Setback requirements for eastern Kansas.

(1) An oil well that is drilled to a total depth of less than 2,000 feet and is drilled in one of the following counties shall not be drilled nearer than 165 feet from the nearest lease or unit boundary line: Allen, Anderson, Atchison, Bourbon, Brown, Cherokee, Coffey, Crawford, Douglas, Elk, Franklin, Greenwood, Jackson, Jefferson, Johnson, Labette, Leavenworth, Linn, Lyon, Miami, Montgomery, Neosho, Osage, Shawnee, Wilson, Woodson, and Wyandotte.

(2) An oil well that is drilled in Chautauqua County and is drilled to a total depth of less than 2,500 feet shall not be drilled nearer than 165 feet from the nearest lease or unit boundary line.

(c) Well location exception. A well location exception may be granted to permit drilling within shorter distances than those provided in subsection (a) or (b), whichever is applicable, and to the

acreage attributable and assigned allowables, if these exceptions are necessary either to prevent waste or to protect correlative rights. In granting the exception, the acreage attributable to the well and the assigned allowables shall be considered.

(d) Application for well location exception. If an exception to this regulation is desired according to subsection (c), an application shall be submitted to the conservation division. The application shall contain the following:

(1) A brief explanation of the exception or exceptions requested;

(2) the proposed location of the well, including the distance to the nearest lease or unit boundary line;

(3) a list of the following:

(A) Each offset operator whose lease line is located less than the required distance from the proposed location;

(B) each unleased offset mineral owner whose property boundary is located less than the minimum distance required by subsection (a) or (b) from the proposed locations; and

(C) the applicant's lessor or lessors, if the applicant operates any lease that will be situated less than the minimum distance required by subsection (a) or (b) from the proposed well location;

(4) the acreage attributable to the well; and

(5) the allowable requested.

(e) Additional application requirements. Each application submitted under subsection (d) shall be accompanied by the proposed notice of the intention to drill and a plat, drawn to the scale of one inch equaling 1,320 feet, that accurately shows the following:

(1) The property on which the well is sought to be drilled;

(2) all other completed, partially drilled, or permitted wells on the property; and

(3) all adjacent properties and wells.

(f) Notice; protest. Notice of the application shall be provided to all parties specified in paragraphs (d)(3)(A), (d)(3)(B), and (d)(3)(C) of this regulation and shall be published as required by K.A.R. 82-3-135a(d). If a protest is filed in accordance with K.A.R. 82-3-135a(e), the application shall be set for hearing by the commission.

(g) Approval of intent to drill. Upon the issuance of a written permit by the conservation division for the well location exception, the proposed notice of intention to drill shall be approved in accordance with K.A.R. 82-3-103, if all other applicable requirements for approval have been met.

(h) Allowable required. Each operator of any well drilled nearer than the minimum distance required by subsection (a) or (b) from any lease or unit boundary line without a previously obtained well location exception shall be prohibited from producing either oil or gas until an appropriate allowable is determined.

(i) Factors considered for allowable. Whenever authority is granted to drill a well at a location other than a location specified by this regulation, the allowable shall be determined by the conservation division for the protection of the correlative rights of all persons entitled to share in the common source of supply in accordance with K.A.R. 82-3-207 and K.A.R. 82-3-312. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-152, 55-603, 55-605, 55-703a, 55-706; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended, T-85-51, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended April 23, 1990; amended Jan. 14, 2005; amended Oct. 24, 2008.)

**82-3-109. Well spacing orders and basic proration orders.** (a) Any interested party may file an application for a new or amended well spacing order or basic proration order. Each application shall include the following:

- (1) If the application is for amendment, a description of the amendment;
- (2) the well location and depth and the common source of supply;
- (3) a description of the acreage, with an affirmation that all of the acreage is reasonably expected to be productive from the common source of supply;
- (4) the proposed well location restriction and provisions for any exceptions;
- (5) the proposed configuration of units for purposes of acreage attribution;
- (6) a list of the persons provided notice pursuant to K.A.R. 82-3-135a and the date that notice was provided;
- (7) the factors proposed to be used in any proration formula;
- (8) the applicant's license number; and
- (9) any other relevant information required by the commission.

(b) Each applicant for a well spacing order or basic proration order or for amendments adding or deleting acreage in an existing well spacing order or basic proration order shall submit the following evidence with the application:

- (1) A net sand isopachus map of the subject common source of supply;
- (2) a geological structure map of the subject common source of supply;
- (3) to the extent practicable, a cross section of logs representative of wells in the acreage affected by the application;
- (4) data from any available drill stem test;
- (5) an economic analysis, including a reservoir or drainage study; and
- (6) any other relevant information required by the commission.

(c) Each applicant shall file an application with the conservation division. The applicant shall publish notice of the application pursuant to K.A.R. 82-3-135a and notice of any hearing pursuant to K.A.R. 82-3-135.

(d) Except as otherwise specified in this subsection, the drilling of any wells within an area subject to an application for spacing or proration shall be prohibited until the commission has issued a final order on the application. However, any operator may drill a well during the pendency of the application if the well location conforms to the most restrictive location provisions in the application. (Authorized by K.S.A. 55-604, K.S.A. 55-704; implementing K.S.A. 55-603, K.S.A. 55-703a, K.S.A. 55-704; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended, T-85-51, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990; amended Aug. 14, 2015.)

**82-3-110. Penalties for violations of well spacing, basic proration orders.** (a) Any well drilled or being drilled in violation of an order or rule of the commission in effect at the time drilling commences shall be considered to be an unlawful location. Such a well shall be presumed to be in violation of correlative rights and to constitute waste. A show cause order to determine whether the drilling of the well was necessary to protect correlative rights or prevent waste may be issued by the commission, either upon receipt of a complaint or on the commission's own motion. A hearing shall be held after notice to all interested parties.

(b) If the commission determines that good cause has not been shown or that an exception should be denied, an order may be issued by the commission requiring the well to be permanently capped or plugged and abandoned in accordance with the rules of the commission, or production at a reduced rate may be permitted by the commis-

sion to ensure protection of correlative rights and the prevention of waste. (Authorized by K.S.A. 1989 Supp. 55-604, K.S.A. 55-704; implementing K.S.A. 1989 Supp. 55-604, 55-605, K.S.A. 55-703a, 55-704; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended April 23, 1990.)

**82-3-111. Temporarily abandoned wells; penalty; plugging.** (a) Temporary abandonment approval or plugging required. Within 90 days after operations cease on any well drilled for the purpose of exploration, discovery, service, or production of oil, gas, or other minerals, the operator of that well shall perform either of the following:

- (1) Plug the well; or
- (2) file an application with the conservation division requesting temporary abandonment authority, on a form prescribed by the conservation division.

(b) Approval of temporary abandonment. No well shall be temporarily abandoned as described in subsection (a) unless first approved by the conservation division. If the operations on any temporarily abandoned well or other inactive well are not resumed within one year after the application has been approved, the well shall be deemed a permanently abandoned well, and the operator of the well shall comply with regulations of the commission relating to the plugging of wells. Upon application to the conservation division before the expiration of the one-year period and for good cause shown, the period may be extended by the conservation division for one year. Additional one-year extensions may be granted by the conservation division. A well shall not be eligible for temporary abandonment status if the well has been shut in for 10 years or more without an application for an exception pursuant to K.A.R. 82-3-100 and approval by the commission. The failure to file a notice of temporary abandonment shall be punishable by a \$100 penalty.

(c) Right of denial. After an application for temporary abandonment has been filed, the well shall be subject to inspection by the conservation division to determine whether its temporary abandonment could cause pollution of fresh and usable water resources. If necessary to prevent the pollution of fresh and usable water, temporary abandonment may be denied by the conservation division, and the well may be required to be plugged or repaired according to the direction of the conservation division and in accordance with its regulations.

(d) Plugging of temporarily abandoned wells. At the expiration of any approved temporary abandonment period, each well temporarily abandoned shall be plugged, repaired, or returned to operation in accordance with applicable regulations.

(e) Certain wells exempted. The requirements of this regulation shall not apply to any well that meets all of the following criteria:

- (1) The well is fully equipped for production of oil or gas or for injection.
- (2) The well is capable of immediately resuming production of oil or gas or of injection.
- (3) The well is subject to a valid, continuing oil and gas lease.
- (4) The cessation period for the well is less than 365 consecutive days.
- (5) The well is otherwise in full compliance with all of the commission's regulations.

(f) Post-exemption requirements. The date on which a well ceases to qualify for the exemption specified in subsection (e) shall be deemed to be the date operations ceased on the well, for purposes of subsection (a). (Authorized by K.S.A. 55-152; implementing K.S.A. 55-152 and 55-164; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended April 23, 1990; amended Jan. 25, 2002; amended Oct. 24, 2008.)

**82-3-112. Shut-off test; when required.**

Whenever it appears to the conservation division that any water from any well is migrating or infiltrating into oil-bearing or gas-bearing strata or that any detrimental substances are infiltrating any fresh and usable water, a shut-off test may be required by the conservation division, to be made at the expense of the operator or owner of that well. The time and procedure for the taking of the test shall be fixed by the conservation division. Reasonable notice of the test shall be given to the owner or operator.

The person legally responsible for the proper care and control of any abandoned oil or gas well from which water is migrating or infiltrating into any oil-bearing or gas-bearing strata, or from which any detrimental substances are infiltrating any fresh or usable water, shall immediately plug or repair the well in accordance with K.A.R. 82-3-114 or 82-3-115 and shall prevent the infiltration of oil, gas, salt water or other detrimental substances into underground fresh and usable water strata. (Authorized by K.S.A. 55-602; implementing K.S.A. 55-157; effective, T-83-44, Dec.

8, 1982; effective May 1, 1983; amended May 1, 1984; amended May 1, 1988.)

**82-3-113. Notice of intention to plug and abandon a well; supervision; penalty.**

(a) Notice required; penalty. Before any work is commenced to plug and abandon any well drilled for the discovery of oil or gas, for underground porosity gas storage, or for disposal of salt water, or to plug and abandon any injection well for enhanced recovery, including any well drilled below the fresh and usable water level, the operator shall give written notice to the conservation division of the intention to plug and abandon that well. The notice shall be submitted upon a form furnished by the conservation division and shall contain all of the information requested on it. The failure to file a notice of intention to plug and abandon a well shall be punishable by a \$100 penalty.

(b) Plugging instructions; scheduling.

(1) Upon receipt of the notice, the notice shall be acknowledged by the conservation division by letter to the operator. The letter shall provide instructions to the operator, including the name of the district office that is to be notified, and a requirement that the operator submit a proposed plugging plan.

(2) The operator shall notify the appropriate district office of the operator's proposed plugging plan no later than five days before the plugging.

(c) Exceptions. Exceptions from the notice requirement on the plugging of wells may be granted by the district office if either of the following conditions is met:

(1) A drilling rig already at work on location is ready to commence plugging operations on a dry and abandoned well.

(2) An emergency situation exists. In this case, the operator shall orally notify and present the plugging proposal to the district office.

This regulation shall be effective on and after October 29, 2002. (Authorized by K.S.A. 55-152 and K.S.A. 2001 Supp. 55-1,115 and 74-623; implementing K.S.A. 55-152, 55-159, K.S.A. 2001 Supp. 55-164, K.S.A. 55-173, K.S.A. 2001 Supp. 55-1,115 and 74-623; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended April 23, 1990; amended, T-82-6-27-02, July 1, 2002; amended Oct. 29, 2002.)

**82-3-114. Plugging methods and procedure.** (a) Plugging of producing, storage, and in-

jection wells. In addition to any other applicable requirements in these regulations, the methods and procedure for plugging a well drilled for exploration of oil or gas, for underground porosity gas storage, or for injection shall be as follows:

(1) For productive or past-productive oil or gas formations, a cement plug not less than 50 feet in length or a bridge capped with cement shall be placed above each such formation.

(2) Cement plugs of 50 feet or more in length shall be placed both above and below any fresh or usable water horizons. The lower plug shall extend at least 50 feet below the base of water zones, and the upper plug shall extend at least 50 feet above the top of the water zones.

(3) In each well plugged, a cement plug shall be placed near the surface of the ground in a manner that does not interfere with soil cultivation.

(b) Rathole and mousehole plugging. Each rathole and each mousehole shall be plugged by displacing any mud or water with cement from the bottom of the hole to near the surface in a manner that does not interfere with soil cultivation.

(c) Highly permeable formations. If the wellbore has penetrated both a highly permeable formation and an overlying major salt formation, a cement plug of 50 feet or more in length shall be set above the highly permeable formation. Additionally, a cement plug of 50 feet or more in length shall be set in the first formation compatible with cement in each of the following locations:

(1) Immediately above the salt formation; and

(2) immediately below the salt formation.

(d) Well location exceptions. In wells located within 330 feet from the lease or unit boundary or located within less than the minimum distance specified in K.A.R. 82-3-108(b), all zones that are perforated or open in the well and that are being produced on the lease adjacent to that boundary shall be plugged. This requirement shall not apply to zones that are not producing within one-half mile of the well to be plugged.

(e) Plugging intervals. All intervals between plugs within the same wellbore shall be filled with an approved heavy, mud-laden fluid of not less than 36 viscosity as measured using the marsh funnel method described in sections 4.1 and 4.2 of the "recommended practice standard procedure for field testing water-based drilling fluids," second edition, dated September 1997 and published by the American petroleum institute. Sections 4.1 and 4.2 of this document are hereby adopted by reference. The approved heavy, mud-laden fluid shall

have a weight of not less than nine pounds per gallon. If the requirements of this subsection are not met, a bridge shall be set at all plugging intervals.

(f) Alternative plugging methods; when authorized.

(1) If the procedures specified in this regulation cannot be followed due to conditions in the casing or wellbore, alternative plug placement while ensuring the protection of fresh and usable water may be authorized by a representative of the commission.

(2) The operator, with the approval of the representative of the commission, may place cement in the well by using a dump bailer, pumping through tubing, or using any other method approved by the commission.

(g) Tagging plugs. Plugs may be tagged by the commission at the direction of the director of the conservation division.

This regulation shall be effective on and after October 29, 2002. (Authorized by K.S.A. 55-152 and K.S.A. 2001 Supp. 55-1,115 and 74-623; implementing K.S.A. 55-152, 55-156, 55-157, 55-159, and K.S.A. 2001 Supp. 55-1,115 and 74-623; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended, T-87-3; amended May 1, 1986; amended May 1, 1988; amended May 8, 1989; amended, T-82-6-27-02, July 1, 2002; amended Oct. 29, 2002.)

**82-3-115. Plugging methods and procedure for core and other stratigraphic holes; fees.** The methods and procedure for plugging core and other stratigraphic holes shall be as follows:

(a) The owner or operator shall notify the commission prior to the plugging of each core or stratigraphic hole pursuant to the requirements of K.A.R. 82-3-113. An on-site inspection of the plugging operation may be conducted by a representative of the commission.

(b) Each core or stratigraphic hole that penetrates a regionally confined salt water aquifer shall be plugged so as to prevent the migration of salt waters into fresh or usable water.

(1) As used in this regulation, a "regionally confined salt water aquifer" means a salt water-bearing zone overlain by an aquitard which, in area, is coextensive with the salt water zone and restricts the movement of the salt water. Aquitard means a zone of low permeability.

(2) The hole shall be filled with a cement plug from a point 20 feet below the base of the regionally confined salt water aquifer to within 10 feet of

the surface. The remaining hole shall be filled to surface with coarse ground bentonite.

(c) Each core or stratigraphic hole that does not penetrate a regionally confined salt water aquifer shall be plugged as follows:

(1) A bridge and cement plug shall be placed at the depth set forth as the base of the deepest fresh and usable water. The cement plug shall be not less than 50 feet in length or shall be placed to a point within 12 feet of the surface, whichever is the lesser length. The remaining hole shall be filled to the surface with coarse ground bentonite as defined in K.A.R. 82-3-101(a)(12);

(2) The interval or intervals between the bottom of any hole and the plug or plugs set in any hole shall be filled with an approved heavy mud-laden fluid of not less than 9.4 pounds per gallon.

(d) Each core or stratigraphic hole that penetrates multiple usable or fresh water aquifers regionally confined by consolidated rock or strata, as distinguished from usable or fresh water zones in an unconsolidated stratum, shall be filled with cement from the bottom of the hole to the top of the highest aquifer, if identifiable and the remaining hole shall be filled with fine grain materials to within 20 feet of the surface, then with impermeable material to within 12 feet of the surface and the top 12 feet of the hole filled with coarse ground bentonite. If the top of the highest aquifer is not identifiable the hole shall be filled with cement from the bottom to within 12 feet of the surface and the remaining hole filled with coarse ground bentonite.

(e) Each core or stratigraphic hole that penetrates a usable or fresh water zone resulting in an artesian flow to the surface shall have a cement plug placed immediately above the top of the artesian water zone. The plug shall not be less than 25 feet in length or shall be placed to a point within 12 feet of the surface, whichever is the lesser length. The remaining hole shall be filled with coarse ground bentonite.

(f) If circulation is lost in the drilling of any hole and circulation cannot be regained, a cement plug shall be placed immediately above the zone of lost circulation. The plug shall not be less than 25 feet in length or shall be placed to a point within 12 feet of surface, whichever is the lesser length. The remaining hole shall be filled with coarse ground bentonite.

(g) Alternative plugging methods may be specified by the district supervisor when geological conditions warrant.

(h) Alternative plugging materials may be substituted for coarse ground bentonite upon approval

by the Director of the Conservation Division. The Director shall base approval or denial upon material specifications including experimental results supplied by the manufacturer of such material and will keep a list available of all materials approved. The approval process for alternative plugging materials shall also be applicable to K.A.R. 82-3-115b.

(i) All core and stratigraphic holes shall be plugged as soon after being used as is reasonably practicable. However, such holes shall not remain unplugged for a period of more than 10 days after the drilling of the hole. An extension may be granted by the district supervisor if access to the hole is prevented by force of nature.

(j) A minimum fee of \$5 shall be assessed for plugging of core and other stratigraphic holes. The minimum fee for any hole which penetrates a regionally confined salt water aquifer shall be assessed pursuant to K.A.R. 82-3-118. (Authorized by K.S.A. 1992 Supp. 55-152; implementing K.S.A. 1993 Supp. 55-152, 55-156, 55-157; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended March 20, 1995.)

**82-3-115a. Intent to drill seismic shot holes; notification; penalty; exemption.** (a) Each owner, operator, or persons responsible for a seismic operation shall give written notice of the intention to drill for approval by the conservation division before the commencement of drilling operations.

(1) Filing. The notice shall be filed with the conservation division at least five days before any drilling is commenced.

(2) Contents. The notice shall be on a form prescribed by the commission. The notice shall be filled in completely and signed by the operator or the operator's agent, and shall contain:

(A) The seismic company's name, address, and commission license number;

(B) the date on which drilling is anticipated to begin;

(C) the quarter section, section, township, range and county of the proposed location;

(D) the estimated number and depth of seismic shot holes to be drilled in each quarter section;

(E) the proposed plugging plan or method to be used for plugging seismic shot holes; and

(F) any other information which may be requested by the commission.

(b) District office notification. Prior to drilling one or more seismic shot holes, the operator shall notify the appropriate district office.

(c) Emergency situation. When an emergency situation exists, the operator shall orally notify and present the proposal to the district office. The written notice of intention to drill shall be filed with the commission within 24 hours.

(d) Drilling seismic shot holes without an approved notice of intent of emergency notice shall be punishable by a penalty of up to \$1000.

(e) Exemption. Seismic operations which do not require the drilling or digging of a hole shall be exempt from the requirements of this regulation. (Authorized by K.S.A. 1993 Supp. 55-152; implementing K.S.A. 1992 Supp. 55-151, 55-152, 55-164; effective March 20, 1995.)

**82-3-115b. Plugging methods and procedures for seismic shot holes; retention of logs; penalty; exception; fees.** (a) Each seismic shot hole shall be plugged in accordance with the specified methods applicable to the geologic conditions or drilling method used as described in this regulation and in Table IV.

(b) Each hole drilled with water or water-based muds and each hole that encounters water and does not encounter artesian pressure shall be plugged using the following method.

(1) Each seismic shot hole drilled in a single aquifer area shall be plugged from the point of collapse of the last shot with one 50-pound bag of coarse ground bentonite followed by cuttings to within 12 feet of the surface. The top 12 feet of the hole shall be filled with coarse ground bentonite. A non-metallic retrievable plug with identifying mark shall be placed three feet from the surface.

(2) Each seismic shot hole drilled in a multiple aquifer area and which penetrates only the upper aquifer, may be plugged using the single aquifer method.

(3) Seismic shot holes drilled into or through multiple aquifers shall be pre-plugged by filling the hole with coarse ground bentonite to a point at which the bentonite no longer encounters water followed by cuttings to within 12 feet of the surface. The top 12 feet of the hole shall be filled with coarse ground bentonite. A non-metallic retrievable plug with identifying marks shall be placed three feet from the surface. The plug shall be allowed to set at least 15 hours prior to detonation of the explosive charge unless a lesser time is approved by the appropriate district supervisor. The coarse ground bentonite used to fill the hole up to the point where it no longer encounters wa-

ter shall be poured at a rate no greater than one 50 pound bag per two minutes.

(4) Each seismic shot hole that penetrates a salt-water formation shall be plugged from bottom to top with cement. The blend of cement shall be approved by the district supervisor.

(5) Alternate plugging material may be substituted for coarse ground bentonite in accordance with procedures set forth in K.A.R. 82-3-115(h).

(c) Each hole that penetrates a strata which causes water to flow at the surface shall not be charged nor shot and shall be immediately plugged with cement. The plug shall be placed from bottom to top using tubular goods for placement. Prior to plugging, the company shall immediately notify the appropriate district office for plugging instructions.

(d) If groundwater is not encountered in a seismic shot hole that is drilled with air, dry augured, or otherwise drilled, the hole shall be either pre-plugged or post-plugged by filling the hole with clay or silt sized cuttings from the point of collapse of the last shot to within 12 feet of the surface. The top 12 feet of the hole shall be filled with coarse ground bentonite. A non-metallic retrievable plug with identifying mark shall be placed three feet from the surface.

(e) The district supervisor may make changes in the plugging requirements on a case-by-case basis and may prescribe other methods where the district supervisor deems other plugging methods to be more appropriate due to geological or hydrologic conditions.

(f) The operator shall submit plugging reports to the Conservation Division Central Office on forms provided by the commission within 90 days after the commencement of each project. All plugging reports shall include:

(1) a description of the placement of plugs and the material used;

(2) a description of the identifying mark on the non-metallic retrievable plug;

(3) the name of the licensed person, firm, association, or corporation actually conducting the seismic operation; and

(4) a plat map showing the number of holes drilled, the location of each hole, the designated well number of each hole, and other information requested on the plugging report. Requests for confidentiality of plat map information should be made to the Director in accordance with procedures set forth in K.A.R. 82-3-107(e) and will be subject to time limits established in that regulation.

(g) The operator shall notify the appropriate district office prior to the plugging if the plugging of seismic holes is to occur anytime other than immediately after shooting takes place.

(h) When an emergency situation exists, the operator shall verbally notify and present the plugging proposal to the district office. A written plugging report shall be filed with both the district and conservation division office within five days of the completion of the plugging operation.

(i) A listing of those areas in which complex, multiple or divided aquifers occur shall be prepared by the commission. This list shall be made available to all drillers of seismic shot holes. Seismic shot holes drilled in these areas shall be plugged in accordance with the guidelines described in subsection (b)(3) of this regulation or as determined by the district supervisor.

(j) The driller or on-site geologist shall keep well logs of each hole drilled on forms approved by the commission. The logs shall be retained by the operator. If requested by the Conservation Division, the logs shall be made available contingent upon client approval.

(k) A minimum fee of \$5 shall be assessed for plugging of seismic holes. The minimum fee for any hole which penetrates a regionally confined salt water aquifer shall be assessed pursuant to K.A.R. 82-3-118.

(1) Seismic operations which do not require the drilling or digging of a hole shall be exempt from the requirements of this regulation.

(m) Failure to comply with the provisions of this regulation shall result in the following penalties:

(1) \$250 fine for the first offense, plus correction of the violation;

(2) Up to \$1000 fine for the second offense and review of operator's license, plus correction of any violations; and

(3) Up to \$2000 fine per hole for the third offense, plus 30 days suspension of license, which may be extended if correction of violation does not occur during suspension period, and review of license. (Authorized by K.S.A. 1993 Supp. 55-152; implementing K.S.A. 1993 Supp. 55-151, 55-152, 55-164; effective March 20, 1995.)

**82-3-116. Core and other stratigraphic holes to be plugged; affidavit.** Before any core or other stratigraphic hole is abandoned, it shall be plugged in accordance with K.A.R. 82-3-115 to properly protect all fresh and usable water formations. The person, firm, association or corporation

actually conducting the core or stratigraphic field operations requiring use of the hole, regardless of whether these operations are for their own account or under contract or agreement for the account of others, shall file with the conservation division an affidavit on the form prescribed by the commission. The affidavit shall state the date of drilling, the location of each hole, the method used to plug such hole, and all other information requested by the prescribed form. The affidavit shall be filed within 60 days after the core or other stratigraphic holes in a specifically platted area have been plugged. (Authorized by K.S.A. 1993 Supp. 55-152; implementing K.S.A. 1993 Supp. 55-152, 55-156, 55-157; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended March 20, 1995.)

**82-3-117. Plugging report; penalty.** (a) Within 60 days after plugging any well drilled for discovery of oil or gas, for underground porosity gas storage, for disposal of salt water, or for injection for enhanced recovery, the owner or operator of the well shall file a well plugging report with the conservation division setting forth the following information:

- (1) The date of drilling;
- (2) the location of the well;
- (3) the method used in plugging the well; and
- (4) all other information required by the commission.

The report shall be made on the form furnished by the commission and shall be verified by the operator.

(b) The failure to file a plugging report shall be punishable by a \$100 penalty.

(c) The operator shall be assessed the cost of the plugging as specified in K.A.R. 82-3-118.

(d) Copies of well plugging records shall be furnished to any person requesting that information upon the payment of two dollars per copy.

This regulation shall be effective on and after October 29, 2002. (Authorized by K.S.A. 55-152 and K.S.A. 2001 Supp. 55-1,115 and 74-623; implementing K.S.A. 55-152, K.S.A. 2001 Supp. 55-158, K.S.A. 55-159, and K.S.A. 2001 Supp. 55-164, 55-1,115, and 74-623; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1988; amended April 23, 1990; amended, T-82-6-27-02, July 1, 2002; amended Oct. 29, 2002.)

**82-3-118. Costs.** The owner or operator of each plugged well shall pay a fee to the commission, as assessed, at a cost of \$.0325 per foot

of well depth plugged. The minimum amount of any fee paid under this regulation shall be \$35.00. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-152, 55-131; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984.)

**82-3-119.** (Authorized by K.S.A. 55-152; implementing K.S.A. 55-152, 55-156, 55-157; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; revoked Nov. 2, 2007.)

**82-3-120. Operator or contractor licenses; application; financial responsibility; denial of application; penalty.** (a)(1) No operator or contractor shall undertake any of the following activities without first obtaining or renewing a current license:

(A) Drilling, completing, servicing, plugging, or operating any oil, gas, injection, or monitoring well;

(B) operating a gas-gathering system, even if the system does not provide gas-gathering services as defined in K.S.A. 55-1,101(a), and amendments thereto; or

(C) constructing or operating an underground porosity gas storage facility.

Each operator in physical control of any such well or gas storage facility shall maintain a current license even if the well or storage facility is shut in or idle.

(2) Each licensee shall annually submit a completed license renewal form on or before the expiration date of the current license.

(b) To qualify for a license or license renewal, the applicant shall be in compliance with applicable laws, as required in subsection (g), and shall submit the following items to the conservation division:

(1) An application meeting the requirements of subsection (c);

(2) a \$100 license fee, except that an applicant for a license who is operating one gas well used strictly for the purpose of heating a residential dwelling shall pay an annual license fee of \$25;

(3) for each rig as defined in subsection (d), a \$25 fee and copies of property tax receipts on all rigs; and

(4) financial assurance in accordance with K.S.A. 55-155(d), and amendments thereto.

(c) The application for a license or a license renewal shall be verified and filed with the commission showing the following information:

(1) The applicant's full legal name and any other name or names under which the applicant transacts or intends to transact business under the license and the applicant's correct mailing address. If the applicant is a partnership or association, the application shall include the name and address of each partner or member of the partnership or association. If the applicant is a corporation, the application shall contain the names and addresses of the principal officers;

(2) the number of rigs sought to be licensed; and

(3) any other information that the forms provided may require.

Each application for a license shall be signed and verified by the applicant if the applicant is a natural person, by a partner or a member if the applicant is a partnership or association, by an executive officer if the applicant is a corporation, or by an authorized agent of the applicant.

(d) "Rig" shall mean any crane machine used for drilling or plugging wells. An identification tag shall be issued by the commission for each rig licensed according to this regulation. The operator shall display a current identification tag on each rig at all times.

(e) "An acceptable record of compliance" shall mean that both of the following conditions are met:

(1) The operator neither has been assessed by final order of the commission with \$3,000 or more in penalties nor has been cited by final commission order for five or more violations in the preceding 36 months.

(2) The operator has no outstanding undisputed orders or unpaid fines, penalties, or costs assessed by the commission and has no officer or director that has been or is associated substantially with another operator that has any such outstanding orders or unpaid fines, penalties, or costs.

(f) Each operator furnishing financial assurance under K.S.A. 55-155(d)(1), and amendments thereto, shall also furnish a complete inventory of wells and the depth of each well for which the operator is responsible. Each operator furnishing financial assurance under K.S.A. 55-155(d)(2), (4), (5), or (6), and amendments thereto, either shall furnish a well inventory or shall be required to furnish the \$45,000 bond, letter of credit, fee, or other financial assurance based on that amount. Falsification of the well inventory shall be punishable by a penalty of up to \$5,000 and possible suspension of the operator's license.

(g) (1) If the applicant is registered with the federal securities and exchange commission, the applicant shall demonstrate to the commission that the applicant complies with all requirements of K.S.A. 55-101 et seq. and amendments thereto, all implementing regulations, and all commission orders and enforcement agreements.

(2) If the applicant is not registered with the federal securities and exchange commission, the applicant shall demonstrate to the commission that the following individuals comply with all requirements of K.S.A. 55-101 et seq. and amendments thereto, all implementing regulations, and all commission orders and enforcement agreements:

(A) The applicant;

(B) any officer, director, partner, or member of the applicant;

(C) any stockholder owning in the aggregate more than five percent of the stock of the applicant; and

(D) any spouse, parent, brother, sister, child, parent-in-law, brother-in-law, or sister-in-law of any of the individuals specified in paragraphs (g)(2)(A) through (C).

(h) Upon approval of the application by the conservation division, a license shall be issued to the applicant. Each license shall be in effect for one year unless suspended or revoked by the commission.

(i) An application or renewal application shall be denied if the applicant has not satisfied the requirements of this regulation. Denial of a license application shall constitute a summary proceeding under K.S.A. 77-537, and amendments thereto. A denial pursuant to K.S.A. 55-155(c)(3) or (4), and amendments thereto, shall be considered a license revocation.

(j) Upon revocation of a license, no new license shall be issued to that operator or contractor until after the expiration of one year from the date of the revocation.

(k) The failure to obtain or renew an operator or contractor license before operating shall be punishable by a \$500 penalty.

(l) Each operator shall notify the conservation division in writing within 30 days of any change in information supplied in conjunction with the license application. If the change involves an increase in the number or depth of the wells listed on the operator's well inventory, the operator's notification shall be accompanied by additional financial assurances to cover the additional number or depth of wells. (Authorized by K.S.A.

55-152 and 55-1,115; implementing K.S.A. 2009 Supp. 55-155 and K.S.A. 55-164 and 55-1,115; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 8, 1989; amended April 23, 1990; amended March 20, 1995; amended Aug. 29, 1997; amended Jan. 25, 2002; amended, T-82-6-27-02, July 1, 2002; amended Oct. 29, 2002; amended Nov. 5, 2010.)

**82-3-120a.** (Authorized by and implementing K.S.A. 1996 Supp. 55-155 and 55-164; effective Aug. 29, 1997; revoked Jan. 25, 2002.)

**82-3-121. Designation of an agent.** Every person, firm or corporation operating within the state shall designate an agent who will be responsible for certification of compliance with the commission's regulations concerning the drilling, completion or plugging of wells. The designation of an agent shall be set forth on the commission's forms used for licensing of operators and contractors. (Authorized by and implementing K.S.A. 1982 Supp. 55-154; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983.)

**82-3-122. Operators; complaints; hearing.** A hearing may be conducted by the commission if it finds that there is reasonable cause to believe, or upon a written complaint charging, that any operator has violated any of the rules and regulations adopted by the commission pursuant to K.S.A. chapter 55. (Authorized by K.S.A. 1989 Supp. 55-152, implementing K.S.A. 1989 Supp. 55-152, 55-162; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended April 23, 1990.)

**82-3-123. Well bore; commingling of production.** (a) Applicability. Commingling of production from more than one source of supply shall be permitted if the total production potential is less than the allowable for a single common source of supply for the immediate area and after application and approval by the conservation division.

(b) Coalbed natural gas. Each well producing only coalbed natural gas shall be exempt from this regulation.

(c) Application. Each original application for commingling and one copy shall be filed with the conservation division. The application shall be submitted to the commission on the form provided by the commission and shall be accompanied by the following information:

(1) A description of the well with a plat attached showing the location of the subject well, the location of other wells on the lease, the location of offset wells within a ½-mile radius of the subject well, and for each of these wells, the name of the lessee of record or the operator;

(2) the names of the upper and lower limits of the sources of supply to be commingled, with proposed perforations or open holes noted;

(3) a wireline log of the subject well;

(4) the production potential of oil, water, gas, or a combination for each source of supply;

(5) the total anticipated production for the formations sought to be commingled; and

(6) the applicant's license number.

(d) Allowable. The maximum well allowable for a well in which commingled production is approved shall be the following:

(1) For oil wells, the allowable for the deepest source of supply demonstrating productivity as specified in K.A.R. 82-3-203 or special order; and

(2) for gas wells, the allowable specified in K.A.R. 82-3-312, based on the combined actual open-flow potential from all producing zones or as provided by special order.

(e) Notice; protest. The applicant shall provide notice of the application as required in K.A.R. 82-3-135a. If a protest is filed in accordance with K.A.R. 82-3-135a, the application shall be set for hearing by the commission. Commingling shall be prohibited if the commission finds that waste or a violation of correlative rights is likely to result.

(f) Application for additional sources of supply. A new commingling application shall be required if the operator desires to open an additional source of supply that was not included in the initial application. (Authorized by K.S.A. 55-152, K.S.A. 55-604, K.S.A. 55-704; implementing K.S.A. 55-603, K.S.A. 55-605; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990; amended Aug. 29, 1997; amended Jan. 25, 2002; amended Jan. 14, 2005; amended Nov. 2, 2007.)

**82-3-123a. Well bore; commingling of fluids.** (a) When applicable. Well bore commingling of fluids from one or more intervals with fluids from a production interval shall be permitted after application and approval by the conservation division.

(b) Application. Each original application for commingling and one copy shall be filed with the

conservation division. The application shall contain the following information:

(1) A plat map showing the location of the subject well, the location of other wells on the lease, the location of offset wells within a ½-mile radius of the subject well, and, for each well, the name of the lessee of record or the operator;

(2) the intervals to be commingled, with proposed perforations or open holes noted;

(3) a well construction diagram of the subject well;

(4) any available water chemistry data demonstrating the compatibility of the fluids to be commingled; and

(5) an estimate of the amount of fluids to be commingled.

(c) Notice; protest. The applicant shall provide notice of the application as required in K.A.R. 82-3-135a. If a protest is filed in accordance with K.A.R. 82-3-135a, the application shall be set for hearing by the commission. Commingling shall be prohibited if the commission finds that waste or a violation of correlative rights is likely to result. (Authorized by K.S.A. 55-604; implementing K.S.A. 55-603, K.S.A. 55-605; effective May 8, 1989; amended April 23, 1990; amended Jan. 14, 2005; amended Nov. 2, 2007.)

**82-3-124. Dual or multiple-completed wells.** (a) When applicable. Production from more than one common source of supply through the same well bore shall be permitted if separation of each source of supply is maintained and after application and approval by the commission has been obtained.

(b) Application. Whenever an operator or producer desires to complete a well in more than one common source of supply, an original and one copy of an application requesting approval of dual or multiple completion shall be filed with the conservation division. The application shall be submitted to the commission on the form provided by the commission and shall be accompanied by the following:

(1) A description of the well with a plat attached showing the location of the subject well, the location of all other wells on the lease, the location of all offset wells within a ½-mile radius of the subject well, and for each of these wells, the name of the lessee of record or the operator. Well depths and producing sources of supply shall be properly designated on the plat;

(2) the names and upper and lower limits of the

common sources of supply involved in the dual or multiple completion;

(3) a wireline log of the subject well;

(4) a complete description of the proposed installation including the size, weight, depth, and condition of all casing and tubing, the size of all drilled holes, the amount of cement used and the location of the tops of cement behind each casing string, the location or intended location of casing perforations, the type of packer to be used and the depth at which it is to be set. A diagram of the proposed installation shall be attached to the application;

(5) a description of the proposed plan for separately measuring and accounting for the production for each source of supply;

(6) a description of storage facilities;

(7) a description and diagram of the proposed wellhead to pipeline installation; and

(8) the applicant's license number.

(c) Notice. The applicant shall provide notice of the application pursuant to K.A.R. 82-3-135a.

(d) Commission supervision. All dual and multiple completions shall be made and operated under the direction of the commission. Packers shall not be installed, removed, reinstalled, or replaced in such a well, except upon notice to and with the approval of a representative of the commission. If one of the producing sources of supply is abandoned, the plugging of the abandoned source of supply shall be in accordance with the requirements of the commission.

(e) Plugging. If any common source of supply in an intended dual or multiple completion is found upon testing to be nonproductive, it shall immediately be plugged under the direction of a commission representative.

(f) Packer testing. Dual and multiple-completed wells shall be operated and maintained so as to ensure complete segregation of all fluids from the producing sources of supply. In monitoring installation of packers, and in inspecting dual and multiple-completed wells, tests shall be made by or at the direction of representatives of the commission to determine whether packer leakage exists. These tests may include bottom hole pressure measurements, chemical analysis of oil, water, and gas, and any other tests which indicate the effectiveness of the packer.

(g) Packer leakage. Whenever evidence of leakage of the packer in any dual or multiple-completed well is discovered, the packer shall be immediately repaired, a new packer shall be in-

stalled, or the affected producing source of supply shall be plugged.

(h) Allowable. The allowable for each source of supply shall be determined according to K.A.R. 82-3-203(b) or K.A.R. 82-3-312 for non-prorated common sources of supply or according to the basic proration order for prorated common sources of supply, or both.

(i) Packer installation. Operators shall notify the commission and the operators of offset producing leases at least 24 hours before installing a packer.

(j) Installation charge. An installation charge for each dual or multiple-completed well, and a charge for any inspection of such a well, shall be made to defray necessary expenses of supervision by the commission.

(k) Revocation. Failure of the operator of any dual or multiple-completed well to comply with any of the provisions of this regulation shall constitute grounds for the revocation of the order granting the dual or multiple completion, or the suspension or cancellation of current or future allowables of that well. If the order granting the dual or multiple completion of any well is revoked, all but one of the producing sources of supply shall immediately be sealed off under the direction of the commission.

(l) Approval. Tentative approval for dual or multiple-completed wells may be granted by the commission based on extenuating circumstances. Final approval may be granted after proper application. (Authorized by K.S.A. 55-602; implementing K.S.A. 55-605, 55-706, 55-603; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended, T-85-51, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990; amended Nov. 2, 2007.)

**82-3-125. Surface commingling of production.** The production from one common source of supply may be commingled on the surface with that from another common source of supply before delivery to a purchaser. However, the commission may prohibit surface commingling whenever this action is deemed advisable. (Authorized by and implementing K.S.A. 55-604; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983.)

**82-3-126. Tank and truck identification; penalty.** (a) Tanks. All oil tanks, tank batteries, tanks used for salt water collection or disposal,

and tanks used for sediment oil treatment or storage shall be identified by a sign posted on, or not more than 50 feet from the tank or tank battery. The sign shall be of durable construction and shall be large enough to be legible under normal conditions at a distance of 50 feet. The sign shall identify:

(1) the name and license number of the operator;

(2) the name of the lease being served by the tank; and

(3) the location of the tank by unit name, section, township, range, and county.

(b) The failure to post an identification sign shall be punishable by a \$100 penalty.

(c) Trucks. Every truck, tank wagon or other vehicle transporting crude petroleum oil, sediment oil, water or brine produced in association with the production of oil or gas shall have the name and address of the owner or lessee painted or otherwise durably marked on both sides of the vehicle. (Authorized by and implementing K.S.A. 55-1503, 55-1504, K.S.A. 1989 Supp. 55-164; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended April 23, 1990.)

**82-3-127. Documentation required for transportation and storage.** (a) Transportation.

(1) Every person that uses a motor vehicle to transport crude petroleum oil, sediment oil, water or brine produced in association with the production of oil or gas shall possess a run ticket or equivalent documents containing the following:

(A) the name and address of the transporter;

(B) the name and license number of the operator of the lease;

(C) the name of the lease or facility from which the above-named fluids were taken and the location of the tank by unit letter, section, township, range and county;

(D) the date and time that fluids were loaded for transportation and unloaded at the destination;

(E) the estimated volume of fluids, or the opening and closing tank gauges or meter readings;

(F) the signature of the driver;

(G) the name and location of the disposal, storage, processing or refining facility to which the fluid is being transported; and

(H) the name and address of the party receiving shipment.

(2) The following information shall be left at the facility from which the fluids were removed:

(A) the name and address of the transporter;

(B) the date and time that fluids were loaded for transportation;

(C) the signature of the driver;

(D) the estimated volume of fluids, or the opening and closing tank gauges or meter readings.

(3) One copy of the documentation shall be carried in the vehicle during transportation and shall be produced for examination and inspection by any representative of the commission or any federal, state, county or city law enforcement officer upon identification and request.

(4) All persons who transport fluids produced in association with the production of oil or gas shall retain a record reflecting the transportation of the fluids for at least three years.

(b) All persons that store, possess or dispose of fluids produced in association with the production of oil or gas shall retain a record reflecting a complete inventory, including detail of the acceptance and disposition of the fluids, for at least three years. (Authorized by and implementing K.S.A. 55-1504; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1987.)

**82-3-128. Reports and permits; penalty.** Verification of any information necessary to administer these rules and regulations or any commission order may be required by the conservation division. The failure to verify requested information shall be punishable by a \$100 penalty. (Authorized by and implementing K.S.A. 1989 Supp. 55-604, 55-164; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended April 23, 1990.)

**82-3-129.** (Authorized by K.S.A. 1989 Supp. 55-604; implementing K.S.A. 1989 Supp. 55-176, 55-609; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended April 23, 1990; revoked Aug. 29, 1997.)

**82-3-130. Completion reports; penalty.** (a) Within 120 days of the spud date or commencement of recompletion of a well, the operator shall file an original and two copies of an affidavit of completion with the conservation division, except as provided by subsection (b).

(b) If the time requirement for cementing the additional casing, pursuant to K.A.R. 82-3-106(c)(2)(B), is greater than 120 days, the time for filing the affidavit of completion and two copies shall be extended accordingly.

(c) The affidavit of completion shall be filed regardless of the manner in which the well is com-

pleted or recompleted, including a well that is dry and abandoned. The affidavit of completion shall be submitted on forms furnished by the commission. The affidavit shall be accompanied by wireline logs of the well, if run. The failure to file the affidavit of completion within the time required shall be punishable by a \$500 penalty.

(d) Each operator shall attach legible documentation to the affidavit of completion, showing the type, amount, and method of cementing used on all casing strings in the wellbore. The documentation may consist of invoices, job logs, job descriptions, or other similar service company reports. (Authorized by and implementing K.S.A. 1996 Supp. 55-604, K.S.A. 1996 Supp. 55-164; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1986; amended May 8, 1989; amended April 23, 1990; amended Aug. 29, 1997.)

**82-3-131. Vacuum and high volume pumps; application and approval.** (a) Upon application, the installation and use of vacuum pumps in fields that are nearly depleted and the installation and use of high volume pumps may be permitted by the commission. A high volume pump shall mean one that is capable of producing total fluids in excess of 2,500 barrels per day. No application for commission approval shall be required for the installation and use of vacuum or high volume pumps in a field that is unitized for secondary recovery operations.

(b) The original and one copy of the application shall be filed with the conservation division. The application shall contain the following information:

(1) The applicant's license number;

(2) the name, location, and producing formation of the well or wells to be pumped;

(3) a plat map showing the subject well or wells, the location of all oil and gas wells on the lease, and the location of all offset wells within a ½-mile radius of the subject well or wells and their operators' names;

(4) the anticipated maximum daily production of oil, water, and gas;

(5) for vacuum pump applications, an estimate of the remaining recoverable hydrocarbon reserves underlying the subject lease;

(6) for high volume pump applications, the size and capacity of the pump to be used and the estimated oil-water ratio; and

(7) any additional relevant information that the commission may require.

(c) Each applicant shall provide notice of the application pursuant to K.A.R. 82-3-135a. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-604; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1987; amended May 1, 1988; amended April 23, 1990; amended Nov. 2, 2007.)

**82-3-132. Re-entry notification.** Every operator shall notify the conservation division or a district office at least 48 hours before re-entering an abandoned or plugged well. An agent of the commission may conduct on-site inspection of the drilling operations. A report shall be filed by the agent of the commission or, in the absence of an observing agent, by the operator, stating where cement was encountered when drilling out plugs. (Authorized by K.S.A. 1986 Supp. 55-152; implementing K.S.A. 1986 Supp. 55-160; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1988.)

**82-3-133. Penalties for unlawful production.** (a) The production of oil or gas in violation of the provisions of a basic proration order, or otherwise in violation of the statutes or the rules and regulations of the commission, shall be deemed unlawful and shall be presumed to violate correlative rights and to constitute waste.

(b) Upon the commission's receipt of a complaint or on its own motion, and upon a determination that a well has unlawfully produced, the operator of that well may be ordered by the commission to shut in the well. The well shall remain shut in until the unlawful production is made up. The violating operator may make application for an exception to the order by showing that the unlawful production was necessary to protect correlative rights or to prevent waste. The exception may be granted by the commission after proper notice and hearing.

(c) Upon a determination by the commission that a well has produced unlawfully, the following may be ordered:

(1) The surface equipment of the unlawfully produced well to be sealed or padlocked for any period of time that the commission may determine;

(2) production of the unlawfully produced well at a reduced rate to ensure the protection of correlative rights and the prevention of waste;

(3) a penalty of \$500; or

(4) any combination of the orders enumerated in paragraphs (c)(1), (2), and (3).

(d) Any action taken by the commission under this regulation shall be in accordance with the Kansas administrative procedure act. (Authorized by K.S.A. 2000 Supp. 55-164, K.S.A. 55-152; implementing K.S.A. 2000 Supp. 55-603, K.S.A. 55-605, K.S.A. 55-703; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended April 23, 1990; amended June 1, 2001.)

**82-3-133a. Balancing overages and underages in nonprorated areas; penalty.** For purposes of determining whether a particular oil or gas well subject to statewide field rules and regulations is overproduced or underproduced, the following requirements shall apply:

(a) Operators shall retain records of production volumes for each individual oil and gas well subject to the statewide rules and regulations each month. These records shall show any underage or overage under the applicable statewide rules and regulations. Notwithstanding any other applicable record retention requirements, for purposes of this regulation, these records shall be retained for a minimum of five years.

(b) Production volumes for oil wells shall be balanced on a quarterly basis. Any overage for oil wells shall be made up in the calendar quarter following the quarter in which it was accrued. Accrued underage shall be used in the quarter after it is accrued, or it shall be canceled.

(c) Production volumes for gas wells shall be balanced on the semiannual basis of April through September and October through March. Any overage shall be made up in the six-month period following the six-month period in which it was accrued. Accrued underage shall be used in the six-month period after it is accrued, or it shall be canceled.

(d) Records kept for the subsequent year shall show the amounts that were made up during the time period denoted in subsection (b) or (c), and these amounts shall not be counted against the production allowable in the subsequent year.

(e) Any underage that is not made up within the time designated in subsections (b) and (c) shall be canceled and may not be reinstated except through application to the commission and for good cause shown.

(f) Any overage that is not made up within the time designated in subsections (b) and (c) may be eliminated or reduced, at the discretion of the commission, through application to the commission for retroactive assignment of allowable and for good cause shown.

(g) Any overage that is not made up within the time designated in subsections (b) and (c) shall subject the well and operator to the penalties for overproduction. (Authorized by K.S.A. 2000 Supp. 55-164, K.S.A. 55-152; implementing K.S.A. 2000 Supp. 55-603, K.S.A. 55-605, K.S.A. 55-703; effective June 1, 2001.)

**82-3-134.** (Authorized by and implementing K.S.A. 55-152, K.S.A. 55-604, 55-704; effective May 1984; revoked April 23, 1990.)

**82-3-135. Notice of hearings.** (a) Scope. The notice requirements in this regulation apply to each hearing arising under any rule or regulation or statutory provision for the conservation of crude oil and natural gas or for the protection of fresh and usable water, heard by the commission or any agent appointed by the commission.

(b) Hearings initiated by the attorney general or the commission.

(1) Notice of the hearing shall be published by the commission in the Wichita Eagle newspaper and in the Kansas Register. Notice of the hearing shall also be published in the official county newspaper of each county in which the lands affected by the hearing are located. If that county does not have an official county newspaper, notice may be published in any newspaper satisfying the requirements of K.S.A. 64-101 in a county in which the lands affected by the hearing are located.

(2) A copy of the notice of the hearing shall be mailed by the commission to each person who has filed for the purpose of receiving notice. The notice shall be mailed not less than 10 days prior to the hearing date.

(3) Any additional notice required by any rule, regulation or statute which applies to the hearing or which is necessary to provide due process to any person whose property may be affected by the hearing shall be provided by the commission.

(c) Hearings initiated by any person other than the attorney general or commission.

(1) Anyone who initiates a hearing shall publish notice of the hearing in the Wichita Eagle newspaper and in the official county newspaper of each county in which the lands affected by the hearing are located. Anyone who initiates a hearing may publish notice in any newspaper satisfying the requirements of K.S.A. 64-101 in a county in which the lands affected by the hearing are located, if that county does not have an official newspaper.

(2) A copy of the notice of the hearing shall be

mailed by the commission to each person who has filed for the purpose of receiving notice. The copy of the notice shall be mailed not less than 10 days prior to the hearing date.

(3) Anyone who initiates a hearing shall provide any additional notice required by any rule, regulation or statute which applies to the hearing or is necessary to provide due process to any person whose property may be affected by the hearing.

(d) Proof of notice. If the commission is required to publish notice, it shall be proven by commission staff that notice has been properly published. Acceptable proof of notice may include an affidavit sworn by the commission staff that notice has been perfected. Anyone who initiates the hearing shall provide that notice has been properly published. An affidavit sworn by the person who initiates the hearing certifying that notice has been perfected may be accepted as proof of notice. The affidavit shall be filed with the commission on or before the hearing date.

(e) Filing for the purpose of receiving notice. Anyone who desires to receive notice of any hearings shall file annually with the conservation division that person's name, address and other information as may be reasonably required by the commission. The filing shall be on a form required by the commission and shall be accompanied by an annual \$50 fee. (Authorized by K.S.A. 1989 Supp. 55-152, 55-604, K.S.A. 55-602, 55-704; implementing K.S.A. 1989 Supp. 55-605, 55-706; effective, T-85-51, Dec. 19, 1984; effective May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended April 23, 1990.)

**82-3-135a. Notice of application.** (a) Scope. Except as otherwise provided in K.A.R. 82-3-100, 82-3-108, 82-3-109, 82-3-138, 82-3-203, 82-3-208, 82-3-209, 82-3-300, and 82-3-300a, the notice requirements in this regulation shall apply to each application for an order or permit filed pursuant to any regulation, special order, or statutory provision for the conservation of crude oil and natural gas or for the protection of fresh and usable water.

(b) Production matters. Except as otherwise provided in K.A.R. 82-3-100, 82-3-108, 82-3-109, 82-3-138, 82-3-203, 82-3-208, 82-3-209, 82-3-300, and 82-3-300a, each applicant for an order filed pursuant to K.A.R. 82-3-100 through K.A.R. 82-3-314 shall give notice of the application on or before the date the application is filed with the conservation division by mailing or delivering a copy of the application to the following:

(1) Each operator or lessee of record within a one-half mile radius of the well or of the subject acreage; and

(2) each owner of record of the minerals in unleased acreage within a one-half mile radius of the well or of the subject acreage.

(c) Environmental matters. Each applicant for an order or permit filed pursuant to K.A.R. 82-3-400 through 82-3-412 and K.A.R. 82-3-600 through 82-3-607 shall give notice of the application on or before the date the application is filed with the conservation division by mailing or delivering a copy of the application to the following:

(1) Each operator or lessee of record within a one-half mile radius of the well or of the subject acreage;

(2) each owner of record of the minerals in unleased acreage within a one-half mile radius of the well or of the subject acreage; and

(3) the landowner on whose land the well affected by the application is located.

(d) Publication of notice. Notice of the application shall be published in at least one issue of the official county newspaper of each county in which the lands affected by the application are located. In addition, notice of applications relating to production matters shall also be published in at least one issue of the Wichita Eagle newspaper.

(e) Protest. Once notice of the application is published pursuant to subsection (d), the application shall be held in abeyance for 15 days for production matters and 30 days for environmental matters, pending the filing of any protest pursuant to K.A.R. 82-3-135b. If a valid protest is filed or if the commission, on its own motion, deems that there should be a hearing on the application, a hearing shall be held. The applicant shall publish notice of the hearing pursuant to K.A.R. 82-3-135. (Authorized by K.S.A. 2012 Supp. 55-152, K.S.A. 55-704, K.S.A. 2012 Supp. 55-901; implementing K.S.A. 55-605, K.S.A. 2012 Supp. 55-901, K.S.A. 55-1003; effective April 23, 1990; amended Oct. 24, 2008; amended Aug. 16, 2013.)

**82-3-135b. Protesters.** Each protest against the granting of an application for an order or permit filed pursuant to K.A.R. 82-3-135a shall be considered under the following conditions and requirements:

(a) A protest may be filed by any person having a valid interest in the application. Each protest shall be submitted in writing and shall provide the name and address of the protester and the title

and docket number of the proceeding. The protest shall include a clear and concise statement of the direct and substantial interest of the protester in the proceeding, including specific allegations as to the manner in which the grant of the application will cause waste, violate correlative rights, or pollute the water resources of the state of Kansas.

(b) If the protester opposes only a portion of the proposed application, the protester shall state with specificity the objectionable portion.

(c)(1) The protest shall be filed with the conservation division according to the following deadlines:

(A) For each protest of production matters, within 15 days after publication of the notice of the application required in K.A.R. 82-3-135a; and

(B) for each protest of environmental matters, within 30 days after publication of the notice of the application required in K.A.R. 82-3-135a.

(2) Failure to file a timely protest shall preclude the interested person from appearing as a protester.

(d) Each protester shall serve the protest upon the applicant at the same time or before the protester files the protest with the conservation division. The protest shall not be served on the applicant by the conservation division.

(e) To secure consideration of a protest, the protester shall offer evidence or a statement or participate in the hearing. (Authorized by K.S.A. 55-152, 55-704, and 55-901; implementing K.S.A. 55-605, 55-901, 55-1003; effective April 23, 1990; amended Oct. 24, 2008.)

**82-3-136. Transfer of operator responsibility.** (a) If operator responsibility is transferred, the past operator shall report this transfer to the conservation division within 30 days of the change upon a form prescribed by the commission.

(b) The past operator shall furnish a list of all active and inactive wellbores on the lease, unit, gas storage facility, or secondary recovery unit with the notice of transfer.

(c) Transfers shall not be made to any individual, partnership, corporation, or municipality not currently licensed as an operator, gas gatherer, or gas storage operator.

(d) Within 90 days of any transfer, the new operator shall change the tank battery identification sign provided for in K.A.R. 82-3-126 to show the new operator information.

(e) Violations of this regulation shall be punishable by a penalty of up to \$1,000 for the first violation, \$2,000 for a second violation, and \$3,000 plus

license review for a third violation. (Authorized by and implementing K.S.A. 1996 Supp. 55-164, K.S.A. 1996 Supp. 55-604, and K.S.A. 55-704; effective May 1, 1985; amended Aug. 29, 1997.)

**82-3-137. Change in purchasers.** If a purchaser of production changes and if that production is subject to a proration order issued by the commission, the operator shall report this change to the conservation division within 30 days of the change in the purchaser. (Authorized by and implementing K.S.A. 55-604, 55-704; effective May 1, 1985.)

**82-3-138. New pool application.** (a) Application requirements. Each application for a new pool certificate shall be submitted to the conservation division on the form provided by the conservation division and shall be accompanied by the following:

- (1) The affidavit of completion;
- (2) a copy of the results of a state-supervised production test, showing volumes of oil, gas, and water;
- (3) a certificate of mailing verifying that notice of the application was provided as required in K.A.R. 82-3-135a(b);
- (4) the exhibits and evidence needed to substantiate the applicant's claim of a new pool; and
- (5) any other relevant information required by the conservation division.

(b) New pool certificate. Each newly discovered pool shall be recognized only upon issuance of a certificate by the conservation division, signifying that the application has been approved. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-603; effective May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended April 23, 1990; amended June 6, 1994; amended Jan. 14, 2005; amended Oct. 24, 2008.)

**82-3-139.** (Authorized by and implementing K.S.A. 1987 Supp. 55-152, K.S.A. 55-602, 55-604, as amended by L. 1988, Ch. 356, Sec. 168, 55-704; effective May 1, 1986; amended May 8, 1989; revoked April 23, 1990.)

**82-3-140. Tertiary recovery project certification.** (a) Any interested party may file an application for certification of a tertiary recovery project. Each application for certification of a tertiary recovery project to the Kansas department of revenue shall be submitted to the conservation division and shall be accompanied by the following:

- (1) The project name and its legal description;

(2) the type of tertiary recovery process to be implemented;

(3) exhibits and evidence required to support the application for certification; and

(4) any other relevant information that may be required by the commission.

(b) The applicant shall publish notice of the application pursuant to K.A.R. 82-3-135a. (Authorized by K.S.A. 55-152, 55-704, and 79-4217; implementing K.S.A. 55-604 and 79-4217; effective, T-87-46, Dec. 19, 1986; effective May 1, 1987; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990; amended Nov. 2, 2007.)

**82-3-141.** (Authorized by and implementing K.S.A. 1989 Supp. 55-164, 55-604; effective May 1, 1988; amended April 23, 1990; revoked Aug. 29, 1997.)

**82-3-142.** (Authorized by and implementing K.S.A. 1988 Supp. 55-604, K.S.A. 55-704; effective May 8, 1989; revoked April 23, 1990.)

**82-3-143.** (Authorized by and implementing K.S.A. 55-604, as amended by L. 1988, Ch. 356, Sec. 168, 55-704; effective May 8, 1989; revoked April 23, 1990.)

**82-3-200. Prevention of waste, protection of correlative rights, and prevention of discrimination between pools.** (a) Any person having the right to drill, complete and operate wells from which oil from any common source of supply or pool is produced may produce on a monthly basis not more than that amount of crude oil from any well or lease than the allowable specified by the commission.

(b) Oil market demand.

(1) A monthly hearing may be held by the commission to determine the total statewide oil allowable.

(2) The statewide oil allowable shall be the amount of crude petroleum that can be produced daily throughout the state, during the next succeeding proration period, without causing waste.

(3) The total statewide allowable shall be allocated by the commission among the prorated pools, leases and wells.

(4) Any crude oil which is removed from a lease shall be charged against the allowable established for that lease, except in cases where permission is granted to use waste oil for oiling roads leading to the lease.

(c) The crude oil allowable shall be that amount of oil which may be produced currently from any pool without causing waste or injury to correlative rights, and without discriminating between pools.

(1) In determining allowables, the statistical status of each well or lease, as of the first day of the preceding proration period shall be considered by the commission.

(2) Any applicable overages and shortages for each well or lease shall be used in determining the statistical status of that well or lease.

(d) The provisions of this regulation shall be construed in conjunction with K.A.R. 82-3-202 through K.A.R. 82-3-208. (Authorized by K.S.A. 1993 Supp. 55-602, 55-604; implementing K.S.A. 1993 Supp. 55-603; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1986; amended June 6, 1994.)

**82-3-201. Oil production in prorated areas: balancing of underages.** Whenever an oil well producing in a prorated area fails to produce its allowable, this shortage or underage shall be carried forward for two months upon the monthly proration report of the commission. The well shall be permitted to produce the underage in addition to its designated allowable. If the commission determines, however, that a proration unit is incapable of producing its allowable, the accrued underages shall be cancelled. Whenever shortages are attributable to the lack of transportation facilities, these shortages shall not be accrued for more than 60 days from the date of the initial productivity test, except as otherwise ordered by the commission. (Authorized by and implementing K.S.A. 1999 Supp. 55-604; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1986; amended April 23, 1990; amended June 1, 2001.)

**82-3-202. Productivities, methods of determining, when required.** The productivity of all wells in prorated pools in this state shall be determined in accordance with the following rules.

(a) Type of test. The productivity of each well shall be determined by a physical test conducted in the manner in which the well is normally produced. The initial physical test shall be conducted within 30 days of the filing of the affidavit of completion for the well.

(b) Supervision. Each test shall be conducted under the supervision of the commission.

(c) Notice and witnesses. Each operator of a well on which a test is to be conducted shall notify the commission's agent at least 12 hours before the beginning of a test. Any offset operator may witness the test.

(d) Temporary allowable of a well. After the operator files an affidavit of completion, a temporary allowable for the well shall be established and shall be effective for 30 days.

(e) Production considered. Only pipeline oil produced during the test shall be considered in determining a well's productivity.

(f) Pool and productivity tests.

(1) Pool and productivity tests shall be taken initially and on an annual basis, except on wells which produced less than 25 barrels of oil per day at the time of the last current test.

(2) Those wells producing less than 25 barrels of oil per day shall be exempt from further testing unless the well becomes capable of producing more than 25 barrels of oil per day or unless otherwise ordered by the commission.

(3) Whenever, due to some act or omission of the operator, more than 15 months have lapsed since the last productivity test for a well was conducted, the well shall not be entitled to an allowable until tested, unless otherwise exempt.

(4) Any well that was tested less than three months before the date of a scheduled pool test shall not be required to take the pool test.

(5) Operators shall be notified 10 days before the start of a pool test.

(g) Good cause shown. The commission may, on its own motion and for good cause shown, direct the taking of a productivity test of any well or any pool. (Authorized by and implementing K.S.A. 55-604; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1986; amended May 1, 1988.)

**82-3-203. Production allowable.** (a) An allowable shall be assigned to each well in a nonprorated pool. The allowable shall be set by the following schedule and shall take effect on the date of first production:

Depth of Producing Interval	Daily Production Allowable (barrels per well per day)
0-4000'	100
4001-6000'	200
Below 6000'	300

(b) Any interested party may file an application for an exception to this regulation with the conser-

vation division. The application shall include the following:

- (1) The location of the well and the acreage attributed to the well;
- (2) the allowable requested;
- (3) the geological name of the producing formation;
- (4) the top and bottom depths of the producing formation;
- (5) a list of the persons provided notice pursuant to K.A.R. 82-3-135a and the date that notice was provided; and
- (6) any other relevant information that the commission may require.

(c) The applicant shall publish notice of the application pursuant to K.A.R. 82-3-135a and notice of any hearing pursuant to K.A.R. 82-3-135. (Authorized by and implementing K.S.A. 55-604; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended, T-85-51, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 8, 1989; amended April 23, 1990; amended June 6, 1994; amended Aug. 14, 2015.)

**82-3-204. Reports by producers.** The producer or operator of each well in prorated pools, including minimum wells, shall file each month a verified statement showing the amount of crude petroleum actually produced by each well and lease. The verified statement shall be filed with the conservation division on or before the 15th day of each month following the month in which the production occurred. The filing of production reports by producers shall be required for the purpose of obtaining allowables. (Authorized by K.S.A. 55-604; implementing K.S.A. 55-603; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1986; amended May 1, 1988.)

**82-3-205.** (Authorized by and implementing K.S.A. 55-604, as amended by L. 1988, Ch. 356, Sec. 168; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended May 8, 1989; revoked April 23, 1990.)

**82-3-206. Oil conservation assessment.** In order to pay the conservation division expenses and administration costs not otherwise provided for, an oil conservation assessment shall be made as follows:

(a) A charge of 144.00 mills on each barrel of crude oil or petroleum marketed or used each

month shall be assessed to each producer. The charge and assessment shall apply only to the first purchase of oil from the producer.

(b) Each month, the first purchaser of the production shall perform the following:

(1) Deduct the assessment per barrel of oil marketed or used from the lease before paying for production;

(2) remit the assessment in a single check to the conservation division when making regular oil payments; and

(3) account for the deductions on the regular payment statements to producers, royalty owners, and other interested persons. (Authorized by K.S.A. 2017 Supp. 55-152; implementing K.S.A. 2017 Supp. 55-176; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1986; amended April 23, 1990; amended Dec. 6, 1993; amended Nov. 15, 1996; amended June 1, 2001; amended Dec. 22, 2006; amended June 15, 2018.)

**82-3-207. Oil drilling unit.** This regulation shall apply to all oil wells not covered by a special commission order.

(a) Standard drilling unit. The standard drilling unit shall be 10 acres, except that the standard drilling unit for the counties and well depths listed in K.A.R. 82-3-108 (b) shall be 2.5 acres.

(b) Exceptions. Exceptions to the standard drilling unit may be granted by the commission to prevent waste or to protect correlative rights. (Authorized by and implementing K.S.A. 55-604; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended May 1, 1988; amended Aug. 14, 2015.)

**82-3-208. Venting or flaring of casing-head gas.** (a) The venting or flaring of non-sour casinghead gas may be permitted by the director if the operator files an affidavit with the conservation division that states all of the following:

(1) The well produces 25 mcf/d or less of casing-head gas.

(2) The casinghead gas volume is uneconomic to market due to pipeline or marketing expenses.

(3) The operator has made a diligent effort to obtain a market for the gas.

(b) If the well produces more than 25 mcf/d, venting or flaring may be permitted only by commission order after consideration of the following:

(1) The availability of a market or of pipeline facilities;

- (2) the probable recoverable gas reserves;
- (3) the necessity for maintenance of reservoir gas pressure to maximize the recoverability of oil reserves from the formation;
- (4) the feasibility of reinjecting the gas;
- (5) a reasonable testing period;
- (6) any anticipated change in the gas-to-oil ratio;
- (7) the applicant's compliance with the department's applicable air quality regulations; and
- (8) any other relevant fact or circumstance.

(c) Any interested party may file an application to vent or flare more than 25 mcf of casinghead gas. Each applicant shall file an application with the conservation division. The applicant shall publish notice of the application pursuant to K.A.R. 82-3-135a and notice of any hearing pursuant to K.A.R. 82-3-135.

(d) Each application shall include a list of the persons provided notice pursuant to K.A.R. 82-3-135a and the date that notice was provided.

(e) The volume of gas vented or flared under this regulation shall be metered, and the records shall be retained for at least two years. This information shall be reported to the commission semi-annually or as designated by the commission.

(f) All gas venting or flaring shall be done in a manner designed to prevent damage to property and injury to persons who are reasonably expected to be in the vicinity for work, pleasure, or business. (Authorized by K.S.A. 55-604, K.S.A. 55-704; implementing K.S.A. 55-604, K.S.A. 55-702, and K.S.A. 55-704; effective May 1, 1984; amended May 1, 1986; amended April 23, 1990; amended Jan. 14, 2005; amended Aug. 14, 2015.)

**82-3-209. Flaring of sour gas.** (a) Sour casinghead gas may be flared only if permitted by commission order, with consideration of the following factors:

- (1) The availability of a market or of pipeline facilities;
- (2) probable recoverable gas reserves;
- (3) the necessity for maintenance of gas pressure in the formation;
- (4) the feasibility of reinjection of sour gas;
- (5) any anticipated change in the gas-oil ratio;
- (6) the hydrogen sulfide content of the gas;
- (7) the feasibility of desulfurization of the gas;
- (8) the proposed flaring facility;
- (9) the applicant's compliance with the department's air quality regulations; and
- (10) any other relevant fact.

(b) Each applicant shall file an application with the conservation division. The applicant shall publish notice of the application pursuant to K.A.R. 82-3-135a and any hearing pursuant to K.A.R. 82-3-135.

(c) Each application shall include a list of the persons provided notice pursuant to K.A.R. 82-3-135a and the date that notice was provided.

(d) All sour gas flared under this regulation shall be metered and analyzed for its hydrogen sulfide content. This information shall be reported to the commission semiannually or as designated by the commission. (Authorized by K.S.A. 55-604, K.S.A. 55-704; implementing K.S.A. 55-604, K.S.A. 55-702, K.S.A. 55-703, K.S.A. 55-704; effective May 1, 1987; amended April 23, 1990; amended Aug. 14, 2015.)

**82-3-300. Assignment of gas allowables in prorated pools; notice.**

(a) Request for allowable. A gas well in a prorated common source of supply that is in conformance with all provisions of the applicable basic proration order shall be granted an allowable by the commission on the date of filing the latest of the following:

- (1) A form as prescribed by the commission requesting an allowable for a gas well in a prorated pool;
- (2) an acreage plat verifying the location of the well and a description of the acreage to be attributed to the well;
- (3) the results of the state-supervised test as required by the applicable basic proration order; and
- (4) in the case of a replacement well, either of the following:

(A) Documentation that the operator has plugged the original well, caused the productive perforations to be squeezed, or otherwise isolated the productive zone; or

(B) an affidavit filed with the commission stating that the well is disconnected and surface equipment is sealed in preparation to be plugged or returned to other use within one year of the date of being sealed.

(b) Replacement wells. In the case of a replacement well, any accumulated overage or underage shall be transferred to the replacement well.

(c) Application for exception. A gas well in a prorated common source of supply that requires exceptions to any provision of the applicable basic proration order may be granted an allowable by the commission only after an application has been

filed with the conservation division. Each application shall show the following:

(1) The exact location of the well and the acreage attributed to the well;

(2) the common source of supply from which the well is producing;

(3) the name and address of the purchaser, if known;

(4) a statement of the exception being requested and the reasons the exception should be granted;

(5) a plat showing the location and approximate depths of all wells and dry holes that have been drilled within one mile from the acreage to be attributed;

(6) the applicant's license number;

(7) the names and addresses of each person owning a royalty or working interest in the acreage to be attributed, and a certificate of mailing indicating the date on which service of a copy of the application was made to each person;

(8) the names and addresses of all operators of producing acreage abutting or adjoining the acreage to be attributed, and a certificate of mailing indicating the date on which service of a copy of the application was made to each operator;

(9) the names and addresses of all lessees of record of nonproducing acreage abutting or adjoining the acreage to be attributed, and a certificate of mailing indicating the date on which service of a copy of the application was made to each lessee;

(10) the names and addresses of all owners of record of the minerals in, or royalty of unleased acreage abutting or adjoining, the acreage to be attributed, and a certificate of mailing indicating the date on which service of a copy of the application was made to each owner;

(11) the names and addresses of all persons owning the royalty or leasehold interests in acreage abutting or adjoining the acreage to be attributed that is operated by the applicant or on which the applicant has a lease or an interest in the lease, and a certificate of mailing indicating the date on which service of a copy of the application was made to each person;

(12) a statement advising each person listed in paragraphs (7) through (11) of this subsection that the person has 15 days in which to file a protest to the application with the conservation division pursuant to the provisions of K.A.R. 82-3-135b; and

(13) any other relevant information that the commission may require.

(d) Notice of the application. In addition to mailing a copy of the application to each of the

persons described in subsection (c), notice of the application shall be published in at least one issue of the official county newspaper of each county in which lands affected by the application are located and in the "Wichita Eagle" newspaper.

(e) Protest. After notice of the application is published pursuant to subsection (d) and mailed to the persons described in subsection (c), the application shall be held in abeyance for 15 days from the date of publication or mailing, whichever is later, pending the filing of any protest pursuant to K.A.R. 82-3-135b. If a valid protest is filed or if, on the commission's own motion, it is deemed that there should be a hearing on the application, a hearing shall be held. The applicant shall publish notice of the hearing pursuant to K.A.R. 82-3-135. (Authorized by K.S.A. 55-152 and 55-704; implementing K.S.A. 55-705b, K.S.A. 55-706; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1988; amended April 23, 1990; amended March 20, 1995; amended June 1, 2001; amended Nov. 2, 2007.)

**82-3-300a. Reinstatement of cancelled underage.** (a) A cancelled underage for any gas well producing from a common source of supply governed by a basic proration order which provides for the reinstatement of cancelled underage shall not be reinstated by the commission unless an application has been filed with the conservation division and duly verified.

Each application shall show:

(1) The exact location of the well and the acreage attributed to the well;

(2) the common source of supply from which the well is producing;

(3) the name and address of the purchaser, if known, and a certificate of mailing indicating the date the application was served;

(4) the volume of underage available to be reinstated and the date of its cancellation;

(5) the applicant's license number; and

(6) any other information the commission may require.

(b) Notice of the application shall be published in at least one issue of the official county newspaper of each county in which lands affected by the application are located and in the Wichita Eagle newspaper. (Authorized by and implementing K.S.A. 55-704, K.S.A. 1989 Supp. 55-706; effective April 23, 1990.)

**82-3-301.** (Authorized by K.S.A. 55-704; implementing K.S.A. 1982 Supp. 55-703; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; revoked Jan. 14, 2005.)

**82-3-302.** (Authorized by and implementing K.S.A. 55-704; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; revoked May 1, 1988.)

**82-3-303. Determination of open flow of a gas well.** In the absence of field rules to the contrary, the open flow capacity of a gas well shall be determined by flowing the well into a pipeline for a period of 24 to 72 hours, as required to attain stabilization through approved metering equipment. This procedure shall be known as a one point stabilized flow test. The rate of flow shall be recorded on a standard orifice meter chart, either graphically or mathematically, or recorded electronically in a flow computer connected to a metering device. The rate of flow at the end of the period shall be extrapolated to atmospheric pressure by using the characteristic well slope as determined from a multipoint back-pressure test.

(a) Multipoint back-pressure test. A multipoint back-pressure test shall be taken for determination of characteristic well slope, "n," as determined from the equation

$$Q = C(P_c^2 - P_w^2)^n$$

where:

Q = the rate of flow, using MCF per day at 14.65 pounds per square inch absolute and 60°F;

C = the performance coefficient of the well;

P<sub>c</sub> = wellhead shut-in pressure, expressed in pounds per square inch absolute and using the casing or tubing pressure, whichever is higher;

P<sub>w</sub> = static wellhead working pressure, expressed in pounds per square inch absolute, at the termination of each flow period. Except as otherwise provided, the casing pressure shall be used if the annulus is open to the formation. If the annulus is not open to the formation so that the pressure cannot be measured on a static column, the tubing pressure shall be used if the flowing pressure is corrected for friction. All squared pressures shall be expressed in thousands; and

n = a numerical exponent characteristic of the particular well, referred to as "slope."

Multipoint back-pressure tests shall be limited to one per commercial gas well. A second test shall be permitted for a commercial gas well only if the well is recompleted into a separate common source of supply or for good cause shown.

The basic procedures for taking a multipoint back-pressure test shall be as follows:

(1) The well shall be shut in for 72 hours, plus or minus six hours, and the shut-in pressure shall be taken. This shut-in pressure shall be considered stabilized unless readings taken with commission-approved equipment at a shorter period are higher. In this event, the highest recorded pressure during the test shall be used as the shut-in pressure. If the shut-in period appreciably affects the surface pressure, appropriate correction of the surface pressure shall be made in order to account for the pressure due to the liquid column.

(2) If the well being tested has a pipeline connection, it shall be flowed for at least 24 hours before the shut-in period at a rate high enough to clear the well of liquids.

(3) A series of at least four flow tests shall be taken. The tests shall be run in an increasing flow rate sequence. In the case of high liquid-to-gas ratio wells, a decreasing flow rate sequence may be used if the increasing sequence method will not give point alignment. If the decreasing sequence method is used, a statement giving the reasons why the use of this method is necessary, with a copy of the data taken on increasing sequence, shall be furnished to the commission.

(4) Each flow test shall extend for not more than two hours. If the wellhead working pressure does not decline more than 0.1 percent of the wellhead shut-in pressure during any 15-minute period before the end of the two-hour flow period, the pressure may be recorded and the next flow test started. All subsequent flow periods shall be of the same duration.

(5) If the back-pressure curve cannot be drawn through at least three of the plotted points, the well shall be retested. If upon retest a curve cannot be drawn through at least three of the plotted points, an average curve shall be drawn through the points of the test if the slope of the curve will be not more than 1.0 and not less than 0.5.

(6) If the curve drawn through at least three points of the back-pressure test has a slope greater than 1.0 or less than 0.5, the well shall be retest-

ed. If upon retest the slope of the curve is greater than 1.0, a curve with a slope of 1.0 shall be drawn through the data point corresponding to the highest rate of flow. If upon retest the slope of the curve is less than 0.5, a curve with a slope of 0.5 shall be drawn through the data point corresponding to the lowest rate of flow.

(7) All tests shall be subject to review and approval by a representative of the state corporation commission.

(8) The lowest rate of flow on the test shall be at a rate high enough to keep the well clear of liquids.

(9) If possible, the working wellhead pressure at the lowest rate of flow shall be drawn down at least five percent of the well's shut-in pressure and, if possible, 25 percent of the well's shut-in pressure at the highest rate of flow. If data cannot be obtained in accordance with this paragraph, a written explanation shall be furnished to the commission.

(10) Correction for the compressibility of flowing gas shall be made in accordance with approved commission methods.

(11) If the static wellhead working pressure reading cannot be obtained due to packer or dual completion, the pressure shall be calculated by using appendix A in the document adopted by reference in paragraph (b)(4).

(12) If a satisfactory test cannot be obtained on wells whose indicated open flow is 500 mcf or less, an exception to the foregoing procedure may be granted by the commission and a slope of 0.85 may be assigned to the well.

(13) Upon completion of the test, all the calculations shall be shown on any approved form and shall be accompanied by a back-pressure curve neatly plotted on equal scale log paper of at least three-inch cycles.

(b) One-point stabilized flow test.

(1) An initial one-point stabilized flow test shall be made within 30 days from the date of first production of gas into a pipeline, and additional tests shall be taken yearly or as ordered by the commission. Upon the completion of all flow tests, a copy of the flow calculations shall be submitted to the commission.

(2) Immediately after the shut-in wellhead pressure is taken, the well shall be opened into the pipeline and gas shall be produced for the subsequent 24 to 72 hours at the test rate as required to reach stabilization. During this time, the working pressure at the wellhead shall be maintained as nearly as possible at 85 percent of the wellhead shut-in pressure, expressed in pounds per square

inch gauge, or as close to 85 percent as operating conditions in the field will permit.

(3) The wellhead working pressure shall never be more than 95 percent or less than 75 percent of the wellhead shut-in pressure of the well being tested unless, in the judgment of the commission's representative, it is impractical to maintain the pressure within these limits. In this case, the well shall be produced at maximum capacity through either the tubing or the annulus, whichever will give the greater drawdown.

(4) The open flow shall be calculated by use of the formula specified in this paragraph. Flow shall be measured by an approved meter throughout the test period, and the wellhead and meter pressures shall be measured at the close of the test period by gauges approved for use in the state corporation commission's "manual of back pressure testing of gas wells," written pursuant to commission order dated May 15, 1957, docket number 34,780-C (C-1825), which is hereby adopted by reference, including the appendices.

The rate at which the well is producing at the end of the flow period shall be considered the stabilized producing rate corresponding to the wellhead working pressure existing at that time, if the rate is not greater than the average producing rate for the entire flow period. The observed stabilized producing rate shall be converted to open flow by use of the following formula:

$$OF = R \text{ times } \left[ \frac{(P_c^2 - P_a^2)}{(P_c^2 - P_w^2)} \right]^n$$

where:

OF = Open flow, expressed in MCF/D.

R = Stabilized producing rate, expressed in MCF per day at 14.65 pounds per square inch absolute and 60°F.

P<sub>a</sub> = Atmospheric pressure, expressed in pounds per square inch absolute.

P<sub>c</sub> = Wellhead shut-in pressure of the well, expressed in pounds per square inch absolute.

P<sub>w</sub> = Stabilized wellhead working pressure at rate R, expressed in pounds per square inch absolute.

n = Characteristic well slope as determined by the multipoint back-pressure test.

(5) Shut-in wellhead pressure shall be measured after the well has been shut in for approximately 72 hours. The well shall have been shut in for not less than 66 hours and not more than 78 hours when the shut-in pressure is taken. If the representative of the commission believes that the shut-in pressure taken upon a well is incorrect, the representative may require that the well be blown to clean fluids from the well bore or may take any other reasonable steps that may be necessary to get a true pressure reading upon the well. If more than one shut-in pressure is taken upon a well during the test period, the highest shut-in pressure obtained shall be used in calculating the open flow of the well.

(c) Metering devices. An orifice meter, a critical flow prover, or a turbine meter in good operating condition and properly calibrated in accordance with the manufacturer's recommendation shall be the only acceptable metering devices. The owner of the metering device shall have documentation of any recalibration or refurbishment of the metering device and shall furnish the documentation to the conservation division upon request.

(d) Gas venting. Gas shall not be vented except when absolutely necessary. (Authorized by K.S.A. 55-704; implementing K.S.A. 55-703; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1987; amended April 23, 1990; amended June 1, 2007.)

**82-3-304. Tests of gas wells.** (a) Initial test.

(1) Each operator shall conduct a multipoint back-pressure test and a one-point stabilized flow test, as specified in K.A.R. 82-3-303, on each gas well producing at least 250 mcf per day. The tests shall be conducted within 30 days of the first gas sales. The test results shall be filed with the commission within 60 days of the first gas sales.

(2) Each operator shall conduct a 24-hour shut-in pressure test on each gas well producing less than 250 mcf per day. Each test shall be conducted within 120 days of the first gas sales. The test results shall be filed with the commission within 150 days of the first gas sales.

(b) Annual test. Before April 1 of each calendar year, each operator shall conduct a one-point stabilized flow test on each gas well producing at least 500 mcf per day. The test results shall be filed with the commission before May 1 of each calendar year.

(c) Test witnessing. Each test shall be conducted under the supervision of the conservation di-

vision, which may have an employee witness any test. A test of any individual well may be required by the commission at any time.

(d) Coalbed natural gas exemption.

(1) Any operator of a well producing only coalbed natural gas may seek an exemption from subsection (a) or (b) by filing an application with the conservation division stating that only coalbed natural gas is produced from the well and that testing would be physically impossible or contrary to prudent practices. No well shall be exempt unless the application has been approved by the conservation division.

(2) If the exemption is granted, the exemption shall continue in effect until the well no longer meets the criteria for exemption. The operator shall notify the conservation division immediately if the well begins producing oil or gas other than coalbed natural gas or if the well characteristics change so that testing becomes possible. (Authorized by K.S.A. 55-704; implementing K.S.A. 2014 Supp. 55-164 and K.S.A. 55-703; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended April 23, 1990; amended Aug. 29, 1997; amended Jan. 25, 2002; amended Jan. 14, 2005; amended June 1, 2007; amended Oct. 23, 2015.)

**82-3-305. Gas to be metered.** (a) Well,

lease, or unitized property. All gas, when produced or sold, shall be metered with an approved meter of sufficient capacity. Gas may be metered from a lease or unitized property as a whole if it is shown that ratable taking can be maintained. Meters shall not be required for gas produced and used on the lease for development purposes and lease operations or for use in primary dwellings.

(b) Meters: calibration, testing, charts, and records. Each party who owns, maintains, or operates the metering device used to record gas sales from each well or lease in gas fields shall at a minimum test and calibrate the metering device on an annual basis by a method approved by the conservation division and retain the record of the testing and calibration for at least two years. Each party shall also retain for at least two years the original field record consisting of magnetic tapes, meter charts, electronic records, or records of gas purchases. All information retained shall be made available to the conservation division upon request.

(c) By-passes. By-passes shall not be connected around meters in a manner that will permit the improper taking of gas.

(d) Penalties. Each failure to comply with any of the requirements of this regulation shall be punishable by a \$1,000 penalty. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-164 and 55-703; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 8, 1989; amended Dec. 22, 2006.)

**82-3-306. Report of gas produced.** (a) Each party who owns, maintains, or operates the metering device used to record gas produced from each well in any prorated gas field shall file a monthly volume report showing the amount of gas actually metered on each well. The volume report shall be filed with the conservation division on or before the 20th day of the succeeding month in which the production occurred. Extensions of the time period within which the volume report shall be filed may be granted by the director. The form or electronic format used for reporting the volume shall be furnished or approved by the commission.

(b) Each party who owns, maintains, or operates the metering device used to record gas produced from each lease or well in any gas field under statewide general rules and regulations may be directed by the commission to file a volume report showing the amount of gas actually metered on each lease or well for a specified time period. The form or electronic format used for reporting the volume shall be furnished or approved by the commission. (Authorized by and implementing K.S.A. 55-704; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1988; amended April 23, 1990; amended June 1, 2001.)

**82-3-307. Gas conservation assessment.** In order to pay the conservation division expenses and other costs in connection with the administration of the gas conservation regulations not otherwise provided for, an assessment shall be made as follows:

(a) A charge of 20.50 mills shall be assessed on each 1,000 cubic feet of gas sold or marketed each month. The assessment shall apply only to the first purchaser of gas.

(b) Each month, the first purchaser of the production shall perform the following:

(1) Before paying for the production, deduct an amount equal to the assessment for every 1,000 cubic feet of gas produced and removed from the lease;

(2) remit the amounts deducted, in a single check if the purchaser desires, to the conservation

division when the purchaser makes regular gas payments for this period; and

(3) show all deductions on the regular payment statements to producers, royalty owners, and other interested persons.

(c) The assessment established by the commission shall not apply to gas that is being returned to the ground for repressuring purposes within the field, but shall apply to gas that is produced and removed from the lease and returned to the ground for storage purposes. (Authorized by K.S.A. 2017 Supp. 55-152; implementing K.S.A. 2017 Supp. 55-176; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended April 23, 1990; amended Aug. 19, 1991; amended Dec. 6, 1993; amended Nov. 15, 1996; amended June 1, 2001; amended Dec. 22, 2006; amended June 15, 2018.)

**82-3-308.** (Authorized by and implementing K.S.A. 1982 Supp. 55-703; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; revoked Aug. 29, 1997.)

**82-3-309.** (Authorized by and implementing K.S.A. 1982 Supp. 55-703; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; revoked Aug. 29, 1997.)

**82-3-310. Natural gas pipeline maps.** Upon the request of the conservation division, each operator shall file natural gas pipeline maps of a size and scale prescribed by the commission, indicating the location, size, and extensions of the pipeline, and any portions abandoned or not used. (Authorized by K.S.A. 55-704; implementing K.S.A. 55-703; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended June 1, 2001.)

**82-3-311. Drilling through gas storage formations.** (a) Any person, firm, or corporation who, for any purpose, drills or causes the drilling of a well or test hole that penetrates or bores through any underground stratum or formation utilized for the underground storage of natural gas shall seal off the natural gas storage stratum or formation by either of the following:

(1) The methods and materials recommended by the operator of the gas storage facility and approved by the commission or its duly authorized representative; or

(2) any methods and materials that the commission determines to be fair, equitable, and reasonable.

(b) That person, firm, or corporation shall maintain the well or test hole in a manner that protects

the stratum or formation at all times against pollution and the escape of natural gas.

(c) Not less than 30 days before commencing or plugging a well or test hole as referred to in subsection (b), the person, firm, or corporation desiring to commence drilling or plugging operations shall give the operator of the gas storage facility and the commission notice in writing, by registered mail, of the date desired for commencement of drilling or plugging the well.

(d) Within 10 days after receipt of notice, the operator of the gas storage facility shall forward to the commission its recommendations as to the manner, methods, and materials to be used in the sealing off or plugging operation. The operator of the gas storage facility shall give notice of the recommendations by mailing or delivering a copy to the person, firm, or corporation who seeks to drill or plug a well or test hole. The notice shall be mailed or delivered on or before the date on which the recommendations are mailed to or filed with the commission.

(e) Any objections or complaints stating why the recommendations proposed by the operator of the gas storage facility are not feasible, practical, or reasonable shall be filed within five days after the recommendation is filed.

(f) If any objections or complaints are filed or if the commission deems that there should be a hearing on the recommendation of the operator of the gas storage facility, a hearing shall be held. Notice of the hearing shall be published according to K.A.R. 82-3-135.

(g) Following receipt of the recommendations proposed by the operator of the gas storage facility or the hearing, the manner, methods, and materials to be used in the sealing off or plugging operation shall be prescribed by the commission. Operations shall not commence until the manner, methods, and materials to be used have been prescribed by the commission.

(h) Any operator of the gas storage facility involved may have a representative present at all times during the drilling, completing, or plugging of the well or test hole and shall have access to all records relating to the drilling, equipping, maintenance, operation, or plugging of the well.

(i) Each operator of the gas storage facility involved, in conjunction with the commission or its representative and the operator of the well, shall have the right to inspect or test the well to discover any leaks or defects that may affect the underground natural gas storage stratum or formation.

(j) Each cost and expense necessarily incurred in sealing off the stratum or formation or in plugging, maintaining, inspecting, or testing the well, as recommended by the operator of the gas storage facility and subsequently approved or independently determined by the commission or its representative, that is over and above the ordinary expense of operations using similar methods, shall be paid upon completion by the operator of the gas storage facility involved.

This regulation shall be effective on and after October 29, 2002. (Authorized by K.S.A. 55-152, K.S.A. 2001 Supp. 55-1,115 and 55-604, K.S.A. 55-704, and K.S.A. 2001 Supp. 74-623; implementing K.S.A. 2001 Supp. 55-1,115, K.S.A. 55-605, 55-706, 55-1203, and K.S.A. 2001 Supp. 74-623; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended, T-85-51, Dec. 19, 1984; effective May 1, 1985; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990; amended, T-82-6-27-02, July 1, 2002; amended Oct. 29, 2002.)

**82-3-311a. Drilling through CO<sub>2</sub> storage facility or CO<sub>2</sub> enhanced oil recovery reservoirs.**

(a) Each person, firm, or corporation that, for any purpose, drills or causes the drilling of a well or test hole that penetrates or bores through any stratum or formation utilized for CO<sub>2</sub> storage or CO<sub>2</sub> enhanced oil recovery shall seal off the CO<sub>2</sub> stratum or formation by either of the following:

(1) The methods and materials recommended by the operator of the CO<sub>2</sub> storage facility or CO<sub>2</sub> enhanced oil recovery project and approved by the director or the director's authorized representative; or

(2) any methods and materials that the director determines to be fair and reasonable.

(b) Each person, firm, or corporation specified in subsection (a) shall maintain the well or test hole in a manner that protects the stratum or formation at all times from pollution and the escape of CO<sub>2</sub>.

(c) At least 30 days before commencing or plugging a well or test hole as specified in subsection (a), the person, firm, or corporation desiring to commence drilling or plugging operations shall give to the operator of the CO<sub>2</sub> storage facility or CO<sub>2</sub> enhanced oil recovery project and the conservation division written notice, by registered mail, of the date desired for commencement of drilling or plugging the well.

(d) Within 10 days after receipt of notice, the operator of the CO<sub>2</sub> storage facility or CO<sub>2</sub> enhanced oil recovery project shall forward to the conservation division the operator's recommendations for the manner, methods, and materials to be used in the sealing off or plugging operation. The operator of the CO<sub>2</sub> storage facility or CO<sub>2</sub> enhanced oil recovery project shall give notice of the recommendations by mailing or delivering a copy to the person, firm, or corporation that seeks to drill or plug a well or test hole. The notice shall be mailed or delivered on or before the date on which the recommendations are mailed to or filed with the conservation division.

(e) Each objection or complaint stating why the recommendations proposed by the operator of the CO<sub>2</sub> storage facility or CO<sub>2</sub> enhanced oil recovery project are not feasible, practical, or reasonable shall be filed within five days after the recommendation is filed.

(f) If any objections or complaints are filed or if the director deems that there should be a hearing on the recommendation of the operator of the CO<sub>2</sub> storage facility or CO<sub>2</sub> enhanced oil recovery project, a hearing shall be held. Notice of the hearing shall be published according to K.A.R. 82-3-135.

(g) Following the hearing or receipt of the recommendations proposed by the operator of the CO<sub>2</sub> storage facility or CO<sub>2</sub> enhanced oil recovery project, the manner, methods, and materials to be used in the sealing off or plugging operation shall be prescribed by the director. Operations shall not commence until the director has prescribed the manner, methods, and materials to be used.

(h) The operator of the CO<sub>2</sub> storage facility or CO<sub>2</sub> enhanced oil recovery project involved may have a representative present at all times during the drilling, completing, or plugging of the well or test hole and shall have access to all records relating to the drilling, equipping, maintenance, operation, or plugging of the well.

(i) Each operator of the CO<sub>2</sub> storage facility or CO<sub>2</sub> enhanced oil recovery project involved, in conjunction with the conservation division or its representative and with the operator of the well, shall have the right to inspect or test the well to discover any leaks or defects that could affect the CO<sub>2</sub> storage or CO<sub>2</sub> enhanced oil recovery stratum or formation.

(j) The operator of the CO<sub>2</sub> storage facility or enhanced oil recovery project shall pay each cost necessarily incurred in sealing off the stratum or

formation or in plugging, maintaining, inspecting, or testing the well, as recommended by the operator of the CO<sub>2</sub> storage facility or CO<sub>2</sub> enhanced oil recovery project and subsequently either approved or independently determined by the director or the director's representative, that exceeds the ordinary cost of operations using similar methods. (Authorized by and implementing K.S.A. 2008 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-312. Gas allowables and drilling unit.** This regulation shall apply to all gas wells not covered by a special commission order.

(a) Daily allowable. The daily allowable for each well shall be 50 percent of the well's actual open-flow potential, as measured by the testing procedures specified in K.A.R. 82-3-303. Each well in compliance with K.A.R. 82-3-304 shall be entitled to a minimum allowable of 250mcf per day.

(b) Coalbed natural gas exemption. Coalbed natural gas wells that are exempt from the requirements of K.A.R. 82-3-304(a) and (c) shall be exempt from subsection (a) of this regulation.

(c) Standard drilling unit. The standard drilling unit shall be 10 acres.

(d) Drilling unit exceptions. Exceptions to the standard drilling unit may be granted by the commission to prevent waste or to protect correlative rights. (Authorized by K.S.A. 55-704; implementing K.S.A. 55-703; effective May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended April 23, 1990; amended Aug. 29, 1997; amended June 1, 2001; amended Jan. 25, 2002; amended Jan. 14, 2005; amended Aug. 14, 2015.)

**82-3-313.** (Authorized by K.S.A. 55-604, 55-704; implementing K.S.A. 55-602, 55-603, 55-703, as amended by L. 1985, Ch. 183, Sec. 1; effective May 1, 1986; revoked Aug. 29, 1997.)

**82-3-314. Venting or flaring of gas other than casinghead gas.** (a) Coalbed natural gas.

(1) Without a hearing, the venting or flaring of coalbed natural gas may be permitted by the commission if the requirements specified in this subsection are met. The operator shall file an affidavit with the conservation division. The affidavit shall be submitted on a form supplied by the commission and shall meet the following requirements:

(A) Identify the geographic area included in the proposed pilot project;

(B) state that there are no gathering or pipeline facilities available;

(C) state that venting or flaring of gas is necessary to dewater wells while they are being tested to determine the economic feasibility of installing gathering or other facilities to make the gas marketable and to determine the required capacity of the facilities;

(D) state the maximum daily volume of gas anticipated to be vented or flared; and

(E) state that the applicant will comply with the department's applicable air quality regulations.

(2) Venting or flaring for any reason shall not exceed 180 days without reapplication with the commission. Without a hearing, one extension not to exceed 180 days may be granted by the commission.

(3) The operator shall publish notice of the affidavit and any request for an extension of the venting or flaring period, pursuant to K.A.R. 82-3-135. In addition, the operator shall give notice to the local emergency planning commission (LEPC). If any part of the proposed project area falls within the corporate limits of any city, the operator shall give notice to the city clerk. The operator shall file with the conservation division a certificate of mailing indicating the date on which service of a copy of the affidavit was made to the LEPC or city clerk.

(b) Natural gas.

(1) Without a hearing, the venting or flaring of natural gas, other than sour gas, may be permitted by the commission if necessary for any of the following purposes:

(A) Dewatering or well cleanup;

(B) well testing;

(C) well cleanup after stimulation or workover;

(D) evaluation and testing before connecting to a pipeline;

(E) emergencies; or

(F) those purposes and conditions specified under K.S.A. 55-102(a), and amendments thereto.

(2) If a well is to be vented or flared for more than seven days, either pursuant to K.S.A. 55-102(a) and amendments thereto or for any other reason, the operator shall notify the appropriate district office and shall file an affidavit with the conservation division, on a form supplied by the commission. The affidavit shall state that the extended period of time to vent the well is necessary for at least one of the following:

(A) The efficient operation of the well;

(B) evaluation and determination of whether the quality of gas meets pipeline specifications; or

(C) evaluation and determination of whether the well is capable of producing in economic quantities.

(c) Gas measurement; continuing jurisdiction. The volume of gas vented or flared under this regulation shall be metered, measured, or monitored, and the charts or records shall be retained for two years. This information shall be reported to the commission semiannually or as designated by the commission. The continuing jurisdiction with authority to terminate the venting or flaring of gas when necessary shall lie with the commission.

(d) Protection of persons and property. All gas vented or flared under this regulation shall be done in a manner designed to prevent damage to property and injury to persons who are reasonably expected to be in the vicinity for work, pleasure, or business.

(e) The venting or flaring of natural gas under conditions not addressed in this regulation may be authorized if the operator files an application and the commission approves the application before the start of the venting or flaring activity. (Authorized by K.S.A. 55-152; implementing K.S.A. 2003 Supp. 55-102; effective Jan. 14, 2005.)

**82-3-400. Injection allowed only by permit; penalty.** (a) Authority to inject. Injection shall be permitted only after both of the following conditions are met:

(1) The operator has filed an application for injection authority with the conservation division in accordance with K.A.R. 82-3-401 and provided notice in accordance with K.A.R. 82-3-402.

(2) The conservation division has issued a written permit granting the application.

(b) Penalty for unauthorized injection. The failure to obtain a written permit from the conservation division before beginning injection operations shall be punishable by a penalty of \$1,000 for first-time violators, \$5,000 for second-time violators, and \$10,000 and operator license review for third-time violators. In addition, each injection well found to be operating without a conservation division permit shall be shut in until compliance is achieved. (Authorized by K.S.A. 55-151, 55-152, K.S.A. 2000 Supp. 55-164, as amended by L. 2001, ch. 5, sec. 191; implementing K.S.A. 55-151, K.S.A. 2000 Supp. 55-164, as amended by L. 2001, ch. 5, sec. 191; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended, T-87-46, Dec. 19, 1986; amended May 1, 1987; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990; amended April 5, 2002.)

**82-3-401. Application for injection well; content.** (a) Application form; content. The original and two copies of each application shall be signed and verified by the operator, and filed with the conservation division on a form approved by the commission, and shall provide the following information:

(1) The name, location, surface elevation, total depth, and plug-back depth of each injection well;

(2) a plat showing the location of all oil and gas wells, including producing wells, abandoned wells, drilling wells and dry holes within a ½-mile radius of the injection well, and indicating producing formations and the subsea top of the producing formations;

(3) the name and address of each operator of a producing or drilling well within a ½-mile radius of the injection well;

(4) the name, description, and depth of each injection interval. The application shall indicate whether the injection is through perforations, an open hole, or both;

(5) the depths of the tops and bottoms of all casing and cement used or to be used in the injection or disposal well;

(6) the size of the casing and tubing and the depth of the tubing packer;

(7) an electric log run to the surface or a log showing lithology or porosity of geological formations encountered in the injection well, including an elevation reference. If such a log is unavailable, an electric log to surface or a log showing lithology or porosity of geological formations encountered in wells located within a one-mile radius of the subject well;

(8) a description of the fluid to be injected, the source of injected fluid, and the estimated maximum injection pressure and average daily rate of injection in barrels per day;

(9) an affidavit that notice has been provided in accordance with K.A.R. 82-3-402;

(10) information showing that injection into the proposed zone will be contained within the zone and will not initiate fractures through the overlying strata that could enable the fluid or formation fluid to enter fresh and usable water strata. Fracture gradients shall be computed and furnished to the conservation division by the applicant, if requested by the conservation division;

(11) the applicant's license number;

(12) any other information that the conservation division requires; and

(13) payment of the application fee required by K.A.R. 82-3-412.

(b) Applications for dually completed wells. In addition to the requirements set out in subsection (a), applications for dually completed injection and production wells shall show that the producing interval lies above the injection interval. Before a well is dually completed, the applicant shall demonstrate that the well has mechanical integrity as specified in K.A.R. 82-3-407 from a point immediately above the producing interval to the surface.

(c) Applications for simultaneous injection wells. In addition to the requirements set out in subsection (a), applications for simultaneous injection wells shall demonstrate all of the following:

(1) The injection will not adversely affect offsetting production or endanger fresh and usable groundwater.

(2) Injection pressure is limited to less than the local injection formation fracture gradient.

(3) The injection well is continuously cemented across the injection and producing intervals.

(4) The well demonstrates mechanical integrity as specified in K.A.R. 82-3-407.

(d) Disposal zone. If the application is for disposal into a producing zone within a ½-mile radius of the applicant's well, the disposal zone shall be below the oil-water contact or 50 feet below the base of the producing zone. For the purposes of this subsection, "disposal zone" means the stratigraphic interval that contains few or no commercially productive hydrocarbons and that is saltwater bearing, and "producing zone" means the stratigraphic interval that contains, or appears to contain, a common accumulation of commercially productive hydrocarbons.

(e) Design approval. Each applicant desiring design approval shall place the words "design approval" at the top of the application for injection operations. The design approval application shall be subject to the requirements set forth in subsection (a) of this regulation, K.A.R. 82-3-402(a), and K.A.R. 82-3-403(a).

(f) Well modifications. Significant modifications to the type or construction of the injection well shall not require an application, but shall require notice as specified in K.A.R. 82-3-408. However, if the modifications include an increase in injection rate or pressure or an additional perforation or injection zone, neither of which is expressly authorized by the existing permit, an application for injection shall be filed.

(g) Multiple enhanced recovery wells. Applications may be filed for more than one enhanced recovery well on the same lease or on more than one lease. The applicant shall provide the requested information for each well included in the application. (Authorized by K.S.A. 55-901, as amended by L. 2001, ch. 5, sec. 198, 55-151, and 55-152; implementing K.S.A. 55-151, 55-901, as amended by L. 2001, ch. 5, sec. 198, and 55-1003; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended, T-85-51, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-46, Dec. 19, 1986; amended May 1, 1987; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990; amended May 3, 1993; amended April 5, 2002.)

**82-3-401a.** (Authorized by and implementing K.S.A. 1991 Supp. 55-152 and 55-901; effective May 3, 1993; revoked April 5, 2002.)

**82-3-401b.** (Authorized by K.S.A. 55-901 and 55-152; implementing K.S.A. 55-164, 55-152, and 55-1003; effective March 19, 1999; revoked April 5, 2002.)

**82-3-402. Notice of application; objection.** (a) Notice required. Each applicant shall give notice of the application either to those persons listed in K.A.R. 82-3-135a(c) or according to the provisions of subsection (b) below. Notice shall be mailed or delivered on or before the date the application is filed with the conservation division. Notice of the application shall be published in at least one issue of the official county newspaper of each county in which the lands involved are located.

(b) Area notice. In lieu of the notice requirements of K.A.R. 82-3-135a(c), an applicant may provide area notice utilizing the following procedure:

(1) The application shall state that area notice in accordance with this regulation is being utilized and shall state the approximate maximum number of injection wells that will ultimately be utilized within the project boundaries.

(2) The applicant shall notify each of the following parties whose acreage lies partially or fully within a ½-mile radius of the project boundaries, by mailing or delivering a copy of the application and notice:

- (A) Each operator or lessee of record;
- (B) each owner of record of the mineral rights of unleased acreage; and
- (C) each landowner within the project boundaries.

(3) Notice of the application shall be published in at least one issue of the official county newspaper of each county in which the affected acreage is located, which shall be defined as a ½-mile radius around the project boundary, and shall contain the following:

(A) The name of the operator of the enhanced recovery project;

(B) the legal description of the project acreage;

(C) the proposed maximum injection rate and pressure;

(D) the proposed injection formation or formations and approximate depth;

(E) a statement indicating that no wells will be used for injection that are closer to lease or unit boundary lines than allowed by field or general state spacing rules unless further notice is given; and

(F) the approximate maximum number of injection wells that will ultimately be utilized in the project.

(4) The applicant shall file a memorandum of notification with the register of deeds in each county where the project is located, setting out the information contained in the published notice. The applicant shall provide proof of this filing to the conservation division before the application may be approved and a permit issued.

(5) Notice of application for additional injection wells added to a project shall be published in at least one issue of the official county newspaper of the county or counties in which the well is located, if the well exceeds the required distance from lease or unit boundary lines as provided by field order or general state spacing regulations.

(6) The applicant shall provide notice of application for each additional injection well that is located less than the required distance from the lease or unit boundary lines, under the field order or general state spacing regulations. A copy of the application shall be mailed to each offsetting operator or unleased mineral owner whose acreage is adjacent to any additional injection well that does not exceed the required distance from the lease or unit boundary lines under the field order or general state spacing regulations. Notice of the application shall be published in at least one issue of the official county newspaper of the county in which the well is located.

(7) The publication notice specified in paragraphs (b)(5) and (6) of this regulation shall contain the following information:

- (A) The name of the operator;

- (B) the location of proposed injection wells;
  - (C) the proposed maximum injection rate;
  - (D) the proposed maximum injection pressure;
- and
- (E) the proposed injection formations and approximate depth.

(8) Each application for any significant modifications to the injection permit, including increasing pressure or rate and changing or adding injection formations, shall require the notice specified in paragraphs (b)(2), (3), and (4) of this regulation.

(c) Objection to application. Objections or complaints shall be filed within 30 days after the notice is published. Each complaint or objection shall conform to the requirements of K.A.R. 82-3-135b and shall state the reasons why the proposed plan, as contained in the application, may cause damage to oil, gas, or fresh and usable water resources. (Authorized by K.S.A. 55-152 and 55-901; implementing K.S.A. 55-152; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 8, 1989; amended April 5, 2002; amended Oct. 24, 2008.)

**82-3-403. Permitting factors; application approval.** (a) Permitting factors. When a permit authorizing injection is issued, the following factors shall be considered by the conservation division:

- (1) Maximum injection rate;
- (2) maximum surface pressure, formation pressure, pressure at the formation face, or all of the above;
- (3) the type of injection fluid and the rock characteristics of the injection zone and the overlying strata;
- (4) the adequacy and thickness of the confining zone or zones between the injection interval and the base of the lowest fresh and usable water; and
- (5) the construction of all oil and gas wells within a ¼-mile radius of the proposed injection well, including all abandoned, plugged, producing, and other injection wells, to ensure that fluids introduced into the proposed injection zone will be confined to that zone. If deemed necessary by the conservation division to ensure the protection of fresh and usable water, this radius may be determined pursuant to 40 C.F.R. 146.6(a)(2), as published July 1, 2000, which is hereby adopted by reference.

(b) Conditions for simultaneous injection. Simultaneous injection may be permitted if, in addition to the requirements of subsection (a) above, all of the following conditions are met:

(1) Injection will not adversely affect offsetting production or endanger fresh and usable groundwater.

(2) Injection pressure is limited to less than the local injection formation fracture gradient.

(3) The injection well is continuously cemented across the injection and producing intervals.

(4) The well demonstrates mechanical integrity.

(c) Protection of fresh and usable water. Before any formations may be approved for use, determinations shall be made that these formations are separated from fresh and usable water formations by impervious beds to give adequate protection to the fresh and usable water formations.

(d) In reviewing applications for injection wells, the protection of hydrocarbons and water resources and oil and gas advisory committee recommendations concerning safe depths for injection for all producing areas in the state shall be considered by the conservation division.

(e) Minimum depth for injection. If no additional information, including well logs, formation tests, water quality data, and water well data, is made available by the operator, table II, "established minimum depths for disposal wells," revised August 1, 1987, and hereby adopted by reference, shall be used by the conservation division in determining the minimum depth for the injection of saltwater.

(f) For all injection well applications that require wellhead pressure to inject fluids, filed on and after December 8, 1982, the operator shall inject the fluids through tubing under a packer set immediately above the uppermost perforation or open-hole zone, except as specified in K.A.R. 82-3-406. A packer run on the tubing shall be set in casing opposite a cemented interval at a point immediately above the uppermost perforation or open-hole interval.

(g) Design approval. If the application requests design approval, approval of the design of the proposed well may be obtained before actual construction of the well.

(1) Each applicant shall be notified by the conservation division of its approval of the well design if both of the following conditions are met:

(A) All requirements set forth in K.A.R. 82-3-401(a), K.A.R. 82-3-402(a), and K.A.R. 82-3-403(a) have been met.

(B) The design of the proposed well will protect fresh and usable water.

(2) Upon completion of each well, the applicant shall submit a copy of the well completion report,

on the form furnished by the commission, to the conservation division. The application for the injection of fluid into the proposed well for injection purposes shall be approved, if there are not significant differences between actual construction and the approved designed construction of the proposed well and if the mechanical integrity of the well has been tested according to K.A.R. 82-3-407.

(h) Emergency authority. Emergency authority to inject or dispose of fluids at an alternate location, if a facility is shut in for maintenance, testing, or repairs, or by order of the commission, may be granted by the conservation division. (Authorized by K.S.A. 55-151, 55-152, 55-605, 55-901; implementing K.S.A. 55-151, 55-605, 55-901, 55-1003; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended April 23, 1990; amended April 5, 2002.)

**82-3-404. Notice of commencement and discontinuance of injection operations; cessation of production from dually completed well; penalty.** (a) Immediately upon the commencement of injection operations, the applicant shall notify the conservation division of the date of commencement.

(b) Within 90 days after permanent discontinuance of injection operations, the operator of the project shall notify the conservation division of the date of the discontinuance and the reasons for discontinuance, and shall follow the provisions of K.A.R. 82-3-111.

(c) Cessation of production from dually completed well. Upon cessation of commercial production from the producing interval of a dually completed injection well, the injection authority shall be canceled by the conservation division unless the operator, through the filing of a modification, shows all of the following:

(1) The perforations at the producing interval are sealed.

(2) The casing above the injection packer has mechanical integrity according to K.A.R. 82-3-407.

(3) The tubing-casing annulus is filled with a corrosion-inhibiting fluid.

(d) The failure to notify the commission of commencement or permanent discontinuance of injection operations shall be punishable by a \$100 penalty. (Authorized by K.S.A. 55-152, 55-156, 55-157, K.S.A. 2000 Supp. 55-164, as amended by L. 2001, ch. 5, sec. 191, and K.S.A. 55-901, as amended by L. 2001, ch. 5, sec. 198; implementing K.S.A. 55-156, 55-157, K.S.A. 2000 Supp. 55-

164, as amended by L. 2001, ch. 5, sec. 191, and K.S.A. 55-1003; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended, T-87-46, Dec. 19, 1986; amended May 1, 1987; amended April 23, 1990; amended April 5, 2002.)

**82-3-405. Casing and cement.** Injection wells shall be cased and the casing cemented so that damage will not be caused to hydrocarbon sources or fresh and usable water resources. Steel surface casing shall be set and cemented in the following manner:

(a) In existing wells to be converted to injection use, all additional casing that is next to the bore hole shall be cemented by circulating cement to the surface from a point at least 50 feet below the base of the lowest known fresh and usable water. If cement fails to circulate to the surface, staged squeezes shall be required to protect and isolate fresh and usable water resources. Cementing shall be completed with a portland cement blend, except as provided by K.A.R. 82-3-106(d)(3).

(b) The operator shall notify the appropriate district office before the cementing of the additional casing. A backside squeeze, the uncontrolled placement of cement in the annular space between the surface casing and the production casing from the surface down, shall be permitted only upon request to the appropriate district office. Each request shall be granted only upon the approval of the cement evaluation method to be utilized and submitted as verification of cement placement.

(c) An exception to the cementing requirements of subsection (a) may be granted by the director or the director's designee. A written request for exception shall be submitted to the conservation division and shall include cement evaluation logs demonstrating that the proposed alternate process adequately protects fresh and usable water resources. The alternate process shall be proposed to be performed between the casing and the borehole at a point at least 50 feet below the base of the lowest known fresh and usable water resources to ensure protection of fresh and usable water resources.

(d) If the injection zone lies stratigraphically above the Wellington salt and the wellbore has penetrated into or through the salt, a cement plug of at least 50 feet in length shall be placed in the borehole or casing below the injection zone and above the salt. However, if the plug is inside

the casing, the annular space between the casing and the well bore shall be protected with cement through the same interval. (Authorized by K.S.A. 55-152, 55-157, and 55-901, as amended by L. 2001, ch. 5, sec. 198; implementing K.S.A. 55-1003, 55-152, and 55-157; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1987; amended May 8, 1989; amended April 23, 1990; amended April 5, 2002.)

**82-3-406. Injection well tubing and packer requirements.** (a) Each well permitted after December 8, 1982 shall meet one of the following requirements:

(1) The well shall be equipped to inject through tubing below a packer.

(2) A packer run on the tubing shall be set in casing opposite a cemented interval at a point immediately above the uppermost perforation or open-hole interval. The annulus between the tubing and the casing shall be filled with a corrosion-inhibiting fluid or hydrocarbon liquid.

(3) With the prior approval of the conservation division, packerless or tubingless completions may be authorized under the provisions of subsection (b) or (c) of this regulation.

(b) Injection through tubing without a packer may be authorized by the conservation division if the following requirements are met:

(1) Surface wellhead injection pressure shall not exceed zero psig.

(2) The tubing shall be run to a depth equal to or below the uppermost perforation or open hole of the injection interval.

(3) The annular space between the tubing and the casing shall be filled with a corrosion-inhibiting fluid or hydrocarbon liquid that has a specific gravity less than 1.00 and that is displaced and maintained at a point within 50 feet of the bottom of the tubing.

(4) Each wellhead shall be equipped with a pressure observation valve on the tubing and the tubing-casing annulus.

(5) A positive annulus pressure shall be maintained and monitored.

(6) Annulus pressure and injection surface pressure shall be monitored and recorded monthly and kept by the operator for five years.

(7) All pressure readings recorded shall be taken during actual injection operations and under static conditions.

(c) Injection without tubing may be authorized by the conservation division if all five of the fol-

lowing requirements are continuously met during the life of the well:

(1) The casing shall be cemented continuously from setting depth to surface.

(2) Surface wellhead injection pressure shall be recorded monthly and kept by the operator for five years.

(3) All pressure readings recorded shall be taken during actual injection operations.

(4) Mechanical integrity tests shall be performed at least every five years by running a retrievable plug to a depth of no more than 50 feet above the uppermost perforation or open hole of the injection zone or by another method approved by the conservation division.

(5) It shall be the sole responsibility of the operator of the tubingless completion to maintain the well so that the mechanical integrity tests can be performed as specified, or the well shall be immediately plugged and abandoned by displacing cement from the bottom of the well to the surface. (Authorized by K.S.A. 55-152, 55-901, as amended by L. 2001, ch. 5, sec. 198; implementing K.S.A. 55-152, 55-901, as amended by L. 2001, ch. 5, sec. 198, 55-1003; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended, T-87-46, Dec. 19, 1986; amended May 1, 1987; amended April 23, 1990; amended April 5, 2002.)

**82-3-407. Mechanical integrity requirements; penalty.** (a) Each injection well shall be completed, equipped, operated, and maintained in a manner that will prevent pollution of fresh and usable water, prevent damage to sources of oil or gas, and confine fluids to the interval or intervals approved for injection.

An injection well shall be considered to have mechanical integrity if there are no significant leaks in the tubing, casing, or packer and no fluid movement into fresh or usable water. Mechanical integrity shall be established on each well by one of the following:

(1) Pressure test. The annulus above the packer, or the injection casing in wells not equipped with a packer, shall be pressure tested at least once every five years under the supervision of a representative of the operator. The date for this test shall be mutually agreed upon by the operator's representative and a representative of the commission. Test results shall be verified by the operator's representative. A minimum of 25 percent of the tests conducted each year shall be witnessed by a representative of the commission. The test

shall be conducted in accordance with subsection (b). Injection wells within tubing shall be tested in accordance with K.A.R. 82-3-406.

(2) Alternate tests. Alternative test methods approved by the commission, including radioactive tracer surveys and temperature surveys, may be used to establish mechanical integrity if conditions are appropriate. The test shall be run at least once every five years under the supervision of a representative of the operator. The date for this test shall be mutually agreed upon by the operator's representative and a representative of the commission. Test results shall be verified by the operator's representative and shall be interpreted as specified in commission-approved procedures. A minimum of 25 percent of the tests conducted each year shall be witnessed by a representative of the commission.

(3) Monitoring. Once a month, the operator shall monitor and record, during actual injection, the pressure or fluid level in the annulus and any other information deemed necessary by the conservation division. An annual report of information logged shall be submitted to the conservation division in accordance with K.A.R. 82-3-409.

(4) Dually completed injection wells. For dually completed injection wells, the testing requirements shall include the following:

(A) The operator shall determine the fluid level in the annular space in the production casing and the fluid level within the injection tubing. All fluid level determinations shall be performed under static well conditions. The minimum shut-in time shall be 24 hours before determining the fluid level. Fluid level tapes shall be submitted as verification of measurements.

(B) The operator shall measure and report the oil-to-water ratio of produced fluids from the well. In the case of gas wells, the operator shall report changes in monthly production volumes.

(C) The fluid level determination and oil-to-water ratios shall be performed once every three months during the first year of the well's five-year test cycle, and then once a year for the next four years. The repeat test cycle of quarterly reports for one year and annual reports for four years shall begin on the five-year anniversary of the first fluid level test.

(b) Before operating a well drilled or converted to injection after December 8, 1982, an operator choosing to use a pressure test for the initial mechanical integrity test shall perform the test in the following manner:

(1) Wells constructed with tubing and a packer shall be pressure tested with the packer in place. A fluid pressure of 300 psig shall be applied. If the operator requests a pressure in excess of 300 psig on the injection application, a test pressure up to the requested pressure may be required. The duration of the test shall be at least 30 minutes. Maintenance of the fluid pressure during the test shall provide assurance of the integrity of the injection casing.

(2) For wells constructed with tubing and no packer, a retrievable plug or packer shall be set immediately above the uppermost perforation or open hole zone. A fluid pressure of 300 psig shall be applied. The duration of the test shall be at least 30 minutes. Maintenance of the fluid pressure during the test shall provide assurance of the integrity of the injection casing.

(3) For wells constructed with tubing and no packer, a method of pressure testing known as fluid depression may be conducted with prior approval and under guidelines established by the appropriate district office. The fluid in the well shall be depressed with gas pressure to a point in the wellbore immediately above the perforations or open hole interval. The minimum calculated pressure required to depress the fluid in the wellbore shall be no less than 100 psig.

(4) For simultaneous injection wells, the following requirements shall be met:

(A) Mechanical integrity shall initially be demonstrated at a pressure of 300 psig before installation of downhole simultaneous injection equipment and shall be demonstrated in the same manner each time that the downhole simultaneous injection equipment is removed; and

(B) after the initial mechanical integrity test, the operator shall monitor the well once each month and record the oil-to-water or gas-to-water ratio. The operator shall report the oil-to-water or gas-to-water ratio to the commission within 30 days for the first month and then annually at the time of filing the annual report according to K.A.R. 82-3-409. The operator shall immediately report an oil-to-water or gas-to-water ratio at or in excess of 10% over the prior month's ratio to the appropriate district office.

(5) In lieu of paragraph (b)(3), the casing may be tested before perforating, upon approval of the conservation division. A fluid pressure of 300 psig shall be applied. If the operator requests a pressure in excess of 300 psig on the injection application, a test pressure up to the requested pressure may be required. The duration of the test shall be

at least 30 minutes. Maintenance of the fluid pressure during the test shall provide assurance of the integrity of the injection casing.

(c) The operator of any well failing to demonstrate mechanical integrity by one of the above methods shall have no more than 90 days from the date of initial failure in which to perform one of the following:

(1) Repair and retest the well to demonstrate mechanical integrity;

(2) plug the well; or

(3) isolate the leak or leaks to demonstrate that the well will not pose a threat to fresh or usable water resources or endanger correlative rights.

(d) Mechanical failures or other conditions indicating that a well is not, or may not be, directing the injected fluid into the permitted or authorized zone shall be cause to shut in the well. The operator shall orally notify the conservation division of any of these failures or conditions within 24 hours of knowledge of any failure or condition. The operator shall submit written notice of a well failure to the conservation division within five days of the occurrence together with a plan for testing and repairing the well. Results of the testing and well repair shall be reported to the conservation division, and all information shall be included in the annual monitoring report to the conservation division. Any mechanical down-hole well repair performed on the well that was not previously reported shall also be included in the annual report.

(e) If the district office has approved the use of any chemical sealant or other mechanical device to isolate the leak before use, the injection pressure into the well shall not exceed the maximum mechanical integrity test pressure. Additionally, the well shall demonstrate mechanical integrity on an annual basis for the duration the well is completed in this manner.

(f) Each operator choosing a pressure mechanical integrity test on a well permitted for injection before December 8, 1982 or on a well having passed an initial pressure mechanical integrity test as specified in subsection (b) shall conduct the test in the following manner:

(1) Wells located in areas having saltwater-bearing zones with sufficient bottom-hole pressure to sustain a static fluid level at or above fresh or usable water bearing zones shall be pressure tested as specified in paragraphs (b)(1) and (2), except that the maximum required test pressure shall be limited to 300 psi.

(2) Wells located in areas without saltwater-bearing zones with sufficient bottom-hole pressure to sustain a static fluid level at or above fresh or usable water bearing zones shall be pressure tested as specified in paragraphs (b)(1) and (2), except that the maximum required test pressure shall be limited to 100 psi.

(3) For wells constructed with tubing and no packer, a method of pressure testing known as fluid depression may be conducted with prior approval and under guidelines established by the commission. The fluid in the well shall be depressed with gas pressure to a point in the wellbore immediately above the perforations or open-hole interval. The minimum calculated pressure required to depress the fluid in the wellbore shall be no less than 100 psi unless otherwise approved by the appropriate district office.

(g) No injection well shall be operated before having passed a mechanical integrity test. The operator's failure to test a well to show its mechanical integrity or to report the oil-to-water or gas-to-water ratio as required under paragraph (b)(4)(B) above shall be punishable by a \$1,000 penalty, and these wells shall be shut in until the required test has been passed or the reports have been furnished. (Authorized by K.S.A. 55-152, K.S.A. 2000 Supp. 55-164, as amended by L. 2001, ch. 5, sec. 191, K.S.A. 55-901, as amended by L. 2001, ch. 5, sec. 198; implementing K.S.A. 55-152, K.S.A. 2000 Supp. 55-164, as amended by L. 2001, ch. 5, sec. 191, K.S.A. 55-901, as amended by L. 2001, ch. 5, sec. 198, and K.S.A. 55-1003; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended, T-87-46, Dec. 19, 1986; amended May 1, 1987; amended May 8, 1989; amended April 23, 1990; amended April 5, 2002.)

**82-3-408. Duration of injection well permits; modification penalty.** (a) Permits authorizing injection into wells shall remain valid for the life of the well, unless revoked by the commission for just cause.

(b) Modifications of any injection well permit may be made only upon application to the conservation division. Each application shall be submitted on the form furnished by the conservation division. The applicant shall give notice of the application to modify according to the provisions of K.A.R. 82-3-135a.

(c) An operator shall not be required to file an application to modify any injection well permit but shall file with the conservation division a no-

tice of modification on a form furnished by the conservation division for permit modifications for one or more of the following purposes:

(1) The operator seeks to decrease the maximum injection pressure.

(2) The operator seeks to decrease the maximum injection rate.

(3) The operator seeks to add or delete leases disposing into the well but will not exceed the maximum authorized injection rate and pressure.

(d) The failure to obtain conservation division approval of any modification to an existing injection well, other than the modifications designated in subsection (c), before resuming injection operations, or the failure to notify the conservation division under subsection (c) shall be punishable by a \$1,000 penalty. (Authorized by K.S.A. 55-152 and K.S.A. 55-901; implementing K.S.A. 55-1003, K.S.A. 55-152, K.S.A. 55-164, and K.S.A. 55-901; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1985; amended, T-87-46, Dec. 19, 1986; amended May 1, 1987; amended May 8, 1989; amended April 23, 1990; amended March 19, 1999; amended April 5, 2002; amended Nov. 2, 2007.)

**82-3-409. Record retention; annual report; penalty.** (a) Each operator of an injection well shall perform the following:

(1) Keep current, accurate records of the amount and kind of fluid injected into the injection well; and

(2) preserve the records required in paragraph (a)(1) above for five years.

(b) Each operator of an injection well shall submit a report to the conservation division, on a form required by the commission, showing for the previous calendar year the following information:

(1) The monthly average wellhead pressure;

(2) the maximum wellhead pressure;

(3) the amount and kind of fluid injected into each well; and

(4) any other performance information that may be required by the conservation division.

The report shall be submitted on or before March 1 of the following year.

(c) The failure to file or timely file an annual injection report shall be punishable by a \$100 penalty. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2000 Supp. 55-164, as amended by L. 2001, ch. 5, sec. 191; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended May 8, 1989; amended April 5, 2002.)

**82-3-410. Transfer of authority to inject; penalty.** (a) Authority to operate an injection well shall not be transferred from one operator to another without the approval of the conservation division. The transferring operator shall notify the conservation division in writing, on a form prescribed by the commission and in accordance with K.A.R. 82-3-136, of the intent to transfer authority to operate an injection well from one operator to another. In addition to the requirements of K.A.R. 82-3-136, the written notice shall contain the following information:

(1) The name and address of the present operator and the operator's license number;

(2) the name and location of the well being transferred;

(3) the order or permit number and date of the order or permit authorizing injection;

(4) the zone or zones of injection;

(5) the proposed effective date of transfer;

(6) the signature of the present operator and the date signed;

(7) the name and address of the new operator and the operator's license number; and

(8) the signature of the new operator and the date signed.

(b) The transferring operator may be required by the conservation division to conduct a mechanical integrity test as a condition of the transfer.

(c) Failure to notify the conservation division of a transfer in accordance with this regulation shall subject the operator to penalties under K.A.R. 82-3-136(e). (Authorized by K.S.A. 55-152, K.S.A. 2000 Supp. 55-164, as amended by L. 2001, ch. 5, sec. 191, and K.S.A. 55-901, as amended by L. 2001, ch. 5, sec. 198; implementing K.S.A. 55-152, 55-1003; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended April 23, 1990; amended April 5, 2002.)

**82-3-411. Authorization for existing injection wells.** Each injection well authorized by order of the commission on or before December 8, 1982 shall be considered an existing injection well. Injection shall be prohibited in any existing well unless the operator had filed, on or before May 1, 1983, an inventory of existing injection wells on the form prescribed by the commission. (Authorized by K.S.A. 55-152, 55-901, as amended by L. 2001, ch. 5, sec. 198; implementing K.S.A. 55-152, 55-901, as amended by L. 2001, ch. 5, sec. 198, 55-1003; effective April 5, 2002.)

**82-3-412. Assessment of costs.** An assessment to pay the costs incurred by the conservation division in reviewing, processing, and approving each injection application shall be payable upon the filing of an application as follows:

(a) Enhanced recovery injection wells.

(1) A fee of \$200 shall be assessed to each applicant for injection authority to cover the review only of the initial pilot well. A fee of \$100 shall be assessed on each additional well included in the initial injection application except where the well depth of each additional well is less than 1,000 feet. Each additional well having a depth of less than 1,000 feet shall be assessed a fee of \$50.

(2) A fee of \$100 for each well shall be assessed to each applicant for any modification to the initial injection well permit or permit adding an injection well or wells except where the well depth of each additional well sought to be modified in the initial order or permit is less than 1,000 feet. Each modification adding an injection well having a depth of less than 1,000 feet shall be assessed a fee of \$50 for each added well.

(3) A fee of \$100 shall be assessed to each applicant for any modification to the initial injection well order or permit seeking to make a significant change in the construction of an injection well, to add an injection well to an authorized waterflood, or to increase either the maximum injection pressure or the maximum injection rate.

(4) A fee of \$50 shall be assessed for any other modification of the initial injection order or permit. However, no fee shall be assessed for those modifications specified in K.A.R. 82-3-408(c).

(b) Injection wells.

(1) A fee of \$200 shall be assessed to each applicant for injection authority.

(2) A fee of \$100 shall be assessed to each applicant for any modification to the initial injection order or permit seeking to make a significant change in the construction of the injection well or to increase either the maximum injection pressure or the maximum injection rate.

(3) A fee of \$50 shall be assessed for any other modification to the initial injection order or permit. However, no fee shall be assessed for those modifications specified in K.A.R. 82-3-408(c).

(c) Fee nonrefundable. Once paid, each fee shall be nonrefundable. (Authorized by and implementing K.S.A. 55-152, 55-176, as amended by L. 2001, ch. 5, sec. 192, and 55-901, as amended by L. 2001, ch. 5, sec. 198; effective April 5, 2002.)

**82-3-500.** (Authorized by and implementing K.S.A. 66-1,185; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; revoked Aug. 29, 1997.)

**82-3-501.** (Authorized by and implementing K.S.A. 66-1,185; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; revoked Aug. 29, 1997.)

**82-3-502.** (Authorized by K.S.A. 66-1,185; implementing K.S.A. 1986 Supp. 55-706, K.S.A. 66-1,185; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended, T-85-51, Dec. 19, 1984; amended May 1, 1988; revoked Aug. 29, 1997.)

**82-3-503.** (Authorized by and implementing K.S.A. 66-1,185; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; revoked Aug. 29, 1997.)

**82-3-504.** (Authorized by and implementing K.S.A. 66-1,185; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; revoked Aug. 29, 1997.)

**82-3-600. Pit permits; penalty; application and approval.** (a) Pits shall not be used to contain fluids resulting from oil and gas activities until approved by the commission. Pits shall be permitted only upon application to and approval by the commission. Use of a pit without a pit permit shall be punishable by a \$500 penalty. Pit permits shall be considered granted unless denied within 10 days after the commission's receipt of the application.

The following types of pits may be authorized by the commission:

(1) Drilling pit, which shall include reserve pits and working pits;

(2) work-over pit;

(3) emergency pit;

(4) settling pit;

(5) burn pit; and

(6) haul-off pit.

(b) Each application shall be verified and filed with the conservation division upon the form prescribed by the commission.

(c) In reviewing applications for pit permit approval, the protection of soil and water resources from pollution shall be considered by the commission. The chloride concentration of drilling fluids and produced waters to be contained in pits and the geohydrologic characteristics of the pit location shall be considered in determining the pollution risk that a particular pit poses to water resources.

(d) Work-over pits may be permitted through verbal authorization from the appropriate district office supervisor or a designated staff member,

subject to the filing of a pit application within five days after the verbal authorization.

(1) Requests for verbal authorization shall be made no less than 24 hours before the intended work-over operation. However, if emergency circumstances require immediate work-over operations, requests for verbal authorization may be made less than 24 hours before the intended operation.

(2) The operator requesting verbal authorization shall provide the information required on the application form to the appropriate district office at the time of the request.

(e) Each operator shall notify the appropriate district office, as specified in K.A.R. 82-3-603, that a temporary containment pit was constructed. A permit shall not be required for a containment pit constructed and used in accordance with this subsection.

(f) Each operator of a pit shall perform the following:

(1) Install observation trenches, holes, or wells if required by the commission;

(2) seal any pit, except burn pits, with liners as specified in K.A.R. 82-3-601a(b)(1) through (6) if the commission determines that an unsealed condition will present a pollution threat to soil or water resources; and

(3) prevent surface drainage from entering the pit.

(g) A pit permit shall not be required for the construction of a dike at an oil and gas facility. (Authorized by K.S.A. 55-152, K.S.A. 2000 Supp. 55-164, as amended by L. 2001, ch. 5, sec. 191; implementing K.S.A. 55-152, K.S.A. 2000 Supp. 55-164, as amended by L. 2001, ch. 5, sec. 191, K.S.A. 55-171, K.S.A. 2000 Supp. 74-623, as amended by L. 2001, ch. 191, sec. 16; effective, T-87-46, Dec. 19, 1986; effective May 1, 1987; amended July 29, 1991; amended April 23, 2004.)

**82-3-600a. Pit permit revocation.** A pit permit may be revoked by the director of the conservation division if fresh or usable water resources are in danger of becoming polluted by the use of the pit or if the operator of a pit is not in compliance with the permit requirements. Each pit for which the permit has been revoked shall be closed according to K.A.R. 82-3-602. (Authorized by K.S.A. 55-152, K.S.A. 55-171; implementing K.S.A. 55-152, K.S.A. 2000 Supp. 55-162, K.S.A. 55-171, K.S.A. 2000 Supp. 74-623, as amended by L. 2001, ch. 191, sec. 16; effective April 23, 1990; amended April 23, 2004.)

**82-3-600b.** (Authorized by K.S.A. 1990 Supp. 55-152, 55-164; implementing K.S.A. 1990 Supp. 55-152, 55-171, 74-623; effective July 29, 1991; revoked April 23, 2004.)

**82-3-601.** (Authorized by K.S.A. 55-152, as amended by L. 1986, Ch. 201, Sec. 9; implementing K.S.A. 55-152, as amended by L. 1986, Ch. 201, Sec. 9; L. 1986, Ch. 201, new Sec. 1, 23; effective, T-87-46; effective May 1, 1987; revoked July 29, 1991.)

**82-3-601a. Pit construction; sensitive groundwater areas; reporting.** (a) Freeboard. All drilling, work-over, burn, and containment pits shall be constructed with a minimum of 12 inches of freeboard. All emergency and settling pits shall be constructed with a minimum of 30 inches of freeboard.

(b) Pit construction. If required by the conservation division to be sealed, pits shall be constructed so that the bottoms and sides have a hydraulic conductivity no greater than  $1 \times 10^{-7}$  cm/sec. during their use. The hydraulic conductivity shall be established by liners, which shall include any of the following:

(1) A natural clay liner;

(2) a soil-mixture liner composed of soil mixed with cement, bentonite, clay-type, or other additives to be applied to pits whose walls do not exceed a slope of three to one;

(3) a recompacted clay liner composed of in situ or imported clay soils that are compacted or restructured to be applied to pits whose walls do not exceed a slope of three to one;

(4) a manufactured liner composed of synthetic material to be applied to pits in a manner that ensures its integrity while the pit is open;

(5) a combination of two or more types of liners described in paragraphs (b)(1) through (4); or

(6) any other liner or groundwater protection system acceptable to the conservation division.

(c) Emergency pit construction. In sensitive groundwater areas as designated in table III as adopted by reference in K.A.R. 82-3-601b, emergency pits shall be sealed. Emergency pits located in sensitive groundwater areas shall be constructed and sealed as set out in paragraphs (b)(1) through (6).

(d) Construction depth. No pit shall be constructed to a depth greater than five feet above the shallowest existing water table in the vicinity of the well.

(e) Reporting.

(1) The hydraulic conductivity of natural liners shall be determined by one of the soil tests approved by the American society of testing and materials and contained in either of the following ASTM publications, both of which are hereby adopted by reference:

(A) "Standard test methods for measurement of hydraulic conductivity of saturated porous materials using a flexible wall permeameter," published January 2001; and

(B) "standard guide for comparison of field methods for determining hydraulic conductivity in the vadose zone," published December 1990 and reapproved in 1998.

Alternately, the hydraulic conductivity of natural liners shall be determined by using another field or laboratory test approved by the commission and conducted by either the operator or the operator's contractor.

(2)(A) Test results for pits required to be sealed according to subsection (b) shall be reported to the appropriate district office at the time of spud notification.

(B) Written documentation of test results shall be filed with the conservation division on a form prescribed by the commission within five days after spudding the well.

(C) Test results for work-over and emergency pits shall be reported to the conservation division when the pit application is filed.

(D) The right to verify test results through on-site investigation may be exercised by the conservation division. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-152, K.S.A. 55-171, K.S.A. 2000 Supp. 74-623; effective July 29, 1991; amended April 23, 2004.)

**82-3-601b. Sensitive groundwater areas; exception procedure.** (a) Each operator of an emergency pit in a sensitive groundwater area as designated by "table III: established sensitive groundwater areas for surface ponds," dated March 2000 and hereby adopted by reference, may request an exception to the requirements of K.A.R. 82-3-601a(c).

(b) Each request for an exception shall be made in writing to the director of the conservation division and shall be submitted with the application for a pit permit. The request shall contain supporting data to show why the exception should be granted.

(c) An on-site investigation may be conducted

by the director or a designee to determine whether the exception request is warranted. (Authorized by and implementing K.S.A. 55-152, K.S.A. 55-171, K.S.A. 2000 Supp. 74-623, as amended by L. 2001, ch. 191, sec. 16; effective July 29, 1991; amended April 23, 2004.)

**82-3-602. Closure of pits; disposal of pit contents; closure form; drilling fluid management; surface restoration.** (a) Closure of pits.

(1) Unless otherwise specified in writing by the commission, each operator shall close the following:

(A) Drilling pits or haul-off pits within 365 calendar days after the spud date of a well;

(B) workover pits within 90 days after workover operations have ceased; and

(C) settling pits, burn pits, and emergency pits within 30 days after cessation or abandonment of the lease.

(2) Any operator may request a pit permit extension of not more than three months, and the request may be granted by the director. An extension may be granted due to pit conditions or for other good cause shown by the operator. Any pit permit extension may be renewed upon additional request by the operator, but no pit permit extension shall be extended beyond six months after the original deadline. Failure to close any pit or to file an extension within the prescribed time limits specified in paragraphs (1)(A) through (C) of this subsection shall be punishable by a \$250 penalty.

(b) Disposal of pit contents. Before backfilling any pit, each operator shall dispose of the pit contents according to K.A.R. 82-3-607 and shall submit the required form pursuant to K.A.R. 82-3-608.

(c) Closure form. Each operator of a pit shall file a pit closure form prescribed by the commission within 30 days after the closure of the pit. Failure to file the pit closure form in accordance with this subsection shall be punishable by a \$100 penalty.

(d) Drilling fluid management. Each operator of a reserve pit shall report the drilling fluid management methods utilized for the reserve pit, including the chloride concentration of the drilling fluids, on the affidavit of completion required by K.A.R. 82-3-130.

(1) Except as specified in paragraph (d)(2), the chloride concentration shall be calculated according to the following portions of the American petroleum institute's "recommended practice: standard procedure for field testing water-based drilling fluids," second edition, dated September 1997, which are hereby adopted by reference:

- (A) Section 10.3 on pages 21-22;
- (B) appendix A; and
- (C) tables 1 and 5.

(2) An alternate test for measuring the chloride concentration may be approved by the director if the alternate test is at least as accurate and precise as the required test.

(e) Surface restoration. Upon abandonment of any pit, the operator shall grade the surface of the soil as soon as practicable or as required by the commission. The surface of the soil shall be returned, as nearly as practicable, to the condition that existed before the construction of the pit. (Authorized by K.S.A. 2012 Supp. 55-152, K.S.A. 74-623; implementing K.S.A. 55-171; effective, T-87-46, Dec. 19, 1986; effective May 1, 1987; amended May 1, 1988; amended July 29, 1991; amended April 23, 2004; amended Aug. 16, 2013.)

**82-3-603. Spill notification and cleanup; penalty; lease maintenance.** (a) Spill prevention. Each operator shall act with reasonable diligence to prevent spills and safely confine saltwater, oil, and refuse in tanks, pipelines, pits, or dikes.

(b) Notification.

(1) Each operator shall notify the appropriate district office in accordance with subsection (c) immediately upon discovery or knowledge of any spill that has reached or threatens to reach surface water or that has impacted or threatens to impact groundwater. Each operator shall take immediate action in accordance with procedures specified or approved by the district office to contain and prevent the saltwater, oil, or refuse from reaching surface water or impacting groundwater.

(2) Except as otherwise specified in this regulation, each operator shall notify the appropriate district office of any spill, as defined in K.A.R. 82-3-101. This notification shall meet the requirements of subsection (c) and shall be made not later than the next business day following the date of discovery or knowledge of the spill.

(3) The notification requirement for spills in paragraph (b)(2) shall not apply to very minor amounts of saltwater, oil, or refuse that unavoidably or unintentionally leak or drip from pumps, machinery, pipes, valves, fittings, well rods, or tubing during the conduct of normal prudent operations and that are not confined in dikes or pits or within the vicinity of the well. This exception shall not apply to ongoing, continual, or repeated leaks or drips, or to leaks or drips that are the re-

sult of intentional spillage or abnormal operations, including unrepaired or improperly maintained pumps, machinery, pipes, valves, and fittings.

(4) For purposes of this regulation, the point of “discovery or knowledge” shall mean that point when the operator knew or reasonably should have known of the spill.

(5) The notification requirement in this subsection shall apply even if the operator knows or believes that the appropriate district office is already aware of the spill.

(c) Information required with notification. Each operator shall submit the following information in conjunction with the notification requirement in subsection (b):

- (1) The operator’s name and license number;
- (2) the lease name, legal description, and approximate spill location;
- (3) the time and date the spill occurred;
- (4) a description of the spilled materials, including type and amount;
- (5) a description of the circumstances creating the spill;
- (6) the location of the spill with respect to the nearest fresh and usable water resources;
- (7) the proposed method for containing and cleaning up the spill; and
- (8) any other information that the commission may require.

(d) Penalty for failure to notify. The failure to comply with subsection (b) shall be punishable by a \$250 penalty for the first violation, a \$500 penalty for the second violation, and a \$1,000 penalty and an operator license review for the third violation.

(e) Cleanup of spill.

(1) Each operator shall clean up any spill that requires notification under this regulation in accordance with the cleanup method approved by the appropriate district office. The cleanup techniques deemed appropriate and acceptable to the appropriate district office shall be physical removal, dilution, treatment, and bioremediation. Except as otherwise required by law or regulation, each operator shall complete the cleanup of the spill within 10 days after discovery or knowledge, or by the deadline prescribed in writing by the district office.

(2) Each operator shall clean up all leaks, drips, and escapes that are excepted from notification under this regulation in accordance with cleanup techniques recognized as appropriate and acceptable by the commission. The following cleanup techniques shall be deemed appropriate and ac-

ceptable to the commission: physical removal, dilution, treatment, and bioremediation. Each operator shall accomplish this cleanup upon completion of the routine operation or condition that caused the leak, drip, or escape or within 24 hours of discovery or knowledge of the leak, drip, or escape, whichever occurs sooner.

(3) If refuse is transferred in conjunction with a cleanup pursuant to paragraph (e)(1) or (e)(2), each operator shall submit any required forms according to K.A.R. 82-3-608.

(f) Penalties. Failure to contain and clean up the spill in accordance with this regulation shall be punishable by the following penalties:

- (1) \$1,000 for the first violation;
- (2) \$2,500 for the second violation; and
- (3) \$5,000 and an operator license review for the third violation. (Authorized by K.S.A. 2012 Supp. 55-152; implementing K.S.A. 2012 Supp. 55-164, K.S.A. 55-172, K.S.A. 74-623; effective, T-87-46, Dec. 19, 1986; effective May 1, 1987; amended May 1, 1988; amended April 23, 1990; amended April 23, 2004; amended Aug. 16, 2013.)

**82-3-603a. Spill notification to landowner or representative; penalty.** (a) Notification required. Each operator shall make good faith efforts to notify the landowner or the landowner's representative of any spill or escape that is required to be reported to the conservation division under K.A.R. 82-3-603(b)(1) or (b)(2). This notification to the landowner or landowner's representative shall meet the requirements of subsection (b) and shall be made no later than five business days following the discovery or knowledge of the spill or escape.

(b) Required information. Each notification shall include the following information:

- (1) The operator's name;
- (2) the lease name and approximate spill location;
- (3) the time and date the spill or escape occurred;
- (4) a description of the escaped materials, including each type and amount; and
- (5) the methods being used to clean up the spill.

(c) "Discovery and knowledge" defined. For the purpose of this regulation, the point of "discovery and knowledge" shall mean the point at which the operator knew or reasonably should have known of the spill or escape.

(d) Record of notification and retention of records. Each operator shall keep accurate records of each notification made to a landowner

or a landowner's representative regarding spills or escapes required under subsection (a). These records may include correspondence, electronic mail, telephone records, and field notes. The operator shall keep these records for at least three years. The records shall be made available to the conservation division upon request.

(e) Penalty for failure to notify. Failure to comply with subsection (a) shall be punishable by a \$250 penalty for the first violation, a \$500 penalty for the second violation, and a \$1,000 penalty for each subsequent violation. (Authorized by K.S.A. 55-152 and K.S.A. 2006 Supp. 55-186; implementing K.S.A. 55-164, K.S.A. 2006 Supp. 55-186, K.S.A. 74-623; effective Oct. 26, 2007.)

**82-3-604. Discharges into emergency pits and diked areas; removal of fluids; penalties.** (a) Notification of discharge. Each operator shall notify the appropriate district office within 24 hours of discovery or knowledge of any oil field-related discharge of five or more barrels of saltwater, oil, or refuse into an emergency pit or diked area.

(b) Removal of fluids from pit or dike. Each operator of an emergency pit or diked area shall remove any fluid from the pit or diked area within 48 hours after discovery or knowledge, or as authorized by the appropriate district office, and shall dispose of the fluid according to K.A.R. 82-3-607. The operator shall submit forms pursuant to K.A.R. 82-3-608, unless the fluid is removed to an on-site tank.

(c) "Discovery or knowledge" defined. For purposes of this regulation, the point of "discovery or knowledge" shall mean that point when the operator knew or reasonably should have known of the discharge.

(d) Penalties. The failure to timely notify the district office of an oil field-related discharge into an emergency pit or diked area in accordance with subsection (a), or the failure to timely remove fluids from an emergency pit or diked area in accordance with subsection (b), shall be punishable by the following penalties:

- (1) \$250 for the first violation;
- (2) \$500 for the second violation; and
- (3) \$1,000 and an operator license review for the third violation. (Authorized by K.S.A. 2012 Supp. 55-152; implementing K.S.A. 2012 Supp. 55-164, K.S.A. 55-172, and K.S.A. 74-623; effective April 23, 1990; amended June 6, 1994; amended April 23, 2004; amended Aug. 16, 2013.)

**82-3-605.** (Authorized by and implementing K.S.A. 1993 Supp. 55-152, 55-164, 55-171, 55-172; effective July 29, 1991; amended June 6, 1994; revoked April 23, 2004.)

**82-3-606. Chemical dumping prohibited; penalty.** (a) The dumping or release of chemical substances and other nonexempt waste associated with any drilling or production operation, as listed in K.A.R. 28-31-3, into pits or diked areas shall be strictly prohibited. Nonexempt waste shall include the following:

(1) Unused acids, or any other unused substances brought onto the lease for potential use in drilling or production operations;

(2) oil and gas service company wastes, including empty drums, spent solvents, rinsate, spilled chemicals, and waste acid;

(3) used equipment lubrication oils and hydraulic fluids; and

(4) sanitary wastes, drums, insulation, and other miscellaneous solid waste.

(b) Any operator or contractor found to be responsible for the dumping or release of chemical substances or nonexempt wastes shall be assessed a \$1,000 penalty for the first violation, a \$5,000 penalty for the second violation, and a \$10,000 penalty for the third violation. Under this regulation, operators and contractors shall be considered responsible for the actions of their subcontractors. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2000 Supp. 55-164, as amended by L. 2001, ch. 5, sec. 191, and K.S.A. 2000 Supp. 74-623, as amended by L. 2001, ch. 191, sec. 16; effective April 23, 1990; amended April 23, 2004.)

**82-3-607. Disposal of dike and pit contents.** (a) Each operator shall perform one of the following when disposing of dike or pit contents:

(1) Remove the liquid contents to a disposal well or other oil and gas operation approved by the commission or to road maintenance or construction locations approved by the department;

(2) dispose of reserve pit waste down the annular space of a well completed according to the alternate I requirements of K.A.R. 82-3-106, if the waste was generated during the drilling and completion of the well; or

(3) dispose of the remaining solid contents in any manner required by the commission. The requirements may include any of the following:

(A) Burial in place, in accordance with the grading and restoration requirements in K.A.R. 82-3-602 (e);

(B) removal of the contents to an on-site disposal area approved by the commission;

(C) removal of the contents to an off-site disposal area on acreage owned by the same landowner or to another producing lease or unit operated by the same operator, if prior written permission from the landowner has been obtained; or

(D) removal of the contents to a permitted off-site disposal area approved by the department.

(b) Each violation of this regulation shall be punishable pursuant to K.A.R. 82-3-608(d).

(c) If refuse is transferred pursuant to this regulation, the operator shall submit forms pursuant to K.A.R. 82-3-608, unless the refuse is removed to the same on-site tank or facility from which the refuse originated. (Authorized by and implementing K.S.A. 2012 Supp. 55-152 and K.S.A. 2012 Supp. 55-164; effective April 23, 2004; amended Aug. 16, 2013.)

**82-3-608. Transfer of refuse.** (a) Each operator shall file a form prescribed by the commission within 30 days after the operator transfers refuse from any pit or diked area or refuse relating to any remediation or cleanup activity.

(b) The failure to timely submit the form specified in subsection (a) shall be punishable by the following penalties:

(1) \$250 for the first violation;

(2) \$500 for the second violation; and

(3) \$1,000 and an operator license review for the third violation.

(c) The conservation division central office and the district offices may require any operator to transfer refuse from any pit or diked area or refuse relating to any remediation or cleanup activity, if it is reasonably likely that the refuse would cause pollution without the transfer.

(d) The failure to timely transfer refuse shall be punishable by the following penalties:

(1) \$1,000 for the first violation;

(2) \$2,500 for the second violation; and

(3) \$5,000 and an operator license review for the third violation. (Authorized by and implementing K.S.A. 2012 Supp. 55-152, K.S.A. 2012 Supp. 55-164, and K.S.A. 74-623; effective Aug. 16, 2013.)

**82-3-700. Definitions.** As used in these regulations for cathodic protection facilities, the following terms shall have the meanings specified:

(a) "Annular space" means the space between the surface casing and the borewall or the space between two or more strings of surface casing in a cathodic protection borehole.

(b) “Anode conductor grout” means a mixture having a minimum of 30 percent solids and weighing not less than 10.1 pounds per gallon. This mixture shall consist of 14 gallons of freshwater and 50 pounds of a commercial, single-sack grout that contains a plugging sodium bentonite blended clay with less than 10 percent of inorganic additives to temporarily inhibit sodium bentonite clay hydration during placement.

(c) “Aquifer” means any geologic formation capable of yielding water in sufficient quantities so that the water can be diverted for beneficial use.

(d) “Aquifer completion” means a cathodic protection borehole that is installed in an aquifer.

(e) “Bedrock” means shale, limestone, sandstone, siltstone, anhydrite, gypsum, salt, or other consolidated rock material that can occur at the surface or underlie unconsolidated material.

(f) “Bentonite cement” means a mixture weighing not less than 14.1 pounds per gallon and consisting of freshwater, Portland cement, and four to eight percent of sodium bentonite clay additive or an equivalent as approved by the director of the conservation division or the manager of groundwater management district #2 or #5 for cathodic protection boreholes drilled in the respective groundwater management district.

(g) “Bentonite clay grout” means a mixture weighing not less than 9.4 pounds per gallon. This mixture shall consist of freshwater and commercial grouting or plugging sodium bentonite clay containing a high percentage of solids including those manufactured under the trade names of “Volclay” grout and “HolePlug” or a generic equivalent as approved by the director of the conservation division or the manager of groundwater management district #2 or #5 for cathodic protection boreholes drilled in the respective groundwater management district.

(h) “Cathodic protection borehole” means any excavation penetrating the water table of an aquifer that is drilled, cored, bored, washed, driven, dug, or otherwise constructed for the intended use or purpose of installing equipment to prevent electrolytic corrosion of metallic equipment or facilities.

(i) “Cathodic surface casing” means the first nonmetallic casing put in a cathodic protection borehole with the annular space grouted from the bottom of the cathodic surface casing to land surface, which serves to shut out shallow water formations and also acts as a foundation or anchor for all subsequent drilling activity.

(j) “Concrete” means a mixture consisting of one 94-pound bag of Portland cement, an equal volume of sand having a grain-size diameter not larger than 0.080 inches, and five to six gallons of freshwater.

(k) “Groundwater management district (GMD)” means a continuous area that overlies one or more aquifers, together with any area in between, that is organized for groundwater management purposes, pursuant to K.S.A. 82a-1020 et seq., and amendments thereto.

(l) “Grout” means concrete, neat cement, bentonite clay grout, bentonite cement, or any other material that meets the following requirements:

(1) Is used to create a permanent, impervious, watertight bond; and

(2) is approved by the director of the conservation division or the manager of groundwater management district #2 or #5 for cathodic protection boreholes drilled in the respective groundwater management district.

(m) “Multiple aquifer completion” means a cathodic protection borehole that penetrates more than one aquifer.

(n) “Neat cement” means a mixture consisting of one 94-pound bag of Portland cement and five to six gallons of freshwater.

(o) “Pitless casing adapter” means a nonmetallic assembly of parts installed in the cathodic surface casing to permit the installation of a conduit through the wall of the cathodic surface casing and sealed to prevent the entrance of any fluids or contaminants. (Authorized by and implementing K.S.A. 55-152; effective Oct. 25, 1996; amended, T-82-1-21-04, Jan. 21, 2004; amended May 14, 2004.)

**82-3-701. Intent to drill cathodic protection boreholes; notification; penalty; exemption.** This regulation shall apply in Kansas except for groundwater management districts #2 and #5. Each owner, operator, or person responsible for drilling a cathodic protection borehole in groundwater management district #2 or #5 shall apply directly to the manager of that groundwater management district in accordance with K.A.R. 82-3-705. (a) Except as set forth in subsection (e) of this regulation, each owner, operator, or person responsible for drilling a cathodic protection borehole shall submit written notice of the intention to drill to the conservation division for permit approval before the commencement of drilling operations.

(1) The applicant shall file the notice with the conservation division at least 60 days before commencing any drilling.

(2) Each notice shall be submitted on a form prescribed by the commission. The notice shall be filled in completely and signed by the operator or the operator's agent. The notice shall contain the following:

(A) The name and address of the owner and, if different from the owner, the name of the operator, and the operator license number;

(B) the date on which drilling is anticipated to begin;

(C) the well name or number designation, quarter section, section, range, township, county, and the distance of the proposed drilling location from the section's nearest corner, in exact footage;

(D) the estimated total depth of the borehole;

(E) the type of drilling equipment to be used;

(F) the depth to the bottom of the deepest freshwater at the drill site;

(G) the depth to the bottom of any usable water formation at the drill site; and

(H) any other relevant information requested by the commission.

(3) When a "cathodic protection borehole intent" form is filed, the owner, operator, or person responsible shall submit an "application for surface pit" form in accordance with K.A.R. 82-3-600 and, if required by K.A.R. 82-3-602, a pit closure form.

(b) Before drilling a cathodic protection borehole, the operator shall notify the appropriate conservation division district office.

(c) Any applicant may submit written requests to the director of the conservation division for an exception to the 60-day intention to drill filing period in emergency situations. Each request shall document why the emergency exists.

(d) Drilling any cathodic protection borehole without an approved notice of intent or without being granted an exception shall be punishable by a penalty of up to \$1,000.00.

(e) No permit shall be required for distributed anode systems, shallow "single bell hole" galvanic anode systems, and individual anode installation systems that are less than 25 feet in depth or do not penetrate an aquifer. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-152 and K.S.A. 2003 Supp. 55-164; effective Oct. 25, 1996; amended, T-82-1-21-04, Jan. 21, 2004; amended May 14, 2004.)

**82-3-702. Construction of cathodic protection boreholes, measurements, logging, reports, penalty.**

This regulation shall apply in Kansas except for groundwater management districts #2 and #5. Each owner, operator, or person responsible for the construction of a cathodic protection borehole located in groundwater management district #2 or #5 shall be subject to K.A.R. 82-3-706 through K.A.R. 82-3-709. (a) Each owner, operator, or person responsible for the construction of a cathodic protection borehole shall use a driller who is licensed by the commission under K.S.A. 55-155, and amendments thereto, or a water well contractor who is licensed by the Kansas department of health and environment under K.S.A. 82a-1201 et seq., and amendments thereto.

(b) The operator shall construct each cathodic protection borehole in the following manner.

(1) The total depths of each borehole and the bottom of the cathodic surface casing shall not exceed the depths permitted on the approved intention to drill.

(2) The diameter of the borehole for cathodic surface casing installation shall be at least six inches larger than the nominal outside diameter (OD) of the cathodic surface casing.

(3) In aquifer completions, cathodic surface casing shall extend from the surface to 20 feet below the top of the aquifer.

(4) In multiple aquifer completions, the cathodic surface casing shall extend from the land surface through the aquifers and 20 feet into shale or other impermeable bedrock.

(5) Exceptions to the surface casing depth requirements may be granted by the director of the conservation division upon written request. Each operator requesting an exception shall be required to demonstrate that the exception provides adequate protection of fresh and usable waters.

(6) All cathodic surface casing shall be nonmetallic and shall have a standard dimension ratio (SDR) of 26 or less. The SDR shall be calculated by dividing the cathodic surface casing's outside diameter (OD) by its minimum wall thickness (MWT):  $SDR = OD / MWT$ .

(7) The operator shall install centralizers along the entire length of the cathodic surface casing at intervals of not greater than 40 feet, starting at the bottom of the casing.

(8) The operator shall grout the annular space either by using a tremie pipe or by following the instructions of individual grout manufacturers.

The grout shall be allowed to set undisturbed for at least 24 hours, or for the length of time recommended by individual grout manufacturer's instructions. Exceptions to this requirement may be granted by the director of the conservation division upon written request. Each operator requesting an exception shall be required to demonstrate that the exception provides equivalent or greater protection to fresh and usable waters. Bentonite clay grout shall not be used where a mineralized aquifer or aquifers transect the borehole.

(9) The operator shall not make any openings through the cathodic surface casing, except for the installation of a pitless casing adapter.

(10) The operator shall not use products designed for drilling purposes that contain organic polymers as either drilling mud or grout.

(11) The operator shall install anodes and anode conductors in the borehole beginning at least five feet below the bottom of the cathodic surface casing.

(c) The operator shall measure each borehole to determine the cathodic surface casing depth and the total depth of the borehole. The operator shall record each measurement.

(d) The operator shall log each cathodic protection borehole as follows:

(1) The operator shall collect and record drill cuttings at intervals not greater than five feet or more frequently, if needed to produce an accurate lithologic or driller's log of the entire borehole.

(2) The operator shall record any electrical surveys, logs, or other geophysical readings of the borehole and make them a part of the permanent record.

(e) The operator shall submit a final completion report within 60 days of the start date to the production department of the conservation division. The report shall include all electrical or geophysical readings or logs, as required by the commission.

(f)(1) Each failure to construct a cathodic protection borehole in accordance with these regulations shall be punishable by a penalty of up to \$2,500.

(2) Each failure to submit the final report in accordance with subsection (e) of this regulation shall be punishable by a penalty of \$100. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-152 and K.S.A. 2003 Supp. 55-164; effective Oct. 25, 1996; amended, T-82-1-21-04, Jan. 21, 2004; amended May 14, 2004.)

**82-3-703. Surface construction requirements, appurtenances, vault and below-ground construction, penalty.** This regulation shall apply in Kansas except for groundwater management districts #2 and #5. Each owner, operator, or person responsible for the construction of a cathodic protection borehole located in groundwater management district #2 or #5 shall be subject to K.A.R. 82-3-706 through K.A.R. 82-3-709.

(a) All surface construction features of a cathodic protection borehole shall be designed to minimize physical damage to the installation, prevent entry of fluids and contaminants, and prevent unauthorized access.

(1) The operator shall equip the surface access to each borehole with a waterproof cap, cover, or equivalent housing.

(2) At the land surface contact, the cathodic surface casing or vault cover shall be designed to deter unauthorized access.

(b) Vent pipes shall remove gases from the borehole and shall terminate at least one foot above the highest known flood elevation and at least three feet above land surface.

(c) The aboveground terminus end of the vent pipe shall be turned 180 degrees and equipped at the terminus end with a 16-mesh or greater brass, bronze, or copper screen or other metallic material with similar hardness if that material is approved by the director of the conservation division.

(d) Gases shall not be vented or released if the release is a hazard to public health and safety or the environment.

(e) The top of the cathodic surface casing shall terminate at least three feet above land surface, except as set forth in subsections (f) and (g).

(f) If the top of the cathodic surface casing terminates below land surface in a vault, the following construction features shall be required:

(1) The operator shall install a water-resistant and structurally sound vault to house the top of the cathodic surface casing.

(2) The vault and the cover or lid shall be strong enough to support vehicular traffic where this traffic could occur.

(3) The operator shall set the top of the vault so that surface fluids are directed away from the vault.

(4) The cathodic surface casing shall contact the vault to form a water-resistant and structurally sound seal and connection.

(g) If the borehole and cathodic surface casing are grouted, the operator shall place grout at least

five feet below the bottom of the cathodic surface casing, with grout extending into the cathodic surface casing at least 10 feet in total thickness.

(h) Cathodic surface casing installations that terminate and are buried below land surface shall meet the same water resistance and structural integrity requirements as those for vaulted-type construction described in subsection (f) of this regulation.

(i) The operator shall mark all aboveground installations with the commission borehole permit number, which shall be protected from possible damage and shall be easily visible.

(j) Exceptions to this regulation may be granted by the director of the conservation division upon written request. Each operator requesting an exception shall be required to demonstrate that the requested exception provides an equivalent or greater level of protection to public health and the environment.

(k) Each failure to construct the surface installation in accordance with this regulation shall be punishable by a penalty of up to \$500. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-152 and K.S.A. 2003 Supp. 55-164; effective Oct. 25, 1996; amended, T-82-1-21-04, Jan. 21, 2004; amended May 14, 2004.)

**82-3-704. Plugging methods and procedures for cathodic protection boreholes, site restoration, submission of plugging report, penalty.** This regulation shall apply in Kansas except for groundwater management districts #2 and #5. Each owner, operator, or person responsible for the plugging of a cathodic protection borehole located in groundwater management district #2 or #5 shall be subject to K.A.R. 82-3-710. (a) The operator, owner, or agent of the owner shall plug each cathodic protection borehole in accordance with the following procedures:

(1) At least 72 hours before the actual plugging, the operator, owner, or agent of the owner shall contact the appropriate conservation division district office for plugging instructions and approval.

(2) Before the actual plugging, the operator shall remove any cables and anodes, the vent pipe and anode conductor, and any other materials originally installed in the borehole to a level necessary to ensure that the borehole is properly plugged and to facilitate proper plugging.

(3) The operator shall cut off the cathodic surface casing at least three feet below the land surface.

(4) The operator shall plug each borehole with grout from at least five feet below the bottom of the cathodic surface casing to the top of the cathodic surface casing. The operator shall place grout with a tremie pipe or any other method approved by the appropriate conservation division district office where the facility or borehole is located if the method provides adequate protection of fresh and usable waters.

(5) Where subsurface pressures cause artesian flow, the operator shall maintain a pressure sufficient for placement of the grout plug long enough for the plug to set.

(6) The operator shall fill any vent pipe not removed from the borehole with grout.

(b) The operator shall restore each former cathodic protection borehole site, as close as practical to predrilling condition.

(1) The operator shall backfill and compact each borehole from three feet below land surface to land surface, with clean topsoil.

(2) The operator shall remove from the site all cables and anodes, the vent pipe and anode conductor, all surface casing sections, and any other material installed at the surface or in the borehole.

(c) The operator shall submit a final plugging report to the production department of the conservation division within 60 days after plugging has been completed, on forms prescribed by the commission.

(d) Exceptions to this regulation may be granted by the director of the conservation division upon written request. Each operator requesting an exception shall be required to demonstrate that the exception provides adequate protection of fresh and usable waters.

(e) A cathodic protection borehole shall be considered abandoned if either of the following conditions is met:

(1) The borehole has not been used for one year, and the owner has not provided a written request to the director for temporary abandonment status pursuant to K.A.R. 82-3-111.

(2) The borehole is contaminating or threatening to contaminate a freshwater aquifer.

(f) Each failure to comply with the provisions of this regulation shall be punishable by a penalty of up to \$1,000. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-152 and K.S.A. 2003 Supp. 55-164; effective Oct. 25, 1996; amended, T-82-1-21-04, Jan. 21, 2004; amended May 14, 2004.)

**82-3-705. Groundwater management districts #2 and #5: permit to drill cased and uncased cathodic protection boreholes; notification; exceptions; drilling pit application.** This regulation shall apply only within the boundaries of groundwater management districts #2 and #5. (a) Except as specified in subsection (g), it shall be a violation of this regulation for the operator, owner, or person responsible to drill or construct either a cased or uncased cathodic protection borehole without first applying for and obtaining a permit to drill and construct a cathodic protection borehole.

(b) Each individual seeking a permit shall submit an application to the appropriate GMD office at least 60 days before planned construction, on a form furnished by the appropriate GMD. The permit application shall contain the following:

- (1) The name and address of the owner;
- (2) the quarter section, section, range, township, and county;
- (3) the distance from the borehole to the section's southeast corner, in exact footage;
- (4) the top and bottom depths of any freshwater aquifer;
- (5) the total borehole depth;
- (6) the number and depths of the anodes;
- (7) the top and bottom depths of the anode conductor or anode conductor grout; and
- (8) any other relevant information requested by the manager of the appropriate GMD.

(c) Each manager of a GMD shall submit one copy of each cathodic protection borehole application upon which action has been taken to the production department of the conservation division within 10 days of approval.

(d) The operator, owner, or person responsible shall notify the appropriate GMD office at least 72 hours before drilling each cathodic protection borehole.

(e) When required by the manager of the appropriate GMD, the operator, owner, or person responsible shall submit a surface pit permit approved by the director of the conservation division with the application for a permit to drill and construct a cathodic protection borehole.

(f) Drilling a cased or an uncased cathodic protection borehole without an approved permit shall be punishable by a penalty of up to \$1,000. Drilling any cased or uncased cathodic protection borehole without providing notice to the appropriate GMD office in accordance with subsection (d) shall be punishable by a penalty of up to \$1,000.

(g) No permit shall be required for a cathodic protection anode system that meets the following conditions:

(1) Is constructed to a maximum depth below the land surface of 25 feet or less; and

(2) does not penetrate an aquifer. (Authorized by K.S.A. 55-152 and K.S.A. 2003 Supp. 82a-1028; implementing K.S.A. 55-152, K.S.A. 2003 Supp. 55-164, and K.S.A. 2003 Supp. 82a-1028; effective, T-82-1-21-04, Jan. 21, 2004; effective May 14, 2004.)

**82-3-706. Groundwater management districts #2 and #5: drilling contractor; logging; construction; reports.** This regulation shall apply only within the boundaries of groundwater management districts #2 and #5. (a) Only a driller or water well contractor licensed with the Kansas department of health and environment under K.S.A. 82a-1201 et seq., and amendments thereto, shall drill and construct each cathodic protection borehole.

(b) The total depths of the borehole and the bottom of the cathodic surface casing shall not exceed the authorized depths in the approved permit to drill and construct a cathodic protection borehole.

(c) The cathodic protection borehole shall be logged according to the following requirements:

(1) The drill cuttings shall be sampled and recorded at intervals not greater than five feet or more frequently, if needed, to produce an accurate lithologic or driller's log of the complete cathodic protection borehole.

(2) The electrical readings or log and any other geophysical readings or logs of the complete cathodic protection borehole shall be recorded and made a permanent record.

(d) No uncased cathodic protection borehole shall be drilled or completed below shale or impermeable bedrock surface.

(e) The minimum diameter of each cathodic protection borehole shall be one of the following:

- (1) Eight inches for uncased boreholes; or
- (2) six inches greater than the outside diameter (OD) of the surface casing for cased boreholes.

(f) Except for uncased cathodic protection boreholes, each borehole shall be constructed according to the following requirements:

(1) Nonmetallic casing equipped with centralizers shall be installed in the borehole when the drilling penetrates 20 feet into either shale or impermeable bedrock.

(2) The casing shall be new, clean, serviceable, and free of defects.

(3) The casing shall have a standard dimension ratio (SDR) of 21 or less and shall be calculated by dividing the casing's outside diameter (OD) by its minimum wall thickness (MWT).

(4) Centralizers shall be installed along the entire length of the casing at intervals not greater than 40 feet, starting at the bottom end of the casing.

(5) The annular space shall be grouted, and the grout shall be installed using a grout tremie pipe or as recommended by the grout manufacturer's instructions and allowed to set undisturbed as recommended by the grout manufacturer's specifications.

(6) No opening shall be made through the casing, except for the installation of a pitless casing adapter.

(g) Measurements shall be made as necessary to determine the depth, dimensions, or spacing of the borehole, casing, anode, anode conductor, grout, and other borehole materials.

(h) Drilling products and borehole materials containing organic polymers shall not be used to either drill or construct the borehole.

(i) (1) If the manager of the appropriate GMD determines that the use of a drilling pit threatens to contaminate groundwater, the operator, owner, or person responsible shall ensure that the pit meets one of the following requirements:

(A) Be constructed so that the bottom and sides have a hydraulic conductivity no greater than  $1 \times 10^{-7}$  cm/sec during use;

(B) be constructed aboveground; or

(C) consist of a portable aboveground tank.

(2) All fluids that threaten to contaminate the groundwater shall be removed from the drilling pit and disposed of upon closure of the pit, in accordance with K.A.R. 82-3-602.

(j) If drilling and construction operations are temporarily suspended or interrupted by an unforeseen circumstance, the following requirements shall apply:

(1) All drilling and grouting equipment shall be removed from the borehole.

(2) The borehole shall be secured to prevent the following:

(A) The entry of contaminating or polluting materials into the borehole; and

(B) unauthorized access.

(3) The borehole shall be maintained in a stable condition to prevent collapse.

(k) Two copies of the following information shall be submitted to the appropriate GMD office

within 30 days after the cathodic protection borehole is completed:

(1) The well completion form provided by the commission and completed by the operator;

(2) any electrical or geophysical readings or logs; and

(3) an as-built plan.

The manager of the appropriate GMD shall provide one copy of this information to the conservation division within 30 days of receipt by the GMD office.

(l)(1) Each failure to construct a cathodic protection borehole in accordance with these regulations shall be punishable by a penalty of up to \$2,500.

(2) Each failure to submit the report required under subsection (k) to the appropriate GMD office shall be punishable by a penalty of \$100. (Authorized by K.S.A. 55-152 and K.S.A. 2003 Supp. 82a-1028; implementing K.S.A. 55-152, K.S.A. 2003 Supp. 55-164, and K.S.A. 2003 Supp. 82a-1028; effective, T-82-1-21-04, Jan. 21, 2004; effective May 14, 2004.)

**82-3-707. Groundwater management districts #2 and #5: anode, anode conductor, and anode conductor grout requirements for cased and uncased boreholes.**

This regulation shall apply only within the boundaries of groundwater management districts #2 and #5.

(a) Each operator, owner, or person responsible shall install anodes and anode conductor in each cased cathodic protection borehole starting five feet below the bottom of the cathodic surface casing.

(b) Each operator, owner, or person responsible shall install anodes and anode conductor grout in uncased boreholes according to the following requirements:

(1) Each anode for use in a public water supply system shall meet or exceed the requirements specified in section 4.2.3, "anode materials," in the American water works association's standard D104-01, as approved in 2001. Section 4.2.3 of this document is hereby adopted by reference.

(2) Each anode shall be installed from a minimum of three feet above the shale or impermeable bedrock surface to a maximum of 20 feet below land surface.

(3) The anode conductor grout shall be placed from the total depth to five feet above the anode nearest the land surface, using a grout tremie pipe or as recommended by the grout manufacturer.

(4) The anode conductor grout shall be certified by the national sanitation foundation to meet the criteria specified in section 8 of “drinking water treatment chemicals—health effects,” NSF/ANSI 60-2003e, as revised in October 2003. Section 8 of this document, titled “miscellaneous water supply products” and consisting of pages 27 through 34, is hereby adopted by reference.

(5) Anode conductor grout containing bentonite clay or any other similar material shall not be used if the salinity equals or exceeds 2,000 mg/L chloride in any portion of an aquifer.

(c) Each failure to install anodes or grouting material in accordance with this regulation shall be punishable by a penalty of up to \$2,500. (Authorized by K.S.A. 55-152 and K.S.A. 2003 Supp. 82a-1028; implementing K.S.A. 55-152, K.S.A. 2003 Supp. 55-164, and K.S.A. 2003 Supp. 82a-1028; effective, T-82-1-21-04, Jan. 21, 2004; effective May 14, 2004.)

**82-3-708. Groundwater management districts #2 and #5: surface construction requirements for cased cathodic protection boreholes.** This regulation shall apply only within the boundaries of groundwater management districts #2 and #5. (a) Each operator, owner, or person responsible shall ensure that the top of the cathodic protection borehole casing of each cased borehole meets one of the following requirements:

(1) Terminates a minimum of three feet above land surface or one foot above the highest known flood elevation greater than three feet above land surface;

(2) is equipped with a water-resistant and structurally sound vault; or

(3) terminates a minimum of three feet below land surface.

(b) The minimum construction requirements for each cased cathodic protection borehole shall be the following:

(1) The top of the cathodic protection borehole casing shall meet the following requirements:

(A) Be constructed to prevent damage to the cathodic protection borehole casing, prevent entry of contaminants, and deter unauthorized access to the installation;

(B) be constructed so that surface drainage is directed away from the installation;

(C) be equipped with a watertight seal, cover, or an equivalent device approved by the appropriate GMD office; and

(D) be equipped with an easily visible sign identifying the cathodic borehole permit number and the borehole owner.

(2) The borehole shall be vented of any gases according to the following requirements:

(A) The vent pipe shall terminate a minimum of either three feet above land surface or one foot above the highest known flood elevation greater than three feet above land surface.

(B) The aboveground terminus end of the vent pipe shall be turned 180 degrees and equipped at the terminus end with a 16-mesh or greater brass, bronze, or copper screen, or other material with similar properties if that material is approved by the manager of the appropriate GMD office.

(C) Gases shall not be vented or released if the release is a hazard to public health and safety or the environment.

(3) The cathodic protection borehole casing vault shall meet the following requirements:

(A) Be strong enough to support vehicular traffic where this traffic could occur; and

(B) contact the cathodic protection borehole casing to form a water-resistant and structurally sound seal and connection.

(4) The cathodic protection borehole casing installation terminated below land surface shall meet the following minimum requirements:

(A) Grout shall be placed in the borehole from a minimum of five feet below the bottom of the non-metallic cathodic protection borehole casing to the top of the nonmetallic cathodic protection borehole casing by using a tremie pipe or by following the recommendation of the grout manufacturer.

(B) The borehole shall be backfilled with clean and compacted topsoil from the top of the non-metallic cathodic protection borehole casing to the land surface.

(c) Each operator, owner, or person responsible shall ensure that any concrete pad constructed around an aboveground cathodic protection borehole casing or vault meets the following requirements:

(1) Is a minimum of four inches thick;

(2) is sloped so that surface drainage is directed away from the installation;

(3) is free of cracks, voids, and other defects that detract from its watertightness; and

(4) has a joint between the base and the non-metallic cathodic protection borehole casing that is structurally resistant to sound and water.

(d) Each failure to complete surface construction requirements for cathodic protection bore-

holes in accordance with this regulation shall be punishable by a penalty of up to \$500. (Authorized by K.S.A. 55-152 and K.S.A. 2003 Supp. 82a-1028; implementing K.S.A. 55-152, K.S.A. 2003 Supp. 55-164, and K.S.A. 2003 Supp. 82a-1028; effective, T-82-1-21-04, Jan. 21, 2004; effective May 14, 2004.)

**82-3-709. Groundwater management districts #2 and #5: construction specifications for uncased cathodic boreholes.** This regulation shall apply only within the boundaries of groundwater management districts #2 and #5. Each operator, owner, or person responsible shall ensure that the requirements of this regulation are met. (a) The construction features of each uncased cathodic protection borehole shall prevent physical damage to the installation and prevent the entry of pollutants and contaminants into fresh and usable groundwater.

(b) Each uncased borehole shall be grouted from the top of the anode conductor grout to three feet below land surface with either of the following:

- (1) Grout; or
- (2) anode conductor grout.

(c) From three feet below land surface to the land surface, each uncased borehole shall be back-filled with clean, compacted topsoil and sloped so that surface drainage or runoff is directed away from the installation.

(d) A vent pipe or other gas-venting device shall not be installed in any uncased borehole.

(e) In any area having a saline concentration of 500 ppm or higher, or as determined by the manager of the appropriate GMD office after consideration of ambient water quality data taken from the area within a ½-mile radius of the proposed uncased borehole, a log of a test well located within 20 feet of the proposed uncased borehole shall accompany each uncased cathodic borehole application submitted pursuant to K.A.R. 82-3-705 and shall include the following information:

- (1) A 10-acre tract legal description of the test well location;
- (2) the depth to bedrock;
- (3) the depth to the water table;
- (4) a description of drill cuttings sampled and recorded at intervals not greater than five feet and more frequently, if necessary, to produce an accurate lithologic log; and
- (5) the analyses of groundwater samples collected in a manner approved by the manager of the

appropriate GMD office from the upper, middle, and lower portions of an aquifer. These analyses shall meet the following requirements:

(A) Consist of chloride, specific conductance, and any other parameter analysis specified by the manager of the appropriate GMD office; and

(B) be performed by a laboratory certified by the Kansas department of health and environment.

(f) Each failure to construct any uncased cathodic protection borehole in accordance with this regulation shall be punishable by a penalty of up to \$2,500. (Authorized by K.S.A. 55-152 and K.S.A. 2003 Supp. 82a-1028; implementing K.S.A. 55-152, K.S.A. 2003 Supp. 55-164, and K.S.A. 2003 Supp. 82a-1028; effective, T-82-1-21-04, Jan. 21, 2004; effective May 14, 2004.)

**82-3-710. Groundwater management districts #2 and #5: abandonment, plugging methods, and procedures for cathodic protection boreholes, reports, and restoration.** This regulation shall apply only within the boundaries of groundwater management districts #2 and #5. (a) A cathodic protection borehole shall be deemed abandoned when any of the following conditions exists:

(1) The cathodic protection borehole is not completed due to unforeseen circumstances.

(2) The cathodic protection borehole either threatens to contaminate or contaminates a freshwater aquifer.

(3) Uncontrollable fluid or gas flow is present in the cathodic protection borehole.

(4) The cathodic protection borehole is not operational or is in a state of disrepair.

(b) The operator, owner, or person responsible shall plug each abandoned cathodic protection borehole.

(c) The minimum plugging requirements for an abandoned cathodic protection borehole shall be the following:

(1) At least 72 hours before plugging operations are scheduled to begin, the operator, owner, or person responsible shall submit a plugging plan to the appropriate GMD office. The operator, owner, or person responsible shall not begin plugging operations until the plugging plan is approved.

(2) As part of initial plugging operations, any cables and anodes, the vent pipe and anode conductor, and any other cathodic equipment or materials installed in the borehole shall be removed as necessary to ensure that the borehole is properly plugged and to facilitate proper plugging.

(3) All surface casing shall be cut off a minimum of three feet below the land surface and removed.

(4) Each cased cathodic protection borehole shall be plugged with grout from a minimum of five feet below the bottom of the surface casing to the top of the surface casing.

(5) Each uncased cathodic protection borehole shall be plugged with grout from the bottom of the borehole to three feet below the land surface.

(6) All grout shall be placed with a tremie pipe or in a manner recommended by the grout manufacturer.

(7) Each borehole shall be backfilled with clean topsoil and compacted from three feet below land surface to the land surface.

(8) Each vent pipe not removed from a cased cathodic protection borehole shall be completely filled with grout.

(9) Wherever subsurface fluid or gas pressure flow is encountered, a pressure sufficient for placement of the grout shall be maintained long enough for the grout to set.

(10) The operator shall submit a final plugging report to the manager of the appropriate GMD office within 60 days after plugging operations are completed, on forms prescribed by the manager of the appropriate GMD office.

(d) Each former cathodic protection borehole site shall be restored, as close as practical to pre-drilling conditions, by removing from the site any cables and anodes, the vent pipe and anode conductor, any surface casing sections, and any other material installed at the surface or in the borehole.

(e) (1) Each failure to provide notice under paragraph (c)(1) shall be punishable by a penalty of up to \$1,000.

(2) Each failure to properly plug any cathodic protection borehole in accordance with this regulation shall be punishable by a penalty of up to \$2,500. (Authorized by K.S.A. 55-152 and K.S.A. 2003 Supp. 82a-1028; implementing K.S.A. 55-152, K.S.A. 2003 Supp. 55-164, and K.S.A. 2003 Supp. 82a-1028; effective, T-82-1-21-04, Jan. 21, 2004; effective May 14, 2004.)

**82-3-800. Licensing.** Each person operating any gas-gathering system within the state of Kansas shall be licensed by the commission. Any person claiming an exemption from reporting under L. 1997, Ch. 132, § 22 shall be licensed. (Authorized by and implementing K.S.A. 1997 Supp. 55-155; effective April 3, 1998.)

**82-3-801. Report furnished by persons offering gas-gathering services; penalty.**

(a) Each person offering gas-gathering services shall file with the commission the following data on forms prescribed by the commission:

(1) data on rates paid for natural gas purchased at the wellhead on each gas-gathering system or part thereof if purchased by the gatherer;

(2) data on contract rates charged for gas-gathering services on each gas-gathering system or part thereof;

(3) any special contract terms relating to the volume and characteristics of the gas that will be purchased or transported by the person offering gas-gathering services;

(4) the number of wells connected to the gas-gathering system or part thereof;

(5) a legible map showing the location of the gas-gathering system drawn to a scale of .5 inch equals one mile and clearly indicating section, township, and range; and

(6) other related data that may be required by the commission.

(b) The reports shall contain information current as of the first day of January, April, July, and October and shall be filed within sixty days of these dates. Maps shall be filed annually at the time of license renewal. If any due date falls on a legal holiday or weekend, the report shall be due on the next business day. If no change has been made to reported data from the prior filing, the operator may note this on the reporting form.

(c) Any person claiming an exemption pursuant to L. 1997, Ch. 132, § 22 shall provide a verified, detailed written explanation in support of the exemption.

(d) The report filed with the commission shall be subject to the Kansas open records act.

(e) The report filed with the commission shall not be used by the commission to order a change in any rate except in a proceeding pursuant to K.A.R. 82-3-802.

(f) Any person claiming an exemption pursuant to L. 1997, Ch. 132, § 22 who no longer qualifies for the exemption shall file the necessary gas-gathering report pursuant to K.A.R. 82-3-801 within 10 days from the date on which the exemption expires.

(g) Failure to materially complete the form shall constitute noncompliance with this regulation, and the operator may be subject to the penalty provisions set forth in subsection (h).

(h) Upon notice and opportunity to be heard, a penalty may be imposed by the commission

on any person, not to exceed \$10,000.00 per day up to an aggregate maximum amount of \$250,000.00, for failure to file the report required by subsection (a).

(i) Notice of any substantive change to the reporting form occurring after July 1, 1998, shall be published in the Kansas register at least 30 days before adoption. Additional notice may be provided by the Kansas corporation commission to interested parties and the public generally. An opportunity to comment and a hearing shall be conducted as to the proposed form. (Authorized by and implementing L. 1997, Ch. 132, § 23; effective April 3, 1998.)

**82-3-802. Gas-gathering services and access, complaint, hearing.** (a) Each person offering any gas-gathering services or facilities essential to providing these services shall do so in a manner that is just, reasonable, not unjustly discriminatory, and not unduly preferential to persons seeking services or access to facilities.

(b) Each person performing gas-gathering services shall engage in practices and charge fees for such services that are just, reasonable, not unjustly discriminatory, and not unduly preferential.

(c) Any consumer of gas-gathering services, any person seeking direct purchase of natural gas at the wellhead, any royalty owner, or any natural gas producer may request that the commission investigate and initiate proceedings to review a fee, term, or practice being used by a person offering gas-gathering services.

(d) As a condition to commission action, the person under subsection (c) requesting the action shall file a complaint that includes the following:

(1) A statement that the complainant has presented the complaint, in writing, to the person offering gas-gathering services and has requested a meeting to discuss the complaint. A copy of this document shall accompany the complaint;

(2) a statement that the requested meeting took place and no resolution was reached or that the person offering gas-gathering services refused to meet;

(3) a detailed factual statement alleging how the fee, term or practice violates subsections (a) or (b);

(4) a statement of the precise remedy being requested that will make the fee, term, or practice consistent with the standards established in this section;

(5) if the complainant is a producer of natural gas, a copy of the analysis of the complainant's gas, including the nitrogen, carbon dioxide, hydrogen

sulfide, water and other contaminant content; the volume; the Btu; and the pressure at the wellhead;

(6) if available, a map showing the location of the affected wells and all known gas-gathering systems in the area; and

(7) proof of service of the complaint on the gas gatherer.

(e) Upon the filing of a complaint, the parties to the complaint shall be contacted by the commission staff, and resolution of the matter shall be attempted by the commission staff through the use of informal procedures, including one or more of the following:

(1) A meeting with the complainant, the person offering gas-gathering services, and commission staff.

(2) A mediation conference conducted under the following procedures:

(A) Upon the request of any party and acceptance of the other party, the commission shall schedule a mediation conference. The purpose of the mediation shall be to assist the parties in reaching agreement on any disputed issues by the intervention of a third party who has no decision-making authority, is impartial to the issues being discussed, assists the parties in defining the issues in dispute, facilitates communication between the parties, and assists the parties in reaching resolution.

(B) Mediation conferences shall be conducted by mediators appointed by the commission who are qualified as mediators pursuant to the dispute resolution act, K.S.A. 5-501 et seq., and amendments thereto, and any relevant rules of the Kansas supreme court as authorized pursuant to K.S.A. 5-510, and amendments thereto.

(C) Persons with final settlement authority for each party shall be present, in person, at the mediation conference.

(D) All mediation conferences shall be conducted by a mediator in accordance with the dispute resolution act.

(E) The confidentiality and privilege provisions of K.S.A. 60-452(a) shall apply to all mediation conferences to assure that all verbal or written information transmitted between any party to a dispute and the mediator shall be treated as confidential information and that no admission, representation, or statement made in the mediation conference shall be admissible as evidence or subject to discovery.

(F) The costs of mediation shall be shared equally among all parties.

(G) The commission shall disseminate information about the mediation conference procedure.

(3) Other informal mediation procedures as may be agreed to by all parties.

(f) The commission may at any time review a fee, term, or practice. Upon notice and opportunity for hearing in accordance with the Kansas administrative procedures act, the authority to order the remediation of any violation of L. 1997, Ch. 132, § 24 shall rest with the commission.

(g) A formal hearing shall be scheduled by the commission if the complaint is not resolved by informal procedures within 60 days of its filing or upon notice that no party wishes to utilize any informal procedure. A scheduling order providing notice to the affected parties of the date of hearing and setting forth any additional conditions as the commission deems appropriate shall be issued by the commission.

(h) The hearing shall be conducted in accordance with the Kansas administrative procedure act, K.S.A. 77-501 et seq., and with the commission's rules of practice and procedure, K.A.R. 82-3-201 et seq.

(i) The costs of a proceeding may be assessed to a party or parties based on the findings of the commission.

(j) In determining whether or not to grant access to a system, factors including the following may be considered by the commission:

(1) whether or not the natural gas can be reasonably carried by a gatherer;

(2) whether or not construction of a new system would be feasible;

(3) whether or not a material extension or expansion of facilities would be required;

(4) whether or not there is another gatherer of natural gas who is willing to gather or can more conveniently gather gas;

(5) whether or not the gathering of gas can reasonably be expected to have a materially adverse effect on safety or on service to existing customers or on the operation of or recovery of any processing facility;

(6) whether or not the gas satisfies minimum standards for quality, energy or recoverable hydrocarbon content consistently applied by the gatherer of that system;

(7) whether or not the gas gatherer is gathering gas from an affiliated marketer or producer;

(8) the fiscal impact to all parties; or

(9) any other matters that the commission determines to be relevant.

(k) In evaluating or establishing a fee, term, or practice for a gathering service, whether or not the fee, term, or practice is a just, reasonable, not unjustly discriminatory, and not unduly preferential fee that would result from good faith negotiations in a competitive market shall be determined by the commission. In evaluating or establishing a fee, term, or practice, all economically relevant factors including the following may be considered by the commission:

(1) the fees or terms that the gatherer receives from other shippers;

(2) the fees or terms charged by other gatherers within a relevant area determined by the commission;

(3) the financial risks of installing a gathering system;

(4) the financial risks of operating a gathering system;

(5) the capital, operating and maintenance costs of a gathering system;

(6) the existing gas contract or contracts;

(7) the fiscal impact to all parties;

(8) the fees, terms, or practices that the gas gatherer offers to an affiliated producer or marketer; or

(9) other factors that the commission determines to be relevant, provided that a fee shall not be required to be computed on a utility rate-of-return basis. (Authorized by and implementing L. 1997, Ch. 132, § 24 and L. 1997, Ch. 132, § 25; effective April 3, 1998.)

### **82-3-803. Abuse of complaint procedure.**

No person shall abuse the complaint process in any manner, including causing a delay in the proceedings that may damage a party's ability to pursue or defend the complaint. Any action deemed necessary to protect the rights of a party against abuse of the complaint process may be taken by the commission. (Authorized by and implementing L. 1997, Ch. 132, § 25; effective April 3, 1998.)

### **82-3-804. Notice of termination.**

A public utility providing service from a gas-gathering system shall provide written notice to the executive director of the commission at its Topeka office and to the person receiving service, not later than November 1 preceding the calendar year of service, that it cannot serve the needs of the person receiving service. The utility shall explain in detail any reasons it is unable to perform the service. Investigation of the proposed termination and re-

porting to the commission shall be made by the utilities division with the assistance of the conservation division of the commission. Any further action taken by the commission shall be conducted under chapter 66. (Authorized by and implementing L. 1997, Ch. 132, § 30; effective April 3, 1998.)

**82-3-900. Enhanced recovery severance tax exemption, application, hearing, penalty.** (a) Any operator seeking exemption from the severance tax provisions pursuant to K.S.A. 79-4217, and amendments thereto, shall submit an application to the director of the conservation division. The commission staff shall assign a certifying number to each application upon receipt. The determination as to whether or not the production enhancement project qualifies for exemption shall be made and certified by the director of the conservation division or the director's designee. In the event of an adverse decision at the director's level, an appeal may be made by requesting a hearing before the full commission pursuant to the Kansas administrative procedures act.

(b) Upon the certification by the director of the conservation division or by the commission after hearing, the certification shall be forwarded by the conservation division to the operator for submission to the department of revenue.

(c) All records submitted in connection with an application for exemption from the severance tax under this provision shall be retained by the corporation commission. These records shall be subject to the confidentiality provision of K.A.R. 82-3-107(e). The records shall be retained for no fewer than four years and shall be open at all times to the department of revenue.

(d) Either the first purchaser and the operator or an operator who has duly elected to report the severance tax shall be notified by the department of revenue of its acceptance of the certification from the state corporation commission.

(e) The willful filing of false documents, fraudulent documents, or both, in order to obtain an exemption from the severance tax with the conservation division shall constitute a simultaneous false filing with the department of revenue under K.S.A. 79-4225, and amendments thereto, and its provisions shall apply with respect to civil penalties, criminal prosecution, or both. (Authorized by and implementing K.S.A. 79-4217, as amended by L. 1998, ch. 130, sec. 28; effective March 19, 1999.)

**82-3-901. Determination of base production.** "Base production," as defined in K.S.A. 79-4217(b)(6)(A)(2), and amendments thereto, shall be determined with respect to production decline by the operator certifying under penalty of perjury as to the 12-month history of any well or wells that are part of the production enhancement project. The production decline curve shall be prepared and certified to by either a petroleum geologist or petroleum engineer under penalty of perjury. (Authorized by and implementing K.S.A. 79-4217, as amended by L. 1998, ch. 130, sec. 28; effective March 19, 1999.)

**82-3-902. Relief from severance tax; when available.** Relief from the severance tax under K.S.A. 79-4217, and amendments thereto, shall be available only to a well that has been in existence for no fewer than 12 months in order that an accurate production decline curve can be calculated and substantiated, except if the increase in production is a result of projects utilizing secondary recovery projects or new discoveries from the use of new technology, as defined in K.S.A. 79-4217(b)(6)(A)(4)(iii) or (vii), and amendments thereto. If the increase in production is the result of new technology, the base production shall be zero. Base production for secondary recovery projects shall be as determined under K.A.R. 82-3-906. (Authorized by and implementing K.S.A. 79-4217, as amended by L. 1998, ch. 130, sec. 28; effective March 19, 1999.)

**82-3-903. Certification of well history; right to review.** As part of the certification process, the operator shall certify that the history file of each well or wells substantiates that the efforts taken with respect to a work-over as defined in K.S.A. 79-4217, and amendments thereto, are more than routine maintenance, routine repair, and like-for-like replacement of downhole equipment. The right to review any of this documentation shall be reserved by the commission. (Authorized by and implementing K.S.A. 79-4217, as amended by L. 1998, ch. 130, sec. 28; effective March 19, 1999.)

**82-3-904. Wells qualifying for both new pool and production enhancement severance tax exemptions.** When a new well or the opening of a new zone in an existing well would qualify for a severance tax exemption both as a new pool under K.S.A. 79-4217(b)(4), and amendments thereto, and as a production enhancement project under

K.S.A. 79-4217(b)(6)(A)(4)(ii), and amendments thereto, the operator shall elect which exemption is being claimed. The seven-year exemption for any other production enhancement project for a well already qualifying for a new pool exemption shall begin on the date of the first sale after the enhancement project is completed. (Authorized by and implementing K.S.A. 79-4217, as amended by L. 1998, ch. 130, sec. 28; effective March 19, 1999.)

**82-3-905. New technology; qualification for severance tax exemption.** “New technology,” as used in K.S.A. 79-4217 and amendments thereto, shall include three-dimensional seismic studies and other technology that may be certified by the KCC technical staff. The applicant shall furnish to the Kansas corporation commission proof that the production is the result of new technology, as may be required by the commission staff. All wells drilled as a result of the utilization of new technology shall qualify for the severance tax exemption. (Authorized by and implementing K.S.A. 79-4217, as amended L. 1998, ch. 130, sec. 28; effective March 19, 1999.)

**82-3-906. Production enhancement projects; secondary recovery projects.** For secondary recovery projects, the base production and production decline calculations required under K.A.R. 82-3-901 shall be based on either of the following:

(a) Aggregate production of all producing wells within the boundaries of the secondary recovery project if unitized; or

(b) total production from the enhanced recovery project. (Authorized by and implementing K.S.A. 79-4217, as amended by L. 1998, ch. 130, sec. 28; effective March 19, 1999.)

**82-3-907. Production enhancement project; multiple well lease.** When a production enhancement project is performed on a multiple well lease producing into a common battery or meter, the operator shall make a separate filing for each well. A production test shall be performed on each individual well before the enhancement project and immediately following the enhancement project so that total lease production may be allocated to the individual wells for the purpose of establishing base production and production decline as referenced in K.A.R. 82-3-901. (Authorized by and implementing K.S.A. 79-4217, as amended by L. 1998, ch. 130, sec. 28; effective March 19, 1999.)

**82-3-908. Definition, “start-up date.”** The term “start-up date” shall be defined as the date of the first sale following the production enhancement procedure. (Authorized by and implementing K.S.A. 79-4217, as amended by L. 1998, ch. 130, sec. 28; effective March 19, 1999.)

**82-3-1000. Definitions: underground porosity gas storage facilities.** The following terms, as used in these regulations for underground porosity gas storage facilities, shall have the following meanings: (a) “Cushion gas” means the volume of gas required as permanent storage inventory to maintain adequate reservoir pressure for meeting minimum gas deliverability demands throughout the withdrawal season.

(b) “FERC” means the federal energy regulatory commission.

(c) “Fracture gradient” means the pressure gradient, measured in pounds per square inch per foot, that, if applied to a subsurface formation, will cause that formation to physically fracture.

(d) “Fresh water” means water containing not more than 1,000 milligrams of total dissolved solids per liter.

(e) “Gas storage injection or withdrawal well” means a well used to inject and withdraw natural gas stored in an underground porous and permeable reservoir.

(f) “Gas storage observation well” means a well either completed or recompleted for the purpose of observing subsurface phenomena, including the presence of hydrocarbon gas, pressure fluctuations, fluid levels and flow, and temperature.

(g) “Gas storage porosity reservoir” means a porous stratum of the earth that is separated from any other similar porous stratum by an impermeable stratum and is capable of being used for underground storage of natural gas.

(h) “Gas storage well” means any gas storage injection or withdrawal well, gas storage withdrawal well, or gas storage observation well completed or recompleted as part of an underground porosity gas storage facility.

(i) “Gas storage withdrawal well” means a well used only for the withdrawal of natural gas stored in an underground porous and permeable reservoir.

(j) “Leak detector” means a device capable of detecting by chemical or physical means the presence of hydrocarbon vapor or the escape of vapor through a small opening.

(k) “Licensed engineer” means an engineer that is licensed or authorized to practice engineering

in Kansas by the Kansas state board of technical professions.

(l) "Licensed geologist" means a geologist that is licensed or authorized to practice geology in Kansas by the Kansas state board of technical professions.

(m) "Packer" means an expanding mechanical device used in a well to seal off certain sections of the well when cementing, testing, or isolating the well from the completed interval.

(n) "Small, well-defined outside area" means an area, including a playground, recreation area, outdoor theater, and other place of public assembly, that is occupied by 20 or more persons on at least five days a week for 10 weeks in any 12-month period. The days and weeks shall not be required to be consecutive.

(o) "Underground porosity gas storage" means the storage of hydrocarbon gas in underground porous and permeable geologic strata that have been converted to hydrocarbon gas storage.

(p) "Underground porosity gas storage facility" and "storage facility" mean the leased acreage associated with the storage field. This term shall include the wellbore tubular goods, the wellhead, and any related equipment, including the last positive shutoff valve attached to the flowline.

(q) "Working gas" means the portion of the gas storage volume that can be removed from a gas storage porosity reservoir for deliveries and still maintain pressure sufficient to meet design deliverability.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2001 Supp. 55-1,115 and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

**82-3-1001. Notice of federal energy regulatory commission proceedings.** Whenever the operator of an underground porosity gas storage facility files any application or report concerning the storage facility or operation of the facility with FERC, the operator shall at the same time deliver a copy of this application or report to the commission.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 2001 Supp. 55-1,115 and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

**82-3-1002. Provisional operating permits and operating requirements for existing underground porosity storage facilities; pen-**

**alties.** (a) Application deadline; permitting procedure. No underground porosity gas storage facility or gas storage well in existence on or before July 1, 2002 shall continue in operation unless the following conditions are met:

(1) The operator has filed an application for a provisional underground porosity gas storage permit with the conservation division in accordance with subsection (b) on or before January 31, 2003.

(2) The conservation division has issued a written provisional permit or written temporary provisional permit granting the application. The application shall be acted upon by the commission within 90 days of receipt of the application.

(b) Application form; content. The original and two copies of each application shall be signed and verified by the operator, shall be filed with the conservation division on a form furnished by the commission, and shall provide the following information:

(1) The name of the underground porosity gas storage facility;

(2) the name, description, and average depth of the porosity reservoir or reservoirs being utilized for underground porosity storage;

(3) a site map showing the boundaries of the underground porosity gas storage facility, the location and well number of each gas storage well, including any observation wells, the location of cathodic protection boreholes or ground bed systems, and the location of all pertinent surface facilities located within the boundary of the storage facility. This site map shall be verified by the operator;

(4) a statement confirming that the applicant holds the necessary and sufficient property rights for construction and operation of the underground porosity gas storage facility;

(5) a tabular summary showing the location, well number, completion date, elevation, top and bottom depths of the completed interval, casing information, tubing and packer information, and cementing information for each gas storage well located within the boundary of the underground porosity gas storage facility. This tabular summary shall be verified by the operator;

(6) the results of a water quality test of fluid recovered from the underground porosity storage reservoir or reservoirs reporting the amount of chlorides and total dissolved solids for the fluid in milligrams per liter (mg/l). This test shall be conducted by a laboratory that is certified by the

state of Kansas. No gas storage shall be permitted in any underground porous stratum with chloride levels less than 5,000 milligrams per liter;

(7) the maximum wellhead injection rate and pressure currently utilized at the underground porosity gas storage facility and, if the facility is regulated by FERC, the maximum rate and pressure approved by FERC. In all cases, the applicant shall provide information showing that the maximum injection rate and pressure utilized at the facility will not exceed the fracture gradient and will not initiate fractures through the overlying strata that could enable stored gas or associated formation fluid to enter fresh and usable water strata or cause the injected gas to leak from the underground porosity gas storage reservoir. The fracture gradient of the formation may be required by the conservation division to be determined by a step rate test or by the calculation of a licensed engineer or a licensed geologist, using a method acceptable to the conservation division;

(8) a tabular summary of any gas storage wells located within the boundary of the underground porosity gas storage facility that have unrepaired casing leaks that are currently controlled with a tubing and packer completion;

(9) a schedule of completed and pending mechanical integrity testing for all gas storage wells utilized at the gas storage facility. All existing gas storage injection and withdrawal wells and gas storage withdrawal wells shall demonstrate mechanical integrity according to K.A.R. 82-3-1005 on or before July 1, 2004. All existing gas storage observation wells shall demonstrate mechanical integrity according to K.A.R. 82-3-1005 on or before July 1, 2007. Pressure testing or alternative tests or surveys conducted in accordance with K.A.R. 82-3-1005 and performed after July 1, 1999 shall be deemed to have demonstrated mechanical integrity on the date of the test or survey. All gas storage wells completed after July 1, 2002 shall demonstrate mechanical integrity according to K.A.R. 82-3-1005 before being placed into service as an active gas storage well;

(10) the current maximum storage volume, including values for cushion gas and working gas for the underground porosity gas storage facility;

(11) a detailed description of the storage facility's current safety plan;

(12) the applicant's license number;

(13) any other information that the conservation division requires; and

(14) payment of the application fee required by K.A.R. 82-3-1012.

(c) Safety plan required. Each operator of an underground porosity gas storage facility shall develop and implement a storage facility safety plan on or before January 31, 2003. This plan shall include current emergency response procedures, provisions to provide security against unauthorized activity, and any current gas release detection and prevention measures utilized by the facility. The emergency response procedures for the storage facility shall include contingency plans for gas storage well leaks and loss of containment from gas storage wells or the gas storage reservoir. The emergency response procedures shall also identify specific contractors and equipment vendors capable of providing necessary services and equipment to respond to any gas storage well leaks or loss of containment from one or more of the gas storage wells or the gas storage reservoir. Copies of the plan shall be available at the storage facility and the nearest operational office of the operator of the facility.

(d) Gas metering; required. The total volume of gas injected into and withdrawn from an underground porosity gas storage facility that is operating under a provisional permit or temporary provisional permit issued by the conservation division shall be metered according to K.A.R. 82-3-1006.

(e) Gas volume; reporting. The operator of an underground porosity gas storage facility operating under a provisional permit or temporary provisional permit issued by the conservation division shall report monthly, to the conservation division, the volume of gas placed into storage and the volume of gas removed from storage at the facility during the preceding month. The report shall be filed according to K.A.R. 82-3-1006.

(f) Gas leaks; reporting. The operator of an underground porosity gas storage facility operating under a provisional permit issued by the conservation division shall report any pressure changes or other monitoring data that indicate the presence of leaks in a gas storage well or the lack of confinement of the injected gases and any associated fluids to the underground porosity gas storage reservoir. This report shall be submitted according to K.A.R. 82-3-1006.

(g) Maximum term for provisional permits; extensions. The maximum term for provisional underground porosity gas storage permits issued by the conservation division shall not exceed two years from the date of issue. Underground

porosity gas storage facilities operating under a provisional permit shall file for a fully authorized operating permit in accordance with K.A.R. 82-3-1003 before the expiration of the provisional permit. The extension of a provisional permit may be granted administratively on a showing of good cause by the operator. If a request for an extension is administratively denied, the operator shall have a right to a hearing upon written request.

(h)(1) Provisional permit amendment. The operator of an existing underground porosity gas storage facility operating under a provisional permit shall file an application with the conservation division on a form furnished by the conservation division for an amendment to that provisional permit under any of the following:

(A) At any time that a material change in conditions has occurred in the operation of the storage facility or in the ability of the facility to operate without causing pollution or the waste of hydrocarbons;

(B) before expanding the areal extent of the underground porosity gas storage facility;

(C) before increasing the underground porosity gas storage facility reservoir pressure above the maximum permitted pressure;

(D) before adding any additional gas storage well within the underground porosity gas storage facility, if the well will be located 1,320 feet or less from the boundary of the storage facility; or

(E) before adding any additional gas storage well within the underground porosity gas storage facility, if the well will be located more than 1,320 feet from the boundary of the storage facility.

(2)(A) The applicant for any amendments under paragraphs (h)(1)(A) through (D) of this regulation shall publish notice of the application in at least two issues of the official county newspaper of each county in which the lands affected by the application are located. In addition, notice shall also be published in at least one issue of the Wichita Eagle newspaper. The applicant shall also deliver or publish any notice that the applicant deems necessary to ensure that those persons whose rights may be affected by the application have been sufficiently notified in accordance with applicable due process requirements.

(B) The application shall be held in abeyance for 15 days from the date of last publication or delivery of notice, whichever is later. If during the 15-day period a valid protest is filed according to K.A.R. 82-3-135b or if the commission on its own motion deems that there should be a hearing on

the application, a hearing shall be held. The applicant shall publish notice of the hearing in the same manner as that required by paragraph (h)(2)(A) above.

(C) If an application for an amendment is administratively denied, the operator shall have a right to a hearing upon written request.

(i) Penalties.

(1) Operating an underground porosity gas storage facility in violation of this regulation shall be punishable by a penalty of \$1,000, and the underground porosity gas storage facility may be shut down until compliance is achieved.

(2) Each day that the violation continues may be considered a separate violation. The penalties specified in this subsection may be increased by the commission if it finds that aggravating factors exist.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2001 Supp. 55-162, 55-164, 55-1,115, and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

**82-3-1003. Fully authorized operating permits and operating requirements for existing and new underground porosity gas storage facilities and underground porosity gas storage wells; penalties.** (a) Application and permit required. No underground porosity gas storage facility or gas storage well shall be put into operation and no underground porosity gas storage facility or gas storage well in existence before July 1, 2002 shall continue to operate after its provisional permit has expired, unless the following conditions are met:

(1) The operator has filed an application for a fully authorized underground porosity gas storage facility operating permit with the conservation division in accordance with subsection (b), and the operator has constructed or is operating the storage facility in compliance with provisions of this regulation.

(2) Each application for a fully authorized operating permit for an underground porosity gas storage facility to be constructed after July 1, 2002 also complies with K.A.R. 82-3-1004.

(3) The operator has received from the conservation division a written permit granting the application for full authorization.

(b) Application form; content. The original and two copies of each application for full authorization shall be signed and verified by the operator,

filed with the conservation division on a form furnished by the commission, and provide the following information:

(1) The name of the underground porosity gas storage facility and, if applicable, the permit number of the provisional permit for which the operator is requesting full authorization;

(2) the name, description, and average depth of the gas storage porosity reservoir or reservoirs being utilized for underground porosity gas storage;

(3) a geologic and hydrogeologic evaluation of the gas storage porosity reservoir or reservoirs and the surrounding formations. The evaluation shall include any available geophysical data and assessments of any regional tectonic activity, regional or local fault zones, and structural or stratigraphic anomalies. The evaluation shall focus on the gas storage porosity reservoir or reservoirs and adjacent confining layers. The evaluation shall also identify any oil and gas horizons known to be productive in the area of the storage facility and any freshwater-bearing horizons known to be developed in the area of the storage facility. The evaluation shall include exhibits and plan view maps showing the following:

(A) All water, oil, and gas exploration and development wells, and other man-made surface structures and activities within one mile outside of the storage facility boundary;

(B) any regional or local faulting;

(C) an isopach map of the gas storage reservoir or reservoirs;

(D) an isopach map of the adjacent confining layer;

(E) a structure map of the top and base of the storage reservoir or reservoirs;

(F) identification of all structural spill points or stratigraphic anomalies controlling the isolation of stored hydrocarbon gases or associated fluids; and

(G) structural and stratigraphic cross-sections that describe the geologic conditions at the underground porosity gas storage facility.

The geologic and hydrogeologic evaluation required under this paragraph shall be certified by a licensed geologist or licensed engineer. The operator of an underground porosity gas storage facility may submit existing geologic and hydrogeologic studies or evaluations in fulfillment of the requirement of this paragraph if those studies have been updated to reflect current storage facility conditions at the time of the application and have been certified as such by a licensed geologist or licensed engineer;

(4) an area of review evaluation, which shall include a review of the data of public record for wells that penetrate that part of the underground porosity reservoir designated as the gas storage porosity reservoir, and those wells that penetrate the underground porosity gas storage reservoir within one-fourth mile of the boundary of the underground porosity gas storage facility. This review shall determine if all abandoned wells have been plugged in a manner that prevents the movement of gas or associated fluids from the underground porosity gas storage reservoir. The area evaluation required under this paragraph shall be certified by a licensed geologist or licensed engineer. The applicant shall identify any wells that appear from the review of public records to be unplugged or improperly plugged, and any other unplugged or improperly plugged wells of which the applicant has actual knowledge;

(5) the calculated maximum storage volume for the underground porosity gas storage reservoir or reservoirs using a method acceptable to and filed with the conservation division. Storage volume calculations shall include working gas and cushion gas volumes. Any refinement of actual underground porosity gas storage reservoir volumes determined after continued operation of the facility shall be filed with the conservation division. Storage volume calculations filed according to this paragraph shall be certified by a licensed engineer or licensed geologist;

(6) a report of the maximum operating pressures to be utilized at the underground porosity gas storage facility. The maximum allowed storage reservoir pressure, measured in psig, shall be no greater than 75 percent of the fracture gradient of the formation as determined by a step rate test or as calculated by a licensed engineer or licensed geologist using a method acceptable to the conservation division. The underground porosity gas storage reservoir shall not be subjected to operating pressures in excess of the calculated fracture pressure even for short periods of time. Higher operating pressures may be allowed by the conservation division upon written application by the operator. The application, if approved by the conservation division, shall be subject to any conditions established by the conservation division;

(7) the results of multiple water quality tests of fluid recovered from the gas storage porosity reservoir or reservoirs reporting the amount of chlorides and total dissolved solids for the fluid in milligrams per liter. This test shall be conducted

by a laboratory that is certified by the state of Kansas. No porosity gas storage shall be permitted in porous strata with chloride levels less than 5,000 milligrams per liter;

(8) a schedule of completed and pending mechanical integrity testing for all gas storage wells utilized at the storage facility. All existing gas storage injection and withdrawal wells and gas storage withdrawal wells shall demonstrate mechanical integrity according to K.A.R. 82-3-1005 before July 1, 2004. All existing gas storage observation wells shall demonstrate mechanical integrity according to K.A.R. 82-3-1005 on or before July 1, 2007. Pressure testing or alternative tests or surveys conducted in accordance with K.A.R. 82-3-1005 and performed after July 1, 1999 shall be deemed to have demonstrated mechanical integrity on the date of the test or survey. All gas storage wells completed after July 1, 2002 shall demonstrate mechanical integrity according to K.A.R. 82-3-1005 before being placed into service as an active gas storage well;

(9) a current site map showing the boundaries of the underground porosity gas storage facility, the location and well number of all gas storage wells, including any observation wells, the location of cathodic protection boreholes or ground bed systems, and the location of all pertinent surface facilities within the boundary of the storage facility. This site map shall be verified by the operator;

(10) a statement confirming that the applicant holds the necessary and sufficient property rights for construction and operation of the underground porosity gas storage facility;

(11) a detailed description of the storage facility's current safety plan;

(12) the applicant's license number;

(13) any other information that the conservation division requires; and

(14) payment of the application fee required by K.A.R. 82-3-1012.

(c) Safety plan required. Each operator shall develop and implement a storage facility safety plan. This plan shall include emergency response procedures and provisions to provide security against unauthorized activity. The plan shall detail the safety procedures concerning the residential, commercial, and public land use in the proximity of the storage facility. The emergency response procedures shall include contingency plans for gas storage well leaks and loss of containment from gas storage wells or the gas storage reservoir. The emergency response procedures shall also identify

specific contractors and equipment vendors capable of providing necessary services and equipment to respond to such gas storage well leaks or loss of containment from gas storage wells or the gas storage porosity reservoir. The plan shall be updated as changes in safety features at the facility occur, or as the conservation division requires. Copies of the plan shall be available at the storage facility and at the nearest operational office of the operator of the storage facility.

(d) Safety systems required. Leak detectors shall be placed at all gas storage wells located within 330 feet of an inhabited residence, commercial establishment, church, school, small, well-defined outside area, or enclosed compressor site. Leak detectors, where applicable, shall be integrated with automated warning systems. Inspection and testing of these leak detectors shall comply with requirements of K.A.R. 82-3-1005. Identification signs shall be required at each gas storage well and shall comply with signage requirements specified in K.A.R. 82-3-1007.

(e) Well casing and cementing requirements.

(1) Gas storage wells in existence on July 1, 2002 shall comply with appropriate provisions of casing and cementing requirements as outlined in K.A.R. 82-3-104, K.A.R. 82-3-105, and K.A.R. 82-3-106. However, any intermediate or production casing strings or liners that are set in the wellbore shall be cemented with a sufficient volume of cement to fill the annular space to a point 500 feet above the top of the storage reservoir or to the surface, whichever is less.

(2) Gas storage wells completed after July 1, 2002 and completed with a tubing and packer configuration shall comply with appropriate provisions of casing and cementing requirements as outlined in K.A.R. 82-3-104, K.A.R. 82-3-105, and K.A.R. 82-3-106, except as outlined below:

(A) Any intermediate or production casing strings or liners that are set in the wellbore shall be cemented with a sufficient volume of cement to fill the annular space to a point 500 feet above the top of the storage reservoir or to the surface, whichever is less.

(B) All surface, intermediate, and production casings shall meet the standards specified in either of the following documents, both of which are hereby adopted by reference:

(i) "Bulletin on performance properties of casing, tubing, and drill pipe," API bulletin 5C2, as published by the American petroleum institute in October 1999; or

(ii) “specification for casing and tubing (U.S. customary units),” API specification 5CT, as published by the American petroleum institute in October 1998.

All surface, intermediate, and production casings shall be new casing or reconditioned casing of equivalent quality that has been pressure-tested in accordance with the requirements of paragraph (e)(2)(B). For new pipe, the pressure test conducted at the manufacturing mill or fabrication plant may be used to fulfill the requirements of paragraph (e)(2)(B).

(C) Emplacement of cement in the setting of the intermediate casing string, production casing string, or any liners shall be verified by a cement bond log, cement evaluation log, or any other evaluation method approved by the conservation division.

(D) (i) All tubing strings shall meet the standards contained in either of the documents adopted in paragraph (e)(2)(B) of this regulation. All tubing shall be new tubing or reconditioned tubing of equivalent quality that has been pressure-tested. For new tubing, the pressure test conducted at the manufacturing mill or fabrication plant may be used to fulfill this requirement.

(ii) For tubing completions, the packer shall be set at a depth at which the packer will be opposite a cemented interval of the long string casing and shall be set no more than 50 feet above the uppermost perforation or open hole for the gas storage reservoir.

(3) Each gas storage well completed after July 1, 2002 and not completed with a tubing and packer configuration shall be permitted only upon a showing of good cause. Each well shall, at a minimum, comply with appropriate provisions of casing and cementing requirements as outlined in K.A.R. 82-3-104, K.A.R. 82-3-105, and K.A.R. 82-3-106, except as outlined below:

(A) Any intermediate or production casing strings or liners that are set in the wellbore shall be cemented with a sufficient volume of cement to fill the annular space to the surface. The proposed cementing plan shall be approved by the conservation division in advance of drilling and cementing operations.

(B) All surface, intermediate, and production casings shall meet the standards contained in either of the documents adopted in paragraph (e)(2)(B) of this regulation.

All surface, intermediate, and production casings shall be new casing or reconditioned

casing of equivalent quality that has been pressure-tested. For new pipe, the pressure test conducted at the manufacturing mill or fabrication plant may be used to fulfill this requirement. The proposed casing plan shall be approved by the conservation division in advance of drilling and completion operations.

(C) Emplacement of cement in the setting of the intermediate casing string, production casing string, or any liners shall be verified by a cement bond log, cement evaluation log, or any other evaluation methods approved by the conservation division.

(D) Gas injection or withdrawal wells located within 330 feet of an inhabited residence, commercial establishment, church, school, or small, well-defined outside area shall be equipped with down-hole safety shutoff valves.

(f) Wellhead valves, connections, and flow line requirements. All wellhead components, including the casinghead and tubing head, valves, and fittings, shall be made of steel having operating pressure ratings sufficient to exceed the maximum injection pressures computed at the wellhead. These ratings shall be clearly identified on valves and fittings. The wellhead master valve on each gas storage well shall be fully opening and shall be sized to the diameter of the casing or tubing string to which the valve is attached. Each flow line connected to the wellhead shall be equipped with a manually operated positive shutoff valve located on the wellhead.

(g) Gas metering; required. The total volume of gas injected into and withdrawn from an underground porosity gas storage facility operating under a fully authorized gas storage permit issued by the conservation division shall be metered according to the requirements of K.A.R. 82-3-1006.

(h) Gas volume; reporting. The operator of an underground porosity gas storage facility operating under a fully authorized gas storage permit issued by the conservation division shall report monthly to the conservation division the volume of gas placed into storage and the volume of gas removed from storage at the facility during the preceding month. The report shall be filed according to K.A.R. 82-3-1006.

(i) Gas leaks; reporting. The operator of an underground porosity gas storage facility operating under a fully authorized gas storage permit issued by the conservation division shall report any pressure changes or other monitoring data that indicate the presence of leaks in a gas storage well or the lack of confinement of the injected gases and

any associated fluids to the gas storage reservoir. The report shall be filed according to K.A.R. 82-3-1006.

(j) Modification, suspension, or cancellation of permit. A fully authorized operating permit may be modified, suspended, or canceled after notice and opportunity for hearing if a material change in conditions has occurred in the operation of the gas storage facility or if there are material deviations from the information originally furnished to the conservation division that affect the safe operation of the facility or the ability of the facility to operate without causing the waste of hydrocarbons, pollution, or a threat to public safety. All underground porosity gas storage facility operations shall cease upon suspension or cancellation of a permit under this subsection.

(k)(1) Application required to amend permit; fully authorized permit amendment. The operator of a storage facility operating under a fully authorized operating permit shall file an application with the conservation division on a form furnished by the conservation division for an amendment to that permit under any of the following:

(A) At any time that a material change in conditions has occurred in the operation of the gas storage facility or in the ability of the facility to operate without causing pollution or the waste of hydrocarbons;

(B) before expanding the areal extent of the underground porosity gas storage facility;

(C) before increasing the underground porosity gas storage reservoir pressure above the maximum permitted pressure;

(D) before adding any additional gas storage well within the underground porosity gas storage facility, if the well will be located 1,320 feet or less from the boundary of the storage facility; or

(E) before adding any additional gas storage well within the underground porosity gas storage facility, if the well will be located more than 1,320 feet from the boundary of the storage facility.

(2)(A) The applicant for any amendments under paragraphs (k)(1)(A) through (D) of this regulation shall publish notice of the application in at least two issues of the official county newspaper of each county in which the lands affected by the application are located. In addition, notice of the application shall also be published in at least one issue of the Wichita Eagle newspaper. The applicant shall also deliver or publish any notice that the applicant deems necessary to insure that those persons whose rights may be affected by the ap-

plication have been sufficiently notified in accordance with applicable due process requirements.

(B) The application shall be held in abeyance for 15 days from the date of the last publication or delivery of notice, whichever is later. If during that 15-day period a valid protest is filed according to K.A.R. 82-3-135b or if the commission on its own motion deems that there should be a hearing on the application, a hearing shall be held. The applicant shall publish notice of the hearing in the same manner as that required by paragraph (k)(2)(A) above.

(C) If an application for an amendment is administratively denied, the operator shall have a right to a hearing upon written request.

(l) Penalties.

(1) Operating an underground porosity gas storage facility in violation of this regulation shall be punishable by a penalty of \$1,000, and the underground porosity gas storage facility may be shut down until compliance is achieved.

(2) Each day that the violation continues may be considered a separate violation. The penalties specified in this subsection may be increased by the commission if it finds that aggravating factors exist.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2001 Supp. 55-162, 55-164, 55-1,115, and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

**82-3-1004. Notice of application for a permit to operate an underground porosity gas storage facility constructed after July 1, 2002.**

(a) Notice to adjacent property owners. Each applicant for an underground porosity gas storage facility operating permit for a facility constructed after July 1, 2002 shall give notice on or before the date the application is filed with the conservation division by mailing or delivering a copy of the application to the following:

(1) Each operator or lessee of record within one-half mile of the boundary of the storage facility;

(2) each owner of record of the minerals in unleased acreage within one-half mile of the boundary of the storage facility; and

(3) the landowner on whose land the well or wells affected by the application is located.

(b) Notice by publication. The applicant shall publish notice of the application in at least two issues of the official county newspaper of each county in which the lands affected by the application are located. In addition, notice of the applica-

tion shall also be published in at least one issue of the Wichita Eagle newspaper. The applicant shall also deliver or publish any notice that the applicant deems necessary to insure that those persons whose rights may be affected by the application have been sufficiently notified in accordance with applicable due process requirements.

(c) Protest; notice of hearing.

(1) The application shall be held in abeyance for 15 days from the date of last publication or delivery of notice, whichever is later. If during that 15-day period a valid protest is filed according to K.A.R. 82-3-135b or if the commission on its own motion deems that there should be a hearing on the application, a hearing shall be held.

(2) The applicant shall publish notice of the hearing in the same manner as that required by subsection (b).

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2001 Supp. 55-1,115 and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

**82-3-1005. Testing and inspection requirements for underground porosity gas storage facilities and underground porosity gas storage wells; penalty.** (a) Mechanical integrity testing requirements; existing wells. Each operator of a gas storage injection and withdrawal well or a gas storage withdrawal well completed before July 1, 2002 shall demonstrate the mechanical integrity of each such well according to this regulation before July 1, 2004. Each operator of an existing gas storage observation well shall demonstrate the mechanical integrity of each gas storage observation well according to this regulation on or before July 1, 2007. Each operator of a gas storage well shall subsequently retest each well at least once every five years following the initial mechanical integrity test performed on the well. The operator and a representative of the conservation division shall mutually agree to a date for the mechanical integrity test. Test results shall be verified by the operator's representative. An extension of time to complete or conduct mechanical integrity testing may be granted upon a showing of good cause or as part of an approved alternate testing program. Approved testing procedures for gas storage wells shall include the following:

(1) Pressure tests.

(A) Gas storage wells equipped with a tubing and packer completion shall be pressure tested at

no less than 300 psig or 100 percent of the maximum authorized injection pressure for the underground porosity gas storage facility, whichever is less. The pressure shall be applied to the tubing casing annulus at the surface for a period of 30 minutes and shall have no decrease in pressure greater than 10 percent of the required minimum test pressure. For tubing completions, the packer shall be set at a depth at which the packer will be opposite a cemented interval of the long string casing and shall be set no more than 50 feet above the uppermost perforation or open hole for the gas storage reservoir.

(B) Gas storage wells not completed with a tubing and packer completion shall be pressure tested at 100 percent of the maximum authorized injection pressure for the underground porosity gas storage facility. The pressure shall be applied to the long string casing at the surface after running a retrievable plug, which shall be set no more than 50 feet above the uppermost perforation or open hole of the gas storage reservoir. The test pressure shall be applied for at least 30 minutes and shall have no decrease in pressure greater than 10 percent of the required minimum test pressure.

(2) Alternate tests. An alternative test method, including a tracer survey, temperature survey, gamma ray log, neutron log, noise log, casing inspection log, or a combination of two or more of these surveys and logs, may be used to demonstrate mechanical integrity if approved in advance by the conservation division.

(b) Mechanical integrity testing requirements; newly constructed wells. Each operator of a gas storage well completed after July 1, 2002 shall demonstrate the mechanical integrity of each well according to the testing procedures established in subsection (a) of this regulation before placing the well into service as an active gas storage well. Each operator of a gas storage well shall subsequently retest each well at least once every five years following the initial mechanical integrity test performed on the well. The date for this mechanical integrity test shall be mutually agreed upon by the operator and a representative of the conservation division. Test results shall be verified by the operator's representative. An extension of time to complete or conduct mechanical integrity testing may be granted upon a showing of good cause or as part of an approved alternate testing program.

(c) Supervision of mechanical integrity testing. Conservation division representatives shall be responsible for witnessing a minimum of 25 per-

cent of all mechanical integrity tests conducted by each storage facility operator. However, the conservation division's inability to witness a minimum of 25 percent of all mechanical integrity tests shall not result in any penalty to the operator of the underground porosity gas storage facility if the operator has complied with subsections (a) and (b) of this regulation.

(d) Requirements upon test failure. If a gas storage well fails to demonstrate mechanical integrity by an approved method, the operator of the well shall immediately isolate the leak or leaks in a manner that contains natural gas and associated fluids in the well or storage reservoir and demonstrates that the well does not pose a threat to fresh and usable water resources or to public safety. The operator shall, within 90 days, perform one of the following:

- (1) Repair and retest the well to demonstrate mechanical integrity;
- (2) plug the well; or
- (3) file an application with the conservation division for temporary abandonment according to K.A.R. 82-3-1011.

(e) Leak detector inspections and testing. Each leak detector required under K.A.R. 82-3-1003 shall be tested once each calendar year and, if defective, shall be repaired or replaced within 10 days. Each repaired or replaced detector shall be retested if required by the conservation division. An extension of time for repair or replacement of a leak detector may be granted upon a showing of good cause by the operator of the underground porosity gas storage facility. A record of each inspection, which shall include the inspection results, shall be maintained by the operator for at least five years and shall be made available to the conservation division upon request.

(f) Penalties.

(1) The failure to perform a mechanical integrity test on a gas storage well as required under subsection (a) or (b) of this regulation shall be punishable by a \$1,000 penalty.

(2) The failure to comply with the requirements of subsection (d) of this regulation shall be punishable by a \$1,000 penalty.

(3) The failure to comply with the requirements of subsection (e) of this regulation shall be punishable by a \$500 penalty per occurrence.

(4) Each day that a violation of this regulation continues may be considered a separate violation. The penalties specified in this subsection may be increased by the commission if it finds that ag-

gravating factors exist. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2003 Supp. 55-162, K.S.A. 2003 Supp. 55-164, and K.S.A. 2003 Supp. 55-1,115; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002; amended Jan. 14, 2005.)

**82-3-1006. Storage facility monitoring and reporting.** (a) Monthly wellhead pressure monitoring; record retention. At the time the application for a provisional or fully authorized permit is submitted, the operator shall begin monitoring and recording the wellhead pressure of each gas storage well, including each annulus of the well, on a monthly basis. However, if the operator has provided sufficient evidence to the conservation division that the annulus has been cemented to the surface, no monitoring and reporting shall be required for that annular space. These records shall be retained by the operator for five years.

(b) Annual report of wellhead pressures. Each operator shall annually report information regarding wellhead pressures for each gas storage well to the commission. This report shall be submitted on a form furnished by the commission.

(c) Report of potential leak. The operator of an underground porosity gas storage facility shall report any pressure changes or other monitoring data that indicate the presence of leaks in the well or the lack of confinement of the injected gases and any associated fluids to the gas storage reservoir. This report shall be made orally as soon as practicable to the appropriate conservation district field office following the occurrence of the leak and shall be confirmed in writing to the conservation division office within three working days.

(d) Gas metering; record retention. The total volume of gas injected into and withdrawn from a storage facility shall be metered through a master meter. The gas volumes shall be metered with a meter that has sufficient capacity and is approved by the conservation division. The operator of the storage facility shall keep the original field record consisting of magnetic tapes, digital electronic data, meter charts, or records of gas injected or withdrawn for at least five years. This information shall be made available to the conservation division upon request.

(e) Monthly volume report. The operator of an underground porosity gas storage facility shall, on or before the last day of each month, file with the conservation division a report showing the vol-

ume of gas placed into storage and the volume of gas removed from storage at the storage facility during the preceding month. The report shall also state the total volume of gas stored on the first and last days of the preceding month.

(f) Penalties.

(1) The failure to file or timely file the annual pressure report required under subsection (b) shall be punishable by a \$100 penalty.

(2) The failure to file or timely file the monthly gas volume report required under subsection (e) shall be punishable by a \$100 penalty.

(3) The failure to comply with the reporting requirements of subsection (c) of this regulation shall be punishable by a penalty of up to \$5,000 per occurrence.

(4) Each day that a violation of this regulation continues may be considered a separate violation. The penalties specified in this subsection may be increased by the commission if it finds that aggravating factors exist.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2001 Supp. 55-162, 55-164, 55-1,115, and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

**82-3-1007. Identification signs.** (a) Identification signs required. Each operator shall identify each gas storage well and associated compressor site by posting a sign immediately adjacent to the wellhead or compressor site. The sign shall be durable and shall be large enough to be legible under normal daytime conditions at a distance of 50 feet. The sign shall include all of the following information:

(1) The name and license number of the operator;

(2) the name of the storage facility and the gas storage well number or compressor site name or number;

(3) the location of the gas storage well or compressor site by quarter section, section, township, range, and county; and

(4) the emergency contact phone number or numbers for the operator of the storage facility.

(b) Penalty. The failure to comply with the requirements of subsection (a) of this regulation shall be punishable by a \$100 penalty per occurrence. Each day that a violation of this regulation continues may be considered a separate violation. The penalties specified in this subsection may be increased by the commission if it finds that aggravating factors exist.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2001 Supp. 55-1,115 and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

**82-3-1008. Safety inspections.** (a) Annual safety inspections required. Each operator of an underground porosity gas storage facility shall conduct an annual safety inspection of the facility and shall file with the conservation division a written report consisting of the inspection procedure and results within 30 days following completion of the inspection. The operator shall notify the conservation division at least 10 days before each inspection so that a representative of the conservation division can be present to witness the inspection. An extension of time to conduct an inspection may be granted only upon a showing of good cause.

(b) Inspection criteria. Each inspection shall include verification of all of the following:

(1) All gas storage well manual valves are in normal operating condition.

(2) All surface automatic shut-in safety valves are in normal operating condition.

(3) Wellheads and all related equipment are in normal operating condition.

(4) All warning signs, safety fences or barriers, and security equipment meet the requirements of the operator's safety plan.

(c) Penalty. The failure to comply with the requirements of this regulation shall be punishable by a \$500 penalty per occurrence. Each day that a violation of this regulation continues may be considered a separate violation. The penalties specified in this subsection may be increased by the commission if it finds that aggravating factors exist.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2001 Supp. 55-162, 55-164, 55-1,115, and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

**82-3-1009. Transfer of a gas storage permit; penalty.** (a) Transfer authority required. Authority to operate an underground porosity gas storage facility under a permit from the conservation division shall not be transferred from one operator to another without the approval of the conservation division. The transferor operator shall notify the conservation division in writing of the intent to transfer authority to operate an un-

derground porosity gas storage facility from one operator to another. The written notice shall contain the following information:

- (1) The name and address of the transferor operator and that operator's license number;
- (2) a list of all active and inactive gas storage wells on the storage facility authorized under the permit being transferred;
- (3) the permit number;
- (4) the gas storage reservoir or reservoirs covered by the permit;
- (5) the proposed effective date of transfer;
- (6) the signature of the transferor operator and the date signed;
- (7) the name and address of the transferee operator and that operator's license number; and
- (8) the signature of the transferee operator and the date signed.

(b) License required. Transfers shall not be made to any individual, partnership, corporation, or municipality that is not licensed as a gas storage operator at the time of the proposed transfer or that does not meet the applicable financial responsibility requirements under K.A.R. 82-3-120.

(c) Approval requirements; notification. A copy of the approved transfer shall be mailed by the conservation division to the transferee operator and the transferor operator. As a condition of approval of the transfer, the transferor operator may be required by the commission to show that the storage facility meets the regulatory requirements for mechanical integrity tests and safety inspections. The transferor operator may be required to provide annual pressure-monitoring reports for that operator's period of operation of the facility.

(d) Identification signs. Within 90 days after any approved transfer, the transferee operator shall change the identification signs specified in K.A.R. 82-3-1007 to show the transferee operator information.

(e) Penalties. Each attempted transfer in violation of this regulation shall be void. Additionally, each violation of this regulation shall be punishable by a penalty of up to \$1,000 for the first violation, \$2,000 for the second violation, and \$3,000 plus a license review for the third violation. Each day that a violation of this regulation continues may be considered a separate violation. The penalties specified in this subsection may be increased by the commission if it finds that aggravating factors exist.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implement-

ing K.S.A. 2001 Supp. 55-162, 55-164, 55-1,115, and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

**82-3-1010. Notice of plugging, plugging methods and procedures, plugging report, and plugging fee for gas storage wells; penalty.** (a) Plugging requirements. The plugging of underground porosity gas storage wells shall be accomplished in accordance with K.A.R. 82-3-113, K.A.R. 82-3-114, K.A.R. 82-3-117, and K.A.R. 82-3-118, except as specifically provided below:

(1) To meet the requirement of K.A.R. 82-3-113(b)(2), the operator shall provide a written plugging plan to the conservation division and the appropriate district office no later than 30 days before the planned commencement of plugging operations.

(2) The operator of any gas storage well that shows a positive wellhead shut-in pressure or gas flow at the surface immediately before the commencement of plugging operations shall complete one of the following before commencing plugging operations:

(A) Have a mechanical bridge plug or other approved control device set immediately above the porosity storage reservoir or reservoirs before commencing cementing operations; or

(B) Implement additional cementing procedures as approved by the appropriate district field office to ensure placement of a cement plug across and above the gas storage reservoir.

(3) The operator of each tubingless gas storage well shall plug the well by displacing cement inside the long string and any intermediate casing from the total depth or plug-back total depth of the well to the surface. The operator shall also ensure that there is adequate cement in the annular space between casing strings and the wellbore.

(b) Penalty. The failure of an operator to comply with subsection (a) of this regulation shall be punishable by a \$500 penalty and a requirement that the operator of the underground porosity gas storage well properly plug the well according to this regulation. Each day that a violation of this regulation continues may be considered a separate violation. The penalties specified in this subsection may be increased by the commission if it finds that aggravating factors exist.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 2001 Supp. 55-162, 55-164, 55-1,115,

and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

**82-3-1011. Temporary abandonment of storage wells; well plugging; temporary and permanent abandonment of a storage facility; penalties.** (a) Requirements for cessation of well operations. Within 90 days after injection, withdrawal, or observation operations cease on any well completed for the purpose of underground porosity gas storage, the operator of that well shall perform one of the following:

- (1) Plug the well; or
- (2) file an application with the conservation division requesting temporary abandonment, on a form furnished by the conservation division.

(b) Approval required for temporary abandonment. Each operator shall be required to obtain approval from the commission if the operator desires temporary abandonment status for any underground porosity gas storage well. If the operations on any temporarily abandoned gas storage well are not resumed within one year after the application has been approved, the well shall be deemed a permanently abandoned well, and the operator of the well shall comply with regulations of the commission relating to the plugging of gas storage wells. Upon submitting an application to the conservation division before the expiration of the one-year period and for good cause shown, temporary abandonment status may be extended by the conservation division for one year. Additional one-year extensions may be granted by the conservation division.

(c) Right of denial. After an application for temporary abandonment of an underground porosity gas storage well has been filed, the gas storage well shall be subject to inspection and record review by the conservation division to determine the likelihood that the temporary abandonment of the well might cause pollution, the waste of hydrocarbons, or a threat to public safety. If necessary to prevent pollution, the waste of hydrocarbons, or a threat to public safety, temporary abandonment may be denied by the conservation division, and the well may be required to be plugged or repaired according to the specifications received from the conservation division and in accordance with its regulations.

(d) Plugging of temporarily abandoned gas storage wells. At the expiration of the temporary abandonment period, the operator of each underground porosity gas storage well that is tempo-

rarily abandoned shall plug or repair the well or return the well to operation, in accordance with these regulations.

(e) Temporary abandonment of a storage facility. The operator of an underground porosity gas storage facility may temporarily abandon the storage facility upon submitting written notice to the conservation division. This notice shall include the following:

- (1) The date on which the storage facility is to be temporarily abandoned;
- (2) the projected temporary abandonment period;
- (3) the monitoring procedures to be utilized at the facility during the temporary abandonment period;
- (4) the temporary abandonment applications for each gas storage well within the facility filed according to subsection (b) of this regulation, except any gas storage wells for which temporary abandonment has already been approved; and
- (5) any other information required by the conservation division.

(f) Permanent abandonment and decommissioning of a storage facility. The operator of an underground porosity gas storage facility may permanently abandon and decommission the storage facility upon submitting written notice to the conservation division. This notice shall include the following:

- (1) The anticipated date on which the storage facility is to be permanently abandoned and decommissioned;
- (2) the anticipated field pressure at abandonment;
- (3) a detailed plan and schedule approved by the conservation division for the orderly and timely abandonment and decommissioning of the facility, which shall address the following:
  - (A) The identification of all surface and below-ground facilities to be abandoned;
  - (B) the name or names of the person or persons who will be responsible for any surface facilities abandoned in place;
  - (C) the surface restoration of all well sites and surface facilities to original grade, including the proper closure of all surface impoundments;
  - (D) the removal of any unused concrete bases, machinery, operating materials, and other debris;
  - (E) the disposal of all wastes in accordance with applicable Kansas statutes and regulations;
  - (F) the plugging of all gas storage wells in conformance with K.A.R. 82-3-1008; and

(G) any other information required by the conservation division; and

(4) a demonstration of compliance with the requirements of K.S.A. 55-1208, and amendments thereto, if applicable to the underground porosity gas storage facility.

(g) Permit revocation upon permanent abandonment of storage facility. The underground porosity gas storage facility operating permit shall be revoked by the conservation division upon the completion of the requirements of the abandonment and decommissioning schedule and the delivery to the conservation division of final shut-in pressure data for each gas storage well plugged.

(h) Penalties.

(1) The failure to comply with subsection (a) or (b) of this regulation shall be punishable by a \$100 penalty per occurrence.

(2) The failure to file a notice of temporary abandonment of an underground porosity gas storage facility in accordance with subsection (e) of this regulation shall be punishable by a \$500 penalty.

(3) The failure to file a notice of permanent abandonment of an underground porosity gas storage facility in accordance with subsection (f) of this regulation shall be punishable by a \$1,000 penalty.

(4) Each day that a violation of this regulation continues may be considered a separate violation. The penalties specified in this subsection may be increased by the commission if it finds that aggravating factors exist.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2001 Supp. 55-162, 55-164, 55-1,115, and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

**82-3-1012. Assessment of costs for underground porosity gas storage facilities and gas storage wells.** (a) Annual well fee. An annual fee of \$240 shall be assessed for each active or inactive unplugged gas storage well located within the boundary of any underground porosity gas storage facility. The total annual well fee assessment shall be based on the number of the operator's gas storage wells in existence on the first day of November each year. The operator of the storage facility shall remit the total fee based on this well count in a single check to the conservation division on or before the last day of January each year.

(b) Application fees. The following fee or fees shall be submitted with each of the following applications:

(1)(A) For a provisional storage facility operating permit application filed according to K.A.R. 82-3-1002, each applicant shall submit a fee of \$2,000. In addition, for each gas storage well included in this permit application, the applicant shall submit a fee of \$50.

(B) For any application to amend a provisional storage facility operating permit issued according to K.A.R. 82-3-1002, each applicant shall submit a fee of \$250.

(2)(A) For a fully authorized storage facility operating permit application filed according to K.A.R. 82-3-1003, each applicant shall submit a fee of \$2,500. In addition, for each gas storage well included in this permit application, the applicant shall submit a fee of \$75.

(B) For any application to amend a fully authorized storage facility operating permit issued according to K.A.R. 82-3-1003, each applicant shall submit a fee of \$250.

(c) Fees nonrefundable. Each fee shall be nonrefundable.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 2001 Supp. 55-1,115 and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

**82-3-1100, 82-3-1101, 82-3-1102, 82-3-1103, 82-3-1104, 82-3-1105, 82-3-1106, 82-3-1107, 82-3-1108, 82-3-1109, and 82-3-1110.** (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010; revoked Aug. 14, 2015.)

**82-3-1111.** (Authorized by K.S.A. 2008 Supp. 55-1637 and 55-1640; implementing K.S.A. 2008 Supp. 55-1637; effective Feb. 26, 2010; revoked Aug. 14, 2015.)

**82-3-1112, 82-3-1113, 82-3-1114, 82-3-1115, and 82-3-1116.** (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010; revoked Aug. 14, 2015.)

**82-3-1117.** (Authorized by and implementing K.S.A. 2008 Supp. 55-1637; effective Feb. 26, 2010; revoked Aug. 14, 2015.)

**82-3-1118 and 82-3-1119.** (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010; revoked Aug. 14, 2015.)

**82-3-1120.** (Authorized by and implementing K.S.A. 2007 Supp. 55-1639; effective Feb. 26, 2010; revoked Aug. 14, 2015.)

**82-3-1200. Definitions; compressed air energy storage.** The terms and definitions in K.A.R. 82-3-101, with some definitions modified as follows, shall apply to these regulations for compressed air energy storage, in addition to the new terms and definitions specified: (a) "Abandonment" means the process of plugging all compressed air energy storage wells and removing all surface equipment at a storage facility.

(b) "Air" means the portion of the atmosphere, external to buildings, to which the general public has access.

(1) "Cushion air" means the volume of air maintained as permanent air storage inventory throughout compressed air energy storage operations.

(2) "Working air" means any air in a compressed air energy storage cavern or reservoir in addition to the cushion air.

(c) "Certified laboratory" means a laboratory certified by the Kansas department of health and environment.

(d) "Class I injection well" means any of the following:

(1) Any well used by a generator of hazardous waste, or an owner or operator of a hazardous waste management facility, to inject hazardous waste beneath the lowermost formation containing an underground source of drinking water within one-quarter mile of the wellbore;

(2) any industrial or municipal disposal well that injects fluids beneath the lowermost formation containing an underground source of drinking water within one-quarter mile of the wellbore; or

(3) any radioactive waste disposal well that injects fluids below the lowermost formation containing an underground source of drinking water within one-quarter mile of the wellbore.

(e) "Compressed air energy storage" means the process of compressing and injecting air into an underground geologic stratum and withdrawing the air to generate electricity.

(f) "Compressed air energy storage cavern" and "cavern" mean an underground cavity, created in a bedded salt formation by solution mining, where compressed air is stored.

(g) "Compressed air energy storage reservoir" and "reservoir" mean a porous geologic stratum,

vertically separated from overlying usable water formations by a laterally continuous vertical flow barrier, where compressed air is stored.

(h) "Compressed air energy storage well" and "storage well" mean a well capable of injecting air from the surface into a cavern or reservoir, or withdrawing air from the cavern or reservoir to the surface, including any wellbore tubular good, wellhead, air flow line, brine line, and surface equipment used to maintain cavern or reservoir integrity, through the last positive shutoff valve.

(1) "Active well" means a storage well that is not in plugging-monitoring status and is not plugged.

(2) "Cavern storage well" means a storage well used to inject air into or withdraw air from a cavern.

(3) "Reservoir storage well" means a storage well used to inject air into or withdraw air from a reservoir.

(A) "Injection well" means a reservoir storage well used to inject compressed air from the surface into a reservoir.

(B) "Withdrawal well" means a reservoir storage well used to withdraw compressed air from the reservoir to the surface.

(i) (1) "Compressed air energy storage facility" and "storage facility" mean the cavern or reservoir, the leased acreage above a cavern or reservoir and within a storage facility boundary, and the following:

(A) Electrical generating facility;

(B) equipment used to maintain cavern or reservoir storage integrity;

(C) injection and withdrawal flow line, valve, and equipment connecting the electrical generating facility to a storage well; and

(D) storage well, observation well, and monitoring well.

(2) (A) "Cavern storage facility" means a storage facility that utilizes a cavern.

(B) "Reservoir storage facility" means a storage facility that utilizes a reservoir.

(j) "Corrosion control system" means any process used to prevent corrosion at a storage facility, including cathodic protection, metal coating, corrosive inhibiting fluid, and non-corrosive internal lining.

(k) "Decommission" means to declare in writing that air injection and withdrawal activities will cease at the operator's storage facility.

(l) "Electrical generating facility" means a building or area that contains the equipment used to generate electricity, including any air compressor train, recuperator, expander, and combustion

turbine, but not including any brine line, air flow line located outside the electrical generating facility, or surface equipment used to maintain cavern or reservoir mechanical integrity.

(m) "Excavated mine cavity" means a rock formation with a portion of the rock material removed, not including any cavern created by solution mining.

(n) "First fill" means the process of filling the cavern storage well and cavern with air and displacing saturated brine to the surface.

(o) "Fracture gradient" means the ratio of pressure per unit of depth, measured in pounds per square inch per foot, that if applied to a subsurface formation would cause the formation to physically fracture.

(p) "Kansas board of technical professions" means the state board responsible for licensing persons to practice engineering, geology, and land surveying in Kansas.

(1) "Licensed professional engineer" means a professional engineer licensed to practice engineering in Kansas by the Kansas board of technical professions.

(2) "Licensed professional geologist" means a geologist licensed to practice geology in Kansas by the Kansas board of technical professions.

(3) "Licensed professional land surveyor" means a professional land surveyor licensed to practice land surveying in Kansas by the Kansas board of technical professions.

(q) "Leak" means any loss of air or harmful substances at the surface, including a loss from the wellhead, tubing, casing, around the packer, or an air flow line located outside an electrical generating facility.

(r) "Leak detector" means any device capable of detecting, by chemical or physical means, a leak of harmful substances or air.

(s) "License" means the revocable, written permission issued by the director to an operator to conduct compressed air energy storage activities.

(t) "Liner" means steel casing installed and cemented in the production casing.

(u) "Liquefied petroleum gas" and "LPG" mean any byproduct or derivative of oil or gas, including propane, butane, isobutane, and ethane, maintained in a liquid state by pressure and temperature conditions.

(v) "Loss of containment" means any migration of air beyond any boundary of a cavern storage well or reservoir storage facility.

(w) "Maximum allowable operating pressure"

means the maximum pressure authorized by the director and measured at the wellhead.

(x) "Maximum operating pressure" means the maximum pressure measured at the wellhead over a 24-hour period.

(y) "Monitoring well" means a well used to sample and monitor a usable water aquifer.

(1) "Deep monitoring well" means a monitoring well used to sample and monitor the deepest usable water aquifer at a storage facility.

(2) "Shallow monitoring well" means a monitoring well used to sample and monitor the shallowest usable water aquifer at a storage facility.

(z) "Natural thermal gradient" means the ratio of degrees Fahrenheit per foot that exists in a subsurface formation before any well-drilling activity.

(aa) "Normal operating condition" means that the wellhead master valve, each positive shutoff valve, and each manual valve at a storage facility can be fully opened and closed with reasonable ease and can hold pressure in the closed position.

(bb) "Observation well" means a well used to detect or monitor a loss of containment associated with a cavern or reservoir.

(cc) "Operator" means the person recognized by the director as responsible for the physical operation and control of a storage facility.

(dd) "Packer" means an expandable mechanical device used to seal off any section of a well to cement, test, or isolate the well from a completed interval.

(ee) "Permit" means the revocable, written permission issued by the director for a compressed air energy storage facility to be used by a licensee.

(ff) "Pit" means any constructed, excavated, or naturally occurring depression upon the surface of the earth. This term shall include any surface pond.

(1) "Containment pit" means a temporary pit constructed to aid in the cleanup and to temporarily contain fluids resulting from oil and gas activities that were spilled as a result of immediate, unforeseen, and unavoidable circumstances.

(2) "Drilling pit" means any pit, including reserve pits and working pits, used to temporarily confine fluid or waste generated during the drilling or completion of any storage well, monitoring well, or observation well.

(3) "Emergency pit" means a permanent pit that is used for the emergency storage of fluid discharged as a result of any equipment malfunction.

(4) "Haul-off pit" means a pit used to store spent drilling fluids and cuttings that have been

transferred from an area where surface geological conditions preclude the use of an earthen pit.

(5) “Reserve pit” means a pit used to store spent drilling fluids and cuttings that have been transferred from a working pit.

(6) “Settling pit” means a pit used for the collection or treatment of fluids.

(7) “Working pit” means a pit used to temporarily confine fluids or waste resulting from the drilling or completion of any storage well, monitoring well, or observation well.

(8) “Workover pit” means a pit used to contain fluids during the performance of remedial operations on a previously completed well.

(gg) “Plugged well” means a well that is filled with cement and abandoned.

(hh) “Plugging-monitoring status” means the status of a cavern storage well that is filled with saturated brine to monitor cavern pressure stabilization from the surface.

(ii) “Saturated brine” means saline water with a sodium chloride concentration greater than or equal to 90 percent.

(jj) “Solutioning” means the process of injecting fluid into a well to dissolve or remove any rocks or minerals, including salt.

(kk) “Supervisory control and data acquisition system” and “SCADA system” mean an automated surveillance system used to monitor and control storage activities from a remote location.

(ll) “Usable water” means water containing not more than 10,000 milligrams of total dissolved solids per liter. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1201. Licensing; financial assurance.** (a) License required.

(1) No operator shall perform either of the following without first obtaining or renewing a license:

(A) Test, construct, convert, operate, or abandon any storage facility; or

(B) drill, complete, service, operate, or plug any storage well.

(2) Each operator shall maintain a current license until the storage facility has been abandoned and each storage well has been plugged and abandoned, in accordance with commission regulations.

(3) Each operator shall submit a completed license renewal form to the conservation division annually on or before November 1.

(b) License requirements. Each applicant for a new license or a license renewal shall be in compliance with all applicable laws as required in subsection (f) and shall submit the following items to the conservation division:

(1) An application meeting the requirements of subsection (c);

(2) a license application fee of \$1,500;

(3) financial assurance pursuant to subsection (e); and

(4) a detailed written estimate, signed by a licensed professional engineer or licensed professional geologist, of the current cost to plug all storage wells and abandon the storage facility.

(c) License application. Each applicant for a new license or a license renewal shall file with the conservation division an application providing the applicant’s contact information, full legal name, and any other names under which the applicant transacts or intends to transact business under the license. If the applicant is a partnership, association, or similar entity, the application shall include the name and address of each partner or member. If the applicant is a corporation, limited liability company, or similar entity, the application shall contain the name and address of each principal officer and the resident agent.

(d) Signature. Each applicant for a new license or a license renewal shall sign the license application. If the applicant is a partnership, association, or similar entity, at least one partner or member shall sign. If the applicant is a corporation, limited liability company, or similar entity, at least one principal officer shall sign.

(e) Financial assurance. Each operator shall provide financial assurance in an amount determined by the director. The financial assurance shall be signed as specified in subsection (d). The operator shall continue to provide financial assurance until all storage wells are plugged and abandoned and the storage facility is abandoned, according to commission regulations.

(f) Compliance with applicable laws.

(1) If the applicant is registered with the federal securities and exchange commission, the applicant shall demonstrate to the commission that the applicant complies with all requirements of K.S.A. 55-101 et seq. and K.S.A. 66-1272 through 66-1279 and amendments thereto, all implementing regulations, and all commission orders and compliance agreements. The applicant shall file a list of any past or pending administrative proceedings and court proceedings filed in Kansas in which the

applicant was a party. The list shall include a brief description of the outcome of each proceeding.

(2) (A) If the applicant is not registered with the federal securities and exchange commission, the applicant shall demonstrate to the commission that the following individuals comply with all requirements of K.S.A. 55-101 et seq. and K.S.A. 66-1272 through 66-1279 and amendments thereto, all implementing regulations, and all commission orders and compliance agreements:

- (i) The applicant;
- (ii) any officer, director, partner, or member of the applicant; and
- (iii) any stockholder owning in the aggregate more than five percent of the stock of the applicant.

(B) The applicant shall file a list of any past or pending administrative proceedings and court proceedings filed in Kansas in which any person or entity listed in paragraphs (f)(2)(A)(i) through (iii) was a party. The list shall include a brief description of the outcome of each proceeding.

(g) License issuance; term. If the application is approved by the conservation division, a license shall be issued to the applicant. Each license shall be effective for a maximum of one year, unless suspended or revoked by the commission, and shall expire on January 31 of each year.

(h) Denial of application. An application for a license or a license renewal may be denied by the conservation division if the applicant has not satisfied the requirements of this regulation. Denial of a license application shall constitute a summary proceeding under K.S.A. 77-537 and amendments thereto. Denial pursuant to paragraph (f)(1) or (f)(2) shall be considered a license revocation.

(i) License revocation. If a license is revoked, no new license shall be issued to the operator or contractor until one year has passed since the revocation date and the operator has satisfied the requirements of this regulation.

(j) Notification of changes. Each operator shall notify the conservation division in writing within five business days of any change in information provided as part of the license application. If the change would result in the operator being required to provide additional financial assurances, the operator shall submit the additional financial assurances within 30 days of the change. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1202. Signatory; signature for reports.** (a) Each operator shall designate one sig-

natory to sign and verify any permit application, amendment application, and facility permit transfer, who shall be one of the following:

- (1) If the applicant is a sole proprietor, the signatory shall be that person.
- (2) If the applicant is a partnership, association, or similar entity, the signatory shall be a partner or member.
- (3) If the applicant is a corporation, limited liability company, or similar entity, the signatory shall be a principal officer.

(b) The signatory specified in subsection (a) shall submit a signature statement to the director on a form provided by the conservation division.

(c) Each operator shall ensure that each submitted report that is not required to be signed by a licensed professional geologist, licensed professional engineer, or licensed professional land surveyor is signed by one of the following:

- (1) A plant or operations manager;
- (2) a superintendent;
- (3) a cavern or reservoir storage specialist; or
- (4) a person holding a position with responsibility at least equivalent to those positions specified in paragraphs (c)(1) through (3). (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1203. Permit required; permit application.** (a) No operator shall test, construct, convert, operate, or abandon a storage facility, or drill, complete, service, operate, or plug any storage well, without first obtaining a permit from the conservation division. No operator shall be eligible for a permit without first obtaining a license.

(b) Each operator applying for a permit shall submit a permit application on a form provided by the conservation division at least 180 days before the operator intends to perform any compressed air energy storage activities. The operator shall submit an original and two copies of the application.

(c) Each operator shall submit the following with the permit application:

- (1) The operator name and license number;
- (2) the name of the proposed compressed air energy storage facility;
- (3) the permit application fee and any applicable plan fees pursuant to K.A.R. 82-3-1223;
- (4) a signed statement verifying that the operator possesses the necessary surface and mineral rights for operation of the storage facility;
- (5) plan view maps pursuant to subsection (d);

(6) a site selection plan pursuant to K.A.R. 82-3-1208;

(7) a drilling and completion plan pursuant to K.A.R. 82-3-1209;

(8) a storage facility integrity plan pursuant to K.A.R. 82-3-1210;

(9) if the permit application is for cavern storage, a cavern storage well workover plan pursuant to K.A.R. 82-3-1211;

(10) a storage well integrity plan pursuant to K.A.R. 82-3-1212 or K.A.R. 82-3-1213;

(11) a long-term monitoring, measurement, and testing plan pursuant to K.A.R. 82-3-1214 or K.A.R. 82-3-1215;

(12) a safety and emergency response plan pursuant to K.A.R. 82-3-1216;

(13) a plugging-monitoring status plan pursuant to K.A.R. 82-3-1218;

(14) a plugging plan pursuant to K.A.R. 82-3-1219;

(15) a decommissioning plan pursuant to K.A.R. 82-3-1221; and

(16) any other information that the conservation division may require, if clarification of submitted information is needed for the director to consider the application.

(d) Each operator shall submit the following maps with the permit application:

(1) A plan view map showing the locations of all plugged or unplugged wells of any type, including any well used for production of oil or gas, water supply or injection, solution mining, storage operations, monitoring, or corrosion control, within a one-quarter mile radius of the proposed storage facility boundary;

(2) the plan view map listed in paragraph (d)(1) overlaid with a surface topography map; and

(3) a plan view map, surface topography map, and aerial photo identifying any of the following within a two-mile radius of each proposed storage facility boundary:

(A) Manufactured surface structure, including any industrial or agricultural facility;

(B) utility having a right-of-way, including any wind generator, electrical transmission line, or pipeline;

(C) incorporated city or township;

(D) active or abandoned excavated mine cavity, including the room and tunnel layout;

(E) active or abandoned solution mining facility, including any well;

(F) active or abandoned LPG, crude oil, or natural gas storage facility, including any well;

(G) active or abandoned underground porosity gas storage facility;

(H) navigable water; and

(I) floodplain or area prone to flooding.

(e) After reviewing any permit application, one of the following shall be issued by the director:

(1) A permit pursuant to the permit application;

(2) a permit that includes additional requirements agreed upon by the applicant and the director; or

(3) a permit denial, including an explanation of why the permit is denied.

(f) Each operator shall submit the updated information in paragraphs (c)(5) through (c)(16) within 30 days of a request by the director, if updated information is necessary for full consideration of the permit application. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1204. Notice of application; publication; protest.** (a) Each operator applying for a permit shall provide a copy of the application to the following:

(1) Each operator of record of a mineral lease within one-quarter mile of each boundary of the proposed storage facility;

(2) each owner of record of the minerals in unleased acreage within one-quarter mile of each boundary of the proposed storage facility; and

(3) each surface owner of land where the proposed storage facility will be located.

(b) The operator shall publish notice of the application once each week for two consecutive weeks in the official county newspaper of each county where any lands affected by the application are located, once in the Kansas register, and once in a newspaper of general circulation in Sedgwick County.

(c) The operator shall include the following information in the published notice:

(1) The name and address of the operator;

(2) a brief description of the operations that will be performed at the proposed storage facility, including whether cavern storage or reservoir storage operations will be performed;

(3) the name, address, and telephone number of a contact person for further information, including copies of the application;

(4) the name and address of the conservation division's central office; and

(5) a brief statement that any interested party may file a protest with the conservation division within 30 days and request a hearing.

(d) Any interested party may file a protest within 30 days after publication of the notice of the application.

(1) The protest shall be submitted in writing and shall include the following information:

(A) The name and address of the protester;

(B) a clear and concise statement of the direct and substantial interest of the protester in the proceeding;

(C) if the protester opposes only a portion of the proposed application, a description of the objectionable portion; and

(D) a statement of whether the protester requests a hearing on the application.

(2) The failure to file a timely protest shall preclude the person from appearing as a protester.

(3) The protester shall serve the protest upon the applicant in the manner described in K.A.R. 82-1-216(a) at the same time or before the protester files the protest with the conservation division.

(e) The application shall be held in abeyance for 30 days from the date of last publication or delivery of notice in subsection (a), whichever is later. If a protest with a request for hearing is filed pursuant to subsection (d) within the 30-day waiting period or if the director deems that a hearing is necessary to protect public safety, usable water, or soil, a hearing on the application shall be held.

(f) The operator shall publish notice of the hearing in the same manner as that required by subsection (b). The notice shall include the following information:

(1) The information specified in paragraphs (c) (1) through (c)(4);

(2) a statement that any member of the public who is not intervening in the matter may attend the hearing without prior notice, except that each person requiring special accommodations under the Americans with disabilities act shall notify the conservation division at least 10 days before the hearing;

(3) a statement that the applicant and any intervening person shall prefile written direct testimony pursuant to K.A.R. 82-1-229; and

(4) the date, time, and location of the hearing. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1205. Permit amendment.** (a) Each operator shall file an application to amend that operator's permit if any of the following conditions is met:

(1) The proposed activity would result in a sub-

stantial change to the storage facility, including a change in the rate, pressure, or volume of injected air.

(2) The proposed activity could result in a threat to public safety, usable water, or soil.

(3) The size of the storage facility would be expanded or contracted.

(4) A storage well would be drilled, or an existing well would be converted to a storage well.

(5) An amendment is necessary for the permit to meet the requirements of any statute, regulation, or commission order.

(b) Each operator seeking a permit amendment shall file a signed application to amend the permit, on a form provided by the conservation division, at least 90 days before the proposed date of the activity described in the application. The operator shall submit an original and two copies of the application to the conservation division.

(c) Notice of the amendment application and the protest period shall be as provided in K.A.R. 82-3-1204. Each protest shall address a change proposed by the application for a permit amendment. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1206. Permit transfer.** (a) No operator shall transfer a permit to another operator without the prior approval of the director.

(b) The transferring operator shall notify the conservation division, on a form provided by the conservation division, of the intent to transfer the permit at least 30 days before the proposed date of the transfer.

(c) The notification shall contain the following information:

(1) The name, address, and license number of the transferring operator;

(2) the permit number and the name of the storage facility;

(3) a list of all storage wells listed on the permit;

(4) the proposed effective date of transfer;

(5) the signature of the transferring operator and the date signed;

(6) the name, address, and license number of the transferee operator;

(7) a signature statement form signed by the signatory for the transferee operator, pursuant to K.A.R. 82-3-1202; and

(8) any other information that the conservation division may require, if clarification of any of the submitted information is needed for the director to review the permit transfer.

(d) The transferee operator shall provide financial assurance pursuant to K.A.R. 82-3-1201(e) before the transfer may be approved by the director.

(e) The transferee operator shall reproduce and sign the most recent version of each plan that was previously submitted pursuant to K.A.R. 82-3-1203(c) by the transferring operator.

(f) Within 90 days of approval of a permit transfer, the transferee operator shall update the identification signs at the storage facility to include the transferee operator information. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1207. Permit modification, suspension, and cancellation.** (a) A permit may be modified, suspended, or canceled by the director after notice and opportunity for hearing if any of the following conditions is met:

(1) A substantial change in the operation of the storage facility, including a change in the rate, pressure, or volume of injected air, has occurred.

(2) Material deviations from the information originally provided to the conservation division occur or are discovered and could affect the ability of the storage facility or storage wells to be operated in a manner that protects public safety, usable water, and soil.

(3) The permit, for any reason, no longer meets the requirements of any statute, regulation, or commission order.

(b) All operations at a storage facility shall cease upon suspension or cancellation of the permit for that storage facility. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1208. Site selection.** (a) No operator shall test, construct, convert, or operate a storage facility without a site selection plan approved by the director. The operator shall submit a proposed site selection plan to the conservation division that includes all information specified in, and demonstrates compliance with, subsections (b) through (k).

(b) Each operator shall submit to the conservation division an area of review evaluation, signed by a licensed professional engineer or licensed professional geologist, identifying any plugged or unplugged well of any type, including any well used for production of oil or gas, water supply or injection, solution mining, storage operations, monitoring, or corrosion control, that penetrates

the storage facility and is located within one-quarter mile of any proposed boundary. The area of review evaluation shall contain any information available from public records, publicly accessible data, or the operator's records.

(1) The operator shall indicate whether each well has been properly constructed or plugged to protect public safety, usable water, and soil.

(2) The operator shall include a schedule to correct or plug any well that is not properly constructed or plugged to protect public safety, usable water, and soil, including any well that does not have adequate cement to isolate any storage cavity or storage reservoir from any reservoir in the well, or adequate cement behind the casing.

(c) Each operator shall submit the proposed boundaries of the storage facility.

(1) No reservoir storage facility boundary may be approved by the conservation division unless each reservoir storage well is located at least 150 feet from each boundary.

(2) No storage facility boundary may be approved by the conservation division unless the boundary is located at least two miles from each of the following:

(A) Active or abandoned excavated mine cavity;

(B) solution mining operation facility boundary;

(C) LPG, crude oil, or natural gas storage facility boundary;

(D) underground porosity gas storage facility boundary; and

(E) any incorporated city or organized township.

(d) (1) Each operator of a cavern storage facility shall demonstrate that any potential surface subsidence event would remain within the storage facility boundary. No cavern storage facility boundary may be approved by the director unless each of the following is located at least 100 feet from the cavern wall:

(A) Land owned by a surface owner who has not submitted to the operator a signed consent form stating that there is no objection to storage;

(B) any building or structure not owned by the cavern storage facility's owner;

(C) any utility with a right-of-way, including any wind generator, electrical transmission line, or pipeline; and

(D) any railroad, road, or highway.

(2) A distance greater than 100 feet may be required if the director determines that a greater distance is necessary to protect public safety, usable water, or soil.

(e) No cavern having a maximum horizontal diameter of greater than 300 feet may be approved by the director.

(f) Each cavern storage well shall be located so that each cavern wall is at least 100 feet from each cavern wall of any offset storage cavern. The operator shall consider the cavern spacing-to-diameter ratio, cavern pressure differentials, frequency of cavern injection and withdrawal cycles, and cavern shape, size, and depth.

(g) Each operator of a cavern storage facility shall submit the proposed salt roof thickness, which shall be at least 100 feet measured from the top of the bedded salt formation to the cavern roof, unless otherwise approved by the director.

(h) Each operator shall submit a regional geological evaluation and a local geological evaluation covering an area within one-quarter mile outside each storage facility boundary, for all formations between the surface and the top of the proposed cavern or reservoir, and all formations below the base of the proposed cavern or reservoir to a depth of 300 feet below the base.

(1) If the proposed storage facility is a cavern storage facility, the applicant shall submit the following:

(A) A structure map and stratigraphic cross section identifying any bedded salt formation proposed to be solution mined, usable water formation, regional or local fault zone, structural anomaly, salt thinning due to stratigraphic change, dissolution zone in the salt, and migration pathway that could cause a loss of containment; and

(B) an isopach map of the bedded salt formation identifying any regional or local faulting, dissolution zone in the salt, salt thinning due to any stratigraphic change, and migration pathway that could cause a loss of containment.

(2) If the proposed storage facility is a reservoir storage facility, the applicant shall submit the following:

(A) A structure map and stratigraphic cross section identifying the reservoir and any usable water formation, regional or local fault zone, structural anomaly, structural spill point controlling the containment of air, and migration pathway that could cause a loss of containment; and

(B) an isopach map of the storage reservoir formation identifying any regional or local faulting and any migration pathway that could cause a loss of containment.

(3) Each operator shall submit an updated lo-

cal geologic evaluation pursuant to subsection (h) within 30 days after any new storage well is drilled and completed, unless otherwise approved by the director.

(i) (1) Each operator shall submit the proposed layout of the storage facility and the equipment design parameters, including the minimum and maximum pressure, temperature, and flow rate requirements for the following:

(A) Each electrical generating facility component, including any compressor train used to increase air pressure, compressor intercooler or aftercooler used to reduce air temperature before injection into any cavern storage well, recuperator, expander, exhaust air stack, and fuel-fired combustion turbine;

(B) any equipment, alarm, or safety device that prevents the injection of water and moisture into a cavern;

(C) each air injection and withdrawal flow line connecting any storage well to the electrical generating facility; and

(D) any flow line, equipment, and class I injection well that is used to dispose of fluids and solids produced during storage well operations.

(2) The operator shall list any air sample location that will be used to monitor the quality of air injected into any storage well.

(3) The layout of the proposed storage facility shall include the following:

(A) Each storage well;

(B) for any plugged or unplugged cavern storage well, the cavern configuration and dimensions associated with each historical sonar survey;

(C) the corrosion control system;

(D) any well in the area of review evaluation submitted pursuant to subsection (b);

(E) any navigable water, floodplain, or area prone to flooding;

(F) any utility having a right-of-way, including any wind generator, electrical transmission line, or pipeline; and

(G) any manufactured surface structure, including any industrial or agricultural facility.

(4) Within 30 days after construction of the storage facility is completed, the operator shall submit an updated layout of the storage facility and the updated equipment design parameters to the conservation division.

(j) No person shall test, construct, convert, or operate a storage facility or drill, complete, service, plug, or operate any storage well in either of the following types of geological strata:

(1) A porous geologic stratum containing usable water; or

(2) an excavated mine cavity.

(k) No site selection plan may be approved by the director if underground communication between cavern storage wells exists. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1209. Design and construction of storage well.** (a) Each operator shall drill and complete each storage well, including the conversion of an existing well of any type to a storage well or the conversion of a storage well to any other type of well, according to a drilling and completion plan signed by a licensed professional engineer or licensed professional geologist and approved by the director. The operator shall submit the plan on a form provided by the conservation division at least 90 days before the proposed date of drilling or completion. The operator shall supplement the plan by submitting open hole logs within 30 days after completing the well. The operator submitting a proposed drilling and completion plan shall include the following:

(1) (A) The operator shall submit, within 30 days of completing any well, the following open hole logs, one on a scale of five inches equals 100 feet, and one on a scale of two inches equals 100 feet, from the surface to the deeper of the base of the storage cavern or reservoir or the total depth of the storage well:

(i) Spectral gamma ray;

(ii) spontaneous potential;

(iii) density;

(iv) photoelectric;

(v) caliper;

(vi) for cavern storage wells, dipole sonic for evaluating mechanical rock properties, logged at least from the base of the cavern or the total depth of the storage well to 100 feet above the top of the confining layer of the bedded salt formation; and

(vii) neutron log, with the source registered in Kansas.

(B) The operator may submit an open hole log that is substantially similar to an open hole log specified in paragraph (a)(1)(A) if the operator demonstrates that the substitute open hole log provides sufficient data for the director to determine whether the well is constructed in a manner that protects public safety, usable water, and soil.

(2) (A) The operator shall submit, within 30 days of completing any well, the following cased

hole logs, with one on a scale of five inches equals 100 feet and one on a scale of two inches equals 100 feet:

(i) Casing collar log and gamma ray;

(ii) temperature survey showing the natural thermal gradient of the cavern; and

(iii) cement evaluation log, performed after the neat cement has cured for at least 72 hours.

(B) The operator may submit a cased hole log that is substantially similar to the cased hole logs specified in paragraph (a)(2)(A) if approved by the director.

(3) The operator shall submit a water quality test performed by a certified laboratory demonstrating that there is no usable water in the proposed storage reservoir.

(4) The operator shall provide at least one core for each cavern storage facility, including both the bedded salt formation interval and a portion of the overburden. The applicant shall use core drilling procedures, a coring interval, and a core analysis that are approved by the director. The operator may use an offset storage facility core if the offset storage facility core represents the local geology at the proposed storage facility. The operator shall make the core available for inspection if requested by the director. The operator shall submit a core analysis report to the conservation division within 30 days after the core analysis is completed.

(5) (A) The core analysis shall include petrographic, geochemical, and geomechanical rock properties for the overburden and bedded salt formation at intervals approved by the director. The core analysis and the petrographic, geochemical, and geomechanical rock properties shall include the following:

(i) Indirect tensile strength tests;

(ii) triaxial compression tests; and

(iii) triaxial creep tests defining the time-dependent creep deformation characteristics of the salt.

(B) The core analysis shall include a geomechanical and geochemistry evaluation used to predict reactions between air and shale and reactions between salt and shale, including any potential contaminant from fuel-fired combustion turbine exhaust at the electrical generating facility.

(C) The overburden pressure for the bedded salt formation shall be considered when determining geomechanical rock properties.

(D) Permeability and porosity shall be determined for any rock formations layered within the salt formation, except shale layers deposited with-

in the salt formation or the upper confining layer of the layered salt formation.

(E) A gamma ray log of the core shall be correlated with the well's cased hole gamma ray and casing collar locator logs.

(6) The operator shall provide documents demonstrating that each storage well will be drilled and completed pursuant to subsections (b) through (u).

(b) Each operator of a storage well shall equip, complete, and operate the storage well to protect public safety, usable water, and soil, and to confine air in the tubing, production casing, and the storage cavern or reservoir.

(c) Each operator shall use only equipment that can withstand exposure to injected and withdrawn air, including surface, intermediate, and production casing, production tubing, packers, and packer elements.

(d) Each operator shall equip each storage well with surface casing.

(1) The surface casing shall be set below all usable water formations in accordance with "table I: minimum surface casing requirements," dated February 2003 and incorporated into commission order in docket number 34,780-C (C-1825), which is hereby adopted by reference.

(2) The surface casing string shall be equipped with centralizers. The number of centralizers shall be determined as follows:

(A) If the surface casing string is less than 250 feet long, the operator shall at a minimum install one centralizer on the collar of the second joint of the surface casing and one centralizer on the collar of the last joint of the surface casing.

(B) If the surface casing string is 250 feet long or more, the operator shall install the two centralizers specified in paragraph (d)(2)(A) and shall ensure that at least one centralizer is installed every four joints of casing throughout the surface casing string.

(3) The annular space between the casing and the formation shall be filled with cement, and the cement shall be circulated to the surface.

(e) Each operator shall ensure that the surface casing, production casing, and tubing strings meet the standards specified in either of the following, which are hereby adopted by reference:

(1) "Bulletin on performance properties of casing, tubing, and drill pipe," API bulletin 5C2, as published by the American petroleum institute in October 1999; or

(2) "specification for casing and tubing (U.S. customary units)," API specification 5CT, sixth

edition, as published by the American petroleum institute in October 1998, including the appendices and including the errata published in May 1999, but not including the publications listed in section 2.1.

(f) Each operator shall use a casing guide shoe or equivalent device to guide and protect the surface, intermediate, and production casing.

(g) Each operator shall use surface, intermediate, and production casing and tubing strings that are either new or reconditioned and the equivalent of new and that have been pressure-tested at the greater of the storage well's maximum allowable operating pressure or the storage facility's air compressor train design. If the casing used is new, the pressure test performed at the manufacturing mill or fabrication plant shall fulfill this requirement.

(h) The operator shall use surface, intermediate, and production casing, tubing, and liners that are rated for at least 125 percent of the maximum allowable operating pressure for the storage well or 125 percent of the storage facility's air compressor train design, whichever is greater.

(i) Each operator shall equip all intermediate and production casing with centralizers and scratchers.

(j) Each operator shall ensure that any cavern storage well is constructed as follows:

(1) The production casing shall be set in the upper part of the bedded salt formation. The production casing shall not extend less than 105 feet into the upper part of the bedded salt formation unless otherwise approved by the director if the operator demonstrates that the installation of the production casing will protect public safety, usable water, and soil.

(A) No permeable formation within the bedded salt formation shall be exposed to the cavern.

(B) Each operator shall demonstrate that any shale layer within the bedded salt formation will not lose integrity if exposed to storage operations.

(2) Liners shall extend from the surface to a depth near the bottom of the production casing, allowing room for any workover operation.

(3) Each operator shall obtain the director's approval before performing any remedial casing repair.

(k) Each operator shall ensure that each storage well is cemented as follows:

(1) Production casing set in a cavern storage well and any intermediate casing string shall be cemented with sufficient cement to fill the annular space

between the casing and wellbore to the surface, including the innermost casing or liner that extends the entire length of the production casing.

(2) All intermediate or production casing strings set in a reservoir storage well shall be cemented with sufficient cement to fill the annular space either to 500 feet above the top of the storage reservoir or to the surface.

(3) The cement shall be compatible with the rock formation waters and drilling fluids. Salt-saturated cement shall be used in any bedded salt formation.

(4) Liners set in the casing shall have cement circulated from the bottom of the liner to the top of the liner. If the cement does not circulate, the annulus between the liner and casing shall be equipped to allow the annulus to be monitored and tested for mechanical integrity.

(5) Circulated cement shall have a compressive strength of at least 1,000 pounds per square inch.

(6) Each operator shall perform remedial cementing if there is evidence of either of the following:

(A) Communication between the confining zone and other horizons; or

(B) annular voids that could allow fluid contact with the casing or channeling across or above the confining zone.

(1) Each operator shall equip each reservoir storage well as follows:

(1) The well shall have a tubing and packer completion if any intermediate or production casing string does not have cement circulated to the surface or if the cement is not circulated from the bottom to the top of a liner set in the casing.

(2) The packer shall be set at a depth that is opposite a cemented interval of the production casing and no more than 50 feet above the uppermost perforation or open hole for the storage reservoir.

(m) Each operator shall equip the wellhead of any storage well with manual isolation valves and shall equip each port on the wellhead with either a valve or blind flange, which shall be rated at the same pressure as that of the wellhead.

(n) Each operator shall ensure that the wellhead master valve on each storage well is capable of opening fully and sized to the diameter of the casing or tubing string attached to the valve. The operator shall use a wellhead master valve rated at the same pressure as that of the wellhead.

(o) Each operator shall install a leak detector at any storage well located within 330 feet of an

inhabited residence, commercial establishment, church, school, park, or public building.

(p) Each operator shall equip each storage well with a corrosion control system.

(q) Each operator of a cavern storage well shall submit to the conservation division all monitoring, testing, and reporting documents, including any correspondence with the Kansas department of health and environment, relating to any solution mining operation.

(r) Each operator shall ensure that a licensed professional engineer or licensed professional geologist supervises the installation of each storage well personally or through an agent.

(s) Each operator shall post at each storage well a sign large enough to be legible under normal daytime conditions at a distance of 50 feet, which shall include the following:

(1) The operator's name and license number;

(2) the storage facility's name and the storage well number;

(3) the location of the storage well by quarter section, section, township, range, and county; and

(4) the operator's emergency contact phone number.

(t) Each operator shall submit to the conservation division all supporting documents, logs, and tests within 30 days of drilling or completing any storage well.

(u) Each operator shall use only a pit that is permitted pursuant to K.A.R. 82-3-600. Each operator shall dispose of any waste or fluid pursuant to K.A.R. 82-3-602, 82-3-603, 82-3-604, 82-3-606, and 82-3-607. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1210. Storage facility construction and integrity.** (a) Each operator shall equip the storage facility according to a storage facility integrity plan signed by a licensed professional engineer and a licensed professional geologist. The operator shall submit a storage facility integrity plan that includes the following:

(1) A description of how each storage facility will be constructed, equipped, operated, maintained, and abandoned to protect public safety, usable water, and soil; and

(2) information demonstrating that the storage facility and each storage well will meet the requirements of subsections (b) through (l).

(b) Each operator shall equip each air injection flow line and withdrawal flow line connecting the

electrical generating facility to any storage well with a manually operated positive shutoff valve at the following locations:

- (1) Within 20 feet of the electrical generating facility;
- (2) on the wellhead of each storage well; and
- (3) within 15 feet of any class I injection well located within the storage facility boundary.

(c) Each operator shall ensure that all components of the storage facility meet the following requirements:

(1) Are composed of material capable of withstanding the corrosive nature of the compressed air injected or withdrawn; and

(2) are rated at a minimum of 125 percent of either the maximum allowable operating pressure for each storage well or the air compressor train design, whichever is greater. Each operator shall ensure that the pressure ratings are clearly identified on each flow line, valve, and fitting connecting the storage facility to each storage well.

(d) Each operator shall install equipment to sample and monitor injected air quality, with the air sampling location located at least 30 feet from the electrical generating facility and at each storage well.

(e) (1) Each operator shall install the following at each cavern storage facility:

(A) Within 30 feet of the electrical generating facility or at each cavern storage well, equipment that prevents the injection of water and moisture, including any alarm and safety device; and

(B) a continuously operating SCADA system approved by the director that includes meters and gauges that measure pressure, temperature, water and moisture content, total volume, and flow rate and that automatically closes any air injection and withdrawal line, air compressor train, and brine or water line if an emergency occurs or if any pressure, temperature, total volume, or flow rate meter or gauge fails.

(2) Warning systems for the SCADA system shall consist of pressure, temperature, water and moisture content, total volume, and flow rate sensors connected to an alarm and emergency shutdown instrumentation. The equipment shall be capable of automatically closing all of the following if an emergency occurs:

- (A) Air injection and withdrawal flow lines at the storage facility;
- (B) the air compressor train;
- (C) the brine or water flow lines; and
- (D) all wells of any type that are associated with

the cavern storage facility and located within the storage facility boundary.

(3) The SCADA system circuitry shall be designed so that the failure of a pressure, temperature, water and moisture content, total volume, or flow rate meter or gauge will activate the warning system.

(4) The total volume, rate, temperature, and pressure of air injected into or withdrawn from each cavern storage well shall be measured, metered, or gauged with sufficient accuracy and precision to allow the director to determine whether the storage well is operating within the conditions in the permit. The original field record consisting of magnetic tapes, digital electronic data, meter charts, or records of air injected and withdrawn shall be retained for at least five years and made available to the conservation division upon request.

(f) Each operator shall equip each reservoir storage facility as specified in this subsection.

(1) Each operator shall install a continuously operating SCADA system that includes meters and gauges that measure pressure, total volume, and flow rate and that automatically closes any air injection or withdrawal line, air compressor train, and brine or water line if an emergency occurs or if a pressure, total volume, or flow rate meter or gauge fails.

(2) Warning systems for the SCADA system shall consist of pressure, total volume, and flow rate sensors connected to an alarm and emergency shutdown instrumentation. The equipment shall be capable of automatically closing all of the following if an emergency occurs:

- (A) Air injection and withdrawal flow lines at the storage facility;
- (B) the compressor train at the storage facility;
- (C) brine, water, or oil flow lines; and
- (D) all wells of any type that are associated with the reservoir storage facility and located within the storage facility boundary.

(3) The SCADA system circuitry shall be designed so that the failure of a pressure, total volume, or flow rate meter or gauge will activate the warning system.

(4) The total volume, rate, and pressure of air injected into or withdrawn from each reservoir storage well shall be measured, metered, or gauged with the accuracy and precision approved by the director. The original field record consisting of magnetic tapes, digital electronic data, meter charts, or records of air injected and withdrawn shall be retained for at least five years and

shall be made available to the conservation division upon request.

(g) Each operator shall ensure that each SCA-DA system is connected by a communication link to the local control room and each remote control center.

(h) Each operator shall ensure that an audible manual warning system is available to storage facility personnel in the local control room and each remote control center.

(i) Each operator shall install and maintain a corrosion control system.

(1) Each operator shall evaluate the corrosion control system in a manner and pursuant to a schedule recommended by the system manufacturer and shall submit the results to the conservation division annually on or before April 1.

(2) Each operator shall ensure that the corrosion control system for cavern storage wells protects the following:

(A) Any storage well casing or liner;

(B) any surface equipment and injection or withdrawal flow line connecting the electrical generating facility to any storage well;

(C) any brine disposal flow line, including the last positive shutoff valve connecting the storage facility with any well of any type at the storage facility; and

(D) any surface equipment, including any brine tank and piping network used for first fill operations or conversion of an active storage well and cavern to plugging-monitoring status.

(3) Each operator shall ensure that the corrosion control system for reservoir storage wells protects the following:

(A) Any storage well casing and liner;

(B) any brine, water, or oil disposal flow line, including the last positive shut off valve connecting the storage facility with any well of any type at the storage facility; and

(C) any surface equipment and injection or withdrawal flow line connecting the electrical generating facility to any storage well.

(j) Each operator shall ensure that the storage facility is equipped with security measures to prevent access by individuals without authorization or a legal right to enter the storage facility, including the following:

(1) Each operator shall post a sign at each entrance to the storage facility large enough to be legible at 50 feet during normal daytime conditions that states the following: the storage facility name; the operator name and license number; the

storage facility location by quarter section, section, township, range, and county; and the operator emergency contact phone number.

(2) Each operator shall ensure that the electrical generating facility is equipped with security lighting and surrounded by a fence located approximately 25 feet outside the electrical generating facility boundary.

(3) Each operator shall ensure that the electrical generating facility is protected from accidental damage by vehicular or shipping traffic.

(k) Each operator shall drill and complete shallow monitoring wells and deep monitoring wells to determine the initial groundwater quality and the effects of any spill or loss of containment on groundwater.

(l) Each operator shall install a leak detector at any storage well located within 330 feet of an inhabited residence, commercial establishment, church, school, park, or public building. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1211. Storage well workover.** (a)

Each operator shall submit a workover plan to the conservation division at least 10 days before performing any downhole or wellhead work that involves dismantling or removing the wellhead, unless the work is only routine maintenance or the replacement of any gauge, sensor, or valve. If an emergency situation exists, the workover plan requirement may be temporarily waived by the director. Each operator shall submit a detailed summary of the work performed to the conservation division within 30 days of the completion of the workover activity.

(b) Each operator shall determine how long any cavern storage well can safely operate below the minimum allowable pressure limit or cushion air requirement to perform storage facility maintenance or storage well workover activities. If storage facility maintenance or storage well workover activities are not performed within this time frame, the operator shall test or log the storage well according to the long-term monitoring, measurement, and testing plan.

(c) Each operator shall use, during any workover, a blowout preventer with a pressure rating that is sufficient for the anticipated workover operations.

(d) Each operator shall perform all logging procedures through a lubricator unit with a pressure rating that is sufficient for the anticipated workover operations.

(e) Each operator shall provide all relevant well information to any contractor logging a storage well or performing a workover before commencing the log or workover. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1212. Operation, monitoring, and measurement requirements for cavern storage wells.**

(a) Each operator shall monitor each cavern storage well according to the storage well integrity plan signed by a licensed professional engineer and a licensed professional geologist. The operator shall submit a storage well integrity plan that includes information required by, and demonstrates compliance with, subsections (b) through (n).

(b) Each operator shall monitor the quality of the air to be injected into each storage well before the commencement of storage operations and at least once every 90 days after operations have commenced. The operator shall test for fuel-fired turbine exhaust contaminants, water, and moisture.

(c) Each operator shall report the monitoring results for each cavern storage well to the conservation division, on a form provided by the conservation division, annually on or before April 1.

(d) Each operator shall monitor cavern storage wells daily. If the cavern storage wells consistently operate in a manner that appears to be protective of public safety, usable water, and soil, monitoring according to a time frame based on the air injection and withdrawal cycles may be allowed by the director.

(e) Each operator shall include in the storage well integrity plan descriptions of the equipment, processes, and criteria used to determine the pressure, temperature, water and moisture content, total volume, and air flow rate. Each operator shall report any change in the equipment, processes, and criteria by submitting updated descriptions to the conservation division within 30 days after the change.

(f) Each operator shall install, within 30 feet of the electrical generating facility or at each cavern storage well, equipment including any alarm and safety device that prevents the injection of water and moisture.

(g) Each operator shall equip each cavern storage well with sensors and safety devices to continuously monitor the well and prevent the well from operating outside of the allowable operating limits for pressure, temperature, water and mois-

ture, total volume, and air flow rate. If the cavern storage well is constructed with tubing and a packer, the sensors and safety devices shall also monitor the pressure in the annulus between the casing and tubing for any unexpected increase or decrease in pressure.

(1) The sensors shall be capable of recording maximum and minimum values during a 24-hour period.

(2) Each operator shall submit any monitoring data, including historic continuous monitoring, to the conservation division within 48 hours of a request by the conservation division.

(h) Each operator shall ensure that any cavern storage well conforms to the maximum allowable operating pressure according to the following requirements:

(1) The operator shall perform a site-specific geomechanical core analysis of the fracture gradient that is calibrated to the open hole log for each storage well and determines mechanical rock properties for the bedded salt formation.

(2) The operator shall not subject the cavern to pressures in excess of the maximum allowable operating pressure associated with abnormal operating conditions, including pressure pulsations from the electrical generating facility.

(3) No operator shall allow the maximum allowable operating pressure or test pressure to exceed the lower of either 80 percent of the fracture gradient for the cavern measured in PSIG or 0.8 pounds per square inch per foot of depth, measured at the higher elevation of either the casing seat or the highest interior elevation of the cavern roof.

(i) If underground communication exists between cavern storage wells due to fracturing or coalescing, each operator shall immediately plug all cavern storage wells that are in communication according to a plugging plan submitted pursuant to K.A.R. 82-3-1219.

(j) Each operator shall operate any cavern storage well according to the minimum allowable operating pressure according to site-specific geomechanical studies from core analysis or any representative offset operating history, including any site-specific geomechanical core analysis for LPG, natural gas, or crude oil storage facilities.

(k) Each operator shall operate any cavern storage well within the injection and withdrawal rates and based on casing and tubing limitations, the placement of any production tubing and packer in relation to the salt roof, the stability of the cavern,

and the flow rate requirements for the electrical generating facility.

(l) Each operator shall operate each cavern storage well at or below the maximum wellhead temperature based on the natural thermal gradient of the cavern, air temperature variations due to injection and withdrawal operations, heat transfer across the storage cavern wall, and core analysis of the bedded salt formation.

(m) The wellhead injection temperature and the normal thermal gradient of the salt formation shall be in a range that will not significantly increase the time-dependent salt creep of the bedded salt formation.

(n) The operator shall develop an inventory balance plan, as part of the cavern storage well integrity plan, that demonstrates the maximum air injection or withdrawal volume from each storage well. The inventory balance plan shall include the cushion air and working air volumes. The operator shall reevaluate the inventory balance plan whenever monitoring, testing, or logging data indicate that a change in cavern volume has occurred. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1213. Operation, monitoring, and measurement requirements for reservoir storage wells.** (a) Each operator shall monitor each reservoir storage well according to a storage well integrity plan signed by a licensed professional engineer and a licensed professional geologist. The operator shall submit a storage well integrity plan that includes information pursuant to, and demonstrates compliance with, subsections (b) through (i).

(b) Each operator shall monitor the quality of air to be injected into each reservoir storage well before the commencement of storage operations and at least once each 12 months after storage operations commence. The analysis of the quality of air shall include consideration of fuel-fired turbine exhaust contaminants.

(c) Each operator shall evaluate the formation water in the reservoir before commencing storage operations.

(d) Each operator shall report the monitoring results for each reservoir storage well to the conservation division, on a form provided by the conservation division, annually on or before April 1.

(e) Each operator shall monitor each reservoir storage well daily. If the reservoir storage well consistently operates in a manner that appears to

be protective of public safety, usable water, and soil, monitoring on a time frame based on the air injection and withdrawal cycles may be allowed by the director.

(f) Each operator shall include in the reservoir storage well integrity plan a description of the equipment, processes, and criteria used to determine pressure, total volume, and air flow rate wellhead conditions. Each operator shall monitor and report the pressure, total volume, and air flow rate. If the reservoir storage well is constructed with tubing and a packer, the operator shall also monitor and report the pressure in the annulus between the casing and tubing for any unexpected increase or decrease.

(g) (1) Each operator shall ensure that any reservoir storage well is operated at or below the maximum allowable operating pressure and based on either of the following criteria:

(A) Site-specific geomechanical core analysis of the fracture gradient calibrated to the open hole log for each storage well that determines mechanical rock properties; or

(B) sufficient testing of the reservoir.

(2) The operator shall not subject the reservoir to pressures in excess of the maximum allowable operating pressure associated with abnormal operating conditions, including pressure pulsations from the electrical generating facility.

(3) No operator shall allow the maximum allowable operating pressure to exceed the lower of either 80 percent of the fracture gradient for the storage reservoir or 0.8 pounds per square inch per foot of depth, measured at the top of the reservoir.

(h) Each operator shall operate any reservoir storage well within the injection and withdrawal rates based on casing and tubing limitations, the formation compressibility of the reservoir, and the flow rate requirements for the electrical generating facility.

(i) The operator shall develop an inventory balance plan as part of the reservoir storage well integrity plan that demonstrates the maximum air injection or withdrawal volume for each storage well. The storage volume calculations shall include the cushion air and working air volumes. The operator shall reevaluate the inventory balance plan whenever an additional storage well is drilled and completed. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1214. Long-term monitoring, measurement, and testing for cavern storage facilities and cavern storage wells.** (a) Each operator shall perform long-term monitoring, measurement, and testing on any cavern storage facility and cavern storage well pursuant to a long-term monitoring, measurement, and testing plan signed by a licensed professional engineer, a licensed professional geologist, and a licensed professional land surveyor. The operator shall submit a long-term monitoring, measurement, and testing plan that includes the information required by, and demonstrates compliance with, subsections (b) through (n) and includes the information specified in this subsection.

(1) Each operator shall determine the thickness of the salt roof for each cavern storage well with a gamma ray and density log.

(2) Each operator shall demonstrate that each cavern storage well has internal mechanical integrity by performing a nitrogen-brine interface test, liquid-brine interface test, hydraulic casing test, or storage well and cavern pressure test. If the well is constructed with tubing and a packer, the operator may demonstrate internal mechanical integrity by performing a pressure test of the production tubing and production casing annulus.

(3) Each operator shall demonstrate that all cavern storage wells and all caverns have external mechanical integrity by performing a nitrogen-brine interface test, liquid-brine interface test, or storage well and cavern pressure test.

(4) The operator shall evaluate the cement outside the production casing with a cement evaluation log verifying that the cement is adequately bonded, including any innermost casing or liner that extends the entire length of the production casing.

(5) Each operator shall meet the long-term monitoring, measurement, and testing requirements in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) according to the following:

(A) At least once each five years;

(B) before first fill operations commence;

(C) after first fill operations have been completed;

(D) after any workover involving production casing cemented in the bedded salt formation or the innermost casing or liner that extends the entire length of the production casing;

(E) after converting the storage well to plugging monitoring status;

(F) before commencing plugging operations, if the most recent tests or logs were not performed within the previous five years; and

(G) whenever required by the director, if the director determines that it is necessary to protect public safety, usable water, or soil.

(6) Each operator shall monitor the cavern's storage capacity and geometry with a sonar survey according to the following:

(A) Before first fill operations commence;

(B) after any storage well is converted to plugging-monitoring status;

(C) before plugging the storage well, if the sonar survey was not performed within the previous five years; and

(D) whenever required by the director, if the director determines that it is necessary to protect public safety, usable water, or soil.

(7) Each operator shall evaluate the production casing set and cemented in the bedded salt formation or the innermost casing or liner that extends the entire length of the production casing with a magnetic flux log if the conservation division determines that it is necessary to protect public safety, usable water, or soil.

(8) Each operator shall demonstrate every two years that surface ground subsidence is not occurring at the storage facility by performing a land survey at each storage well until the storage facility is abandoned.

(b) Each operator performing a nitrogen-brine mechanical integrity test to demonstrate internal or external mechanical integrity shall ensure that the test is witnessed by a licensed professional engineer and shall use a pressure for the nitrogen-brine test pressure that is equal to the maximum allowable operating pressure.

(1) The cavern storage well shall be considered to have internal mechanical integrity if the calculated nitrogen leak rate is less than 100 barrels of nitrogen per year.

(2) The cavern storage well and cavern shall be considered to have external mechanical integrity if the calculated nitrogen leak rate is less than 1,000 barrels of nitrogen per year.

(c)(1) Each operator performing a liquid-brine mechanical integrity test to demonstrate internal or external mechanical integrity shall ensure that the test is witnessed by a licensed professional engineer and shall meet the following requirements:

(A) Use a type of liquid that allows verification of mechanical integrity without harming the cavern storage well or cavern storage facility; and

(B) use a pressure for the liquid test pressure that is equal to the maximum allowable operating pressure.

(2) The cavern storage well shall be considered to have internal mechanical integrity if the calculated liquid leak rate is less than 10 barrels of liquid per year.

(3) The cavern storage well shall be considered to have external mechanical integrity if the calculated liquid leak rate is less than 100 barrels of liquid per year.

(d) Each operator performing a storage well and cavern pressure test shall test the well at the maximum allowable operating pressure. The operator shall first monitor the conditions at the wellhead until the pressure variations at the wellhead can reasonably be shown to correlate with ambient temperature changes. Then the operator shall monitor the surface shut-in pressure for at least 24 hours. The well shall be considered to have internal and external mechanical integrity if the pressure does not vary by more than three percent, with adjustments made to the pressure for changes in temperature.

(e) Each operator performing a hydraulic casing test shall meet the following requirements:

(1) The operator shall set a retrievable bridge plug or packer in the storage well within 25 feet of the top of the cavern.

(2) The operator shall test the storage well at the maximum allowable operating pressure. The operator shall test the well for at least 30 minutes, and the well shall be considered to have internal mechanical integrity if the pressure does not decrease by more than 10 percent.

(f) Any operator may perform a pressure test of the production tubing and production casing annulus if the well is constructed with tubing and a packer. The operator performing a pressure test of the production tubing and production casing annulus shall use a minimum fluid pressure of 300 psig applied to the tubing casing annulus at the surface for a period of 30 minutes. Internal mechanical integrity shall be demonstrated if the applied pressure does not decrease by more than 10 percent.

(g) Any operator may use an alternative method for the long-term monitoring, measurement, and testing activity if approved by the director. The alternative method shall be approved by the director if this method will allow the conservation division to verify mechanical integrity according to the following information submitted by the operator:

(1) A description of the alternate method and the theory for its operation;

(2) a description of the conditions at the cavern

storage well that are necessary for the use of the alternate method;

(3) specifications of the logging tool, survey, or test, including the tool dimensions, maximum temperature and pressure rating, recommended logging speed, approximate image resolution, and casing or hole size range;

(4) the procedure for interpreting the results of the alternate method; and

(5) an interpretation of the results after the alternate method has been used.

(h) No operator shall inject air into or withdraw air from a cavern storage well that fails to demonstrate mechanical integrity through the performance of any test or log in subsections (a) through (g) until the well has been repaired, if necessary, and successfully retested.

(i) Each operator shall submit the long-term monitoring, measurement, and testing plan at least 60 days before commencing any long-term monitoring, measurement, and testing activity. Each operator shall ensure that an employee witnesses any activity. The operator shall schedule the activity to facilitate witnessing by a conservation division agent.

(j) Each operator shall submit a summary, including all supporting documents, of the long-term monitoring, measurement, or testing activity to the conservation division within 30 days after completion.

(k) On or before April 1 of each year, each operator shall submit a report and all supporting documents to the conservation division, on a form provided by the conservation division, listing any activity in subsection (a) performed during the previous calendar year at any storage well.

(l) Each operator shall monitor, measure, sample, and report water quality at any shallow monitoring well and deep monitoring well in a manner that allows the director to determine whether groundwater has been affected by any spill or loss of containment.

(m) Each operator shall monitor, measure, and sample at any leak detector in a manner that allows the director to determine that leaks are not occurring.

(n) Each operator shall ensure that a professional land surveyor performs a land survey for each cavern storage well every two years, pursuant to the following requirements:

(1) The operator shall report to the conservation division the method used in performing the elevation survey.

(2) The operator shall report to the conservation division the criteria used to establish any monument, benchmark, and wellhead survey point.

(3) The operator shall monitor subsidence by performing level measurements with an accuracy of .01 foot. The operator shall report changes in excess of .1 foot to the conservation division within 24 hours of actual knowledge.

(4) The operator shall not change any benchmark without approval by the director. If a benchmark is changed, the operator shall report the elevation change from the previous benchmark to the conservation division.

(5) The operator shall report the elevation to the conservation division before and after any wellhead work that results in a change in the survey point at the wellhead.

(6) The operator shall submit the survey reports, including certified and stamped field notes, to the conservation division within 90 days after completion of the survey. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1215. Long-term monitoring, measurement, and testing for reservoir storage facilities and reservoir storage wells.** (a) Each operator shall perform long-term monitoring, measurement, and testing for each reservoir storage facility and reservoir storage well pursuant to a long-term monitoring, measurement, and testing plan signed by a licensed professional engineer and a licensed professional geologist. Each operator shall submit a long-term monitoring, measurement, and testing plan that includes the information required by, and demonstrates compliance with, subsections (b) through (j) and includes the information specified in this subsection.

(1) Each operator shall demonstrate that each reservoir storage well has internal mechanical integrity by using a hydraulic casing test or, if the well is constructed with tubing and packer, a pressure test of the production tubing and production casing annulus.

(2) Each operator shall demonstrate that each reservoir storage well has external mechanical integrity by running gamma ray, neutron, noise, and temperature logs from 50 feet above the point of injection continuously to the surface. A depth lower than 50 feet may be required by the director if the director deems that this requirement is necessary to determine whether the reservoir storage well has external mechanical integrity.

(3) Each operator shall meet the long-term monitoring, measurement, and testing requirements in paragraphs (a)(1) and (a)(2) according to the following:

(A) At least once each five years;

(B) after any workover involving the production casing cemented in the storage reservoir or the innermost casing or liner inside the production casing;

(C) before commencing plugging operations if the most recent tests or logs were not performed within the previous five years; and

(D) whenever required by the director, if the director determines that it is necessary to protect public health, usable water, or soil.

(4) Each operator shall evaluate the production casing or innermost casing or liner that extends the entire length of the production casing with a magnetic flux log if the director determines that it is necessary to protect public safety, usable water, or soil.

(b) Each operator performing a hydraulic casing test shall perform the following:

(1) The operator shall set a retrievable bridge plug or packer in the storage well opposite a cemented interval at a point immediately above the uppermost perforation or open-hole interval.

(2) The operator shall test the storage well at the maximum allowable operating pressure. The operator shall test the well for at least 30 minutes, and the well shall be considered to have internal mechanical integrity if the pressure does not decrease by more than 10 percent.

(c) Any operator may perform a pressure test of the production tubing and production casing annulus if the well is constructed with tubing and a packer. The operator performing a pressure test of the production tubing and production casing annulus shall apply a minimum fluid pressure of 300 psig to the tubing casing annulus at the surface for 30 minutes, and the well shall be considered to have mechanical integrity if the pressure does not decrease by more than 10 percent.

(d) Any operator may use an alternative method for the long-term monitoring, measurement, and testing activity if approved by the director. The alternative method shall be approved by the director if this method will allow the conservation division to verify mechanical integrity according to the following information submitted by the operator:

(1) A description of the alternate method and the theory for its operation;

(2) a description of the reservoir storage well conditions necessary for the use of the alternate method;

(3) specifications for the logging tool, surveys, or tests including the tool dimensions, maximum temperature and pressure rating, recommended logging speed for the tool, approximate image resolution, and casing and hole size range;

(4) the procedure for interpreting the results of the alternate method; and

(5) an interpretation of the results after the alternate method has been used.

(e) No operator shall inject air into or withdraw air from a reservoir storage well that fails to demonstrate mechanical integrity through the performance of any test or log in subsections (a) through (d), until the storage well is repaired, if necessary, and successfully retested.

(f) Each operator shall submit the long-term monitoring, measurement, and testing plan at least 60 days before commencing any long-term monitoring, measurement, and testing activity. Each operator shall ensure that an employee witnesses any activity. The operator shall schedule the activity to facilitate witnessing by a conservation division agent.

(g) Each operator shall submit a summary, including all supporting documents, of the long-term monitoring, measurement, or testing activity to the conservation division within 30 days after completion of the activity.

(h) Each operator shall submit a report to the conservation division, annually on or before April 1 on a form provided by the conservation division, listing any activity in subsection (a) performed on any reservoir storage well during the previous calendar year.

(i) Each operator shall monitor, measure, sample, and report water quality at any shallow monitoring well and deep monitoring well in a manner that allows the director to determine whether groundwater has been affected by any spill or loss of containment.

(j) Each operator shall monitor, measure, and sample at any leak detector in a manner that allows the director to determine that leaks are not occurring. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1216. Safety and emergency response plan.** (a) Each operator shall construct, convert, operate, and abandon the storage facil-

ity in accordance with a safety and emergency response plan signed by a licensed professional engineer or licensed professional geologist. The operator shall submit a safety and emergency response plan that includes the following:

(1) Brine spill and flood assessment, which shall meet the following requirements:

(A) The applicant shall identify on a map the location of any navigable water, floodplain or area prone to flooding, and potential drainage path of a brine spill to navigable water, within a two-mile radius of each storage facility boundary;

(B) the applicant shall submit the design criteria for any storage well and facility equipment located in an area prone to flooding; and

(C) the applicant shall submit procedures for responding to a brine spill and flood that address water containment and soil remediation and state the names of specific contractors and equipment vendors available to respond to an emergency;

(2) procedures to respond to the following:

(A) Surface subsidence event;

(B) unexpected air release;

(C) storage well drilling, completion, workover, conversion to plugging-monitoring status, and plugging; and

(D) storage well blowout;

(3) a description of the storage facility communication, warning, alarm, manual and automatic shutdown, and SCADA systems; and

(4) an identification of potential risks to the storage facility from activities performed at any facilities located within two miles of each storage facility boundary, including any utility having a right-of-way, road, highway, or railroad.

(b) Each operator shall perform a review of the safety and emergency response plan with storage facility field staff at least once every 12 months and at any additional time required by the director if conditions indicate that additional reviews are necessary to ensure that public safety, usable water, and soil are protected. The operator may request, for good cause, an extension to perform the annual review, which may be granted by the director. The review shall address the following:

(1) Emergency procedures in response to surface subsidence, cavern collapse, brine spill, air release, storage well blowout, and flooding if the storage facility is located on a floodplain or in an area prone to flooding;

(2) the company name, telephone number, and contact person for any utility having a right-of-way within one-quarter mile of the storage facility

boundary, including any wind generator, electrical transmission line, and oil or gas pipeline;

(3) names of specific contractors and equipment vendors capable of providing necessary services and equipment in response to an emergency;

(4) the address and phone number for each person within one-quarter mile of the storage facility boundary;

(5) procedures to coordinate an emergency response with any local emergency planning entity;

(6) a report of the safety training drills that occurred during the previous year, including a list of attendees and the date each drill was performed;

(7) a report of the safety meetings that occurred during the year, including a list of attendees and the date each safety meeting occurred; and

(8) a review of the safety plan to ensure that the plan is current and correct.

(c) Each operator shall notify the conservation division at least 30 days before the annual review. The operator shall schedule the review on a date that facilitates attendance by an agent of the conservation division. Each operator shall submit a written summary of the annual review to the conservation division within 30 days after the review.

(d) Each operator shall maintain a copy of the safety and emergency response plan at the storage facility and at the company headquarters. Each operator shall provide the conservation division with a copy of the safety and emergency response plan within 48 hours of receipt of the request.

(e) Each operator shall provide a copy of the applicable portions of the safety and emergency response plan to any public or private entity involved with the implementation of the safety and emergency response plan.

(f) Each operator shall update the safety and emergency response plan at least once every 12 months, after any change in safety features at the storage facility, after the approval of an application to amend, transfer, or modify the permit, and upon the director's determination that an update is necessary to protect public safety, usable water, or soil. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1217. Safety inspection.** (a) Each operator shall perform a safety inspection of the storage facility at least once every 12 months. One extension of one month for the performance of the safety inspection may be granted by the director, upon written request. Each operator shall

ensure that all of the following conditions are met in the safety inspection:

(1) Each automatic shut-in safety valve at the surface is in normal operating condition and each alarm is operating.

(2) Each wellhead and any equipment attached to the wellhead is connected and functioning.

(3) Each valve, annulus, and blowdown opens and closes with reasonable ease, including the storage wellhead manual valve.

(4) Each communication link between any control room and remote control center is connected and functioning.

(5) The SCADA system is connected and functioning.

(6) The wellhead pressure monitoring associated with the plugging-monitoring status plan is in working order.

(7) Each corrosion control system is functioning.

(8) Each sign is properly posted, updated, and maintained.

(9) The safety fences or barriers, security equipment, and lighting are properly installed and maintained.

(b) Each operator shall notify the conservation division of the inspection at least 30 days before the inspection. Each operator shall schedule the inspection to facilitate the presence of an agent of the conservation division.

(c) Each operator shall submit to the conservation division a written report that includes the inspection procedures and results. The report shall be submitted within 30 days after the safety inspection.

(d) Each operator shall maintain the following at the storage facility and at the operator's main office in Kansas, for inspection by the conservation division:

(1) The maps specified in K.A.R. 82-3-1203(d);

(2) the local geological evaluation specified in K.A.R. 82-3-1208(h); and

(3) the layout of the storage facility specified in K.A.R. 82-3-1208(i). (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1218. Plugging-monitoring status.**

(a) Any operator may place a cavern storage well in plugging-monitoring status according to a plugging-monitoring status plan signed by a licensed professional engineer or licensed professional geologist. The operator shall submit the plugging-monitoring status plan at least 60

days before placing the cavern storage well in plugging-monitoring status.

(b) Each operator submitting a plugging-monitoring status plan shall include the following:

(1) The portion of the safety and emergency response plan specified in K.A.R. 82-3-1216 that is applicable to the plugging-monitoring status plan;

(2) the saturated brine information, including the source, volume, transportation logistics, and time necessary to fill each cavern storage well;

(3) the storage well filling, monitoring, and reporting procedures used to ensure that saturated brine will stabilize the cavern;

(4) a list of additional storage well requirements and storage facility equipment, including wellhead gauges, surface brine tanks, pumps, and piping network used in implementing the plugging-monitoring status plan;

(5) a wellbore schematic of the storage well;

(6) a record of each historical internal and external mechanical integrity test, salt roof thickness evaluation log, cement evaluation log, casing inspection log, and sonar survey for the cavern storage well;

(7) a schedule to perform sonar surveys and internal and external mechanical integrity tests after the storage well is filled with saturated brine;

(8) a schedule to perform surface pressure monitoring at the wellhead to determine whether the cavern storage well has been stabilized;

(9) a cost estimate of converting the cavern storage well to plugging-monitoring status;

(10) updated maps specified in K.A.R. 82-3-1203(d);

(11) the updated local geological evaluation specified in K.A.R. 82-3-1208(h); and

(12) the updated layout of the storage facility specified in K.A.R. 82-3-1208(i).

(c) The operator shall perform additional testing or logging before placing the cavern storage well in plugging-monitoring status if required by the conservation division due to the absence of current logs or tests or due to a lack of cavern storage well mechanical integrity that could result in a threat to public safety, soil, or usable water.

(d) Each operator converting an active cavern storage well to plugging-monitoring status shall fill the cavern storage well with saturated brine pursuant to the plugging-monitoring status plan. The operator shall submit all documents, logs, and tests regarding the conversion to the conservation division within 30 days after the storage well is converted.

(e) Each operator of a cavern storage well in plugging-monitoring status shall monitor the surface wellhead pressure with a pressure transducer connected to a SCADA system. The operator shall, within 24 hours of actual knowledge, report to the director any unexpected increase or decrease in the surface wellhead pressure, including a description of whether the condition threatens public safety, usable water, or soil. The operator shall perform any additional testing, logging, or other measures required by the conservation division to determine whether the increase or decrease indicates potential harm to public safety, usable water, or soil.

(f) Each operator shall submit a report to the conservation division each year on or before April 1, on a form provided by the conservation division, listing the monitored wellhead pressure of each well in plugging-monitoring status.

(g) No operator shall convert a storage well in plugging-monitoring status to an active well without the director's prior written approval. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1219. Storage well plugging.** (a) Any operator may plug any storage well pursuant to a well plugging plan signed by a licensed professional engineer or licensed professional geologist. Each plugging plan for a cavern storage well shall also be signed by a licensed professional land surveyor. The operator shall submit the plugging plan to the conservation division at least 60 days before the anticipated plugging date.

(b) Each operator submitting a plugging plan for any cavern storage well shall include the following:

(1) The portion of the safety and emergency response plan specified in K.A.R. 82-3-1216 that is applicable to the well plugging plan;

(2) a wellbore schematic of the storage well to be plugged;

(3) the updated local geological evaluation specified in K.A.R. 82-3-1208(h) and the updated layout of the storage facility specified in K.A.R. 82-3-1208(i);

(4) a record of each historical internal and external mechanical integrity test, salt roof thickness evaluation log, cement evaluation log, casing inspection log, and sonar survey for the storage well;

(5) evidence regarding whether the wellhead pressure for the cavern storage well has stabilized according to the plugging-monitoring status plan;

(6) procedures to set a mechanical bridge plug or other control device in the long string casing;

(7) procedures to place a cement plug above the storage cavern by a method that will prevent migration of fluid into or out of the storage cavern;

(8) procedures to establish a monument at the surface for elevation survey purposes for monitoring ground subsidence;

(9) procedures to perform land surveys every two years until the storage facility is abandoned pursuant to commission regulations; and

(10) a reasonable estimate of the cost to plug each cavern storage well currently in plugging-monitoring status.

(c) The operator of a cavern storage well shall perform additional testing or logging before plugging the cavern storage well if required by the conservation division due to the absence of current logs or tests or due to a lack of mechanical integrity of the cavern storage well that could result in a threat to public safety, usable water, or soil.

(d) Each operator shall plug any cavern storage well in plugging-monitoring status according to the plugging plan if both of the following conditions are met:

(1) The cavern storage well has been in plugging-monitoring status for at least five years.

(2) The director determines that the cavern storage well has been stabilized according to the plugging-monitoring status plan.

(e) (1) Each operator submitting a well plugging plan for any reservoir storage well shall include the following:

(A) The portion of the safety and emergency response plan specified in K.A.R. 82-3-1216 that is applicable to the well plugging plan;

(B) a wellbore schematic of the storage well to be plugged;

(C) the updated local geological evaluation specified in K.A.R. 82-3-1208(h) and the updated layout of the storage facility specified in K.A.R. 82-3-1208(i);

(D) a record of each historical internal and external mechanical integrity test, cement evaluation log, and casing inspection log;

(E) procedures to set a mechanical bridge plug or other control device in the long string casing;

(F) procedures to place a cement plug above the storage reservoir by a method that will prevent migration of fluid into or out of the storage reservoir; and

(G) a reasonable estimate of the cost to plug each reservoir storage well.

(2) The operator shall perform additional testing or logging before plugging the reservoir storage well if required by the conservation division due to the absence of current logs or tests or due to a lack of mechanical integrity of the reservoir storage well that could result in a threat to public safety, usable water, or soil.

(f) Each operator shall plug any storage well within a time frame specified by the director if the director determines that the storage well presents a danger to public safety, usable water, or soil.

(g) Each operator shall submit a well plugging report within 30 days after plugging any storage well. This report shall contain the following information:

(1) The date the storage well was drilled and completed;

(2) the location of the storage well;

(3) the method used to plug the storage well; and

(4) any other information that is necessary to allow the director to determine whether the well was plugged in a manner that will protect public safety, usable water, and soil. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1220. Temporary abandonment of reservoir storage wells and reservoir storage facilities.**

(a) Each operator of a reservoir storage well shall, within 90 days after any reservoir storage well ceases operation, plug the storage well according to K.A.R. 82-3-1219 or file an application with the conservation division requesting temporary abandonment status, on a form provided by the conservation division.

(1) An application for temporary abandonment status may be approved by the director for one year if approval will not threaten public safety, usable water, or soil. Each operator shall file any subsequent one-year application before the expiration of the previous approved temporary abandonment period. No well that has been temporarily abandoned for 10 years or longer shall be approved for temporary abandonment status.

(2) If a temporary abandonment application is denied, the operator shall plug the well pursuant to K.A.R. 82-3-1219.

(b) Any operator of a reservoir storage facility may request temporary abandonment status for the storage facility. The operator shall submit a written application to the conservation division for temporary abandonment at least 90 days before the temporary abandonment. The application shall include the following:

(1) The date the storage facility will be temporarily abandoned;

(2) the projected temporary abandonment period, which shall be less than 10 years;

(3) the monitoring procedures to be used during temporary abandonment;

(4) temporary abandonment applications for each reservoir storage well, pursuant to subsection (a), except for any reservoir storage well that is currently approved for temporary abandonment; and

(5) any additional information necessary to allow the director to determine whether the reservoir storage facility can be temporarily abandoned in a manner that protects public safety, usable water, and soil.

(c) Any application for temporary abandonment status of a reservoir storage facility pursuant to subsection (b) may be approved by the director for less than 10 years if the approval will not threaten public safety, soil, and usable water. Each operator shall file any subsequent application before the expiration of the previous approved temporary abandonment period. No storage facility that has been temporarily abandoned for 10 years or longer shall be approved for temporary abandonment status. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1221. Decommissioning and abandonment of a storage facility.** (a) No operator shall permanently abandon a storage facility unless an application is approved by the director. Each operator decommissioning and abandoning a storage facility shall file an application at least 90 days before any decommissioning activities. The application shall contain a detailed decommissioning plan that includes the following:

(1) The anticipated date and a schedule for plugging each storage well;

(2) a schedule for abandoning the storage facility, including when and how any equipment and building will be abandoned;

(3) the name and address of persons responsible for any equipment and buildings that will be abandoned or will remain in use;

(4) a reasonable estimate of the cost to perform the activities specified in subsection (b); and

(5) any additional information necessary for the director to determine whether the decommissioning plan will protect public safety, usable water, and soil.

(b) Each operator decommissioning and abandoning a storage facility shall plug all storage wells according to K.A.R. 82-3-1219 and perform the following:

(1) Dispose of any liquid or solid waste in an environmentally safe manner;

(2) clear the area of debris;

(3) drain or fill all excavations;

(4) remove any unused concrete base, machinery, and material;

(5) level and restore the site; and

(6) perform any additional activities that may be required by the director, if additional activities are necessary to protect public safety, usable water, and soil.

(c) After all decommissioning and abandonment activities are complete, a determination of whether the decommissioning and abandonment of the storage facility are protective of public safety, soil, and usable water shall be made by the director. If the director determines that public safety, soil, and usable water will be protected and no further activities are required from the operator, the operator's financial assurance shall be released.

(d) If the application to decommission and abandon the storage facility is denied, the operator shall proceed according to instructions by the director. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1222. Reporting required; record retention.** (a) Each operator shall meet the requirements in subsection (b) if any safety inspection reveals any regulatory or permit deficiencies at the storage facility, if any threat to public safety, usable water, or soil is discovered, or if the storage facility or any storage well fails any monitoring activity, test, survey, or log specified in the following plans:

(1) The site selection plan in K.A.R. 82-3-1208;

(2) the drilling and completion plan in K.A.R. 82-3-1209;

(3) the storage facility integrity plan in K.A.R. 82-3-1210;

(4) the storage well workover plan in K.A.R. 82-3-1211;

(5) the storage well integrity plan in K.A.R. 82-3-1212 or K.A.R. 82-3-1213;

(6) the long-term monitoring, measurement, and testing plan in K.A.R. 82-3-1214 or K.A.R. 82-3-1215;

(7) the safety and emergency response plan in K.A.R. 82-3-1216;

(8) the plugging-monitoring status plan in K.A.R. 82-3-1218;

(9) the well plugging plan in K.A.R. 82-3-1219; and

(10) the decommissioning plan in K.A.R. 82-3-1221.

(b) Each operator shall, upon the occurrence of any condition in subsection (a), perform the following, which may include repairs, retesting, plugging, or abandonment activities as required by the director:

(1) Notify the conservation division of the condition in subsection (a) within 24 hours of actual knowledge, including a description of whether the condition threatens public safety, usable water, or soil;

(2) submit a detailed written plan to correct the condition in subsection (a) within three days of actual knowledge;

(3) if the conservation division determines that the condition in subsection (a) threatens public safety, usable water, or soil, comply with instructions from the conservation division and correct the condition within 30 days; and

(4) if the conservation division determines the condition in subsection (a) does not threaten public safety, usable water, or soil, comply with instructions from the conservation division and correct the violation within 90 days.

(c) Each operator shall keep and maintain for at least five years all data obtained from the SCADA system, including any magnetic tape, electronic data, and meter chart, and any reports submitted to the conservation division pursuant to K.A.R. 82-3-1201(b)(4), K.A.R. 82-3-1212, and K.A.R. 82-3-1213.

(d) (1) Each operator shall keep and maintain for the life of the storage facility and any storage well, until the storage facility is abandoned pursuant to K.A.R. 82-3-1221, all logs, updated maps, tests, records, data, and correspondence with the conservation division or Kansas department of health and environment specified in the following plans and regarding the construction, drilling, completion, solutioning, mechanical integrity, and abandonment of the storage facility or any storage well:

(A) The permit application specified in K.A.R. 82-3-1203;

(B) the site selection plan specified in K.A.R. 82-3-1208;

(C) the drilling and completion plan specified in K.A.R. 82-3-1209;

(D) the storage facility integrity plan specified in K.A.R. 82-3-1210;

(E) the storage well workover plan specified in K.A.R. 82-3-1211;

(F) the long-term monitoring, measurement, and testing plan specified in K.A.R. 82-3-1214 or K.A.R. 82-3-1215;

(G) the plugging-monitoring status plan specified in K.A.R. 82-3-1218;

(H) the well plugging plan specified in K.A.R. 82-3-1219; and

(I) the decommissioning plan specified in K.A.R. 82-3-1221.

(2) The record retention requirement in this subsection shall also include any shallow or deep groundwater monitoring data and leak detector monitoring data.

(e) Each transferring operator and each transferee operator of any permit transferred pursuant to K.A.R. 82-3-1206 shall ensure that all items specified in subsections (c) and (d) are transferred to the control of the transferee operator.

(f) If an operator makes any change to any plan described in K.A.R. 82-3-1203(c), the operator shall provide an updated copy of the plan to the conservation division within 30 days of making the change. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

**82-3-1223. Fees.** (a) Each operator shall submit a fee of \$18,890 for each storage facility and \$305 for each storage well annually on or before January 31. The operator shall pay the fee for each cavern storage well, whether plugged or unplugged, and for each unplugged reservoir storage well.

(b) Each permit applicant shall submit a fee of \$1,500, in addition to any applicable plan fees specified in paragraph (c)(2), to the conservation division with any permit application submitted according to K.A.R. 82-3-1203.

(c) Each operator shall submit a fee in the amount of \$1,500 to the conservation division for each of the following at the time of submission of the application or plan:

(1) An application to amend a storage facility permit according to K.A.R. 82-3-1205;

(2) each drilling and completion plan filed according to K.A.R. 82-3-1209;

(3) each workover plan filed according to K.A.R. 82-3-1211;

(4) each plugging-monitoring status plan according to K.A.R. 82-3-1218;

(5) each well plugging plan according to K.A.R. 82-3-1219;

(6) each application for temporary abandonment status for the storage facility or any storage well according to K.A.R. 82-3-1220; and

(7) an application to decommission and abandon the storage facility according to K.A.R. 82-3-1221.

(d) Each operator shall submit a fee in the amount of \$1,500 to the conservation division for each of the following, in a single payment on or before the last day of the month in which the activity occurs, with a description of the activity listed on a form provided by the conservation division:

(1) Performance of any long-term monitoring and testing activity according to K.A.R. 82-3-1214 or K.A.R. 82-3-1215;

(2) performance of the annual review of the safety and emergency response plan according to K.A.R. 82-3-1216; and

(3) performance of the annual storage facility inspection according to K.A.R. 82-3-1217.

(e) All fees shall be nonrefundable and shall be made payable to the “Kansas corporation commission — compressed air energy storage fund,” pursuant to K.S.A. 66-1279 and amendments thereto. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274 and 66-1279; effective Dec. 21, 2012.)

### **82-3-1300. Definitions; horizontal wells.**

The terms and definitions in K.A.R. 82-3-101, with some of those definitions modified as follows, shall apply to these regulations for horizontal wells, in addition to the new terms and definitions specified:

(a) “Bottom-hole location” means the terminus of each horizontal wellbore.

(b) “Completion interval” means the following:

(1) For open-hole horizontal wellbores, the area between the point that the wellbore contacts the producing formation and the bottom hole, including any isolation packers; and

(2) for cased horizontal wellbores, the area between the perforation nearest the vertical portion of the horizontal well and the perforation nearest the bottom-hole location.

(c) “Directional survey” means a report showing the location of the horizontal wellbore from the surface location to the bottom hole.

(d) “Horizontal well” means a well that is drilled from a surface location and includes one or more horizontal wellbores.

(e) “Horizontal wellbore” means any portion of a horizontal well that extends laterally within the productive or injection formation.

(f) “Measured total depth” means the total length of the drilled wellbore.

(g) “Surface location” means the point at which the vertical portion of a horizontal well penetrates the ground at the surface.

(h) “True vertical depth” means the distance from the deepest point in the wellbore measured vertically to a point with the same elevation as that of the surface location. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Aug. 16, 2013.)

**82-3-1301. Horizontal wells.** The regulations applicable to wells, as defined in K.A.R. 82-3-101, shall apply to horizontal wells, except as specifically provided in K.A.R. 82-3-1300 through K.A.R. 82-3-1307. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Aug. 16, 2013.)

**82-3-1302. Notice of intention to drill; setback.** (a) Before commencing the drilling of any horizontal well, each operator shall submit to the conservation division and obtain approval of a written notice of the intention to drill according to K.A.R. 82-3-103 on a form supplied by the commission. The notice shall include information specific to the horizontal well, including the estimated true vertical depth, the estimated bottom-hole location, the estimated completion interval, a brief description of the leased acreage, and a statement regarding whether multiple leases are unitized. Each submitted form shall be accompanied by a detailed plat map that includes the surface location, estimated completion interval, estimated bottom-hole location, and lease or unit boundaries.

(b) The setback requirements in K.A.R. 82-3-108, K.A.R. 82-3-207, and K.A.R. 82-3-312 shall be applicable to the entire completion interval of each horizontal wellbore. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Aug. 16, 2013.)

**82-3-1303. Oil and gas allowables.** (a) The oil allowables specified in K.A.R. 82-3-203 and the standard daily allowable for gas wells specified in K.A.R. 82-3-312 shall not apply to horizontal wells.

(b) Each horizontal well classified as an “oil well” in K.A.R. 82-3-101 shall be assigned a production

allowable of 200 barrels of oil per day for each 660 feet of the completion interval. Each remainder of less than 660 feet shall result in a correspondingly proportionate addition to the allowable.

(c) Each horizontal well classified as a “gas well” in K.A.R. 82-3-101 shall be assigned a production allowable of 3,000,000 cubic feet per day. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Aug. 16, 2013.)

**82-3-1304. Gas well test exemption.** The gas well testing requirements in K.A.R. 82-3-303 and K.A.R. 82-3-304 shall not apply to any horizontal well. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Aug. 16, 2013.)

**82-3-1305. Venting and flaring.** (a) The venting and flaring requirements in K.A.R. 82-3-208 and K.A.R. 82-3-314 shall not apply to any horizontal well.

(b) The following venting and flaring requirements shall apply to each horizontal well:

(1) No operator shall vent gas from any horizontal well.

(2) Each operator flaring gas from a horizontal well shall meet the following requirements:

(A) The operator shall ensure that the site is inspected and approved by the appropriate district office before the commencement of flaring.

(B) The operator shall file an affidavit on a form supplied by the commission within five days after commencement of flaring.

(C) The operator may flare gas for a maximum of 30 producing days following the initial horizontal completion or recompletion.

(i) A “producing day” shall mean any day in which fluid is produced at the well.

(ii) When counting the producing days for flaring purposes, the producing days may be consecutive or intermittent, or both.

(D) The operator may submit a written request to flare for an additional 30 producing days. The request shall be granted by the director if the operator demonstrates that additional flaring is necessary to prevent waste and will not violate correlative rights. Only one additional flaring period of 30 producing days may be authorized by the director.

(E) No operator shall flare gas for more than 60 producing days without commission approval of an application for an exception according to K.A.R. 82-3-100.

(F) The operator shall continuously meter, measure, or monitor the flared gas and shall retain the chart or record for at least two years. The operator shall provide the conservation division with a copy of the chart or record within five business days of receipt of any request. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Aug. 16, 2013.)

**82-3-1306. High-volume pumps.** The restrictions on and requirements for the use of high-volume pumps in K.A.R. 82-3-131 shall not apply to any horizontal well. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Aug. 16, 2013.)

**82-3-1307. Well completion report.** Each operator of a horizontal well shall comply with the affidavit requirements in K.A.R. 82-3-106 and K.A.R. 82-3-130 by submitting to the conservation division and obtaining approval of a well completion report on a form provided by the commission, which shall include the true vertical depth and information specific to the horizontal well. Each submitted form shall be accompanied by a copy of the directional survey and a detailed, as-drilled plat map that includes the lease or unit boundaries, surface location, completion interval, and bottom-hole location. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Aug. 16, 2013.)

**82-3-1400. Hydraulic fracturing treatment; definitions.** The terms and definitions in K.A.R. 82-3-101 shall apply to K.A.R. 82-3-1400 through 82-3-1402, in addition to the following terms and definitions:

(a) “Base fluid” means the primary fluid, as measured by volume, used in a hydraulic fracturing treatment.

(b) “Chemical” means any element, chemical compound, chemical substance, or combination thereof that has a specific identity.

(c) “Chemical abstracts service registry number” and “CAS number” mean the unique identification number assigned to a chemical by the chemical abstracts service.

(d) “Chemical constituent” means any chemical or chemical concentration intentionally added to a base fluid.

(e) “Chemical disclosure registry” means the publicly available web site database managed by the ground water protection council and the interstate oil and gas compact commission and known

as “fracfocus,” or any other database authorized by order of the commission.

(f) “Health professional” means a physician, physician assistant, nurse practitioner, registered nurse, emergency medical technician, or similar individual who is licensed in that individual’s state of practice.

(g) “Hydraulic fracturing fluid” means the base fluid, each proppant, and all chemical constituents used in a hydraulic fracturing treatment.

(h) “Hydraulic fracturing treatment” means all stages in a well completion utilizing hydraulic fracturing fluid under pressure to create fractures in a targeted geological formation.

(i) “Manufacturer” means an entity that produces finished goods from raw materials.

(j) “Proppant” means each material used in a hydraulic fracturing treatment for the purpose of propping open fractures.

(k) “Service company” means an entity that performs a hydraulic fracturing treatment.

(l) “Supplier” means an entity that provides chemical constituents for hydraulic fracturing fluid.

(m) “Trade secret” has the meaning specified in K.S.A. 60-3320, and amendments thereto. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Dec. 2, 2013.)

**82-3-1401. Hydraulic fracturing treatment; chemical disclosure.** (a) Applicability. This regulation shall apply to each hydraulic fracturing treatment that uses more than 350,000 gallons of base fluid.

(b) Operator disclosures. Unless the operator submits all information to the chemical disclosure registry under subsection (f), the operator shall submit to the commission a list of each hydraulic fracturing treatment as part of the completion report required by K.A.R. 82-3-130. The list shall include the following information, as a percentage by mass of the total amount of hydraulic fracturing fluid:

(1) The base fluid used, including its total volume;

(2) each proppant; and

(3) each chemical constituent at its maximum concentration in the hydraulic fracturing fluid and its CAS number.

(c) Disclosures not required. No operator shall be required to disclose any chemical constituent that meets any of the following conditions:

(1) Is the incidental result of a chemical reaction or chemical process;

(2) is a component of a naturally occurring material and becomes part of the hydraulic fracturing fluid during the hydraulic fracturing treatment; or

(3) is a trade secret.

(d) Trade secrets. Each operator reporting that a chemical constituent is a trade secret shall indicate to the commission that disclosure of the chemical constituent is being withheld pursuant to a trade secret claimed by the operator, manufacturer, supplier, or service company. The operator shall provide the name of the chemical family or a similar descriptor and the name, authorized representative, mailing address, and phone number of the party claiming the trade secret.

(e) Inaccurate or incomplete information. No operator shall be responsible for inaccurate or incomplete information provided by a manufacturer, supplier, or service company.

(f) Alternate disclosure mechanism. In lieu of complying with subsection (b), the operator may submit the information required by subsection (b) to the chemical disclosure registry. The operator shall submit verification of prior submission to the chemical disclosure registry as part of the completion report required by K.A.R. 82-3-130. Each submission to the chemical disclosure registry shall also include the following information:

(1) The operator’s name;

(2) the date on which the hydraulic fracturing treatment began;

(3) the county in which the treated well is located;

(4) the American petroleum institute number for the well;

(5) the well name and number;

(6) the global positioning system (GPS) location of the wellhead; and

(7) the true vertical depth of the well. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Dec. 2, 2013.)

**82-3-1402. Hydraulic fracturing treatment; disclosure of trade secrets.** (a) Director.

(1) The manufacturer, supplier, service company, or operator shall provide the specific identity of a chemical constituent reported to be a trade secret to the director under the following circumstances:

(A) Within two business days after receipt of a letter from the director stating that the information is necessary to investigate a spill or contamination of fresh and usable water relating to a hydraulic fracturing treatment; or

(B) immediately following notice from the director that an emergency requiring disclosure exists.

(2) The director may authorize disclosure of a trade secret disclosed under paragraph (a)(1) to any of the following persons:

(A) Any commissioner or commission staff member;

(B) the secretary or any staff member of the department of health and environment; or

(C) any relevant public health officer or emergency manager.

(b) Health professionals.

(1) A manufacturer, supplier, service company, or operator shall provide the specific identity of a chemical constituent reported to be a trade secret to any health professional who meets one of the following requirements:

(A) Provides a written statement of need and signs a confidentiality agreement on a form provided by the commission; or

(B) determines that the information is reasonably necessary for emergency treatment, verbally agrees to confidentiality, and provides a written statement of need and signed confidentiality agreement as soon as circumstances permit.

(2) Each statement of need shall state that the health professional has reasonable basis to believe that the information will assist in diagnosis or treatment of a specific individual who could have been exposed to the chemical constituents.

(3) Each confidentiality agreement shall state that the health professional will not disclose or use the information for any reason other than those reasons asserted in the statement of need.

(c) Continued confidentiality. A trade secret disclosed pursuant to this regulation shall not be further disclosed except as authorized by this regulation, K.S.A. 66-1220a and amendments thereto, or K.A.R. 82-1-221a. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Dec. 2, 2013.)

#### **Article 4.—MOTOR CARRIERS OF PERSONS AND PROPERTY**

##### **MOTOR CARRIERS**

**82-4-1. Definitions.** The following terms used in connection with the regulations of the state corporation commission governing motor carriers shall be defined as follows:

(a) “Affiliate” means a person or company controlling, controlled by, or under common control or ownership with another person or company.

(b) “Air mile” means nautical mile.

(c) “Authorized agent” and “authorized representative” mean any authorized special agent or employee of the commission, any member of the Kansas highway patrol, or any law enforcement officer in the state certified in the inspection of motor carriers and authorized in accordance with the requirements of the Kansas motor carrier safety program.

(d) “Certificate” means a document evidencing a certificate of convenience and necessity or a certificate of public service issued to an intrastate common carrier to operate motor vehicles as a common carrier.

(e) “Chameleon carrier” means a motor carrier continuing its motor carrier operation under a new USDOT or motor carrier identification (MCID) number for the purpose of avoiding a fine, penalty, federal out-of-service order, or commission order that was issued against the previously used USDOT or MCID number.

(f) “Commission” means Kansas corporation commission.

(g) “Conviction” means any of the following, whether or not the penalty is reduced, suspended, or resolved by means of a probationary agreement:

(1) An unvacated adjudication of guilt or a determination by a federal, state, or local court of original jurisdiction or by an authorized administrative tribunal that a person has violated or failed to comply with the law;

(2) an unvacated forfeiture of bail or collateral deposited to secure the person’s appearance in court;

(3) a plea of guilty or nolo contendere accepted by the court;

(4) the payment of a fine or court cost; or

(5) violation of a condition of release without bail.

(h) “Director” means director of the transportation division of the commission.

(i) “Distance” means distance measured in air miles.

(1) Distances shall be computed from the corporate limits of incorporated communities and from the post office of unincorporated communities.

(2) If there is no post office in the unincorporated community, the distance shall be computed from the center of the business district.

(j) “Docketing” means entering a proposal in the organization files and then giving notice of the proposal to other carrier members of the organization and shipper subscribers.

(k) “Entire direct case” shall include, for the purpose of this article of the commission’s regulations, all testimony, exhibits, and other documentation offered in support of the proposed rates.

(l) “Express carrier” means a common carrier who carries packages or parcels, the maximum weight of which does not exceed 350 pounds for each package or parcel.

(m) “FHWA” means federal highway administration.

(n) “FMCSA” means federal motor carrier safety administration.

(o) “General increase” and “general decrease” mean a common motor carrier rate increase or decrease proposed as a general adjustment of substantially all the rates published in a tariff.

(p) “Groundwater well drilling rig” means any vehicle, machine, tractor, trailer, semi-trailer, or specialized mobile equipment propelled or drawn by mechanical power and used on highways to transport groundwater well field operating equipment, including any groundwater well drilling and pump service rig equipped to access groundwater.

(q) “Hazardous materials regulations” and “HMR” mean the federal hazardous material regulations as adopted in K.A.R. 82-4-20.

(r) “Industry average carrier cost information” means the average intrastate cost of the carriers who participate in an organization tariff and who have authority from the commission to transport the commodities indicated in the organization tariff.

(s) “Joint line rate” means a rate, charge, or allowance established by two or more common motor carriers of property or passengers that is applicable over the carriers’ lines and for which the transportation can be provided by these carriers.

(t) “License” means the document or registration receipt evidencing the registration of an interstate common motor carrier or interstate exempt motor carrier to operate motor vehicles in the state of Kansas in interstate commerce.

(u) “Medical waiver” means “medical variance” as defined in 49 C.F.R. 390.5, which is adopted by reference in K.A.R. 82-4-3f.

(v) “Moving violation” means the commission or omission of an act by a person operating a motor vehicle that could result in injury or property damage and that is also a violation of a statute, ordinance, or regulation of this state or any other jurisdiction.

(w) “Notice” means advance notification to shipper subscribers through an organization’s docket service.

(x) “Organization” means a legal entity that administers an agreement approved under K.A.R. 82-4-69.

(y) “Out-of-service” and “OOS,” when used to describe a driver, a commercial motor vehicle, or a motor carrier operation, mean that the driver, commercial motor vehicle, or motor carrier has ceased to operate or move pursuant to the statutes and regulations of the state of Kansas, the federal motor carrier safety administration regulations, or the “North American standard out-of-service criteria,” including the appendix, published by the commercial vehicle safety alliance, revised on April 1, 2016, and hereby adopted by reference.

(z) “Ownership” means an equity holding in a business entity of at least five percent.

(aa) “Permit” means the document evidencing authority of a motor carrier to operate motor vehicles as a private carrier.

(bb) “PHMSA” means pipeline and hazardous materials safety administration of the United States department of transportation.

(cc) “Single line rate” means a rate, charge, or allowance established by a single common motor carrier of property or passengers that is applicable only over its line and for which the transportation can be provided by that carrier.

(dd) “Tariff publication” means the rates, charges, classification, ratings, or policies published by, for, or on behalf of common motor carriers of household goods, property, or passengers.

(ee) “Transportation” means the movement of household goods, property, or passengers, or any combination of these, and the loading, unloading, or storage incidental to this movement.

(ff) “USDOT” means the United States department of transportation. (Authorized by and implementing K.S.A. 66-1,112, K.S.A. 66-1,112g, K.S.A. 66-1,129; effective Jan. 1, 1971; modified, L. 1981, Ch. 424, May 1, 1981; amended, T-83-45, Dec. 8, 1982; amended May 1, 1983; amended May 1, 1984; amended April 30, 1990; amended Sept. 16, 1991; amended July 6, 1992; amended May 10, 1993; amended Oct. 3, 1994; amended Jan. 30, 1995; amended Jan. 4, 1999; amended July 28, 2000; amended Nov. 14, 2011; amended Sept. 20, 2013; amended May 6, 2016; amended July 26, 2019.)

**82-4-2. General duty of carrier.** (a) Each motor carrier shall instruct its officers, agents, employees, and representatives to comply with all the regulations of the commission.

(b) Each motor carrier and its officers, agents, employees, and representatives shall comply with the regulations of the commission and with any reasonable requests of the commission or its authorized agents for inspection or examination of any operating credentials of motor carrier equipment or required parts and accessories.

(c) Each motor carrier who has obtained a certificate, license, or permit from the commission shall notify the commission within 10 days of any change of business or mailing address. (Authorized by K.S.A. 2009 Supp. 66-1,112 and K.S.A. 66-1,112g; implementing K.S.A. 2009 Supp. 66-1,111; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1984; amended May 1, 1987; amended Sept. 16, 1991; amended Jan. 31, 2003; amended Oct. 22, 2010.)

**82-4-2a. Authority of agents, employees, or representatives authorized by commission.** The special agents, agents, employees, or representatives authorized by the commission shall have the authority to perform the following:

(a) Examine motor carrier equipment operating on the highways in this state;

(b) enter upon any motor carrier's premises located in Kansas and inspect and examine the motor carrier's records, books, and equipment located on the premises;

(c) examine the manner of the motor carrier's conduct as it relates to the public safety and the operation of commercial motor vehicles in this state; and

(d) declare or place, or both, any commercial motor vehicle, driver, or motor carrier "out-of-service" for any "out-of-service" conditions as defined in K.A.R. 82-4-1. Authorized personnel shall declare and mark as out-of-service any commercial motor vehicle, driver, or motor carrier that by reason of its mechanical condition or loading would likely cause an accident or a breakdown or is in violation of any commission economic or safety regulations or "out-of-service" criteria as defined in K.A.R. 82-4-1. An "out-of-service vehicle" sticker shall be used to mark each vehicle and any intermodal equipment as out-of-service. (Authorized by K.S.A. 66-1,108a and 66-1,108c; implementing K.S.A. 66-1,108b; effective Nov. 14, 2011; amended May 6, 2016; amended July 26, 2019.)

**82-4-3. Exemption from the motor carrier safety regulations.** The commission's safety regulations and the federal safety regulations ad-

opted by reference in this article shall not apply to the following:

(a) The occasional transportation of personal property by private motor carriers that is not for compensation and is not in the furtherance of a commercial enterprise;

(b) the operation of fire trucks and rescue vehicles while involved in emergency and related operations;

(c) the operation of commercial motor vehicles designed or used to transport between nine and 15 passengers, including the driver, not for compensation, if the commercial motor vehicle does not otherwise meet the definition of a commercial motor vehicle, except that motor carriers operating these vehicles shall comply with 49 C.F.R. 390.15, 49 C.F.R. 390.19, and 49 C.F.R. 390.21(a), as adopted by K.A.R. 82-4-3f;

(d) the operation of commercial motor vehicles designed or used to transport between nine and 15 passengers, including the driver, for direct compensation, if the vehicle is not being operated beyond a radius of 75 air miles from the driver's normal work-reporting location and if the vehicle does not otherwise meet the definition of a commercial motor vehicle, except that motor carriers operating these vehicles shall comply with 49 C.F.R. 390.15, 49 C.F.R. 390.19, and 49 C.F.R. 390.21(a), as adopted by K.A.R. 82-4-3f. (Authorized by and implementing K.S.A. 2003 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2003 Supp. 66-1,129, as amended by L. 2004, Ch. 152, § 7; effective Jan. 1, 1971; modified, L. 1981, ch. 424, May 1, 1981; amended May 1, 1984; amended May 1, 1985; amended May 1, 1987; amended April 30, 1990; amended Sept. 16, 1991; amended July 6, 1992; amended May 10, 1993; amended Oct. 3, 1994; amended Jan. 30, 1995; amended Jan. 4, 1999; amended, T-82-9-13-99, Sept. 13, 1999; amended March 3, 2000; amended, T-82-4-7-00, April 17, 2000; amended July 28, 2000; amended, T-82-10-25-01, Oct. 25, 2001; amended Dec. 28, 2001; amended, T-82-12-29-04, Dec. 29, 2004; amended April 29, 2005.)

**82-4-3a. Hours of service.** (a)(1) With the following exceptions, 49 C.F.R. Part 395, as in effect on October 1, 2019 and as amended by 85 fed. reg. 33451-33452 (2020), excluding appendix A to subpart B, is hereby adopted by reference:

(A) The following revisions shall be made to 49 C.F.R. 395.1:

(i) 49 C.F.R. 395.1(a)(2) shall be deleted.

(ii) In paragraph (b)(1), the phrase “Except as provided in paragraph (h)(3) of this section,” shall be deleted.

(iii) In paragraph (g)(1)(ii)(C), the phrase “— or, for calculation of the 20-hour period in § 395.1(h)(1)(ii) for drivers in Alaska, all on-duty time—” shall be deleted.

(iv) In paragraph (g)(2), the phrase “393.76 of this subchapter” shall be deleted and replaced with “49 C.F.R. 393.76 as adopted by K.A.R. 82-4-3i.”

(v) In paragraph (g)(3), the phrase “393.76 of this subchapter” shall be deleted and replaced with “49 C.F.R. 393.76 as adopted by K.A.R. 82-4-3i.”

(vi) 49 C.F.R. 395.1(h) shall be deleted.

(vii) 49 C.F.R. 395.1(i) shall be deleted.

(viii) In paragraph (k), the phrase “each State” shall be deleted and replaced with “the state of Kansas.” The following shall be added after subparagraph (3): “(4) ‘Planting and harvesting periods’ means the time periods for planting, growing, and harvesting that occur between January 1 and December 31.”

(ix) In paragraph (q), the phrase “49 CFR 397.5” shall be deleted and replaced with “49 C.F.R. 397.5 as adopted by K.A.R. 82-4-3k.”

(x) In paragraph (s), the phrase “49 CFR 390.5” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(xi) In paragraph (x), the phrase “49 CFR 390.38(b)” shall be deleted and replaced with “49 C.F.R. 390.38(b) as adopted by K.A.R. 82-4-3f.”

(B) The following revisions shall be made to 49 C.F.R. 395.2:

(i) In the definition of “farm supplies for agricultural purposes,” the phrase “each State” shall be deleted and replaced with “the state of Kansas.” The phrase “the State” shall be deleted and replaced with “the commission.”

(ii) In paragraph (4)(i) of the definition of “on duty time,” the phrase “§ 397.5 of this subchapter” shall be deleted and replaced with “49 C.F.R. 397.5 as adopted by K.A.R. 82-4-3k.”

(iii) In paragraph (7) of the definition of “on duty time,” the phrase “part 382 of this subchapter” shall be deleted and replaced with “49 C.F.R. Part 382 as adopted by K.A.R. 82-4-3c.”

(iv) The definition of “signal employee” shall be deleted and replaced with the following: “‘Signal employee’ means an individual who is engaged in installing, repairing or maintaining signal systems.”

(v) The definition of “sleeper berth” shall be deleted and replaced by the following: “‘Sleeper berth’ means a berth conforming to the requirements of 49 C.F.R. 393.76, as adopted in K.A.R. 82-4-3i.”

(vi) In the definition of “transportation of construction material and equipment,” the following text shall be deleted: “, except that a State, upon notice to the Administrator, may establish a different air mile radius limitation for purposes of this definition if such limitation is between 50 and 75 air miles and applies only to movements that take place entirely within the State. This paragraph does not apply to the transportation of material found by the Secretary to be hazardous under 49 U.S.C. 5103 in a quantity requiring placarding under regulations issued to carry out such section.”

(C) The following changes shall be made to 49 C.F.R. 395.8:

(i) In paragraph (a)(1), the phrase “§ 390.5 of this subchapter” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(ii) All references to “December 18, 2017” shall be replaced with “January 3, 2018.”

(D) The following revisions shall be made to 49 C.F.R. 395.11:

(i) In paragraph (a), “December 18, 2017” shall be replaced by “January 3, 2018.”

(ii) Paragraphs (h)(1), (h)(2), and (h)(3) shall be deleted and replaced with the following: “A carrier utilizing an FMCSA authorized supporting document self-compliance system will be deemed to comply with K.A.R. 82-4-3a.”

(E) The following revisions shall be made to 49 C.F.R. 395.13:

(i) In paragraph (a), the phrase “every special agent of the Federal Motor Carrier Safety Administration (as defined in appendix B to this subchapter)” shall be deleted and replaced by “any authorized representative of the commission, and any member of the Kansas highway patrol or any other law enforcement officer in the state who is certified in the inspection of motor carriers based on the motor carrier safety assistance program standards.”

(ii) 49 C.F.R. 395.13(c)(2) shall be deleted and replaced by the following: “Within fifteen days following the date any driver is placed out of service, the motor carrier that employed the driver shall personally deliver or place in the U.S. mail to the state director of transportation and to the federal motor carrier safety administration a signed certi-

fication in a form acceptable to the commission. Any signed certification acceptable to the commission shall include the following information:

“(i) All violations have been corrected;  
 “(ii) action has been taken to ensure compliance with 49 C.F.R. 395.1, 49 C.F.R. 395.2, 49 C.F.R. 395.3, 49 C.F.R. 395.5, 49 C.F.R. 395.8, 49 C.F.R. 395.13, and 49 C.F.R. 395.15, each as adopted by K.A.R. 82-4-3a; and

“(iii) the motor carrier understands that false certification can result in appropriate enforcement action.”

(iii) 49 C.F.R. 395.13(d)(4) shall be deleted and replaced with the following: “49 C.F.R. 395.13 does not alter the hazardous materials requirements prescribed in 49 C.F.R. 397.5 as adopted by K.A.R. 82-4-3k pertaining to attendance and surveillance of commercial motor vehicles.”

(F) The following revisions shall be made to 49 C.F.R. 395.15:

(i) In paragraph (a), “December 18, 2017” shall be replaced with “January 3, 2018.”

(ii) The last sentence in 49 C.F.R. 395.15(b)(3) shall be deleted.

(iii) In paragraphs (j)(1) and (j)(2), the term “FMCSA” shall be deleted and replaced by “commission.”

(G) In 49 C.F.R. 395.20(b), the phrase “December 18, 2017” shall be replaced with “January 3, 2018.”

(H) In 49 C.F.R. 395.22(j), the phrase “§ 390.29 of this subchapter” shall be replaced with “49 CFR 390.29 as adopted by K.A.R. 82-4-3f.”

(I) In 49 C.F.R. 395.26(a), the phrase “in accordance with the requirements contained in appendix A to subpart B of this part” shall be deleted.

(J) In 49 C.F.R. 395.28(c), “§ 390.3(f) of this subchapter” shall be replaced with “49 CFR 390.3 as adopted by K.A.R. 82-4-3f.”

(K) In 49 C.F.R. 395.34(d)(2), (d)(3), (d)(4), and (d)(5), the phrases “FMCSA Division Administrator for the State of the motor carrier’s principal place of business” and “FMCSA” shall be replaced by “the Commission.”

(L) 49 C.F.R. 395.38 shall be deleted.

(2) As used in this regulation, each reference to a portion of 49 C.F.R. Part 395 shall mean that portion as adopted by reference in this regulation.

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall

not be applicable to this regulation unless otherwise specifically adopted.

(c) No wrecker or tow truck, as defined by K.S.A. 66-1329 and amendments thereto, with a gross vehicle weight rating or gross combination vehicle weight rating of 26,000 pounds or less that is operating in intrastate commerce and is not either carrying 16 or more passengers, including the driver, or transporting materials required to be placarded shall be subject to this regulation. (Authorized by and implementing K.S.A. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 66-1,129; effective, T-82-12-16-03, Jan. 4, 2004; effective, T-82-4-27-04, May 3, 2004; effective, T-82-8-23-04, Aug. 31, 2004; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended, T-82-10-25-05, Nov. 1, 2005; amended Feb. 17, 2006; amended, T-82-3-21-06, March 21, 2006; amended June 30, 2006; amended Oct. 2, 2009; amended Oct. 22, 2010; amended Nov. 14, 2011; amended Sept. 20, 2013; amended, T-82-4-14-15, April 14, 2015; amended July 31, 2015; amended, T-82-1-3-18, Jan. 3, 2018; amended April 27, 2018; amended, T-82-9-17-20, Sept. 17, 2020; amended Jan. 15, 2021.)

### **82-4-3b. Procedures for transportation workplace drug and alcohol testing programs.**

(a)(1) With the exceptions specified in this subsection, 49 C.F.R. Part 40, as in effect on October 1, 2015, is hereby adopted by reference.

(2) The following revisions shall be made to 49 C.F.R. 40.3:

(A) In the definition of “Employee,” the term “U.S.” shall be inserted before the phrase “Department of Health and Human Services.”

(B) In the definition of “HHS,” the phrase “U.S.” shall be added before the phrase “Department of Health and Human Services” in both instances.

(C) The following definition of “special agent or authorized representative” shall be added after the definition of “Shipping container”:

“Special agent or authorized representative” means an authorized representative of the commission, and members of the Kansas highway patrol or any other law enforcement officer in the state who is certified in the inspection of motor carriers based on the motor carrier safety assistance program standards.”

(3) 49 C.F.R. 40.5 and 49 C.F.R. 40.7 shall be deleted.

(4) In 49 C.F.R. 40.21, paragraphs (b), (c), and (d) shall be deleted. In paragraph (e), the text “and

DOT agency drug testing regulations” and “by the DOT agency just as you are for other violations of this part and DOT agency rules” shall be deleted.

(5) 49 C.F.R. 40.26 shall be deleted and replaced by the following: “Management information system (“MIS”) data shall be reported to the commission within 10 days of the commission’s request for the information. MIS data shall be reported in a certified form acceptable to the commission. A certified form acceptable to the commission shall include the following information:

“(a) Information regarding the employer, including:

“(1) The name of the employer’s business and, if applicable, the name it does business as;

“(2) the company’s physical address and, if applicable, e-mail address;

“(3) the printed name and signature of the company’s official certifying the MIS data;

“(4) the date the MIS data was certified;

“(5) the name and telephone number of the person preparing the form, if it is different from the person certifying the MIS data;

“(6) the name and telephone number of the C/TPA, if applicable; and

“(7) the employer’s motor carrier identification number.

“(b) Information regarding the covered employees, including:

“(1) the total number of safety-sensitive employees in all categories;

“(2) the total number of employee categories;

“(3) the name of the employee category or categories; and

“(4) the total number of employees for each category.

“(c) Information regarding the drug testing data, including:

“(1) The type of test, which includes:

“(A) Pre-employment;

“(B) random;

“(C) post-accident;

“(D) reasonable suspicion or cause;

“(E) return-to-duty; and

“(F) follow-up.

“(2) The number of tests by result, including:

“(A) Total number of test results;

“(B) verified negative results;

“(C) verified positive results for one or more drugs;

“(D) positive for marijuana;

“(E) positive for cocaine;

“(F) positive for PCP;

“(G) positive for opiates;

“(H) positive for amphetamines;

“(I) canceled results; and

“(J) refusal results, including:

“(i) Adulterated;

“(ii) substitutes;

“(iii) shy bladder with no medical explanation; and

“(iv) other refusals to submit to testing.

“(d) Information resulting alcohol testing data, including:

“(1) The type of test, including the same types as listed in paragraph (c)(1) above;

“(2) the number of tests by results, including:

“(A) total number of screen test results;

“(B) screening tests with results below 0.02;

“(C) screening tests with results of 0.02 or greater;

“(D) number of confirmation test results;

“(E) confirmation tests with results of 0.02 through 0.039;

“(F) confirmation tests with results of 0.04 or greater;

“(G) canceled results; and

“(H) refusal results, including:

“(i) Shy lung with no medical explanation; and

“(ii) other refusals to submit to testing.”

(6) 49 C.F.R. 40.29 shall be deleted.

(7) 49 C.F.R. 40.37 shall be deleted.

(8) Subparts D through N shall be deleted.

(9) Subpart O shall be deleted. Each motor carrier shall use a DOT-certified substance abuse professional.

(10) Subparts P through R shall be deleted.

(11) In 49 C.F.R. Part 40, Appendix A through Appendix H shall be deleted.

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 40 shall mean that portion as adopted by reference in this regulation.

(c) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Sept. 20, 2013; amended July 26, 2019.)

**82-4-3c. Testing for controlled substances and alcohol use.** (a) With the following excep-

tions, 49 C.F.R. Part 382, as in effect on October 1, 2015, is hereby adopted by reference:

(1) The following revisions shall be made to 49 C.F.R. 382.103:

(A) In paragraph (a), the phrase “any State” shall be deleted and replaced by “the state of Kansas.”

(B) In paragraph (a)(1), the phrase “part 383 of this subchapter” shall be deleted and replaced with “the Kansas uniform commercial drivers’ license act, found at K.S.A. 8-2,125 et seq.”

(C) In paragraph (a)(2), the word “or” shall be deleted.

(D) In paragraph (c), the phrase “§ 390.3(f) of this subchapter” shall be deleted and replaced by “49 C.F.R. 390.3(f) as adopted by K.A.R. 82-4-3f.”

(E) Paragraph (d)(2) shall be deleted and replaced by the following: “(2) Operating vehicles exempted from the Kansas uniform commercial drivers’ license act by K.S.A. 8-2,127 and amendments thereto.”

(F) In paragraph (d)(3), the phrase “a State” shall be deleted and replaced by “the state of Kansas.” The phrase “part 383 of this subchapter” shall be deleted and replaced by “the Kansas uniform commercial drivers’ license act.” The text “These individuals may be:” shall be deleted.

(G) Paragraphs (d)(3)(i) and (d)(3)(ii) shall be deleted.

(H) In paragraph (d)(4), the phrase “49 CFR 390.5” shall be deleted and replaced by “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(2) In 49 C.F.R. 382.105, the phrase “part 40 of this title” shall be deleted and replaced by “49 C.F.R. Part 40, as adopted by K.A.R. 82-4-3b.”

(3) The following revisions shall be made to 49 C.F.R. 382.107:

(A) In the first paragraph, the phrase “§§ 386.2 and 390.5 of this subchapter, and § 40.3 of this title” shall be deleted and replaced by “49 C.F.R. 386.2, as adopted by K.A.R. 82-4-3o, 49 C.F.R. 390.5, as adopted by K.A.R. 82-4-3f, and 49 C.F.R. 40.3, as adopted by K.A.R. 82-4-3b.”

(B) The definition of “commerce” shall be deleted and replaced by the following: “‘Commerce’ means any trade, traffic or transportation within the jurisdiction of the state of Kansas, and any trade, traffic and transportation which affects any trade, traffic and transportation within the jurisdiction of the state of Kansas.”

(C) The phrase “as adopted by K.A.R. 82-4-20” shall be inserted after the phrase “(49 C.F.R. part 172, subpart F)” in the definition of commercial motor vehicle.

(D) In the definition of “controlled substances,” the phrase “§ 40.85 of this title” shall be deleted and replaced by “49 C.F.R. 40.85, as adopted by K.A.R. 82-4-3b.”

(E) In the definition of “DOT agency,” the phrase “part 40 of this title” shall be deleted and replaced by “49 C.F.R. Part 40 as adopted by K.A.R. 82-4-3b.”

(F)(i) In paragraph (1) of the definition of “refuse to submit,” the phrase “§ 40.61(a) of this title” shall be deleted and replaced by “49 C.F.R. 40.61(a), as adopted by K.A.R. 82-4-3b.”

(ii) In paragraphs (2) and (3) of the definition of “refuse to submit,” the phrase “§ 40.63(c) of this title” shall be deleted and replaced by “49 C.F.R. 40.63(c), as adopted by K.A.R. 82-4-3b.”

(iii) In paragraph (4) of the definition of “refuse to submit,” the phrase “§§ 40.67(l) and 40.69(g) of this title” shall be deleted and replaced by “49 C.F.R. 40.67(l) and 40.69(g) as adopted by K.A.R. 82-4-3b.”

(iv) In paragraph (5) of the definition of “refuse to submit,” the phrase “§ 40.193(d)(2) of this title” shall be deleted and replaced by “49 C.F.R. 40.193(d)(2) as adopted by K.A.R. 82-4-3b.”

(v) In paragraph (7) of the definition of “refuse to submit,” the phrase “§ 40.193(d) of this title” shall be deleted and replaced by “49 C.F.R. 40.193(d) as adopted by K.A.R. 82-4-3b.”

(G)(i) In paragraph (2) of the definition of “safety-sensitive function,” the phrase “§§ 392.7 and 392.8 of this subchapter” shall be deleted and replaced by “49 C.F.R. 392.7 and 392.8, as adopted by K.A.R. 82-4-3h.”

(ii) In paragraph (4) of the definition of “safety-sensitive function,” the phrase “§ 393.76 of this subchapter” shall be deleted and replaced by “49 C.F.R. 393.76, as adopted by K.A.R. 82-4-3i.”

(4) 49 C.F.R. 382.109 shall be deleted.

(5) 49 C.F.R. 382.117 shall be deleted.

(6) In 49 C.F.R. 382.119(b), the phrase “49 CFR 40.21” shall be deleted and replaced by “49 C.F.R. 40.21 as adopted by K.A.R. 82-4-3b.”

(7) In 49 C.F.R. 382.121(a), the phrase “part 40 of this title” shall be deleted and replaced by “49 C.F.R. Part 40 as adopted by K.A.R. 82-4-3b.”

(8) The following revisions shall be made to 49 C.F.R. 382.213:

(A) In paragraph (a), the phrase “21 CFR 1308.11 Schedule I” shall be deleted and replaced by “21 C.F.R. 1308.11 Schedule I.”

(B) In paragraph (b), the phrase “21 CFR part 1308” shall be deleted and replaced by “21 C.F.R.

Part 1308, dated April 1, 2016, and hereby adopted by reference.”

(9) The following revisions shall be made to 49 C.F.R. 382.301:

(A) In paragraph (c)(1)(iii), the phrase “part 40 of this title” shall be deleted and replaced by “49 C.F.R. Part 40, as adopted by K.A.R. 82-4-3b.”

(B) In paragraph (c)(2), the phrase “part 40 of this title” shall be deleted and replaced by “49 C.F.R. Part 40, as adopted by K.A.R. 82-4-3b.”

(C) In paragraph (d)(4), the phrase “49 CFR part 40 of this title” shall be deleted and replaced by “49 C.F.R. Part 40 as adopted by K.A.R. 82-4-3b.”

(10) In 49 C.F.R. 382.303(h)(3), the phrase “§ 177.823 of this title” shall be deleted and replaced by “49 C.F.R. 177.823 as adopted by K.A.R. 82-4-20.”

(11) In 49 C.F.R. 382.309 and 382.311, the phrase “49 CFR part 40, Subpart O” shall be deleted and replaced by “49 C.F.R. Part 40, Subpart O as adopted by K.A.R. 82-4-3b.”

(12) The following revisions shall be made to 49 C.F.R. 382.401:

(A) In paragraph (b)(3), the phrase “part 40 of this title” shall be deleted and replaced by “49 C.F.R. Part 40 as adopted by K.A.R. 82-4-3b.”

(B) In paragraph (c)(2)(iii), the phrase “, including those required by part 40, subpart G, of this title” shall be deleted.

(C) In paragraph (c)(5)(iv), the phrase “§ 40.213(g) of this title” shall be deleted and replaced by “49 C.F.R. 40.213(g) as adopted by K.A.R. 82-4-3b.”

(D) In paragraph (c)(6)(iii), the phrase “§ 40.111(a) of this title” shall be deleted and replaced by “49 C.F.R. 40.111(a), as adopted by K.A.R. 82-4-3b.”

(E) In paragraph (d), the phrase “§ 390.29 of this subchapter” shall be deleted and replaced by “49 C.F.R. 390.29, as adopted by K.A.R. 82-4-3f.”

(F) Paragraph (e) shall be deleted.

(13) In 49 C.F.R. 382.403(b), the phrase “49 CFR part 40” shall be deleted and replaced by “49 C.F.R. Part 40 as adopted by K.A.R. 82-4-3b.” The phrase “§ 40.26 and appendix H to part 40” shall be deleted and replaced by “49 C.F.R. 40.26 as adopted by K.A.R. 82-4-3b.”

(14) The following revisions shall be made to 49 C.F.R. 382.405:

(A) In paragraph (g), the phrase “§ 40.323(a)(2) of this title” shall be deleted and replaced by “49 C.F.R. 40.323(a)(2) as adopted by K.A.R. 82-4-3b.”

(B) In paragraph (h), the phrase “§ 40.321(b) of this title” shall be deleted and replaced by “49 C.F.R. 40.321(b) as adopted by K.A.R. 82-4-3b.”

(15) 49 C.F.R. 382.407 and 382.409 shall be deleted.

(16) In 49 C.F.R. 382.413, the phrase “§ 40.25 of this title” shall be deleted and replaced by “49 C.F.R. 40.25 as adopted by K.A.R. 82-4-3b.”

(17) In 49 C.F.R. 382.501(c), the phrase “part 390 of this subchapter” shall be deleted and replaced by “49 C.F.R. Part 390 as adopted by K.A.R. 82-4-3f.”

(18) In 49 C.F.R. 382.503, the phrase “part 40, subpart O, of this title” shall be deleted and replaced with “Subpart O of 49 C.F.R. Part 40 as adopted by K.A.R. 82-4-3b.”

(19) 49 C.F.R. 382.507 shall be deleted.

(20) In 49 C.F.R. 382.601(b)(9), the phrase “part 40, Subpart O, of this title” shall be deleted and replaced by “49 C.F.R. Part 40, Subpart O, as adopted by K.A.R. 82-4-3b.”

(21) In 49 C.F.R. 382.605, the phrase “49 CFR part 40, Subpart O” shall be deleted and replaced by “Subpart O of 49 C.F.R. Part 40 as adopted by K.A.R. 82-4-3b.”

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 382 shall mean that portion as adopted by reference in this regulation.

(c) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Sept. 20, 2013; amended July 26, 2019.)

#### **82-4-3d. Safety fitness procedures.** (a)

With the following exceptions, 49 C.F.R. Part 385, as in effect on October 1, 2015, is hereby adopted by reference:

(1) 49 C.F.R. 385.1(a) and (b) shall be deleted.

(2) The following revisions shall be made to 49 C.F.R. 385.3:

(A) In the definition of “Applicable safety regulations or requirements,” the phrase “as adopted by K.A.R. 82-4-3a through 82-4-3o,” shall be inserted after the phrase “49 CFR chapter III, subchapter B—Federal Motor Carrier Safety

Regulations.” The phrase “as adopted by K.A.R. 82-4-20” shall be inserted after the phrase “49 C.F.R. chapter I, subchapter C—Hazardous Materials Regulations.”

(B) In the definition of “CMV,” the phrase “§ 390.5 of this subchapter” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(C) In the definition of “commercial motor vehicle,” the phrase “§ 390.5 of this subchapter” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(D) In the definition of “HMRs,” the phrase “as adopted by K.A.R. 82-4-20” shall be inserted after the phrase “49 C.F.R. parts 171-180.”

(E) In the definition of “motor carrier operations in commerce,” the phrase “or intrastate” shall be added after the word “interstate” in paragraphs (1) and (2).

(F) The definition of “Safety ratings,” including paragraphs (1), (2), (3), and (4), shall be deleted.

(3) 49 C.F.R. 385.4 shall be deleted.

(4) The following revisions shall be made to 49 C.F.R. 385.5:

(A) The first paragraph shall be deleted and replaced by the following: “In cooperation with the FMCSA, special agents and authorized representatives shall conduct reviews in order to gather the information necessary for the FMCSA to issue a safety rating for a motor carrier. Information gathered shall include information necessary to demonstrate that the motor carrier has adequate safety management controls in place which comply with the applicable safety requirements to reduce the risk associated with:”

(B) In paragraph (a), the phrase “part 383 of this chapter” shall be deleted and replaced with “the Kansas uniform commercial drivers’ license act, found at K.S.A. 8-2,125 et seq.”

(C) In paragraph (b), the phrase “part 387 of this chapter” shall be deleted and replaced with “49 C.F.R. Part 387 as adopted by K.A.R. 82-4-3n.”

(D) In paragraph (c), the phrase “part 391 of this chapter” shall be deleted and replaced with “49 C.F.R. Part 391 as adopted by K.A.R. 82-4-3g.”

(E) In paragraph (d), the phrase “part 392 of this chapter” shall be deleted and replaced with “49 C.F.R. Part 392 as adopted by K.A.R. 82-4-3h.”

(F) In paragraph (e), the phrase “part 393 of this chapter” shall be deleted and replaced with “49 C.F.R. Part 393 as adopted by K.A.R. 82-4-3i.”

(G) In paragraph (f), the phrase “part 390 of this chapter” shall be deleted and replaced with “49 C.F.R. Part 390 as adopted by K.A.R. 82-4-3f.”

(H) In paragraph (g), the phrase “part 395 of this chapter” shall be deleted and replaced with “49 C.F.R. Part 395 as adopted by K.A.R. 82-4-3a.”

(I) In paragraph (h), the phrase “part 396 of this chapter” shall be deleted and replaced with “49 C.F.R. Part 396 as adopted by K.A.R. 82-4-3j.”

(J) In paragraph (i), the phrase “part 397 of this chapter” shall be deleted and replaced with “49 C.F.R. Part 397 as adopted by K.A.R. 82-4-3k.”

(K) In paragraph (j), the phrase “parts 170 through 177 of this title” shall be deleted and replaced with “49 C.F.R. Parts 170 through 177 as adopted by K.A.R. 82-4-20.”

(5) The first paragraph of 49 C.F.R. 385.7 shall be deleted and replaced by the following: “In cooperation with the FMCSA, special agents and authorized representatives shall conduct reviews in order to gather the information necessary for the FMCSA to determine and issue an appropriate safety rating for a motor carrier. Information gathered shall be information the FMCSA may consider in assessing a safety rating, including:”

(6) 49 C.F.R. 385.9 through 49 C.F.R. 385.19 shall be deleted.

(7) 49 C.F.R. 385.101 through 49 C.F.R. 385.119 shall be deleted.

(8) 49 C.F.R. 385.301 through 385.337 shall be deleted.

(9) The following shall be inserted after the last sentence in 49 C.F.R. 385.405(b): “All Kansas-based interstate motor carriers and all Kansas intrastate motor carriers transporting hazardous materials are required to obtain a hazardous materials safety permit from the FMCSA and are subject to FMCSA jurisdiction for hazardous materials safety requirements as set forth in 49 C.F.R. 385.401 through 385.423, and in 49 C.F.R. Parts 171, 172, 173, 177, 178 and 180, as adopted by K.A.R. 82-4-20.”

(10) 49 C.F.R. 385.501 through 385.1019, including appendices A and B, shall be deleted.

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 385 shall mean that portion as adopted by reference in this regulation.

(c) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall not be applicable to this regulation unless other-

wise specifically adopted. (Authorized by K.S.A. 66-1,112, K.S.A. 66-1,112g, K.S.A. 66-1,129; implementing K.S.A. 66-1,112, K.S.A. 66-1,112g, K.S.A. 66-1,129, and K.S.A. 66-1,142a; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Oct. 22, 2010; amended Sept. 20, 2013; amended July 26, 2019.)

**82-4-3e.** (Authorized by and implementing K.S.A. 2003 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2003 Supp. 66-1,129, as amended by L. 2004, Ch. 152, § 7; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; revoked Oct. 2, 2009.)

**82-4-3f. General motor carrier safety regulations.** (a) With the following exceptions, 49 C.F.R. Part 390, as in effect on October 1, 2015 and as amended by 81 fed. reg. 47720 (2016) and the portions of 82 fed. reg. 5318 (2017) pertaining to subpart E, is hereby adopted by reference:

(1) The following revisions shall be made to 49 C.F.R. 390.3:

(A) The following revisions shall be made to paragraph (a):

(i) The phrase “subchapter B of this chapter” shall be deleted and replaced with “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(ii) The phrase “or intrastate” shall be added after the word “interstate.”

(B) Paragraph (b) shall be deleted and replaced with the following: “The Kansas uniform commercial drivers’ license act, found at K.S.A. 8-2,125 et seq., is applicable to every person who operates a commercial motor vehicle in interstate or intrastate commerce and to all employers of such persons.”

(C) The following revisions shall be made to paragraph (c):

(i) The phrase “Part 387, Minimum Levels of Financial Responsibility for Motor Carriers” shall be deleted and replaced with “49 C.F.R. Part 387 as adopted by K.A.R. 82-4-3n.”

(ii) The phrase “§ 387.3 or § 387.27” shall be deleted and replaced with “49 C.F.R. 387.3 or 387.27 as adopted by K.A.R. 82-4-3n.”

(D) In paragraph (d), the phrase “subchapter B of this chapter” shall be deleted and replaced with “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(E) In paragraph (e)(1), the phrase “all regulations contained in this subchapter” shall be de-

leted and replaced by “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(F) In paragraph (e)(2), the phrase “all applicable regulations contained in this subchapter” shall be deleted and replaced by “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(G) In paragraph (e)(3), both instances of the phrase “this subchapter” shall be deleted and replaced with “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(H) In paragraph (f), the phrase “this subchapter” shall be deleted and replaced with “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(I) In paragraph (g), the phrase “of Subchapter B of this chapter” shall be deleted.

(J) Paragraph (g)(1) shall be deleted and replaced with the following: “(1) 49 C.F.R. Part 385, subparts A and E, as adopted by K.A.R. 82-4-3d, for carriers subject to the requirements of 49 C.F.R. 385.403, as adopted by K.A.R. 82-4-3d.”

(K) Paragraph (g)(2) shall be deleted.

(L) Paragraph (g)(3) shall be deleted and replaced with “49 C.F.R. Part 387, as adopted by K.A.R. 82-4-3n, to the extent provided in 49 C.F.R. 387.3 as adopted by K.A.R. 82-4-3n.”

(M) Paragraph (g)(4) shall be deleted.

(N) The following revisions shall be made to paragraph (h):

(i) The phrase “of subchapter B of this chapter” shall be deleted.

(ii) Paragraph (1) shall be deleted and replaced with “Subpart F of 49 C.F.R. Part 385 as adopted by K.A.R. 82-4-3d.”

(iii) Paragraph (2) shall be deleted and replaced with “49 C.F.R. Part 386, Subpart F as adopted by K.A.R. 82-4-3o.”

(iv) Paragraph (4) shall be deleted and replaced with “49 C.F.R. Part 393 as adopted by K.A.R. 82-4-3i.”

(v) Paragraph (5) shall be deleted and replaced with “49 C.F.R. Part 396 as adopted by K.A.R. 82-4-3j.”

(2) The following revisions shall be made to 49 C.F.R. 390.5:

(A) In the first paragraph, the phrase “this subchapter” shall be deleted and replaced with “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(B) The following definitions shall be deleted:

(i) Conviction;

(ii) exempt motor carrier;

(iii) other terms;

- (iv) secretary;
- (v) state; and
- (vi) United States.

(C) In the definition of “commercial motor vehicle,” the phrase “or intrastate” shall be inserted following the term “interstate.”

(D) In the definition of “driving a commercial motor vehicle while under the influence of alcohol,” the phrase “Table 1 to §383.51 or §392.5(a)(2) of this subchapter,” shall be deleted and replaced with “K.S.A. 8-2,125 et seq. or 49 C.F.R. 392.5(a)(2) as adopted by K.A.R. 82-4-3h.”

(E) In the definition of “exempt intracity zone,” the following text shall be deleted: “of a municipality or the commercial zone of that municipality described in appendix F to subchapter B of this chapter. The term ‘exempt intracity zone’ does not include any municipality or commercial zone in the State of Hawaii.” The deleted text shall be replaced by the following: “described in section 8 of 49 C.F.R. Subtitle B, Chapter III, Subchapter B, Appendix F, as adopted by K.A.R. 82-4-3f.” The phrase “§ 391.62” shall be deleted and replaced with “49 C.F.R. 391.62 as adopted by K.A.R. 82-4-3g.”

(F) In the definition of “farm vehicle driver,” the phrase “§177.823 of this subtitle” shall be deleted and replaced with “49 C.F.R. 177.823 as adopted by K.A.R. 82-4-20.”

(G) In the definition of “for-hire motor carrier,” the term “for-hire” shall have the same meaning as that for the term “public.”

(H) In the definition of “Hazardous material,” the phrase “United States” shall be inserted immediately before the phrase “Secretary of Transportation.”

(I) The following changes shall be made in the definition of “hazardous substance”:

(i) Both instances of the phrase “§ 172.101” shall be deleted and replaced by “49 C.F.R. 172.101.”

(ii) The first instance of the phrase “of this title” shall be deleted and replaced by “as adopted by K.A.R. 82-4-20.”

(iii) The phrase “§ 171.8 of this title” shall be deleted and replaced by “49 C.F.R. 171.8, as adopted by K.A.R. 82-4-20.”

(J) The definition of “medical examiner” shall be deleted and replaced by the following: “‘Medical examiner’ means an individual certified by FMCSA and listed on the national registry of certified medical examiners in accordance with 49 C.F.R. Part 390, Subpart D.”

(K) In the definition of “medical variance,” the phrase “part 381, subpart C, of this chapter or

§391.64 of this chapter” shall be deleted and replaced with “K.A.R. 82-4-6d or 49 C.F.R. 391.64 as adopted by K.A.R. 82-4-3g.” The phrase “§ 391.49” shall be deleted and replaced with “49 C.F.R. 391.49 as adopted by K.A.R. 82-4-3g.”

(L) The definition of “out of service order” shall be deleted.

(M) The following revisions shall be made to the definition of “principal place of business”:

(i) The phrase “parts 382, 387, 390, 391, 395, 396, and 397 of this subchapter” shall be deleted and replaced by “K.A.R. 82-4-3a, K.A.R. 82-4-3c, K.A.R. 82-4-3f, K.A.R. 82-4-3g, K.A.R. 82-4-3j, K.A.R. 82-4-3k, and K.A.R. 82-4-3n.”

(ii) The first instance of the term “Federal” shall be deleted.

(iii) The phrase “of the Federal Motor Carrier Safety Administration” shall be deleted.

(N) The definition of “Special agent” shall be deleted and replaced by the following: “Special agent or authorized representative means an authorized representative of the commission, and members of the highway patrol or any other law enforcement officer in the state who is certified in the inspection of motor carriers based on the motor carrier safety assistance program standards.”

(O) In the definition of “use a hand-held mobile telephone,” the phrase “as adopted by K.A.R. 82-4-3i” shall be inserted after the phrase “49 C.F.R. 393.93.”

(3) 49 C.F.R. 390.7 and 49 C.F.R. 390.9 shall be deleted.

(4) In 49 C.F.R. 390.11, the phrase “part 325 of subchapter A or in this subchapter” shall be deleted and replaced by “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(5) In 49 C.F.R. 390.13, the phrase “violate the rules of this chapter” shall be deleted and replaced by “operate in Kansas in a manner which violates any order, decision, or regulation of the commission.”

(6) The following revision shall be made to 49 C.F.R. 390.15:

In paragraph (a)(1), the phrase “of the Federal Motor Carrier Safety Administration, an authorized State or local enforcement agency representative or authorized third party representative” shall be deleted.

(7) The following revisions shall be made to 49 C.F.R. 390.19:

(A) In paragraph (a)(1), the phrase “interstate commerce” shall be deleted and replaced by “Kansas.”

(B) In paragraph (a)(2), the phrase “as adopted by K.A.R. 82-4-3d,” shall be inserted following “49 C.F.R. part 385, subpart E.” The phrase “of this chapter” shall be deleted.

(C) Paragraph (b) shall be deleted and replaced by the following: “The Form MCS-150 shall contain the following information:

“(1) The USDOT number assigned to the carrier;

“(2) the legal name of the motor carrier;

“(3) the trade or ‘doing business as’ name of the motor carrier, if applicable;

“(4) the street address of the motor carrier, including city, state, and zip code;

“(5) the mailing address of the motor carrier, including city, state, and zip code;

“(6) the motor carrier’s principal telephone number and facsimile number;

“(7) whether the motor carrier conducts intrastate only carriage of hazardous materials or intrastate carriage of non-hazardous materials;

“(8) the motor carrier’s mileage, rounded to the nearest 10,000, for the last calendar year;

“(9) the type of operations the motor carrier conducts;

“(10) the classification of cargo that the motor carrier transports;

“(11) the hazardous materials transported by the motor carrier;

“(12) the type of equipment owned or leased or both for transporting property or passengers;

“(13) the number of drivers that operate within a 100-mile radius of the carrier’s principal place of business;

“(14) the number of drivers that operate outside a 100-mile radius of the carrier’s principal place of business;

“(15) the number of drivers with commercial drivers’ licenses;

“(16) the total number of drivers; and

“(17) for Kansas-based, intrastate carriers, a signed and dated statement with the signatory’s printed name and title, certifying that the signatory is familiar with the commission’s safety regulations and that the information contained in the report is accurate.”

(D) In paragraph (d), the term “agency’s” shall be deleted and replaced by “FMCSA’s.” The following sentence shall be inserted after the last sentence in paragraph (d): “Kansas-based motor carriers may file the completed Form MCS-150 online at fmcsa.dot.gov or with the Kansas Corporation Commission at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604.”

(E) In paragraph (g), “the penalties prescribed in 49 U.S.C. 521(b)(2)(B)” shall be deleted and replaced by “civil penalties as provided in K.S.A. 66-1,142b.”

(F) Paragraph (h) shall be deleted.

(8) The following revisions shall be made to 49 C.F.R. 390.21:

(A) In paragraph (a), each instance of “subject to subchapter B of this chapter” shall be deleted.

(B) Paragraph (e)(2)(iii)(C) shall be deleted and replaced by the following: “A statement that the lessor cooperates with all relevant special agents and authorized representatives to provide the identity of customers who operate the rental commercial motor vehicles; and.”

(C) The last sentence of paragraph (e)(2)(iv) shall be deleted.

(D) In paragraph (g)(2), the phrase “subchapter B of this chapter” shall be deleted and replaced with “49 C.F.R. Subtitle B, Chapter III, Subchapter B as adopted by K.A.R. 82-4-3a through K.A.R. 82-4-3o.”

(9) The following changes shall be made to 49 C.F.R. 390.23:

(A) In paragraphs (a), (a)(1)(i)(B), and (a)(2)(i)(B), the phrase “Parts 390 through 399 of this chapter” shall be deleted and replaced by “K.A.R. 82-4-3a, and K.A.R. 82-4-3f through K.A.R. 82-4-3o.”

(B) In paragraph (b), both instances of the phrase “parts 390 through 399 of this chapter” shall be deleted and replaced by “K.A.R. 82-4-3a, and K.A.R. 82-4-3f through K.A.R. 82-4-3o.”

(C) In paragraph (c), the phrase “§§ 395.3(a) and (c) and 395.5(a) of this chapter” shall be deleted and replaced by “49 C.F.R. 395.3(a) and (c) and 49 C.F.R. 395.5(a), all as adopted by K.A.R. 82-4-3a.”

(10) 49 C.F.R. 390.27 shall be deleted.

(11) The following revisions shall be made to 49 C.F.R. 390.29(b):

(A) The phrase “of the Federal Motor Carrier Safety Administration” shall be deleted.

(B) The word “Federal” appearing in the last sentence shall be deleted.

(12) 49 C.F.R. 390.37 shall be deleted.

(13) With the following exceptions, 49 C.F.R. 390.38 is hereby adopted by reference:

(A) In paragraph (a)(1), the phrase “49 CFR part 365 or” shall be deleted.

(B) In paragraph (a)(2), the phrase “49 CFR part 391” shall be deleted and replaced with “49 C.F.R. part 391 as adopted by K.A.R. 82-4-3g.”

(C) In paragraph (a)(3), the phrase “49 CFR part 392” shall be deleted and replaced with “49 C.F.R. part 392 as adopted by K.A.R. 82-4-3h.”

(D) In paragraph (a)(4), the phrase “49 CFR parts 393 and 396” shall be deleted and replaced with “49 C.F.R. part 393 as adopted by K.A.R. 82-4-3i and 49 C.F.R. part 396 as adopted by K.A.R. 82-4-3j.”

(E) In paragraph (a)(5), the phrase “49 CFR part 395” shall be deleted and replaced with “49 C.F.R. part 395 as adopted by K.A.R. 82-4-3a.”

(14) The following revisions shall be made to 49 C.F.R. 390.39:

(A) In paragraph (a)(1), the phrase “49 CFR Part 383 or controlled substances and alcohol use and testing in 49 CFR Part 382” shall be deleted and replaced with “the Kansas uniform commercial drivers’ license act, found at K.S.A. 8-2,125 et seq. or controlled substances and alcohol testing in 49 C.F.R. Part 382 as adopted by K.A.R. 82-4-3c.”

(B) In paragraph (a)(2), the phrase “49 CFR Part 391, Subpart E, Physical Qualifications and Examinations” shall be deleted and replaced with “49 C.F.R. Part 391, Subpart E as adopted by K.A.R. 82-4-3g.”

(C) In paragraph (a)(3), the phrase “49 CFR Part 395, Hours of Service of Drivers” shall be deleted and replaced with “49 C.F.R. Part 395 as adopted by K.A.R. 82-4-3a.”

(D) In paragraph (a)(4), the phrase “49 CFR Part 396, Inspection, Repair, and Maintenance” shall be deleted and replaced with “49 C.F.R. Part 396 as adopted by K.A.R. 82-4-3j.”

(E) Paragraph (b) shall be deleted.

(F) Paragraph (c) shall be deleted.

(15) The following revisions shall be made to 49 C.F.R. 390.40:

(A) In paragraph (c), the phrase “§ 396.3(a)(1)” shall be deleted and replaced with “49 C.F.R. 396.3(a)(1) as adopted by K.A.R. 82-4-3j.”

(B) In paragraph (e), the phrase “§ 396.11 of this chapter” shall be deleted and replaced with “49 C.F.R. 396.11 as adopted by K.A.R. 82-4-3j.”

(C) In paragraph (f), the phrase “§ 396.3(b)(3) of this chapter” shall be deleted and replaced with “49 C.F.R. 396.3(b)(3) as adopted by K.A.R. 82-4-3j.”

(D) In paragraph (g), the phrase “§ 396.17 of this chapter” shall be deleted and replaced with “49 C.F.R. 396.17 as adopted by K.A.R. 82-4-3j.”

(E) In paragraph (j), the phrase “as defined in § 386.72(b)(1) of this chapter” shall be deleted and replaced with “as defined in K.A.R. 82-4-3o.”

(16) The following revisions shall be made to 49 C.F.R. 390.42:

(A) In paragraph (a), the phrase “listed in §392.7(b) of this subchapter” shall be deleted and replaced by “specified in K.A.R. 82-4-3h.”

(B) In paragraph (b), the phrase “in § 396.11(b)(2) of this chapter” shall be deleted and replaced by “required by K.A.R. 82-4-3j.”

(17) The following revisions shall be made to 49 C.F.R. 390.44:

(A) The following revisions shall be made to paragraph (a):

(i) The phrase “listed in §392.7(b) of this chapter” shall be deleted and replaced by “specified in K.A.R. 82-4-3h.”

(ii) The phrase “pursuant to §392.7(b)” shall be deleted and replaced by “K.A.R. 82-4-3h.”

(B) The following revisions shall be made to paragraph (b):

(i) The phrase “listed in §392.7(b) of this chapter” shall be deleted and replaced by “adopted and specified in K.A.R. 82-4-3h.”

(ii) The phrase “with §392.7(b)” shall be deleted and replaced by “with K.A.R. 82-4-3h.”

(C) The following revisions shall be made to paragraph (c):

(i) The term “FMCSA” shall be deleted and replaced by “the commission.”

(ii) The phrase “49 U.S.C. 31151 or the implementing regulations in this subchapter regarding interchange of intermodal equipment by contacting the appropriate FMCSA Field Office” shall be deleted and replaced by “K.A.R. 82-4-3a through K.A.R. 82-4-3o and K.A.R. 82-4-20 by filing a written complaint with the commission by: fax—785-271-3124; email: transportation@kcc.ks.gov; or by mail addressed to: 1500 SW Arrowhead Rd, Topeka, KS 66604-3124. The commission may also be contacted by phone number: 785.271.3145, select option one.”

(18) 49 C.F.R. 390.46 shall be deleted.

(19) 49 C.F.R. Part 390, Subpart D shall be deleted.

(b) Section 8 of 49 C.F.R., Chapter III, Subchapter B, Appendix F, as in effect on October 1, 2015, is hereby adopted by reference.

(c) As used in this regulation, each reference to a portion of 49 C.F.R. Part 390 shall mean that portion as adopted by reference in this regulation.

(d) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of

the commission's regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Oct. 8, 2010; amended Nov. 14, 2011; amended Sept. 20, 2013; amended June 12, 2015; amended July 26, 2019.)

**82-4-3g. Qualifications of drivers.** (a) With the following exceptions, 49 C.F.R. Part 391, as in effect on October 1, 2015 and as amended by 81 fed. reg. 47720 (2016), is hereby adopted by reference:

(1) The following revisions shall be made to 49 C.F.R. 391.2:

(A) In paragraph (c), the phrase “§ 390.5 of this chapter” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(B) In paragraph (e), the phrase “49 CFR 390.38(b)” shall be deleted and replaced with “49 C.F.R. 390.38(b) as adopted by K.A.R. 82-4-3f.”

(C) The phrase “49 CFR 390.5” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(2) The following revision shall be made to 49 C.F.R. 391.11: 49 C.F.R. 391.11(b)(1) shall apply only to commercial motor vehicle operations in interstate commerce.

(3) In 49 C.F.R. 391.13, the phrase “§§ 392.9(a) and 383.111(a)(16) of this subchapter” shall be deleted and replaced by “49 C.F.R. 392.9(a), as adopted by K.A.R. 82-4-3h, and 49 C.F.R. 383.111(a)(16), as referenced by K.S.A. 8-2,133.”

(4) The following revisions shall be made to 49 C.F.R. 391.15:

(A) In paragraphs (c)(1)(i) and (c)(2)(iii), each instance of “§ 395.2 of this subchapter” and “§ 395.2 of this part” shall be deleted and replaced by “49 C.F.R. 395.2, as adopted by K.A.R. 82-4-3a.”

(B) In paragraph (c)(2)(i)(C), the phrase “§ 391.15(c)(2)(i)(A) or (B), or § 392.5(a)(2)” shall be deleted and replaced by “49 C.F.R. 391.15(c)(2)(i)(A) or (B) as adopted by K.A.R. 82-4-3g or 49 C.F.R. 392.5(a)(2), as adopted by K.A.R. 82-4-3h.”

(C) In paragraphs (c)(2)(ii) and (iii), the phrase “as adopted by K.A.R. 82-4-3h (a)(2)(A)” shall be added after the phrase “21 C.F.R. 1308.11 Schedule I.”

(D) In paragraphs (e)(1), (e)(2)(i), and (e)(2)(ii), the phrase “§ 392.80(a)” shall be deleted and

replaced with “49 C.F.R. 392.80(a) as adopted by K.A.R. 82-4-3h.”

(E) In paragraphs (f)(1), (f)(2)(i), and (f)(2)(ii), the phrase “§ 392.82(a)” shall be deleted and replaced with “49 C.F.R. 392.82(a) as adopted by K.A.R. 82-4-3h.”

(5) The following revisions shall be made to 49 C.F.R. 391.21:

(A) In paragraph (b)(10)(iv)(B), the term “DOT” shall be deleted and replaced by “commission,” and the phrase “as adopted by K.A.R. 82-4-3b” shall be inserted after the phrase “49 C.F.R. Part 40.”

(B) In paragraph (b)(11), the phrase “as defined by Part 383 of this subchapter” shall be deleted.

(6) The following changes shall be made to 49 C.F.R. 391.23:

(A) In paragraph (a)(2), (h)(i)(1) and (h)(iii)(2), the term “U.S.” shall be inserted before the phrase “Department of Transportation.” The phrase “or commission” shall be inserted after the phrase “Department of Transportation.”

(B) Paragraph (c)(3) shall be deleted and replaced by the following: “Prospective employers shall submit a report noting any failure of a previous employer to respond to an inquiry into a driver's safety performance history to the commission.

“(A) Reports shall be addressed to the Director, Transportation Division, Kansas Corporation Commission, 1500 SW Arrowhead Road, Topeka, KS 66604.

“(B) Reports shall be submitted to the commission within 90 days after the inquiry was submitted to the previous employer.

“(C) Reports must be signed by the prospective employer submitting the report and must include the following information:

“(i) The name, address, and telephone number of the person who files the report;

“(ii) The name and address of the previous employer who has failed to respond to the inquiry into a driver's safety performance history;

“(iii) A concise but complete statement of the facts, including the date the inquiry was sent to the previous employer, the method by which the inquiry was sent, and the dates of any follow-up communications with the previous employer.”

(C) In paragraphs (c)(4), (e), and (g)(1), the term “U.S.” shall be inserted before the term “DOT” and the phrase “or commission” shall be inserted after the term “DOT.”

(D) In paragraph (d)(2), the phrase “§ 390.15(b)(1) of this chapter” shall be deleted and replaced

by “49 C.F.R. 390.15(b)(1), as adopted by K.A.R. 82-4-3f.”

(E) In paragraph (d)(2)(i), the phrase “§ 390.5 of this chapter” shall be deleted and replaced by “49 C.F.R. 390.5, as adopted by K.A.R. 82-4-3f.”

(F) In paragraph (d)(2)(ii), the phrase “§ 390.15(b)(2)” shall be deleted and replaced by “49 C.F.R. 390.15(b)(2), as adopted by K.A.R. 82-4-3f.”

(G) In paragraph (e), the phrase “, as adopted by K.A.R. 82-4-3b” shall be added at the end of the last sentence.

(H) In paragraph (e)(1), the phrase “part 382 of this subchapter” shall be deleted and replaced by “49 C.F.R. part 382, as adopted by K.A.R. 82-4-3c.” The phrase “, as adopted by K.A.R. 82-4-3b” shall be inserted at the end of the last sentence.

(I) In paragraph (e)(2), the phrase “§ 382.605 of this chapter” shall be deleted and replaced by “49 C.F.R. 382.605, as adopted by K.A.R. 82-4-3c.” The phrase “part 40, subpart O” shall be deleted and replaced by “40.281 through 49 C.F.R. 40.313, as adopted by K.A.R. 82-4-3b.”

(J) In paragraph (e)(3), the phrase “§ 382.605” shall be deleted and replaced with “49 C.F.R. 382.605, as adopted by K.A.R. 82-4-3c.” The phrase “part 40, subpart O” shall be deleted and replaced by “49 C.F.R. 40.281 through 40.313, as adopted by K.A.R. 82-4-3b.”

(K) In paragraph (f), the term “§ 40.321(b)” shall be deleted and replaced by “49 C.F.R. 40.321(b), as adopted by K.A.R. 82-4-3b.”

(L) In paragraph (j)(6), the following changes shall be made:

(i) In the first sentence, the comma following the phrase “safety performance information” shall be deleted, and the following text shall be inserted at the end of the first sentence: “if the previous employer is an interstate motor carrier, the driver may submit a complaint.”

(ii) The term “§ 386.12” shall be deleted and replaced with “K.A.R. 82-4-3g(a)(7)(B).”

(iii) The following sentence shall be inserted at the end of the paragraph: “If the motor carrier is a Kansas-based interstate motor carrier, or an intrastate motor carrier, the driver may submit such report in writing to Director, Transportation Division, Kansas Corporation Commission, 1500 SW Arrowhead Road, Topeka, KS 66604.”

(M) In paragraph (m)(2), the phrase “part 383 of this chapter” shall be deleted and replaced with “the Kansas uniform commercial drivers’ license act, found at K.S.A. 8-2,125 et seq.”

(N) In paragraph (m)(2)(i)(A), the phrase “in accordance with §§ 383.71(b)(1) and 383.71(g) of this chapter” shall be deleted.

(O) In paragraph (m)(2)(i)(C), the phrase “in accordance with § 383.73(b)(5) of this chapter” shall be deleted.

(7) The following revision shall be made to 49 C.F.R. 391.25: In paragraph (b)(1), the phrase “Federal Motor Carrier Safety Regulations in this subchapter or Hazardous Materials Regulations (49 CFR chapter 1, subchapter C)” shall be deleted and replaced by “commission motor carrier safety regulations as adopted by K.A.R. 82-4-20, or any Federal Motor Carrier Safety Regulations or Hazardous Materials Regulations, as adopted by article 4 of the commission’s regulations, occurring in interstate commerce.”

(8) The following revisions shall be made to 49 C.F.R. 391.27:

(A) In paragraph (c), the words “be prescribed by the motor carrier. The following form may be used to comply with this section” shall be deleted and replaced by “read substantially as follows.”

(B) Paragraph (e) shall be deleted.

(9) The following revision shall be made to 49 C.F.R. 391.31: In 49 C.F.R. 391.31(c)(1), the phrase “§ 392.7 of this subchapter” shall be deleted and replaced with “49 C.F.R. 392.7 as adopted by K.A.R. 82-4-3h.”

(10) The following revision shall be made to 49 C.F.R. 391.33: In paragraph (a)(1), the phrase “§ 383.5 of this subchapter” shall be deleted and replaced by “K.S.A. 8-234b and amendments thereto.”

(11) The following revisions shall be made to 49 C.F.R. 391.41:

(A) The following revisions shall be made to paragraph (a)(2)(i)(A):

(i) The phrase “part 383 of this chapter” shall be deleted and replaced with “the Kansas uniform commercial drivers’ license act, found at K.S.A. 8-2,125 et seq.”

(ii) The phrase “in accordance with 49 CFR 383.71(h)” shall be deleted.

(B) In paragraph (a)(2)(ii), the phrase “in accordance with § 383.71(h)” shall be deleted.

(C) In paragraph (a)(2)(i)(B), the phrase “49 CFR part 383” shall be deleted and replaced with “the Kansas uniform commercial drivers’ license act, found at K.S.A. 8-2,125 et seq.”

(D) In paragraph (a)(2)(ii), the phrase “part 383 of this chapter” shall be deleted and replaced with “the Kansas uniform commercial drivers’ license act, found at K.S.A. 8-2,125 et seq.”

(E) In paragraph (b)(11), the clause “when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5 1951” shall be deleted.

(F) In paragraph (b)(12)(i), the phrase “as adopted by K.A.R. 82-4-3h” shall be added after the phrase “21 CFR 1308.11 Schedule I.”

(12) The following changes shall be made to 49 C.F.R. 391.43:

(A) The following revision shall be made to paragraph (a): The phrase “subpart D of part 390 of this chapter” shall be deleted and replaced with “subpart D of 49 C.F.R. Subtitle B, Chapter III, Subchapter B, Part 390.”

(B) In the portion titled “Extremities” in paragraph (f), the words “Field Service Center of the FMCSA, for the State in which the driver has legal residence” shall be deleted and replaced by “commission.”

(C) The editorial note found after paragraph (i) shall be deleted.

(13) The following revisions shall be made to 49 C.F.R. 391.47:

(A) Paragraph (b)(8) shall be deleted.

(B) In paragraph (b)(9), the words “or intra-state” shall be inserted following the word “inter-state.”

(C) In paragraphs (c) and (d), the phrase “Director, Office of Carrier, Driver and Vehicle Safety Standards (MC-PS)” shall be deleted and replaced by the phrase “director of the commission’s transportation division.”

(D) The last two sentences of paragraph (e) shall be deleted and replaced by the following sentence: “Petitions shall be filed in accordance with K.A.R. 82-1-235 and K.S.A. 77-601 et seq.”

(E) In paragraph (f), the first two occurrences of the phrase “Director, Office of Carrier, Driver and Vehicle Safety Standards (MC-PS)” shall be deleted and replaced by the phrase “director of the commission’s transportation division.” The clause “or until the Director, Office of Carrier, Driver and Vehicle Safety Standards (MC-PS) orders otherwise” shall be deleted and replaced with “or orders otherwise.”

(14) The following revisions shall be made to 49 C.F.R. 391.49:

(A) The phrase “Division Administrator, FMCSA” in paragraph (a) and the phrase “State Director, FMCSA” in paragraphs (g), (h), (j)(1), and (k) shall be deleted and replaced by “director of the commission’s transportation division.”

(B) The remainder of paragraph (b)(2) after

“The application must be addressed to” shall be deleted and replaced by “: Director of the Transportation Division, Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, KS 66604.”

(C) In paragraph (b)(3), “field service center, FMCSA, for the state in which the driver has legal residence” shall be deleted and replaced by “director of the commission’s transportation division at the address provided in paragraph (b)(2).”

(D) Paragraph (c)(2)(i) shall be deleted.

(E) The following revisions shall be made to paragraph (d):

(F) The phrase “Medical Program Specialist, FMCSA service center” in paragraph (e)(1), the words “Medical Program Specialist, FMCSA for the State in which the carrier’s principal place of business is located” in paragraph (e)(1)(i), and the words “Medical Program Specialist, FMCSA service center, for the State in which the driver has legal residence” in paragraph (e)(1)(ii) shall be deleted and replaced by “director of the transportation division of the commission.”

(G) In paragraph (i), the words between “submitted to the” and “The SPE certificate renewal application” shall be deleted and replaced by “director of the transportation division of the commission.”

(H) In paragraph (j)(1), the first two sentences shall be deleted.

(I) The following revisions shall be made to paragraph (j)(2):

(i) The words “State Director, FMCSA, for the State where the driver applicant has legal residence” shall be deleted and replaced by “director of the transportation division of the commission.”

(ii) The phrase “subchapter B of the Federal Motor Carrier Safety Regulations (FMCSRs)” shall be deleted and replaced by the phrase “as adopted by K.A.R. 82-4-3g.”

(iii) The term “FMCSRs” shall be deleted and replaced by “commission’s regulations regarding motor carrier safety.”

(15) The following revisions shall be made to 49 C.F.R. 391.51:

(A) In paragraph (b)(7)(ii), the phrase “defined at § 384.105 of this chapter” shall be deleted.

(B) The following revisions shall be made to paragraph (b)(8):

(i) The phrase “Field Administrator, Division Administrator, or State Director” shall be deleted and replaced by “the director of the transportation division of the commission.”

(ii) The phrase “or under K.A.R. 82-4-6d” shall be added at the end of the paragraph.

(C) Paragraph (d)(5) shall be deleted and replaced with the following: “Any medical waiver issued by the commission, including a Skill Performance Evaluation Certificate issued in accordance with 49 C.F.R. 391.49 as adopted by K.A.R. 82-4-3g, or the Medical Exemption letter issued by a Federal medical program in accordance with 49 C.F.R. Part 381.”

(16) In 49 C.F.R. 391.55, the text “as in effect on October 1, 2015, which are hereby adopted by reference” shall be inserted at the end of paragraph (b)(1).

(17) The following revision shall be made to 49 C.F.R. 391.61: The phrase “§ 390.5 of this subchapter” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(18) The following revisions shall be made to 49 C.F.R. 391.62:

(A) In paragraph (c), the phrase “, as adopted by K.A.R. 82-4-3f” shall be added after the phrase “49 C.F.R. 390.5.”

(B) In paragraph (d), the phrase “under regulations issued by the Secretary under 49 U.S.C. chapter 51” shall be deleted and replaced by “under the regulations adopted by K.A.R. 82-4-20.”

(C) In paragraph (e)(1), the phrase “Federal Motor Carrier Safety Regulations contained in this subchapter” shall be deleted and replaced by “commission’s motor carrier regulations found in Article 4.”

(19) The following revision shall be made to 49 C.F.R. 391.63: In paragraph (a), the phrase “§ 390.5 of this subchapter” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(20) 49 C.F.R. 391.64 shall be revised as follows:

(A) In paragraph (a)(2)(iii), the phrase “an authorized agent of the FMCSA” shall be deleted and replaced by “the director of the transportation division of the commission.”

(B) In paragraphs (a)(2)(v) and (b)(3), the phrase “duly authorized federal, state or local enforcement official” shall be deleted and replaced by the phrase “any authorized representative of the commission, and any member of the Kansas highway patrol or any other law enforcement officer in the state who has been certified in the inspection of motor carriers based on the motor carrier safety assistance program standards.”

(21) The form set out in 49 C.F.R. 391.65 shall be revised as follows:

(A) The phrase “as adopted by K.A.R. 82-4-3f” shall be added after the phrase “§ 390.5.”

(B) The phrase “Federal Motor Carrier Safety Regulations” shall be deleted and replaced by the phrase “as adopted by K.A.R. 82-4-3g.”

(22) The following revision shall be made to 49 C.F.R. 391.67: The phrase “§ 390.5 of this subchapter” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(23) The following revision shall be made to 49 C.F.R. 391.69: The phrase “§ 390.5 of this subchapter” shall be deleted and replaced by “49 C.F.R. 390.5, as adopted by K.A.R. 82-4-3f.”

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 391 shall mean that portion as adopted by reference in this regulation.

(c) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Nov. 14, 2011; amended Sept. 20, 2013; amended June 12, 2015; amended July 26, 2019.)

**82-4-3h. Driving of commercial motor vehicles.** (a) With the following exceptions, 49 C.F.R. Part 392, as in effect on October 1, 2015 and as amended by 81 fed. reg. 47721 (2016), is hereby adopted by reference:

(1) In 49 C.F.R. 392.1 (b), the phrase “49 CFR 390.38(b)” shall be deleted and replaced with “49 C.F.R. 390.38(b) as adopted by K.A.R. 82-4-3f.”

(2) In 49 C.F.R. 392.2, the words “jurisdiction in which it is being operated” shall be deleted and replaced by “state of Kansas.”

(3) In paragraph (c) of 49 C.F.R. 392.4, the phrase “§ 382.107 of this subchapter” shall be deleted and replaced by “49 C.F.R. 382.107, as adopted by K.A.R. 82-4-3c.”

(4) 49 C.F.R. 392.5 shall be revised as follows:

(A) In paragraph (a)(1), the phrase “§ 382.107 of this subchapter” shall be deleted and replaced by “49 C.F.R. 382.107, as adopted by K.A.R. 82-4-3c.”

(B) In paragraph (a)(3), the phrase “and hereby adopted by reference and dated August 10, 2005” shall be added after the phrase “26 U.S.C. 5052(a).”

(C) In paragraph (a)(3), the phrase “section 5002(a)(8), of such Code” shall be deleted and replaced by “26 U.S.C. 5002(a)(8), hereby adopted by reference and dated August 10, 2005.”

(D) In paragraph (d)(2), a period shall be placed after the phrase “affirmation of the order”; the remainder of the paragraph shall be deleted.

(E) Paragraph (e) shall be deleted and replaced by the following: “(e) Any driver who is subject to an out-of-service order may petition for reconsideration of that order in accordance with K.A.R. 82-1-235 and the provisions of the Kansas Judicial Review Act, found at K.S.A. 77-601 et seq.”

(5) In 49 C.F.R. 392.8, the phrase “§ 393.95 of this subchapter” shall be deleted and replaced by “49 C.F.R. 393.95, as adopted by K.A.R. 82-4-3i.”

(6) In 49 C.F.R. 392.9(a)(1), the phrase “§§ 393.100 through 393.136 of this subchapter” shall be deleted and replaced by “49 C.F.R. 393.100 through 393.136, as adopted by K.A.R. 82-4-3i.”

(7) The following revisions shall be made to 49 C.F.R. 392.9a:

(A) In paragraph (b), the last sentence shall be deleted.

(B) In paragraph (c), the phrase “5 U.S.C. 554 not later than 10 days after issuance of such order” shall be deleted and replaced with “K.A.R. 82-1-235 and the provisions of the Kansas Judicial Review Act, found at K.S.A. 77-601 et seq.”

(8) In 49 C.F.R. 392.9b, the phrase “49 U.S.C. 521” in paragraph (b) shall be deleted and replaced by “Kansas law.”

(9) 49 C.F.R. 392.10 shall be revised as follows:

(A) In paragraph (a)(5), the phrase “§ 173.120 of this title” shall be deleted and replaced by “49 C.F.R. 173.120, as adopted by K.A.R. 82-4-20.”

(B) In paragraph (a)(6), the phrase “subpart B of part 107 of this title” shall be deleted and replaced by “49 C.F.R. 107.105 and 107.107, both as adopted by K.A.R. 82-4-20.”

(C) In paragraph (b)(1), the phrase “§ 390.5 of this chapter” shall be deleted and replaced by “49 C.F.R. 390.5, as adopted by K.A.R. 82-4-3f.”

(10) The phrase “§ 393.95 of this subchapter” in 49 C.F.R. 392.22(b) shall be deleted and replaced by “49 C.F.R. 393.95, as adopted by K.A.R. 82-4-3i.”

(11) In 49 C.F.R. 392.33(a), the phrase “subpart B of part 393 of this title” shall be deleted and replaced by “49 C.F.R. Part 393, Subpart B, as adopted by K.A.R. 82-4-3i.”

(12) In 49 C.F.R. 392.51 (b), the phrase “as adopted by K.A.R. 82-4-20” shall be inserted after the phrase “Parts 171, 172, 173, and 178.”

(13) 49 C.F.R. 392.62 shall be revised as follows:

(A) In paragraph (a), the phrase “§ 393.90 of this subchapter” shall be deleted and replaced by “49 C.F.R. 393.90, as adopted by K.A.R. 82-4-3i.”

(B) In paragraph (b), the phrase “§ 393.91 of this subchapter” shall be deleted and replaced by “49 C.F.R. 393.91, as adopted by K.A.R. 82-4-3i.”

(14) In 49 C.F.R. 392.80(c), the phrase “as adopted by K.A.R. 82-4-3F” shall be inserted after the phrase “49 C.F.R. 390.5.”

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 392 shall mean that portion as adopted by reference in this regulation.

(c) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Sept. 20, 2013; amended May 6, 2016; amended July 26, 2019.)

**82-4-3i. Parts and accessories necessary for safe operation.** (a)(1) With the following exceptions, 49 C.F.R. Part 393, as in effect on October 1, 2015 and as amended by 81 fed. reg. 47721 (2016), is hereby adopted by reference:

(A) In 49 C.F.R. 393.1(e), the phrase “49 CFR 390.38(b)” shall be deleted and replaced with “49 C.F.R. 390.38(b) as adopted by K.A.R. 82-4-3f.”

(B) The following revisions shall be made to 49 C.F.R. 393.5:

(i) The following provision shall be added after the definition of “curb weight”: “DOT C-2, DOT C-3, and DOT C-4. These terms shall be established by figure 12-1, found in 49 C.F.R. 571.108.”

(ii) In the definition of “heater,” the phrase “§177.834(1)(2) of this title” shall be deleted and replaced with “49 C.F.R. 177.834(1)(2) as adopted by K.A.R. 82-4-20.”

(iii) The definition of “manufactured home” shall be deleted and replaced by the following: “Manufactured home means a structure as defined by K.S.A. 58-4202(a) and amendments thereto.” These structures shall be considered manufactured homes when the manufacturer files with the transportation division a certification that it intends that these structures shall be con-

sidered manufactured homes. The manufacturer shall also certify that, if at any time it manufactures structures it does not intend to be manufactured homes, it shall identify those structures by a permanent serial number placed on the structure during the first stage of production and that the series of serial numbers for those structures shall be distinguishable on the structures and in its records from the series of serial numbers used for manufactured homes.”

(iv) The following definition shall be added after the definition of “manufactured home”: “Optically combined. This term refers to two or more lights that share the same body and have one lens totally or partially in common.”

(v) The definition for “reflective material” shall be deleted and replaced by the following: “Reflective material means a material conforming to federal specification L-S-300c, ‘sheeting and tape, reflective: nonexposed lens,’ as in effect on March 20, 1979 and as adopted by reference, meeting the performance standard in either table 1 or table 1A of SAE standard J594f, ‘reflex reflectors,’ as revised in January 1977 and as adopted by reference.”

(C) 49 C.F.R. 393.7 shall be deleted.

(D) The following revision shall be made to 49 C.F.R. 393.11: The last sentence of paragraph (a) (1) shall be deleted and replaced with the following: “All commercial motor vehicles must, at a minimum, meet the requirements of Subpart B of 49 C.F.R. Part 393 in effect at the time of manufacture. For vehicles manufactured prior to the earliest effective date of Subpart B of 49 C.F.R. Part 393, all commercial motor vehicles must, at a minimum, meet the requirements of Subpart B of 49 C.F.R. Part 393 as of the earliest effective date of Subpart B of 49 C.F.R. Part 393.”

(E) The following revision shall be made to 49 C.F.R. 393.13: In paragraph (a), the phrase “§ 390.5 of this subchapter” shall be deleted and replaced by “49 C.F.R. 390.5, as adopted by K.A.R. 82-4-3f.” The last two sentences of paragraph (a) shall be deleted.

(F) The following revisions shall be made to 49 C.F.R. 393.24:

(i) In paragraph (b), the parenthetical sentence shall be deleted.

(ii) Paragraph (d) shall be deleted.

(G) In 49 C.F.R. 393.25(c) and (e), the last sentence shall be deleted and replaced with the following: “The aforementioned documents are hereby adopted by reference.”

(H) The following revisions shall be made to 49 C.F.R. 393.26:

(i) In paragraph (c), the parenthetical sentence shall be deleted and replaced with the following: “The aforementioned documents are hereby adopted by reference.”

(ii) In paragraph (d)(4), the phrase “§ 177.823 of this title” shall be deleted and replaced by “49 C.F.R. 177.823, as adopted by K.A.R. 82-4-20.”

(I) In 49 C.F.R. 393.28, the clause “which is hereby adopted by reference,” shall be inserted after the phrase “October 1981,” and the last sentence shall be deleted.

(J) The parenthetical statement in 49 C.F.R. 393.42(b)(2) shall be deleted.

(K) The following revision shall be made to 49 C.F.R. 393.48: In paragraph (c)(1), the phrase “§ 390.5” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(L) The note following 49 C.F.R. 393.51(b) shall be deleted.

(M) In 49 C.F.R. 393.62(d)(1), the parenthetical sentence at the end of the paragraph shall be deleted and replaced with “Pages 1-37 of this document are hereby incorporated by reference.”

(N) 49 C.F.R. 393.67(c)(3) shall be deleted.

(O) The following revisions shall be made to 49 C.F.R. 393.71:

(i) In paragraph (h)(8), the phrase “Society of Automotive Engineers Standard No. J684c, ‘Trailer Couplings and Hitches—Automotive Type,’ July 1970” shall be deleted and replaced with “society of automotive engineers standard no. J684c, ‘trailer couplings and hitches—automotive type,’ dated July 1970, which is hereby adopted by reference.”

(ii) In paragraph (h)(9), the phrase “requirements of the Federal Motor Carrier Safety Administration” shall be deleted and replaced by “Federal and Kansas requirements.”

(iii) In paragraph (m)(8), the phrase “requirements of the Federal Motor Carrier Safety Administration” shall be deleted and replaced by “Federal and Kansas requirements.”

(P) The following revision shall be made to 49 C.F.R. 393.75: In paragraphs (h)(1) and (g)(2), the clause “that are labeled pursuant to 24 C.F.R. 3282.362(c)(2)(i)” shall be deleted and replaced by “built.”

(Q) 49 C.F.R. 393.77(b)(15) shall be deleted.

(R) In 49 C.F.R. 393.77(c), the phrase “§ 177.834(1) of this title” shall be deleted and replaced by “49 C.F.R. 177.834(l) as adopted by K.A.R. 82-4-20.”

(S) The following revision shall be made to 49 C.F.R. 393.86(a)(1): The third sentence shall be deleted.

(T) In 49 C.F.R. 393.94, paragraph (c)(4) shall be deleted and replaced by the following: "Set the sound level meter to the A-weighting network, 'fast' meter response."

(U) The following revisions shall be made to 49 C.F.R. 393.95:

(i) In paragraph (a)(1)(i), the phrase "§177.823 of this title" shall be deleted and replaced with "49 C.F.R. 177.823 as adopted by K.A.R. 82-4-20."

(ii) In paragraph (a)(5), "Appendix A, Appendix B, Appendix H, Appendix I, Appendix J, Appendix L, Appendix O, and Appendix P, all dated July 1, 2015, which are hereby adopted by reference" shall be added after the phrase "under 40 CFR Part 82, Subpart G."

(iii) In paragraph (f)(2), the phrase "§ 392.22" shall be deleted and replaced by "49 C.F.R. 392.22 as adopted by K.A.R. 82-4-3h."

(iv) In paragraph (j), the period at the end of the second sentence shall be deleted and replaced with the clause "which is hereby adopted by reference." The parenthetical sentence following the second sentence shall be deleted.

(V) The following revisions shall be made to 49 C.F.R. 393.104(e) and its corresponding table:

(i) In paragraph (e)(1), the phrase "Standard Specification for Strapping, Flat Steel and Seals, American Society for Testing and Materials (ASTM) D3953-97, February 1998" shall be deleted and replaced with "standard specification for strapping, flat steel and seals, American society for testing and materials (ASTM) D3953-97, February 1998." This specification is hereby adopted by reference.

(ii) In paragraph (e)(2), the phrase "National Association of Chain Manufacturers' Welded Steel Chain Specifications, dated September 28, 2005" shall be deleted and replaced with "pages 3-13 of the national association of chain manufacturers' 'welded steel chain specifications,' dated September 28, 2005." These pages are hereby adopted by reference.

(iii) In paragraph (e)(3), the phrase "Web Sling and Tiedown Association's Recommended Standard Specification for Synthetic Web Tiedowns, WSTDA-T1, 1998" shall be deleted and replaced with "pages 4-15 of the web sling & tie down association's 'recommended standard specification for web tie downs,' WSTDA-T-1, revised 2015." These pages are hereby adopted by reference.

(iv) In paragraph (e)(5)(i), the phrase "PETRS-2, Polyester Fiber Rope, three-Strand and eight-Strand Constructions, January 1993" shall be deleted and replaced with "CI 1304-96, 'polyester (PET) fiber rope: 3-strand and 8-strand constructions,' October 1998, which is hereby adopted by reference."

(v) In paragraph (e)(5)(ii), the phrase "PPRS-2, Polypropylene Fiber Rope, three-Strand and eight-Strand Constructions, August 1992" shall be deleted and replaced with "CI 1301-07, 'polypropylene fiber rope: 3-strand laid and 8-strand plaited constructions,' May 2007, which is hereby adopted by reference."

(vi) In paragraph (e)(5)(iii), the phrase "CRS-1, Polyester/Polypropylene Composite Rope Specifications, three-Strand and eight-Strand Standard Construction, May 1979" shall be deleted and replaced with "CI 1302A-96, 'polyester/polyolefin dual fiber rope: 3-strand construction,' April 1999, which is hereby adopted by reference."

(vii) In paragraph (e)(5)(iv), the phrase "NRS-1, Nylon Rope Specifications, three-Strand and eight-Strand Standard Construction, May 1979" shall be deleted and replaced with "CI 1303-06, 'nylon (polyamide) fiber rope: 3-strand laid and 8-strand plaited constructions,' October 2006, which is hereby adopted by reference."

(viii) In paragraph (e)(5)(v), the phrase "C-1, Double Braided Nylon Rope Specification DBN, January 1984" shall be deleted and replaced with "CI 1310-09, 'nylon (polyamide) fiber rope: high performance double braid construction,' May 2009, which is hereby adopted by reference."

(2) As used in this regulation, each reference to a portion of 49 C.F.R. Part 393 shall mean that portion as adopted by reference in this regulation.

(b) As used in this regulation, each reference to any of the following federal motor vehicle safety standards (FMVSS) shall mean that standard in 49 C.F.R. Part 571, as in effect on October 1, 2015, which standards are hereby adopted by reference:

(1) FMVSS 103, 49 C.F.R. 571.103;

(2) FMVSS 104, 49 C.F.R. 571.104, sections S4.1 and 4.2.2 only;

(3) FMVSS 105, 49 C.F.R. 571.105, sections S5.3 and 5.5 only;

(4) FMVSS 106, 49 C.F.R. 571.106;

(5) FMVSS 108, 49 C.F.R. 571.108;

(6) FMVSS 111, 49 C.F.R. 571.111;

(7) FMVSS 119, 49 C.F.R. 571.119, section S5.1(b) only;

(8) FMVSS 121, 49 C.F.R. 571.121;

(9) FMVSS 125, 49 C.F.R. 571.125;

(10) FMVSS 205, 49 C.F.R. 571.205, section S6 only;

(11) FMVSS 223, 49 C.F.R. 571.223; and

(12) FMVSS 224, 49 C.F.R. 571.224, sections S5.1.1, 5.1.2, and 5.1.3 only.

(c) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission's regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Nov. 14, 2011; amended Sept. 20, 2013; amended May 6, 2016; amended July 26, 2019.)

**82-4-3j. Inspection, repair, and maintenance.** (a) With the following exceptions, 49 C.F.R. Part 396, as in effect on October 1, 2015 and as amended by 81 fed. reg. 47722 (2016), is hereby adopted by reference:

(1) In 49 C.F.R. 396.1 (c), the phrase "49 CFR 390.5" shall be deleted and replaced with "49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f." In paragraph (d), the phrase "49 CFR 390.38(b)" shall be deleted and replaced with "49 C.F.R. 390.38(b) as adopted by K.A.R. 82-4-3f."

(2) In 49 C.F.R. 396.3(a)(1), the phrase "part 393 of this subchapter" shall be deleted and replaced by "49 C.F.R. Part 393, as adopted by K.A.R. 82-4-3i."

(3) The following revisions shall be made to 49 C.F.R. 396.9:

(A) In paragraph (a), the phrase "Every special agent of the FMCSA (as defined in appendix B to this subchapter)" shall be deleted and replaced by "Any authorized representative of the commission, and any member of the Kansas highway patrol or any other law enforcement officer in the state who is certified in the inspection of motor carriers based on the motor carrier safety assistance program standards."

(B) In paragraph (b), the sentence after "Prescribed inspection report" shall be deleted and replaced by the following sentence: "Motor vehicle inspections conducted by authorized personnel as described in paragraph (a) shall be made on forms approved by the Kansas highway patrol."

(C) In paragraph (c)(1), the term "Out of Ser-

vice Vehicle' sticker" shall mean "a form approved by the Kansas highway patrol."

(D) In paragraph (d)(3)(ii), the phrase "issuing agency" shall be deleted and replaced by "the state's lead Motor Carrier Safety Assistance Program agency."

(4) In paragraph (h) of 49 C.F.R. 396.17, the phrase "penalty provisions of 49 U.S.C. 521(b)" shall be deleted and replaced by "civil penalties provided by K.S.A. 66-1,142b, K.S.A. 66-1,142c, and other applicable penalties."

(5) The following revision shall be made to 49 C.F.R. 396.19: In paragraph (a)(1), the phrase "part 393" shall be deleted and replaced with "49 C.F.R. Part 393 as adopted by K.A.R. 82-4-3i."

(6) In paragraphs (b)(2) and (3) of 49 C.F.R. 396.21, the word "Federal" shall be deleted.

(7) The following revisions shall be made to 49 C.F.R. 396.23:

(A) The following revision shall be made to paragraph (a): The phrase "as adopted in K.A.R. 82-4-3m" shall be added after "Appendix G."

(B) The following revision shall be made to paragraph (b)(1): The phrase "by the Administrator" shall be deleted.

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 396 shall mean that portion as adopted by reference in this regulation.

(c) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission's regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Sept. 20, 2013; amended May 6, 2016; amended July 26, 2019.)

**82-4-3k. Transportation of hazardous materials; driving and parking rules.** (a) With the following exceptions, 49 C.F.R. Part 397, as in effect on October 1, 2015, is hereby adopted by reference:

(1) In 49 C.F.R. 397.1(a), the phrase "\$177.823 of this title" shall be deleted and replaced by "49 C.F.R. 177.823 as adopted by K.A.R. 82-4-20."

(2) In 49 C.F.R. 397.2, the phrase "the rules in parts 390 through 397, inclusive, of this subchapter" shall be deleted and replaced by "K.A.R. 82-4-3a and K.A.R. 82-4-3f through K.A.R. 82-4-3k."

The phrase “§177.823 of this title” shall be deleted and replaced by “49 C.F.R. 177.823 as adopted by K.A.R. 82-4-20.”

(3) In 49 C.F.R. 397.3, the term “Department of Transportation” shall be deleted and replaced by “commission.”

(4) In 49 C.F.R. 397.5 (a), the phrase “as defined by 49 C.F.R. 172.101 and adopted by K.A.R. 82-4-20” shall be added after “(explosive) material.”

(5) In 49 C.F.R. 397.7(a), the phrase “as defined by 49 C.F.R. 172.101 and adopted by K.A.R. 82-4-20” shall be added after the words “Division 1.1, 1.2, or 1.3 materials.”

(6) The following revisions shall be made to 49 C.F.R. 397.13:

(A) In paragraph (a), the phrase “as defined by 49 C.F.R. 172.101 and adopted by K.A.R. 82-4-20” shall be added after the words “Division 2.1, Class 3, Divisions 4.1 and 4.2.”

(B) In paragraph (b), the phrase “§177.823 of this title” shall be deleted and replaced by “49 C.F.R. 177.823 as adopted by K.A.R. 82-4-20.”

(7) The following revisions shall be made to 49 C.F.R. 397.19:

(A) In paragraph (a), the phrase “as defined by 49 C.F.R. 172.101 and adopted by K.A.R. 82-4-20” shall be added after the words “(explosive) materials.”

(B) In paragraph (c)(2), the phrase “§177.817 of this title” shall be deleted and replaced by “49 C.F.R. 177.817 as adopted by K.A.R. 82-4-20.”

(8) The following revisions shall be made to 49 C.F.R. 397.65:

(A) The definitions of “Administrator” and “FMCSA” shall be deleted.

(B) In the definition of “Motor carrier,” the definition portion shall be deleted and replaced with the following: “‘Motor carrier’ shall have the same definition as specified in 49 CFR 390.5 as adopted by K.A.R. 82-4-3f.”

(C) In the definition of “Motor vehicle,” the definition portion shall be deleted and replaced with the following: “‘Motor vehicle’ shall have the same definition as specified in 49 CFR 390.5 as adopted by K.A.R. 82-4-3f.”

(D) In the definition of “Indian tribe,” the text “dated October 25, 1994, which is hereby adopted by reference” shall be added after “25 U.S.C. 450b.”

(E) In the definition of “NRHM,” the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 172.504.”

(F) In the definition of “Radioactive material,”

the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 173.403.”

(9) The following changes shall be made to 49 C.F.R. 397.67:

(A) In paragraph (b), the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 177.823.”

(B) In paragraph (d), the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 173.50 and 173.53 respectively.”

(10) 49 C.F.R. 397.69 shall be deleted.

(11) 49 C.F.R. 397.71 shall be deleted.

(12) 49 C.F.R. 397.73 shall be deleted.

(13) 49 C.F.R. 397.75 shall be deleted.

(14) 49 C.F.R. 397.77 shall be deleted.

(15) The following revisions shall be made to 49 C.F.R. 397.101:

(A) In paragraph (a), the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 172.403” and after “49 CFR part 172.”

(B) In paragraph (b), the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 173.403.”

(C) In paragraph (b)(2), the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 173.403.”

(D) In the first sentence of paragraph (d), the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 173.403.”

(E) In paragraph (e)(1)(i), the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR parts 172, 173, and 177.”

(F) In paragraph (e)(2), the phrase “§ 391.51 of this subchapter” shall be deleted and replaced with “49 C.F.R. 391.51 as adopted by K.A.R. 82-4-3g.”

(G) In paragraph (f), the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 173.22(c).”

(H) Paragraph (g) shall be deleted and replaced by the following: “Unless otherwise preempted, each motor carrier who accepts for transportation on a highway route a controlled quantity of Class 7 (radioactive) material, as defined by 49 C.F.R. 173.401(1), as adopted by K.A.R. 82-4-20, shall provide the following information to the director within 90 days following acceptance of the package:”

(I) In paragraph (g)(3), the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 172.202 and 172.203.”

(16) Except for paragraph (c), 49 C.F.R. 397.103 shall be deleted.

(17) Subpart E of 49 C.F.R. Part 397 shall be deleted.

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 397 shall mean that portion as adopted by reference in this regulation.

(c) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission's regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Sept. 20, 2013; amended May 6, 2016; amended July 26, 2019.)

**82-4-31. Transportation of migrant workers.** (a) With the following exceptions, 49 C.F.R. Part 398, as in effect on October 1, 2015, is hereby adopted by reference:

(1) The following revisions shall be made to 49 C.F.R. 398.1:

(A) The following revisions shall be made to 49 C.F.R. 398.1(a):

(i) A period shall be placed after the word "agriculture."

(ii) The remainder of the paragraph shall be deleted and replaced by the following: "For the purposes of 49 C.F.R. Part 398 only, the definition of 'agriculture' found in 29 U.S.C. 203(f), as in effect on December 16, 2014, is hereby adopted by reference. For the purposes of 49 C.F.R. Part 398 only, the definition of 'employment in agriculture' shall be the same as the definition of 'agricultural labor' found in 26 U.S.C. 3121(g), as in effect on August 31, 2006, which is hereby adopted by reference."

(B) In paragraph (b), the words "person, including any 'contract carrier by motor vehicle', but not including any 'common carrier by motor vehicle', who or which transports in interstate or foreign commerce" shall be deleted and replaced by "motor carrier transporting."

(C) In paragraph (d), the definition of "motor vehicle" shall be deleted.

(2) The following revisions shall be made to 49 C.F.R. 398.2:

(A) In paragraph (a), the phrase "in interstate commerce, as defined in 49 C.F.R. 390.5" shall be deleted and replaced by "within the state of Kansas."

(B) In paragraph (b)(2), the phrase "in interstate commerce, must comply with the applicable requirements of 49 CFR parts 385, 390, 391, 392, 393, 395, and 396" shall be deleted and replaced by "must comply with the applicable requirements of 49 C.F.R. Part 385, as adopted by K.A.R. 82-4-3d, 49 C.F.R. Part 390, as adopted by K.A.R. 82-4-3f, 49 C.F.R. Part 391, as adopted by K.A.R. 82-4-3g, 49 C.F.R. Part 392, as adopted by K.A.R. 82-4-3h, 49 C.F.R. Part 393, as adopted by K.A.R. 82-4-3i, 49 C.F.R. Part 395, as adopted by K.A.R. 82-4-3a, and 49 C.F.R. Part 396, as adopted by K.A.R. 82-4-3j."

(3) In 49 C.F.R. 398.3(b)(9), the phrase "§ 398.3(b) of the Federal Motor Carrier Safety Regulations of the Federal Motor Carrier Safety Administration" shall be deleted and replaced with "49 C.F.R. 398.3(b) as adopted by K.A.R. 82-4-3l."

(4) The following revisions shall be made to 49 C.F.R. 398.4:

(A) In paragraph (b), the words "jurisdiction in which it is being operated, unless such laws, ordinances and regulations are at variance with specific regulations of this Administration which impose a greater affirmative obligation or restraint" shall be deleted and replaced by "state of Kansas."

(B) In paragraph (k), the phrase "part 393 of this subchapter" shall be deleted and replaced by "49 C.F.R. Part 393, as adopted by K.A.R. 82-4-3i."

(5) The following revisions shall be made to 49 C.F.R. 398.5:

(A) In paragraph (b), the phrase "part 393 of this subchapter" shall be deleted and replaced by "49 C.F.R. Part 393, as adopted by K.A.R. 82-4-3i."

(B) In paragraph (c), the phrase "part 393 of this subchapter, except § 393.44 of this subchapter" shall be deleted and replaced by "49 C.F.R. Part 393, as adopted by K.A.R. 82-4-3i."

(6) The following revisions shall be made to 49 C.F.R. 398.8:

(A) In paragraph (a), the phrase "Special Agents of the Federal Motor Carrier Safety Administration, as detailed in appendix B of chapter III of this title" shall be deleted and replaced by "any authorized representative of the commission, and any member of the Kansas highway patrol or any other law enforcement officer in the state who is certified in the inspection of motor carriers based on the motor carrier safety assistance program standards."

(B) Paragraph (b) shall be deleted and replaced by the following: "(b) Prescribed inspection report. A compliance report form approved by the

commission shall be used to record findings from motor vehicles selected for final inspection by any authorized representative of the commission, and any member of the Kansas highway patrol or any other law enforcement officer in the state who has been certified in the inspection of motor carriers based on the motor carrier safety assistance program standards. A compliance report form approved by the commission shall contain the following information:

- “(1) The name, MCID number, and address of the motor carrier;
- “(2) information regarding the inspection location;
- “(3) the date of the inspection;
- “(4) the name, birth date, license number, and employment status of the driver;
- “(5) whether hazardous materials were being transported, and if so, what type;
- “(6) shipping information regarding the commodity transported;
- “(7) identification of the vehicle used;
- “(8) brake adjustment information;
- “(9) identification of the alleged violations;
- “(10) information regarding the authority under which the vehicle could be put out of service for alleged violations discovered during the inspection;
- “(11) information regarding the individual who prepares the inspection report; and
- “(12) a statement to be signed by the motor carrier that the violations have been corrected.”

(C) In paragraph (c)(1), the last sentence shall be deleted and replaced by the following: “A form approved by the commission shall be used to mark vehicles as ‘out of service.’ An out of service form approved by the commission shall contain the following information:

- “(i) A statement that the motor vehicle has been declared out of service;
- “(ii) a statement that the out of service marking may be removed only under the conditions outlined in the out of service order or the accompanying vehicle inspection report;
- “(iii) a statement that operation of the vehicle prior to making the required repairs will subject the motor carrier to civil penalties;
- “(iv) the number and dates of the inspection; and
- “(v) a place for the signature of the authorized individual making the inspection.”

(D) The following revisions shall be made to paragraph (c)(2):

- (i) The phrase “on Form MCS 63” shall be deleted and replaced by “on a form approved by the

commission for driver-equipment compliance reporting.”

- (ii) The phrase “§ 393.52” shall be deleted and replaced by “49 C.F.R. 393.52, as adopted by K.A.R. 82-4-3i.”

(E) In paragraph (c)(3), the phrase “on Form MCS 63” shall be deleted and replaced by “on a form approved by the commission for driver-equipment compliance reporting.”

(F) Paragraph (c)(4) shall be deleted and replaced by the following: “The person or persons completing the repairs required by the out of service notice shall complete a form to certify repairs approved by the commission, which shall include the person’s name and the name of the person’s shop or garage as well as the date and time the repairs were completed. If the driver completes the required repairs, then the driver shall complete the same form.”

(G) In paragraph (d)(1), the phrase “Forms MCS 63” shall be deleted and replaced by “the forms approved by the commission for driver-equipment compliance reporting.”

(H) In paragraph (d)(1), the phrase “Federal Motor Carrier Safety Regulations” shall be deleted and replaced by the phrase “commission’s regulations.”

(I) In paragraph (d)(2), the phrase “‘Motor Carrier Certification of Action Taken’ on Form MCS 63” and the phrase “Form MCS 63” shall be deleted and replaced by “form approved by the commission for driver-equipment reporting.”

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 398 shall mean that portion as adopted by reference in this regulation.

(c) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 66-1,112, K.S.A. 66-1,112g, K.S.A. 66-1,129, and K.S.A. 66-1,142a; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Sept. 20, 2013; amended July 26, 2019.)

**82-4-3m. Employee safety and health standards.** (a)(1) With the following exceptions, 49 C.F.R. Part 399, as in effect on October 1, 2015, is hereby adopted by reference:

- (A) 49 C.F.R. 399.201 shall be deleted.

(B) In 49 C.F.R. 399.205, the definition of “person” shall be deleted.

(C) In 49 C.F.R. 399.209, paragraph (b) shall be deleted.

(2) Appendix G to 49 C.F.R. Chapter III, Subchapter B, as in effect on October 1, 2015, is hereby adopted by reference, except as follows: All text following standards 1 through 13, which begins with the heading “Comparison of Appendix G, and the new North American Uniform Driver-Vehicle Inspection Procedure (North American Commercial Vehicle Critical Safety Inspection Items and Out-Of-Service Criteria),” shall be deleted.

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Sept. 20, 2013; amended July 26, 2019.)

**82-4-3n. Minimum levels of financial responsibility for motor carriers.** (a) With the following exceptions, 49 C.F.R. Part 387, as in effect on October 1, 2015, is hereby adopted by reference:

(1) The following revisions shall be made to 49 C.F.R. 387.3:

(A) In paragraph (a), the phrase “for-hire” shall be deleted and replaced by “public.”

(B) In paragraph (c)(1), the phrase “as adopted by K.A.R. 82-4-20” shall be inserted after the phrase “49 CFR 173.403.”

(2) The following revisions shall be made to 49 C.F.R. 387.5:

(A) The term “for-hire” in the definition of “for-hire carriage” shall be deleted and replaced by “public.”

(B) The definition of “motor carrier” shall be deleted.

(C) The definition of “State” shall be deleted and replaced by “state of Kansas.”

(3) The following revisions shall be made to 49 C.F.R. 387.7:

(A) 49 C.F.R. 387.7(b)(3) shall be deleted.

(B) The following revisions shall be made to paragraph (d)(3):

(i) The phrase “under §387.309” shall be deleted.

(ii) The phrase “part 385 of this chapter” shall be deleted and replaced by “49 C.F.R. 385 as adopted by K.A.R. 82-4-3d.”

(C) In paragraph (g), the term “United States” shall be deleted and replaced by “state of Kansas.”

(4) The following revisions shall be made to 49 C.F.R. 387.9: The term “for-hire” shall be deleted and replaced by “public” in the “schedule of limits—public liability.”

(5) The following revisions shall be made to 49 C.F.R. 387.11:

(A) In paragraphs (b) and (d), the words “any State in which the motor carrier operates” shall be deleted and replaced by “the state of Kansas.”

(B) In paragraph (c), the words “any State in which business is written” shall be deleted and replaced by “the state of Kansas.”

(6) The following revision shall be made to 49 C.F.R. 387.15: The definition of “motor vehicle” shall be deleted in illustration I.

(7) 49 C.F.R. 387.17 shall be deleted.

(8) In 49 C.F.R. 387.25 and 49 C.F.R. 387.27(a), the term “for-hire” shall be deleted and replaced by “public.”

(9) The following revisions shall be made to 49 C.F.R. 387.29:

(A) In the definition of “for-hire carriage,” the term “for-hire” shall be deleted and replaced by “public.”

(B) The definition of “motor carrier” shall be deleted.

(C) In the definition of “seating capacity,” the phrase “(measured in accordance with SEA Standards J1100(a))” shall be deleted.

(10) The following revisions shall be made to 49 C.F.R. 387.31:

(A) The following revisions shall be made to paragraph (e)(2):

(i) The phrase “for-hire” shall be deleted and replaced with “public.”

(ii) The phrase “FMCSA” shall be deleted and replaced with “commission.”

(iii) The phrase “subpart C of this part” shall be deleted and replaced with “K.A.R. 82-4-3n.”

(B) In paragraph (f), the phrase “within the United States” shall be deleted and replaced by “in the state of Kansas.”

(C) In paragraph (g), the phrase “the United States” shall be deleted and replaced by “the state of Kansas.”

(11) The following revision shall be made to 49 C.F.R. 387.33: The term “for hire” shall be deleted and replaced by “public” in the schedule of limits.

(12) In paragraphs (b), (c), and (d) of 49 C.F.R. 387.35, the words “in any State in which the motor carrier operates” shall be deleted and replaced by “in the state of Kansas.”

(13) The following revision shall be made to 49 C.F.R. 387.39: The phrase “prescribed by the FMCSA and approved by the OMB” shall be deleted and replaced with “approved by the commission.”

(14) 49 C.F.R. 387.41 shall be deleted.

(15) The following revisions shall be made to 49 C.F.R. 387.301:

(A) The following revision shall be made to paragraph (a)(1): The phrase “FMCSA” shall be deleted and replaced with “commission.”

(B) In paragraph (b), the phrase “FMCSA” shall be deleted and replaced by “commission.” The last sentence in paragraph (b) shall be deleted.

(C) In paragraph (c), the phrase “FMCSA in accordance with the requirements of section 13906 of title 49 of the U.S. Code,” shall be deleted and replaced by “commission.”

(16) The following revision shall be made to 49 C.F.R. 387.303: Paragraph (b)(4) shall be deleted.

(17) 49 C.F.R. 387.307 through 49 C.F.R. 387.323 shall be deleted.

(18) In 49 C.F.R. 387.401(c), the term “motor vehicle” shall be deleted and replaced with “motor vehicle as defined in 49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(19) The following revisions shall be made to 49 C.F.R. 387.403:

(A) In paragraph (a), the term “FMCSA” shall be deleted and replaced with “the commission.”

(B) In paragraph (b), the term “FMCSA” shall be deleted and replaced with “commission.”

(20) The following revisions shall be made to 49 C.F.R. 387.407: The first instance of the term “FMCSA” shall be deleted and replaced with “commission.” The phrase “FMCSA (or the Department of Transportation, where applicable)” shall be deleted and replaced with “commission.”

(21) 49 C.F.R. 387.409 through 49 C.F.R. 387.419 shall be deleted.

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 387 shall mean that portion as adopted by reference in this regulation.

(c) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall

not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 66-1,112, K.S.A. 66-1,112g, K.S.A. 66-1,128, and K.S.A. 66-1,129; effective Oct. 22, 2010; amended Sept. 20, 2013; amended May 6, 2016; amended July 26, 2019.)

**82-4-30. Imminent hazard.** (a) With the following exceptions, 49 C.F.R. Part 386, Subpart F, as in effect on October 1, 2015, is hereby adopted by reference:

(1) 49 C.F.R. 386.71 shall be deleted.

(2) The following revisions shall be made to 49 C.F.R. 386.72:

(A) In paragraph (a), the first sentence shall be deleted and replaced by the following sentence: “Whenever it is determined that an imminent hazard exists as a result of the transportation by motor vehicle of a particular hazardous material, the director of the commission’s transportation division may request an emergency suspension order from the commission for the purposes of suspending or restricting the transportation by motor vehicle of the hazardous material or for such other order as is necessary to eliminate or mitigate the imminent hazard.”

(B) Paragraph (b)(1) shall be deleted and replaced by the following text: “Whenever it is determined that a violation of the Kansas motor carrier statutes or administrative regulations, as amended, or a combination of such violations, poses an imminent hazard to safety, the commission may order:”

(C) In paragraph (b)(1)(i), the phrase “as provided by 49 U.S.C. 521(b)(5)” shall be deleted and replaced by “in Kansas.”

(D) In paragraph (b)(1)(ii), the phrase “as provided by 49 U.S.C. 521(b)(5) and 49 U.S.C. 31151(a)(3)(I)” shall be deleted and replaced by “in Kansas.”

(E) In paragraph (b)(4), the second sentence of the paragraph shall be deleted and replaced by the following sentence: “Administrative hearings shall be held in accordance with the Kansas Administrative Procedure Act and the commission’s administrative regulations.”

(3) In 49 C.F.R. 386.72 (b)(6), the phrase “in subpart G of this part” shall be deleted and replaced by “by Kansas law.”

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 386, Subpart F shall mean that portion as adopted by reference in this regulation.

(c) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission's regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 66-1,129; effective Oct. 22, 2010; amended Sept. 20, 2013; amended May 6, 2016; amended July 26, 2019.)

**82-4-4 and 82-4-5.** (Authorized by and implementing K.S.A. 66-1,129; effective Jan. 1, 1971; amended May 1, 1981; revoked May 1, 1984.)

**82-4-6.** (Authorized by K.S.A. 66-1,129; effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-79-23, Sept. 21, 1978; amended May 1, 1979; revoked May 1, 1981.)

**82-4-6a. Minimum requirements of drivers.** Each motor carrier and driver shall comply with the following:

(a) The motor carrier regulations established by the federal department of transportation and the federal motor carrier safety administration (FMCSA), as adopted by the commission in this article;

(b) the state traffic laws and regulations of the Kansas department of revenue pertaining to driver's licenses as established in the Kansas driver's license act, K.S.A. 8-222 et seq. and amendments thereto;

(c) the uniform act regulating traffic and the size, weight, and load of vehicles as established in K.S.A. 8-1901 et seq. and amendments thereto; and

(d) the regulations issued by the commission pertaining to the driving of commercial motor vehicles as adopted in K.A.R. 82-4-3h. (Authorized by and implementing K.S.A. 2009 Supp. 66-1,108a, 66-1,108b, and 66-1,129; effective May 1, 1981; amended Sept. 16, 1991; amended Oct. 22, 2010.)

**82-4-6b.** (Authorized by and implementing K.S.A. 66-1,129; effective May 1, 1981; revoked Sept. 16, 1991.)

**82-4-6c.** (Authorized by and implementing K.S.A. 66-1,129; effective May 1, 1981; revoked May 1, 1984.)

**82-4-6d. Waiver of physical requirements.** (a) Any person failing to meet the requirements of

K.A.R. 82-4-3g may be permitted to drive a vehicle if the director finds that the granting of a waiver is consistent with highway safety and the public interest.

(b) The application for a waiver shall meet these requirements:

(1) The application shall be submitted jointly by the person seeking the waiver and by the motor carrier wishing to employ the person as a driver.

(2) The application shall be accompanied by the following:

(A) A copy of the driver applicant's motor vehicle driving record. Each change to this record occurring after submission of the application shall be immediately forwarded to the commission;

(B) reports of medical examinations, administered by a licensed medical examiner, that are satisfactory to the director; and

(C) letters of recommendation from at least two licensed medical examiners, written on their personalized or institutional letterhead, including their national provider identifier assigned by the national plan and provider enumeration system, and meeting the following requirements:

(i) The reports and letters of recommendation shall indicate the opinions of the licensed medical examiners regarding the ability of the driver to safely operate a commercial motor vehicle of the type to be driven;

(ii) letters of recommendation regarding vision impairments shall be provided by a licensed ophthalmologist or optometrist who treated the driver applicant;

(iii) letters of recommendation regarding diabetes shall be provided by an endocrinologist, diabetologist, or primary care physician who has treated the driver applicant;

(iv) letters of recommendation regarding limb impairment or amputation shall include a medical summary conducted by a board of qualified, or board-certified, psychiatrists or orthopedic surgeons, preferably associated with a rehabilitation center; and

(v) letters of recommendation shall include a description of any prosthetic or orthopedic devices worn by the driver applicant.

(3) The application shall contain a description that is satisfactory to the director of the type, size, and special equipment of the vehicle or vehicles to be driven, the general area and type of roads to be traversed, the distances and time period contemplated, the nature of the commodities to be transported and the method of loading and secur-

ing them, and the experience of the applicant in driving vehicles of the type to be driven.

(A) If the applicant motor carrier is a corporation, the application shall be signed by a corporation officer and the driver applicant.

(B) If the applicant motor carrier is a limited liability company, the application shall be signed by a company officer and the driver applicant.

(C) If the applicant motor carrier is a limited liability partnership, the application shall be signed by at least one of the members of the partnership and the driver applicant.

(D) If the applicant motor carrier is a partnership, the application shall be signed by at least one of the members of the partnership and the driver applicant.

(E) If the applicant motor carrier is a sole proprietorship, the application shall be signed by the proprietor and the driver applicant.

(4) The application shall specify that both the person and the carrier will file periodic reports as required with the director. These reports shall contain complete and truthful information regarding the extent of the person's driving activity, any accidents in which the person was involved, and all suspensions or convictions in which the person is or has been involved.

(5) By completing the application, both the driver applicant and the motor carrier applicant shall be deemed to agree that upon grant of the waiver, they will fulfill all conditions of the waiver.

(c) Each driver applicant for a waiver for limb impairment or amputation shall complete a skill performance evaluation administered by a commission driver waiver program manager or a commission special investigator. The driver and motor carrier applicants shall secure the vehicle and provide the necessary insurance for the skill performance evaluation. The skill performance evaluation may be waived if the driver applicant has otherwise met the regulatory requirements of 49 C.F.R. 391.49 as adopted in K.A.R. 82-4-3g.

(d) If the application is approved, a driver medical waiver card signed by the director and accompanied by a letter acknowledging approval shall be issued by the commission. While on duty, the driver medical waiver card shall be in the driver's possession. The motor carrier shall retain the accompanying letter in its files at its principal place of business during the period the driver is in the motor carrier's employment. The motor carrier shall retain this letter for 12 months after the termination of the driver's employment.

(e) If the application is denied, an order setting forth an explanation for the denial and specifying the procedure for appeal of the decision shall be issued by the commission.

(f) The waiver shall not exceed two years and may be renewable upon submission and approval of a new application.

(g) All intrastate vision waiver recipients shall be subject to the following conditions:

(1) Each driver shall be physically examined every year by the following individuals:

(A) A licensed ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard specified in 49 C.F.R. 391.41(b)(10) as adopted in K.A.R. 82-4-3g;

(B) a licensed endocrinologist, diabetologist, or primary care physician who attests that the glycosylated hemoglobin (HbA1C) is less than or equal to 8.0 mmol/mol; and

(C) a licensed medical practitioner who attests that the individual is otherwise physically qualified under the standards specified in 49 C.F.R. 391.41 as adopted in K.A.R. 82-4-3g.

(2) Each driver shall provide a copy of the ophthalmologist's or optometrist's report to the medical practitioner at the time of the annual medical examination.

(3) Each driver shall provide the motor carrier with a copy of the annual medical reports for retention in the motor carrier's driver qualification files.

(4) Each driver shall provide a copy of the annual medical reports to the commission.

(h) The waiver may be revoked by the director after the applicant has been given notice of the proposed revocation and has been given a reasonable opportunity to show cause, if any, why the revocation should not be made.

(i) Each motor carrier and driver shall notify the director within 72 hours upon any conviction of a moving violation or any revocation or suspension of driving privileges.

(j) Written notice shall be given to the director when any of the following occurs:

(1) A driver ceases employment with the "original employer" with whom the waiver was first granted.

(2) A change occurs in employment duties or functions.

(3) A change occurs in the driver's medical condition.

(k) Written notice shall be given by both the motor carrier and the driver within 10 days of any change in employment, duties, or functions, ex-

cept in cases of termination of employment. Notice of termination of employment shall be given by both the motor carrier and the driver within 72 hours of termination.

(l) A waiver shall become void upon termination of employment from the motor carrier joint-applicant.

(m) Each application for renewal of waiver shall be submitted at least 60 days before the expiration date of the existing waiver. (Authorized by and implementing K.S.A. 2011 Supp. 66-1,129; effective May 1, 1981; amended Sept. 16, 1991; amended May 10, 1993; amended Oct. 3, 1994; amended Jan. 30, 1995; amended Jan. 4, 1999; amended July 14, 2000; amended Nov. 14, 2011; amended Sept. 20, 2013.)

**82-4-6e.** (Authorized by K.S.A. 1979 Supp. 66-1,129; implementing K.S.A. 1979 Supp. 66-1,129; effective May 1, 1981; rejected, L. 1981, ch. 424, July 1, 1981.)

**82-4-7.** (Authorized by K.S.A. 66-1,129; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1981.)

**82-4-7a.** (Authorized by and implementing K.S.A. 66-1,129; effective May 1, 1981; revoked May 1, 1984.)

**82-4-7b.** (Authorized by and implementing K.S.A. 66-1,129; modified, L. 1981, ch. 424, May 1, 1981; modified, L. 1983, ch. 357, May 1, 1983; revoked May 1, 1984.)

**82-4-7c to 82-4-7f.** (Authorized by and implementing K.S.A. 66-1,129; effective May 1, 1981; revoked May 1, 1984.)

**82-4-7g.** (Authorized by and implementing K.S.A. 66-1,112, 66-1,112a, 66-1,112g; effective May 1, 1981; revoked May 1, 1984.)

**82-4-7h and 82-4-7i.** (Authorized by and implementing K.S.A. 66-1,129; effective May 1, 1981; revoked May 1, 1984.)

**82-4-8.** (Authorized by K.S.A. 66-1,129; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1981.)

**82-4-8a.** (Authorized by and implementing K.S.A. 2012 Supp. 66-1,129, as amended by L. 2013, ch. 14, sec. 3; effective May 1, 1981; amended May 1, 1984; amended April 30, 1990; amended May 10, 1993; amended July 14, 2000;

amended Nov. 14, 2011; amended Sept. 20, 2013; revoked May 6, 2016.)

**82-4-8b to 82-4-8g.** (Authorized by and implementing K.S.A. 66-1,129; effective May 1, 1981; revoked May 1, 1984.)

**82-4-8h. Marking of commercial motor vehicles.** On and after January 1, 2001, each Kansas-based motor carrier shall obtain a USDOT number that meets the requirements for the motor carrier identification report and markings of commercial motor vehicles established under 49 C.F.R. 390.21, as adopted by K.A.R. 82-4-3f. (Authorized by and implementing K.S.A. 2009 Supp. 66-1,112 and 66-1,129; effective July 14, 2000; amended Oct. 22, 2010.)

**82-4-9 to 82-4-11.** (Authorized by and implementing K.S.A. 66-1,129; effective Jan. 1, 1971; amended May 1, 1981; revoked May 1, 1984.)

**82-4-12.** (Authorized by and implementing K.S.A. 66-1,129; effective Jan. 1, 1971; modified, L. 1981, ch. 424, May 1, 1981; revoked May 1, 1984.)

**82-4-13.** (Authorized by and implementing K.S.A. 66-1,129; effective Jan. 1, 1971; amended May 1, 1981; revoked May 1, 1984.)

**82-4-14.** (Authorized by and implementing K.S.A. 66-1,129; effective Jan. 1, 1971; modified, L. 1981, ch. 424, May 1, 1981; revoked May 1, 1984.)

**82-4-15 and 82-4-16.** (Authorized by and implementing K.S.A. 66-1,129; effective Jan. 1, 1971; amended May 1, 1981; revoked May 1, 1984.)

**82-4-17.** (Authorized by and implementing K.S.A. 66-1,129; effective Jan. 1, 1971; amended May 1, 1981; revoked May 1, 1985.)

**82-4-18.** (Authorized by K.S.A. 66-1,129; effective Jan. 1, 1971; revoked May 1, 1981.)

**82-4-19.** (Authorized by and implementing K.S.A. 66-1,129; effective Jan. 1, 1971; amended May 1, 1981; revoked May 1, 1985.)

**82-4-19a.** (Authorized by and implementing K.S.A. 1984 Supp. 66-1,129, as amended by L. 1985, Ch. 227, Sec. 1; effective May 1, 1986; revoked Sept. 16, 1991.)

**82-4-20. Transportation of hazardous materials by motor vehicles.** (a) The federal regulations adopted by reference in this regulation shall govern the transportation of hazardous materials in Kansas in commerce to the extent that the regulations pertain to the transportation of hazardous materials by commercial motor vehicle.

(b) Copies of all applications for special permits pursuant to 49 C.F.R. Part 107, Subpart B, registrations of cargo tank and cargo tank motor vehicle manufacturers, assemblers, repairers, inspectors, testers, and design-certifying engineers pursuant to 49 C.F.R. Part 107, Subpart F, and registrations of persons who offer transportation or transport hazardous materials pursuant to 49 C.F.R. Part 107, Subpart G shall be made available to the commission for proof of compliance with federal hazardous materials regulations.

(c) The following federal regulations, as in effect on October 1, 2015, are hereby adopted by reference:

- (1) 49 C.F.R. Part 171, except 171.1(a) and 171.6;
- (2) 49 C.F.R. Part 172, except 172.701, 172.804 and 172.822;
- (3) 49 C.F.R. Part 173, except 173.10 and 173.27;
- (4) 49 C.F.R. Part 177;
- (5) 49 C.F.R. Part 178; and
- (6) 49 C.F.R. Part 180.

(d) When used in any provision adopted from 49 C.F.R. Parts 171, 172, 173, 177, 178, and 180, the following substitutions shall be made unless otherwise specified:

(1) The terms “administrator,” “associate administrator,” and “regional administrator” shall be replaced with “director as defined in K.A.R. 82-4-1.”

(2) The term “competent authority” shall mean “the Kansas corporation commission or any other Kansas agency or federal agency that is responsible, under its law, for the control or regulation of some aspect of hazardous materials transportation.”

(3) The terms “Department of Transportation,” “DOT,” and “department” shall be replaced with “commission as defined in K.A.R. 82-4-1.”

(4) The term “the United States” shall be replaced with “the state of Kansas.”

(e) Carriers transporting hazardous materials in intrastate commerce shall be subject to the packaging provisions as provided in K.S.A. 66-1,129b, and amendments thereto.

(f) Whenever the adopted federal hazardous materials regulations refer to portions of the federal hazardous materials regulations that are not included under subsection (a), those references

shall not be applicable to this regulation. (Authorized by K.S.A. 66-1,112, K.S.A. 66-1,112g, K.S.A. 66-1,129, and K.S.A. 66-1,129b; implementing K.S.A. 66-1,112, K.S.A. 66-1,129, and K.S.A. 66-1,129b; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1984; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended April 30, 1990; amended Sept. 16, 1991; amended July 6, 1992; amended May 10, 1993; amended Oct. 3, 1994; amended Jan. 30, 1995; amended Jan. 4, 1999; amended July 14, 2000; amended Jan. 31, 2003; amended Oct. 2, 2009; amended Nov. 14, 2011; amended Sept. 20, 2013; amended May 6, 2016; amended July 26, 2019.)

#### INSURANCE

**82-4-21. Requiring insurance.** The following types of carriers shall not operate a motor vehicle, trailer, or semitrailer for the transportation of persons or property within the provisions of the motor carrier law of this state until an insurance policy is filed in compliance with K.S.A. 66-1,128 and amendments thereto, and in accordance with the commission’s regulations:

(a) Public motor carriers of property, household goods, or passengers; and

(b) private motor carriers of property. (Authorized by K.S.A. 66-1,112, K.S.A. 66-1,112g; implementing K.S.A. 66-1,128; effective Jan. 1, 1971; amended May 1, 1981; amended, T-85-48, Dec. 19, 1984; amended May 1, 1985; amended Jan. 4, 1999; amended Jan. 31, 2003; amended Oct. 22, 2010; amended July 26, 2019.)

**82-4-22. Intrastate insurance requirements.** (a)(1) Before the commission issues a certificate, permit, or license to an applicant, the following types of applicant carriers shall obtain and keep in force a public liability and property damage insurance policy pursuant to K.S.A. 66-1,128, and amendments thereto:

(A) Public motor carriers of property, household goods, or passengers; and

(B) private motor carriers of property.

(2) Each applicant shall submit proof of the required policy by filing the uniform standard insurance form as required by K.A.R. 82-4-24a. This policy shall be issued by an insurance company or association meeting the requirements of K.S.A. 66-1,128, and amendments thereto.

(3) The insurance policy shall bind the obligors to pay compensation for the following:

(A) Injuries or death to persons, except injury to the insured's employees while engaged in the course of their employment; and

(B) loss of, or damage to, property of others, not including property usually designated as cargo, resulting from the negligent operation of the carrier.

(4) Each carrier shall file online, at the national online registration (NOR) database administered by the motor carrier information exchange, proof of insurance in amounts not less than those required in K.S.A. 66-1,128, and amendments thereto. In special cases and for good cause shown, a carrier may be required by order of the commission to file insurance in additional amounts.

(b) If a motor carrier is unable to provide the uniform standard insurance form required in subsection (a), the original or a certified copy of the policy with all endorsements attached may be temporarily accepted by the commission for 30 days. The motor carrier shall then file the form required in subsection (a) within the 30-day period.

(c) Before the expiration date or cancellation date of an insurance policy filed in compliance with the law and the regulations of the commission, either the motor carrier shall file with the commission a new policy for the vehicle, or the vehicle shall immediately be withdrawn from service and notification of the action shall be given to the commission.

(d) Operation by a motor carrier without compliance with this regulation shall result in emergency proceedings pursuant to K.S.A. 77-536, and amendments thereto, to suspend the certificate, permit, or license issued to the carrier. Each emergency order to cancel the certificate, permit, or license issued to the carrier shall be followed by a notice of the agency action and an opportunity for a hearing on the matter, pursuant to K.S.A. 77-536 and amendments thereto. (Authorized by K.S.A. 66-1,112, K.S.A. 66-1,112g; implementing K.S.A. 66-1,128; effective Jan. 1, 1971; modified, L. 1981, ch. 424, May 1, 1981; amended May 1, 1983; amended, T-85-48, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended Oct. 3, 1994; amended Jan. 4, 1999; amended, T-82-7-26-02, July 26, 2002; amended Oct. 18, 2002; amended Oct. 22, 2010; amended July 26, 2019.)

**82-4-23. General intrastate requirements.** (a) Each insurance policy shall be written in the full and correct name of the individual, partnership, limited liability partnership, limited liability company, or corporation to whom the cer-

tificate, permit, or license has been issued, and in case of a partnership, all partners shall be named.

(b) Each policy filed with the commission shall be deemed the property of the commission and shall not be returnable.

(c) Cancellation notices and expiration notices shall be filed in duplicate with the commission on the uniform notice of cancellation of motor carrier insurance policies, form K, or in compliance with K.A.R. 82-4-24a. The original copy shall be retained by the commission, and the duplicate copy shall be stamped with the date it is received and returned to the insurance company for its files.

(d) A policy that has been accepted by the commission under this article may be replaced by filing a new policy. If the commission determines that the replacement policy is acceptable, then the earlier-filed policy shall no longer be considered the effective policy.

(e) All public liability and property damage insurance policies filed with the commission and motor carriers registered pursuant to K.A.R. 82-4-3n shall fulfill the insurance requirements of K.S.A. 66-1,128, and amendments thereto, and the regulations adopted by the commission.

(f) Each policy of insurance filed with the commission for approval shall be in amounts not less than the minimum of liability required under K.S.A. 66-1,128 and amendments thereto. (Authorized by K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g; implementing K.S.A. 2009 Supp. 66-1,128; effective Jan. 1, 1971; amended May 1, 1981; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000; amended Jan. 31, 2003; amended Oct. 22, 2010.)

**82-4-24.** (Authorized by K.S.A. 66-1,128; effective Jan. 1, 1971; revoked May 1, 1981.)

**82-4-24a. Standard insurance forms.** (a) Each motor carrier shall use the uniform standard insurance forms established under 49 C.F.R. Part 387, as adopted by K.A.R. 82-4-3n.

(b) The uniform motor carrier bodily injury and property damage liability certificate of insurance shall be form E for intrastate regulated and interstate exempt motor carriers.

(c) Forms BMC 91 and BMC 91X shall be required for interstate regulated motor carriers in accordance with K.A.R. 82-4-3n.

(d) The uniform notice of cancellation of motor carrier insurance policies shall be form K. (Authorized by K.S.A. 66-1,112, K.S.A. 66-1,112g; imple-

menting K.S.A. 66-1,128; effective May 1, 1981; amended May 1, 1984; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000; amended Oct. 22, 2010; amended July 26, 2019.)

**82-4-25.** (Authorized by K.S.A. 66-1,128; effective Jan. 1, 1971; revoked May 1, 1981.)

**82-4-25a. Endorsements.** There shall be attached to all insurance policies filed with and approved by the commission an endorsement of the policy on a form specified by the commission.

The uniform motor carrier bodily injury and property damage liability insurance endorsement shall be form F.

The uniform motor carrier cargo insurance endorsement shall be form I. (Authorized by K.S.A. 66-1,112, 66-1,112a, 66-1,112g; implementing K.S.A. 66-1,128; effective May 1, 1981.)

#### APPLICATIONS AND OTHER GENERAL PROVISIONS

**82-4-26. General requirements for certificates, permits, and licenses.** (a) Except as otherwise specifically requested by the commission or its staff, each application for a certificate, permit, or license by a partnership shall be accompanied by a copy of the articles of partnership, if in writing. If the articles of partnership are not in writing, a statement of the partnership agreement shall accompany the application. Each limited liability partnership shall provide a copy of its partnership agreement. Each corporation applying for a certificate, permit, or license shall provide a copy of the articles of incorporation. Each limited liability company shall provide a copy of its articles of organization.

(b) In order to demonstrate that each applicant is fit, willing, and able to serve, the applicant shall attend an educational seminar on motor carrier operations conducted by the commission, in compliance with both of the following requirements:

(1) The person attending the seminar shall be the employee of the applicant responsible for the applicant's safety functions.

(2) The person responsible for the applicant's safety functions shall submit written verification on a form provided by the commission to verify that person's attendance at the seminar. (Authorized by K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g; implementing K.S.A. 2009 Supp. 66-1,116, 66-1,117; effective Jan. 1, 1971; amended May 1, 1981; amended Jan. 4, 1999; amended Jan. 31, 2003; amended Oct. 22, 2010.)

#### **82-4-26a. Certain private motor carriers exempt from obtaining commission authority.**

(a) A private motor carrier engaged in the occasional transportation of personal property that is not for compensation and is not in the furtherance of a commercial enterprise shall not be required to apply for a certificate, permit, or license.

(b) An interstate private motor carrier shall not be required to perform any of the following to enter the state of Kansas if that private motor carrier is exempt from safety regulations pursuant to 49 C.F.R. 390.23 and 49 C.F.R. 390.25 as adopted by K.A.R. 82-4-3f:

(1) Obtain commission authority under K.A.R. 82-4-29;

(2) carry a registration receipt pursuant to K.A.R. 82-4-30a(c); or

(3) obtain a permit and pay the special clearance fee required by K.A.R. 82-4-42(b). (Authorized by K.S.A. 66-1,112g; implementing K.S.A. 2009 Supp. 66-1,116 and K.S.A. 2009 Supp. 66-1,117; effective, T-82-10-25-01, Oct. 25, 2001; effective Dec. 28, 2001; amended Jan. 31, 2003; amended Oct. 22, 2010.)

#### **82-4-27. Applications for certificates of convenience and necessity and certificates of public service.**

(a) Each application for a certificate of convenience and necessity or a certificate of public service shall be typewritten or printed on forms furnished by the commission. An original and two copies shall be filed and shall contain the following information:

(1) The address of the applicant's principal office or place of business and the applicant's residential address;

(2) a list of each motor vehicle, by make, year, and vehicle identification number (VIN), to be used by the applicant. If buses are to be used, the seating capacity of each bus shall be included;

(3) the commodity or commodities listed on form MCSA-1 that the applicant intends to transport; and

(4) evidence of compliance with the requirements of K.A.R. 82-4-26(b).

(b) If the commission deems a hearing necessary in order to evaluate an application for a certificate of public service, the applicant shall file testimony that details how the applicant is fit, knowledgeable of, and in compliance with all applicable safety regulations. (Authorized by K.S.A. 66-1,112 and 66-1,117; implementing K.S.A. 66-1,114, 66-1,114b, and 66-1,117; effective Jan. 1, 1971; amended May

1, 1981; amended May 1, 1984; amended May 1, 1987; amended Sept. 16, 1991; amended Oct. 3, 1994; amended Jan. 4, 1999; amended Jan. 31, 2003; amended Oct. 22, 2010; amended Sept. 20, 2013; amended July 26, 2019.)

**82-4-27a. Applications for transfer of certificates of convenience and necessity and certificates of public service.** (a) A certificate of convenience and necessity or a certificate of public service issued to common motor carriers under the provisions of K.S.A. 66-1,114 and K.S.A. 66-1,114b, and amendments thereto, shall not be assigned or transferred without the consent of the commission. The terms and provisions of any certificate may reasonably be altered, restricted, or modified by the commission, or restrictions may be imposed by the commission on any transfers when the public interest may be best served.

(b) An application for the commission's approval of the transfer of the common carrier certificate shall be completed by both transferor and transferee and filed on forms prescribed by the commission. Each applicant shall file an original and two copies of the application with the commission. The application shall contain a certified or sworn contract entered into by the parties that shall meet the following criteria:

- (1) Is filed as an exhibit with the application;
- (2) sets out in full the agreement between the parties; and
- (3) details all transferred items including equipment, property, goodwill, assumption of debt, covenants not to compete, and any other items relevant to the financial stability of the parties.

(c) The transferor or present owner of the certificate shall file a sworn statement containing the following information:

- (1) The name and address of the present owner of the certificate;
- (2) the date the certificate was obtained;
- (3) the reason for the transfer;
- (4) an indication of whether the transferor is currently under citation or suspension by the commission;
- (5) an indication of whether all ad valorem taxes have been paid to the state of Kansas, or a statement that clearly indicates which party shall be responsible for filing any delinquent rendition statement and who shall be responsible for paying any outstanding ad valorem tax obligation; and
- (6) a statement that the vehicle maintenance records, driver qualification files, driver logs, and

bills of lading of the transferor for the three years before the date of the transfer will be in the transferee's possession upon conclusion of the transfer.

(d) The transferee of the certificate shall file a sworn statement containing the following information:

(1) The name and address of the transferee according to one of the following:

(A) If the transferee is a corporation, the application shall designate the state in which the articles of incorporation were issued and shall provide the name and address of all officers;

(B) if the transferee is a limited liability company, the applicant shall designate the state in which the articles of organization were issued, provide the name and address of each officer, and provide a copy of the statement of foreign qualification;

(C) if the transferee is a limited liability partnership, the applicant shall designate the state in which the statement of qualification was issued, provide the name and address of each partner, and provide a copy of the limited liability partnership's statement of qualification; or

(D) if the transferee is an individual, partnership, or association, the application shall indicate the names and addresses of all parties owning an interest in the transferee and the percentage each owns;

(2) a financial statement showing in detail the financial ability and responsibility of the transferee;

(3) a statement specifying the amount the transferee borrowed or otherwise obtained to make the purchase of the items detailed in subsection (b) and specifying all details regarding the transactions;

(4) a sworn statement from the transferee that the vehicle maintenance records, driver qualification files, driver logs, and bills of lading of the transferor will be in the transferee's possession for three years from the date of the transfer. The transferee shall accept all responsibility for the books and records and shall have them available at any time for inspection by the commission or the commission's employees; and

(5) the transferee is not currently a motor carrier holding authority from the commission, evidence of compliance with K.A.R. 82-4-26(b). (Authorized by K.S.A. 2009 Supp. 66-1,112 and 66-1,117; implementing K.S.A. 2009 Supp. 66-1,117 and K.S.A. 66-1,118; modified, L. 1981, ch. 424, May 1, 1981; amended May 1, 1983; amended May 1, 1987; amended Sept. 16, 1991; amended May 10, 1993; amended Oct. 3, 1994; amended

Jan. 4, 1999; amended Jan. 31, 2003; amended Oct. 22, 2010.)

**82-4-27b.** (Authorized by K.S.A. 1982 Supp. 66-1,112; implementing K.S.A. 66-1,117, K.S.A. 1982 Supp. 66-1,112, 66-1,114; effective May 1, 1983; revoked May 1, 1985.)

**82-4-27c. Applications for transfer for purposes of change in the form of a business organization.** (a) An application to transfer a certificate of convenience and necessity or a certificate of public service issued to a common motor carrier shall be considered by the commission without a hearing, pursuant to K.S.A. 66-1,115a and amendments thereto, if the transfer is required because of any change in the form of business organization, including the following:

(1) Incorporation of the limited liability company, sole proprietorship, limited liability partnership, or partnership holding the certificate or permit to be transferred;

(2) the dissolution of the corporation holding the certificate or permit and the formation of a limited liability company, partnership, limited liability partnership, or sole proprietorship by the entities comprising the former corporation;

(3) the dissolution of the limited liability company holding the certificate or permit and the formation of a partnership, limited liability partnership, or sole proprietorship by the entities comprising the former limited liability company;

(4) the dissolution of the limited liability partnership holding the certificate or permit and the formation of a limited liability company, partnership, or sole proprietorship by the entities comprising the former limited liability partnership; or

(5) the dissolution of the partnership holding the certificate or permit and formation of a sole proprietorship by a former partner.

(b) The application for transfer shall contain all applicable information required by K.A.R. 82-4-27a and a signed affidavit from the transferor stating both of the following:

(1) That the transfer is for any of the following:

(A) The incorporation of the present limited liability company, sole proprietorship, partnership, or limited liability partnership;

(B) the dissolution of a corporation to form a limited liability company, partnership, limited liability partnership, or sole proprietorship;

(C) the dissolution of a limited liability compa-

ny to form a partnership, limited liability partnership, or sole proprietorship;

(D) the dissolution of a limited liability partnership to form a limited liability company, partnership, or sole proprietorship;

(E) the dissolution of partnership to form a sole proprietorship; or

(F) any other change in the form of business; and

(2) that the management, operations, and equipment of the transferee will be the same as that of the transferor. (Authorized by K.S.A. 2009 Supp. 66-1,112, 66-1,117; implementing K.S.A. 2009 Supp. 66-1,112, 66-1,114, 66-1,115, 66-1,115a, K.S.A. 66-1,117; effective May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended Sept. 16, 1991; amended July 6, 1992; amended Jan. 4, 1999; amended July 14, 2000; amended Oct. 22, 2010.)

**82-4-27d.** (Authorized by K.S.A. 1983 Supp. 66-1,112, K.S.A. 66-1,112a, K.S.A. 66-1,117; implementing K.S.A. 1983 Supp. 66-1,112, K.S.A. 66-1,112a, K.S.A. 1983 Supp. 66-1,114 and K.S.A. 66-1,115; effective May 1, 1985; revoked May 1, 1986.)

**82-4-27e. Application to merge or consolidate intrastate common authority; application to acquire control or management of an intrastate common motor carrier operation.** (a) All individuals, partnerships, limited liability companies, limited liability partnerships, and corporations who intend to merge, consolidate, or acquire control or management of a motor carrier operation that possesses common interstate authority as well as intrastate authority, or possesses intrastate authority, shall first apply to the commission for authority to do so. The merger, consolidation, or acquisition may be accomplished by means including stock acquisition by a new motor carrier, new owner, or new majority stockholder; transfer of a partnership interest; or a conditional sales contract.

(b) Each entity who has received approval or exemption from the relevant federal agency to make any transaction described in subsection (a) shall send a copy of that approval or exemption to the commission and provide the information specified in subsection (d) on the required application.

(c) Each entity that desires to make any transaction described in subsection (a) and has not received approval or exemption of the relevant federal authority shall provide the information

specified in subsections (d) and (e) and comply with the requirements of subsection (f).

(d) Each applicant shall file an original and two copies of the application with the commission. The application shall contain the following information:

(1) The background of the transaction, including the names of the entities involved, their addresses, the reasons for the transaction, and items to be retained, including equipment, property, and any other item relevant to the transaction; and

(2) a signed affidavit stating whether or not all ad valorem taxes have been paid to the state of Kansas and who shall be responsible for paying any outstanding ad valorem tax obligation.

(e) Those applicants who have not received approval or exemption from the relevant federal agency shall also provide the following information:

(1) With respect to a partnership transaction, the percentage of the partnership being transferred and the percentage of each partner as a result of the transaction;

(2) with respect to a stock transaction, the total number of shares outstanding, the total number of shares being transferred and to whom, and the total number of shares any transferee held before the stock transaction; and

(3) unless preempted by federal law, evidence of compliance by the acquiring party or transferee with K.A.R. 82-4-26(b).

(f) Any application filed under this regulation may be granted without hearing if no protests are lodged and the commission does not require further information to make a determination on the application. (Authorized by K.S.A. 2009 Supp. 66-1,112; implementing K.S.A. 2009 Supp. 66-1,114, 66-1,114b, and K.S.A. 66-1,118; effective May 1, 1986; amended July 6, 1992; amended Jan. 4, 1999; amended July 14, 2000; amended Jan. 31, 2003; amended Oct. 22, 2010.)

**82-4-27f.** (Authorized by K.S.A. 1997 Supp. 66-1,112, K.S.A. 66-1,112a, K.S.A. 66-1,117; implementing K.S.A. 1997 Supp. 66-1,112, K.S.A. 66-1,112a, K.S.A. 66-1,114, and 66-1,115; effective May 1, 1986; amended May 1, 1987; amended Oct. 3, 1994; amended Jan. 4, 1999; revoked July 14, 2000.)

**82-4-27g. Applications for transfer for purposes of name change of a motor carrier.** (a) Any application to transfer a certificate

of convenience and necessity or a certificate of public service because of a name change of an entity holding a certificate or permit shall be considered by the commission without a hearing, pursuant to K.S.A. 66-1,115a, and amendments thereto. The application shall state the reasons for the name change.

(b) Any name change requested because of a change in the form of business shall be filed pursuant to K.A.R. 82-4-27c. (Authorized by and implementing K.S.A. 1999 Supp. 66-1,115a; effective July 6, 1992; amended Jan. 4, 1999; amended July 14, 2000.)

**82-4-28.** (Authorized by K.S.A. 2001 Supp. 66-1,112a, 66-1,117; implementing K.S.A. 2001 Supp. 66-1,112b, 66-1,115, 66-1,117, and 66-1,139; effective Jan. 1, 1971; amended May 1, 1981; amended Oct. 3, 1994; amended Jan. 4, 1999; amended Jan. 31, 2003; revoked Oct. 22, 2010.)

**82-4-28a.** (Authorized by K.S.A. 2001 Supp. 66-1,112a, 66-1,117; implementing K.S.A. 66-1,112c, K.S.A. 2001 Supp. 66-1,117; effective May 1, 1981; amended Jan. 4, 1999; amended Jan. 31, 2003; revoked Oct. 22, 2010.)

**82-4-28b.** (Authorized by and implementing K.S.A. 1997 Supp. 66-1,112; effective May 1, 1983; amended Jan. 4, 1999; revoked Oct. 22, 2010.)

**82-4-29. Applications for private carrier permits.** Each application for a private carrier permit shall be submitted on forms furnished by the commission and shall contain the following: (a) The name, street address, and mailing address of the applicant, and the title under which the applicant proposes to operate;

(b) a list of motor vehicles to be used by the applicant by make, year, and vehicle identification number;

(c) the commodities that the applicant intends to transport;

(d) the nature of the enterprise or enterprises for which commodities are to be transported; and

(e) evidence of compliance with K.A.R. 82-4-26(b). (Authorized by K.S.A. 66-1,112g, K.S.A. 2012 Supp. 66-1,117; implementing K.S.A. 66-1,112g, K.S.A. 2012 Supp. 66-1,115, K.S.A. 2012 Supp. 66-1,117; effective Jan. 1, 1971; amended May 1, 1981; amended May 10, 1993; amended Jan. 31, 2003; amended Sept. 20, 2013.)

**82-4-29a. Application for authorization of joint registration of equipment.** (a) Each application for authorization of joint registration of equipment shall be typewritten or printed on forms furnished by the commission. An original and two copies shall be filed and shall contain the following:

(1) The full and accurate names and addresses of the applicants;

(2) the motor carrier identification number under which authority for joint registration of equipment is sought;

(3) a balance sheet and income statement issued for the most recent 12 months of data available; and

(4) a certified or sworn statement by each applicant indicating all of the following:

(A) The applicant will jointly be in compliance with the state laws and regulations of the commission.

(B) Equipment utilized by the applicant will be properly marked and identified to reflect the authority under which the equipment is being jointly operated.

(C) The applicant presently has registered and is operating units of motor carrier equipment pursuant to the operating authority issued by the commission.

(D) The applicant will provide a list of the names of other carriers with whom the applicant currently has joint registration issued by the commission.

(E) The applicant will provide a list of the equipment to be registered under the joint application.

(b) If either applicant does not currently hold authority from the commission to operate as a motor carrier, that carrier shall also provide evidence of compliance with K.A.R. 82-4-26(b). (Authorized by K.S.A. 2001 Supp. 66-1,112; implementing K.S.A. 2001 Supp. 66-1,112 and 66-1,139; effective May 1, 1983; amended Oct. 3, 1994; amended Jan. 4, 1999; amended Jan. 31, 2003.)

**82-4-30.** (Authorized by K.S.A. 66-1,112; effective Jan. 1, 1971; revoked May 1, 1981.)

**82-4-30a. Applications for interstate registration.** (a)(1) For the purposes of this regulation, “base state” shall have one of the following meanings:

(A) The meaning assigned to “base-state” in 49 U.S.C. 14504a(a)(2), as adopted in paragraph (a)(2) of this regulation; or

(B) if an entity does not have a principal place of business, office, or operating facility in any partic-

ipating state, the participating state chosen by the entity that is nearest to the location of the entity’s principal place of business or any participating state within the entity’s FMCSA region.

(2) 49 U.S.C. 14504a, as in effect on January 14, 2019, is hereby adopted by reference, except for the following portions:

(A) In 49 U.S.C. 14504a(a), the following:

(i) The phrase “and section 14506 (except as provided in paragraph (5))”;

(ii) 49 U.S.C. 14504a(a)(3);

(iii) 49 U.S.C. 14504a(a)(5)(B); and

(iv) 49 U.S.C. 14504a(a)(6) through (7);

(B) 49 U.S.C. 14504a(c) through (e);

(C) In 49 U.S.C. 14504a(f), 49 U.S.C. 14504a(f)(1)(B) through (E); and

(D) 49 U.S.C. 14504a(g) through (j).

(3) Each interstate motor carrier designating Kansas as the carrier’s base state and operating in interstate commerce over the highways of this state under authority issued by the relevant federal agency shall file the uniform application for registration issued by the relevant federal agency. The carrier shall file this application for registration with the transportation division of the state corporation commission.

(b) Each interstate motor carrier designating Kansas as the carrier’s base state shall pay a fee to the state corporation commission through the national registration system. This fee shall be in accordance with the fee schedule in 49 C.F.R. 367.60, as in effect on October 1, 2019 and as amended by 85 fed. reg. 8198 (2020), which is hereby adopted by reference.

(c) An interstate regulated motor carrier shall not operate in interstate commerce over the highways of this state unless the carrier is registered in the carrier’s base state as defined in paragraph (a)(1). (Authorized by K.S.A. 66-1,112; implementing K.S.A. 66-1,108b, 66-1,116, and 66-1,139; modified, L. 1981, ch. 424, May 1, 1981; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000; amended Jan. 31, 2003; amended, T-82-10-8-07, Oct. 8, 2007; amended, T-82-12-10-07, Dec. 10, 2007; amended July 18, 2008; amended, T-82-5-12-10, May 12, 2010; amended Oct. 8, 2010; amended July 26, 2019; amended, T-82-10-27-20, Oct. 27, 2020; amended Feb. 19, 2021.)

**82-4-30b.** (Authorized by K.S.A. 1984 Supp. 66-1333; implementing K.S.A. 1984 Supp. 66-1329, 66-1330, 66-1331, 66-1332, 66-1334; ef-

fective, T-85-48, Dec. 19, 1984; effective May 1, 1985; revoked Jan. 4, 1999.)

**82-4-31.** (Authorized by K.S.A. 1999 Supp. 66-1,112 and 66-1,112a; implementing K.S.A. 1999 Supp. 66-1,112, 66-1,112a, and 66-1a01; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1984; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000; revoked Oct. 22, 2010.)

**82-4-32. Completing motor carrier applications.** (a) Each applicant filing an application for an intrastate common carrier certificate, interstate license, or private carrier permit shall provide the commission with all information required to complete the application within 30 days of the original filing date. Any application that is not completed within 30 days of the original filing date may be dismissed without further notice, at the discretion of the commission.

(b) All information required to complete a filing for a certificate of convenience and necessity, certificate of public service, or a private carrier permit shall be provided to the commission within 90 days of the date of application, or within 30 days after the date of the hearing if the application requires a hearing. If the required information is not provided within the applicable time period, the application may be dismissed by the commission without further notice.

(c) Required application fees shall not be refunded if the application is dismissed by the applicant or the commission.

(d) Fees may be remitted by personal check, cash, certified check, money order, or electronic transfer of funds. (Authorized by K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2009 Supp. 66-1,117; implementing K.S.A. 2009 Supp. 66-1,117; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1987; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000; amended Jan. 31, 2003; amended Oct. 22, 2010.)

**82-4-33. Service of process.** (a) An applicant for a certificate, permit, or license who is not a resident of Kansas shall not be granted a certificate, permit, or license until the applicant designates an agent who is a resident of the state of Kansas to be a process agent for and on behalf of the applicant.

(b) Each interstate regulated carrier shall provide and maintain the name of the carrier's agent for service of process with the carrier's registration

state, pursuant to 49 C.F.R. Part 367, as adopted by K.A.R. 82-4-30a.

(c) This regulation shall not apply to private carrier applicants. This regulation shall not be construed to relieve motor carriers from the obligation to comply with K.S.A. 60-305a, and amendments thereto. (Authorized by K.S.A. 2009 Supp. 66-1,112; implementing K.S.A. 2009 Supp. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1985; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000; amended Oct. 22, 2010.)

**82-4-34.** (Authorized by K.S.A. 66-1,112, 66-1,112a, 66-1,112g; implementing K.S.A. 66-1,112, 66-1,112a, 66-1,112g; effective Jan. 1, 1971; amended May 1, 1981; revoked May 10, 1993.)

**82-4-35. Preserving certificates or permits.** (a) All intrastate motor carriers and drivers of vehicles registered under certificates or permits shall, at all times, carry on every vehicle operated under the certificate or permit an authority card, issued by the commission, that specifies the operating authority granted by the commission under the certificate or permit.

(b) Copies of certificate or permits issued by the commission shall be carefully preserved by the holders. (Authorized by K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g; implementing K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g, K.S.A. 2009 Supp. 66-1,139; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1984; amended May 1, 1987; amended Jan. 31, 2003; amended Oct. 22, 2010.)

**82-4-35a. Inspections of motor carrier documents.** The following documents shall be made available upon request for inspection by any duly authorized representative of the commission, the state highway patrol, or other law enforcement officers:

- (a) Registration receipts;
- (b) authority cards;
- (c) driver logs;
- (d) bills of lading or shipping receipts;
- (e) waybills;
- (f) freight bills;
- (g) run tickets, or equivalent documents, and orders;
- (h) cab cards;
- (i) fuel receipts;
- (j) toll road receipts; and

(k) any other documents that would indicate compliance with hours of service requirements. (Authorized by K.S.A. 2009 Supp. 66-1,112 and K.S.A. 66-1,112g; implementing K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g, 66-1,131, and K.S.A. 2009 Supp. 66-1,139; effective May 1, 1987; amended May 10, 1993; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000; amended Oct. 22, 2010.)

**82-4-36.** (Authorized by K.S.A. 66-1,112, 66-1,112a, 66-1,112f, 66-1,112g; implementing K.S.A. 66-123, 66-1,112g; effective Jan. 1, 1971; amended May 1, 1981; revoked May 1, 1984.)

**82-4-37.** (Authorized by K.S.A. 1999 Supp. 66-1,112, 66-1,112a, K.S.A. 66-1,112g; implementing K.S.A. 1999 Supp. 66-1,112, 66-1,112a, K.S.A. 66-1,112g, K.S.A. 1999 Supp. 66-1,139; effective Jan. 1, 1971; amended May 1, 1981; amended May 10, 1993; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000; revoked Oct. 22, 2010.)

**82-4-38.** (Authorized by K.S.A. 66-1,112, K.S.A. 66-1,112a, K.S.A. 66-1,112g, K.S.A. 66-1333; implementing K.S.A. 66-1,129 as amended by L. 1988, ch. 356, §242, K.S.A. 66-1,139 as amended by L. 1989, ch. 208, §1, K.S.A. 66-1329; effective Jan. 1, 1971; amended May 1, 1981; amended, T-85-48, Dec. 19, 1984; amended May 1, 1985; amended April 30, 1990; revoked May 10, 1993.)

**82-4-39. Surrender of identification cards.** (a) If operations are abandoned under any certificate, permit, or license or upon cancellation or revocation of any certificate, permit, or license by the commission, all identification cards, authority cards, and registration receipts issued under the certificate, permit, or license shall be forwarded to the commission upon the carrier's receipt of the notice of commission consent to abandon or cancel or the notice of revocation.

(b) If by order of the commission or otherwise, operations are suspended under any certificate, permit, or license, the carrier shall remove all identification cards issued under the certificate, permit, or license, from all vehicles upon the carrier's receipt of the notice of commission consent to abandon or cancel or the notice of revocation. (Authorized by K.S.A. 2012 Supp. 66-1,112 and K.S.A. 66-1,112g; implementing K.S.A. 2012 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2012 Supp. 66-1,119; effective Jan. 1, 1971; amended

May 1, 1981; amended May 10, 1993; amended Oct. 3, 1994; amended Sept. 20, 2013.)

**82-4-40.** (Authorized by K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g; implementing K.S.A. 66-1,108, K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g; effective Jan. 1, 1971; amended May 1, 1981; amended Oct. 22, 2010; revoked July 26, 2019.)

**82-4-41.** (Authorized by K.S.A. 66-1,112; effective Jan. 1, 1971; revoked May 1, 1981.)

**82-4-42. Emergency and occasional equipment.** (a) Holders of certificates, permits, and licenses who have motor vehicles registered with the commission and who have complied with all lawful requirements may in case of emergency be authorized by the commission by fax, internet communication, or otherwise, to operate additional equipment or special equipment in substitution of regular registered equipment. Any motor carrier authorized to operate in intrastate commerce may perform either of the following:

(1) Transfer Kansas operating authority from regularly registered equipment to temporary or new equipment online. Regular registered equipment for which special equipment is being substituted shall not be operated at the same time that the special equipment is being operated; or

(2) add the special equipment to the motor carrier's profile and submit payment of the registration fee. The registration fee for the additional or special equipment shall be \$10.00 for each truck or truck-tractor.

(b) Each motor carrier conducting point-to-point intrastate operations in Kansas shall have obtained appropriate commission operating authority pursuant to K.S.A. 66-1,114 and K.S.A. 66-1,115, and amendments thereto. A carrier registered to conduct both intrastate and interstate operations shall not be required to register equipment as specified in subsection (a). (Authorized by K.S.A. 66-1,112, K.S.A. 66-1,112g, K.S.A. 66-1,140; implementing K.S.A. 66-1,140; effective Jan. 1, 1971; amended May 1, 1981; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000; amended Oct. 22, 2010; amended July 26, 2019.)

**RULES APPLICABLE ONLY  
TO PUBLIC CARRIERS**

**82-4-43.** (Authorized by and implementing K.S.A. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; revoked May 1, 1984.)

**82-4-44.** (Authorized by K.S.A. 66-1,112 and 66-1,119; effective Jan. 1, 1971; revoked July 26, 2019.)

**82-4-45.** (Authorized by K.S.A. 66-1,112, 66-1,116; effective Jan. 1, 1971; revoked May 1, 1981.)

**82-4-46.** (Authorized by K.S.A. 2001 Supp. 66-1,112; implementing K.S.A. 2001 Supp. 66-123 and K.S.A. 2001 Supp. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1986; amended Jan. 4, 1999; amended Jan. 31, 2003; revoked July 26, 2019.)

**82-4-47. Loss or damage to baggage.** A common motor carrier's liability in case of loss or damage to baggage while in the carrier's possession shall be determined in accordance with the provisions of the motor carrier's tariff on file with the commission, provided, that the provisions are not in conflict with the statutes or the established common law of the state of Kansas. (Authorized by and implementing K.S.A. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981.)

**82-4-48. Bills of lading and freight bills.**

(a) Each common motor carrier of household goods electing to be governed by K.A.R. 82-4-48a, K.S.A. 66-304, and K.S.A. 84-7-101 through K.S.A. 84-7-603, and amendments thereto, shall issue a bill of lading for household goods tendered for intrastate commerce.

(b) Each common motor carrier transporting property, other than household goods, and electing to be governed by K.A.R. 82-4-48a, K.S.A. 66-304, and K.S.A. 84-7-101 through K.S.A. 84-7-603, and amendments thereto, shall issue a bill of lading for property tendered for intrastate commerce.

(c) Each bill of lading shall include the following:

- (1) The name and address of the motor carrier;
- (2) the name and address of the consignor and consignee;
- (3) the date of shipment;
- (4) the origin and destination of the shipment;
- (5) the signature of the motor carrier or its agent;
- (6) a description of the shipment, including the number of packages, or the weight or volume;
- (7) a released value clause as prescribed in K.S.A. 84-7-309, and amendments thereto, printed on the front of the document, if applicable; and
- (8) on request of the shipper, a written or electronic copy of the rate, classification, rules, and practices upon which any rate applicable to a shipment, or agreed to between the shipper and the

carrier, is based. The copy provided by the carrier shall clearly state the dates of applicability of the rate, classification, rules, or practices.

(d) Bills of lading and freight bills may be included on one form.

(e) Each transporter of crude petroleum oil, sediment oil, water, or brine shall require its drivers to possess a run ticket or equivalent documents as specified in K.A.R. 82-3-127.

(f) The documents required in subsections (a), (b), and (e) shall be made available upon request for inspection by any authorized representative of the commission, the state highway patrol, or other law enforcement officers.

(g) The bill of lading, freight bill, run ticket, or equivalent documents as specified in K.A.R. 82-3-127 shall be retained by the transporter for at least three years from the date of shipment. (Authorized by and implementing K.S.A. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended, T-83-45, Dec. 8, 1982; modified, L. 1983, ch. 362, May 1, 1983; amended Jan. 4, 1999; amended Oct. 22, 2010; amended July 26, 2019.)

**82-4-48a.** (Authorized by and implementing K.S.A. 2012 Supp. 66-1,112, K.S.A. 66-1,112g; effective Jan. 4, 1999; amended Oct. 22, 2010; amended Sept. 20, 2013; revoked July 26, 2019.)

**82-4-49.** (Authorized by K.S.A. 66-1,112; effective Jan. 1, 1971; revoked May 1, 1981.)

**82-4-49a.** (Authorized by and implementing K.S.A. 1983 Supp. 66-1,112; effective May 1, 1981; amended May 1, 1984; revoked May 1, 1986.)

**82-4-49b.** (Authorized by and implementing K.S.A. 1984 Supp. 66-1,112; effective May 1, 1986; revoked Jan. 31, 2003.)

**82-4-49c.** (Authorized by and implementing K.S.A. 1997 Supp. 66-1,112; effective May 1, 1986; amended Jan. 4, 1999; revoked Jan. 31, 2003.)

**82-4-49d.** (Authorized by and implementing K.S.A. 1984 Supp. 66-1,112; effective May 1, 1986; revoked Jan. 31, 2003.)

**82-4-49e.** (Authorized by and implementing K.S.A. 1984 Supp. 66-1,112; effective May 1, 1986; revoked Jan. 31, 2003.)

**82-4-50. Passenger carriers.** (a) With the following exceptions, 49 C.F.R. Part 374, as in effect on October 1, 2015, is hereby adopted by reference:

(1) Each occurrence of the phrase “49 U.S.C. subtitle IV, part B” shall be deleted and replaced by “commission rules and regulations.”

(2) In 49 C.F.R. 374.307, each occurrence of the word “Secretary” shall be deleted and replaced by “commission rules and regulations.”

(3) In 49 C.F.R. 374.307(g), the phrase “notwithstanding 49 CFR 370.9,” shall be deleted.

(4) 49 C.F.R. 374.315 shall be deleted.

(5) In 49 C.F.R. 374.401(a), the phrase “49 U.S.C. 13501” shall be deleted and replaced by “commission rules and regulations.”

(6) In 49 C.F.R. 374.501, the phrase “authorized under 49 U.S.C. 13506 [49 U.S.C. 10932(c)]” shall be deleted.

(7) In 49 C.F.R. 374.503, the phrase “or intrastate” shall be added after the word “interstate.”

(8) In 49 C.F.R. 374.505, paragraphs (c) and (d) shall be deleted.

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 374 shall mean that portion as adopted by reference in this regulation. (Authorized by and implementing K.S.A. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended July 26, 2019.)

**82-4-51.** (Authorized by and implementing K.S.A. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; revoked July 26, 2019.)

**82-4-52.** (Authorized by K.S.A. 66-1,112, 66-1,112a, 66-1,112f; implementing K.S.A. 66-1,112f; effective Jan. 1, 1971; amended May 1, 1981; revoked May 1, 1983.)

#### COMMON CARRIER TARIFFS

**82-4-53. Common motor carrier rates and charges.** (a) Common motor carriers of household goods or passengers that are engaged in intrastate commerce in Kansas shall maintain on file with the commission a copy of the tariff publications applicable to their lines between points in Kansas. The carriers shall keep open for public inspection, at their principal offices and locations at which they have employed exclusive agents, all intrastate tariff publications applicable to their lines from or to their stations.

(b) Each change to a tariff publication shall be made subject to 30-day notice to the public and the commission, unless otherwise authorized by the commission. Tariff publications of motor carriers effecting changes resulting in increases in charges, either directly or by means of any change in the

regulation or practice affecting a charge or value of service, may be filed on one-day notice to the commission and the public. Applicants granted new authority may file tariffs to be effective on one-day notice. Transferees may adopt the existing tariffs of transferors to be effective on one-day notice.

(c) Tariff publication, except general rate increases, shall not go into effect without prior approval of the commission. The publications shall be subject to protest and suspension. All publications shall be accompanied by a full and complete statement citing the reasons and justifications for the changes.

(d) General rate increases shall be made only by filing an application and after approval of the commission.

(e) Protests of tariff publications shall be considered only if received by the commission at least 12 days before the published effective date of publications. Pursuant to protest or on the commission’s own motion without protest, postponement of an effective date may be ordered by the commission to permit the matter to be properly investigated. Unless otherwise ordered by the commission, publication shall become effective as filed. Publications shall not be postponed to exceed 90 days.

(f) All tariff publications shall be made in compliance with the commission’s regulations governing the publication and filing of household goods and passenger rates and charges. (Authorized by K.S.A. 66-1,112; implementing K.S.A. 66-117, K.S.A. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended Jan. 4, 1999; amended Oct. 22, 2010; amended July 26, 2019.)

**82-4-54. Tariff publication to become effective on less than 30-day notice.** (a) Departure from the commission’s requirement in K.A.R. 82-4-53(b) that tariff publications become effective on 30-day notice may be permitted by the commission, if good and sufficient cause is shown to convince the commission that publication should be made on short notice.

(b) The applicant shall provide all related facts or circumstances that could aid the commission in determining if the request is justified. If permission to establish provisions on less than the required notice is sought, the applicant shall state why the proposed provisions could not have been established upon 30-day notice.

(c) Permission to allow a tariff to become effective on less than 30-day notice shall be granted in cases for which good cause is shown. The desire

to meet tariff publications of a competing carrier that has been filed on 30-day notice or one-day notice may be considered a factor for permitting publication on short notice. (Authorized by K.S.A. 66-1,218 and K.S.A. 2009 Supp. 66-1,112; implementing K.S.A. 66-1,218 and K.S.A. 2009 Supp. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1987; amended Jan. 4, 1999; amended Oct. 22, 2010.)

**82-4-55. Procedure for filing a request for postponement of tariff publications.** (a) Each protested tariff publication sought to be postponed shall be identified by making reference to the name of the publishing carrier or agent, to the motor carrier's K.C.C. tariff number, and to the specific items or particular provisions protested. The protest shall state the grounds, indicate in what respect the protested tariff publication is considered unlawful, and state what the protestant offers as a substitution. Each protest shall be addressed to the commission. A protest shall not include a request that it also be considered as a formal complaint. If a protestant desires to proceed further against a tariff publication that is not postponed or that has been postponed and the postponement vacated, a separate, later, formal complaint or petition shall be filed.

(b) Protests against, and requests for, postponement of tariff publications filed under this regulation shall not be considered unless made in writing and filed with the commission in Topeka, Kansas. The original and five copies of each request for postponement shall be filed with the commission at least 12 days before the effective date of the tariff publication, unless the protested publication was filed on less than 30-day notice under the authority of this commission, in which event the protests shall be filed at the earliest possible date. In an emergency, protests submitted by fax shall be acceptable if they fully comply with subsection (a) and copies are simultaneously faxed by protestants to the respondent carriers or their publishing agents. An original and five copies of the fax shall simultaneously be mailed by the protestants to the commission in Topeka.

(c) An original and five copies of each protest or reply filed under this regulation shall be filed with the commission no later than 10 days after the publication of the tariff, and one copy of the protest shall simultaneously be served upon the publishing carrier or agent and upon other known interested parties.

(d) Each order instituting an investigation shall be served by the commission upon respondents. If the respondent fails to comply with any requirements or time period specified in the order, the respondent shall be deemed to be in default and to have waived any further hearing. The investigation may then be decided without further proceedings. (Authorized by K.S.A. 2009 Supp. 66-1,112; implementing K.S.A. 66-117 and K.S.A. 2009 Supp. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended Jan. 4, 1999; amended Oct. 22, 2010.)

**82-4-56.** (Authorized by K.S.A. 66-1,112; effective Jan. 1, 1971; revoked May 1, 1981.)

**82-4-56a. Household goods and passenger carrier tariffs.** (a) Each tariff shall be type-written, printed, or reproduced by other similar, durable process, upon paper of good quality, 8 by 11 or 8½ by 11 inches in size.

(b) The title page shall show the following information:

(1) In the upper right-hand corner, the K.C.C. number of the tariff and, immediately below that, the K.C.C. number of the tariff canceled, if any. The first tariff issued by each carrier shall be numbered "K.C.C. no. 1"; succeeding tariffs shall be numbered consecutively. This information may be shown elsewhere on the page or on the second page of the tariff, if the tariff applies to interstate as well as intrastate traffic;

(2) the name of the carrier, individual, or organization issuing the tariff;

(3) the names of the participating carriers or a reference to the page in the tariff containing that information;

(4) if the tariff is a passenger or household goods tariff, the tariff names' class rates, commodity rates, mileages, rules, one-way fares, round-trip fares, excursion fares, and appropriate designation, if the tariff applies to local traffic, joint traffic, or both;

(5) specific references to the classification and to publications containing any exceptions to the classification governing the rates named in the tariff;

(6) the issued and effective dates; and

(7) the name, title, and complete address of the party issuing the tariff.

(c) The requirements of subsection (a) shall be observed in the construction of circulars and other governing tariff publications. Tariff supplements shall be numbered consecutively, beginning with

the number one, and shall show the K.C.C. number of the publication amended, the number of any previous supplements or tariffs canceled, and numbers of the supplements containing all changes from the original publication. This information shall appear in the upper right-hand corner of the supplement unless the supplement applies to interstate as well as intrastate traffic, in which case the information may be shown elsewhere on the title page or on the second page.

(d) Each household goods tariff shall contain the following information:

(1) In clear and explicit language, all terms, additional charges, and privileges applicable in connection with the rates and charges named in the tariff, or specific reference to publications naming these terms, additional charges, and privileges;

(2) any exceptions to the application of rates and charges named in the tariff;

(3) a full explanation of reference marks and technical abbreviations used in the tariff;

(4) rates in either cents or dollars and cents per 100 pounds or per ton of 2,000 pounds or other definite measure; and

(5) the method by which the distance rates shall be determined. Specific point-to-point rates shall be published whenever practicable.

(e) Each passenger tariff shall show the following information:

(1) Fares, definitely and specifically stated in cents or in dollars and cents; and

(2) the identification of terms, agreements, or other documentation that is applicable or contains specific reference to the publications in which the fares will be found. (Authorized by K.S.A. 66-1,112; implementing K.S.A. 66-117, K.S.A. 66-1,112; effective May 1, 1981; amended Jan. 4, 1999; amended Oct. 22, 2010; amended July 26, 2019.)

**82-4-57. Powers of attorney and concurrences.** (a) A household goods or passenger carrier wanting to give a power of attorney to an agent to issue and file tariffs and supplements for the carrier shall file notice of this intention on a form approved by the commission.

(b) If a household goods or passenger carrier wants to concur in tariffs issued and filed by another carrier or by its agent, a concurrence in substantially the same form as that prescribed by the USDOT for use in similar instances, with references to the interstate tariffs, shall be issued in favor of the issuing carrier.

(c) The original of all powers of attorney and concurrences shall be filed with the commission, and a duplicate of the original shall be sent to the agent or carrier on whose behalf the document is issued.

(d) If a household goods or passenger carrier wants to revoke a power of attorney or concurrence, a notice shall be filed with the commission, the carrier's agent or agents, and any other carrier affected by the revocation. The notice shall be filed at least 30 days before the effective date. (Authorized by and implementing K.S.A. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1984; amended Jan. 4, 1999; amended July 14, 2000; amended Oct. 22, 2010; amended July 26, 2019.)

**82-4-58. Suspension or modification of tariff regulations.** Upon written application and a showing of good cause, common carrier tariff regulations may be suspended or modified by the commission to cover unusual instances. (Authorized by K.S.A. 2009 Supp. 66-1,112; implementing K.S.A. 2009 Supp. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended Oct. 22, 2010.)

**82-4-58a.** (Authorized by K.S.A. 1983 Supp. 66-1,112; implementing K.S.A. 66-117; effective May 1, 1984; revoked Jan. 4, 1999.)

**82-4-58b.** (Authorized by K.S.A. 1983 Supp. 66-1,112; implementing K.S.A. 66-117; effective May 1, 1984; revoked Jan. 4, 1999.)

**82-4-58c.** (Authorized by K.S.A. 1983 Supp. 66-1,112; implementing K.S.A. 66-117; effective May 1, 1984; revoked Jan. 4, 1999.)

**82-4-58d.** (Authorized by and implementing K.S.A. 1997 Supp. 66-1,112; effective May 1, 1987; amended Jan. 4, 1999; revoked July 26, 2019.)

#### RULES APPLICABLE ONLY TO CONTRACT CARRIERS

**82-4-59.** (Authorized by K.S.A. 66-1,112a; implementing K.S.A. 66-1,112e, 66-1,112f; effective Jan. 1, 1971; amended May 1, 1981; revoked Jan. 4, 1999.)

**82-4-60.** (Authorized by K.S.A. 66-1,112; effective Jan. 1, 1971; revoked May 1, 1981.)

**82-4-61.** (Authorized by K.S.A. 66-1,112a; implementing K.S.A. 66-1,112e, 66-1,112f; effective Jan. 1, 1971; modified, L. 1981, ch. 424, May 1, 1981; revoked May 1, 1983.)

**82-4-62.** (Authorized by K.S.A. 1997 Supp. 66-1,112; effective Jan. 1, 1971; amended Jan. 4, 1999; revoked Oct. 22, 2010.)

**RULES APPLICABLE TO COMMON CARRIERS AND CONTRACT CARRIERS**

**82-4-63. Contested and uncontested motor carrier hearings.** An application for a common carrier certificate of convenience and necessity or a certificate of public service shall be considered as contested if either protestants or intervenors, or both, appear at the hearing held on the application and present testimony or evidence in support of their contentions, present a question or questions of law, or cross-examine the applicant's witnesses with regard to the application. If neither protestants nor intervenors appear and offer testimony or evidence in support of their contentions, raise a question of law, or cross-examine the applicant's witnesses with reference to any pending application, the application shall be considered as uncontested. (Authorized by K.S.A. 66-106, 66-1,112; implementing K.S.A. 66-106, 66-1,114, 66-1,115, and 66-1,119; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1987; amended Jan. 4, 1999; amended Oct. 22, 2010; amended July 26, 2019.)

**82-4-64.** (Authorized by K.S.A. 66-108, 66-1,112, 66-1,112a; implementing K.S.A. 66-108, 66-1,118; effective Jan. 1, 1971; amended May 1, 1981; revoked Jan. 4, 1999.)

**82-4-65. Protestants.** Each protest against the granting of a permit, certificate, extension, or transfer shall be considered as follows:

(a) Any interested person who believes that the public will be adversely affected by a proposed application may file a written protest. The protest shall identify the name and address of the protestant and the title and docket number of the proceeding. The protest shall include specific allegations as to how the applicant is not fit, willing, and able, or fit, knowledgeable, and in compliance with the commission safety regulations, to perform these services or how the proposed services are otherwise inconsistent with the public convenience and necessity.

(b) If the protestant opposes only a portion of the proposed application, the protestant shall state with specificity the objectionable portion.

(c) The protest shall be filed in triplicate with the commission within 10 days after publication of the notice in the Kansas register. Failure to file

a timely protest shall preclude the interested person from appearing as a protestant.

(d) Each protestant shall serve the protest upon the applicant when or before the protestant files the protest with the commission. The protest shall not be served on the applicant by the commission.

(e) To secure consideration of a protest, the protestant or intervenor shall offer evidence or a statement or shall participate in the hearing. (Authorized by K.S.A. 66-1,112; implementing K.S.A. 66-1,114; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended Jan. 4, 1999; amended Oct. 22, 2010; amended July 26, 2019.)

**82-4-66.** (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1983; revoked July 26, 2019.)

**82-4-67.** (Authorized by and implementing K.S.A. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; revoked Jan. 4, 1999.)

**COLLECTIVE RATES**

**82-4-68. Collective rate-making agreements.** (a) Motor carriers of household goods and passengers may enter into an agreement with one or more of these carriers concerning rates, allowances, classifications, divisions, or rules related to them or procedures for joint consideration, initiation, or establishment of them. The agreement and all amendments shall be submitted to the commission for approval by the carriers that are parties to the agreement and shall be approved by the commission upon a finding that the agreement fulfills the requirements of K.S.A. 66-1,112, and amendments thereto, and the regulations of the commission. The agreement shall be administered by an organization designated by the carriers who are parties to the agreement.

(b) The agreement shall contain, at a minimum, provisions for the following:

(1) Election of rate committees and procedures for appointments to fill vacancies;

(2) initiation of rate proposals;

(3) recordkeeping;

(4) tariff participation fees for services;

(5) open meetings;

(6) quorum standards;

(7) proxy voting by members;

(8) role of employees in docketing proposals;

- (9) notice of docket proposals and rate committee hearings;
- (10) voting on rate proposals by member carriers;
- (11) right of independent action;
- (12) docketing of independent action;
- (13) the names, addresses, and telephone numbers of carriers who are parties to the agreement;
- (14) the names and addresses of each of its affiliates and of officers and directors of the carriers who are parties to the agreement;
- (15) the carriers' motor carrier identification number assigned by the commission;
- (16) the name, address, and telephone number of the organization that will administer the agreement;
- (17) final disposition of cases docketed;
- (18) prohibitions of the organization from protesting carrier proposals;
- (19) amendments to the agreement; and
- (20) powers of attorney. (Authorized by and implementing K.S.A. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983; amended Jan. 4, 1999; amended July 26, 2019.)

**82-4-69. Applications for approval of collective rate-making agreements.** (a) The carriers' party to the agreement shall submit an application to the commission and attach a copy of the organization's articles of incorporation, bylaws, or other documents, specifying the powers, duties, and procedures of the organization. The organization for the carriers shall provide the commission with an organization chart, a complete description of the organization, including any subunits and their functions and methods of operations, together with the territorial scope of its operation.

(b) The application and supporting documents shall specify the following items:

(1) The full and correct name and business address of the carriers who seek approval of the agreement and whether carrier applicants are corporations, limited liability companies, individuals, partnerships, or limited liability partnerships. If a corporation, the laws under which it was incorporated shall be included. If a limited liability company, the laws under which it was organized shall be included. If a limited liability partnership, the laws under which it was organized shall be included. If a partnership, the names and addresses of all partners and the date of formation of partnership shall be included;

(2) the motor carrier identification number assigned by the commission to each participating applicant;

(3) the name and business address of the organization that will administer the agreement;

(4) the facts and circumstances relied upon to establish that the agreement is in the public interest;

(5) the name, title, and business address of counsel, officers, or any other person to whom correspondence and notice are to be addressed;

(6) a true copy of the agreement and an opinion of a counsel for the applicant that the application made meets the requirements of K.S.A. 66-1,112, and amendments thereto, and commission regulations; and

(7) a prepared public notice to be published in the Kansas Register stating the fact that an application has been filed under these rules, and the date of the hearing, if required by the commission. (Authorized by and implementing K.S.A. 1997 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983; amended Jan. 4, 1999.)

**82-4-70. Record keeping responsibilities.** The organization shall maintain records and minutes of all acts pertaining to joint consideration, initiation and establishment of tariff publications and shall submit written reports to the commission on these activities as the commission from time to time may require. Minutes and voting records shall be made available to the commission upon written request. Minutes, voting records and a complete file of all tariffs issued under the agreement shall be maintained by the organization for at least three years. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

**82-4-71. Charges for services.** The organization shall, in the agreement, provide the commission with a basic schedule of its tariff participation fees applicable to parties to the agreement. If expenses are divided among parties to the agreement, the organization shall provide a statement showing how the expenses are divided. The organization shall also provide the commission with any amendments to the basic charges. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

**82-4-72. Open meetings.** (a) An organization shall admit any person to any meeting at which rates or rules will be discussed or voted upon.

(b) Upon written request, the organization shall divulge to any person the name of the proponent of a rule or rate docketed with it, and shall divulge to any person the vote by any member carrier on any proposal before the organization. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

**82-4-73. Quorum standard.** (a) At any meeting of carriers party to the agreement or carrier committees at which rates, rules or classifications are discussed or considered, 30 percent of the carriers party to the agreement or 50 percent of the committee shall constitute a quorum. The quorum requirement shall apply to any meeting when discussion includes general rate increases and decreases, tariff restructuring, commodity classification, or rules and classifications changes proposed for tariff publication. Carrier members present by means of a proxy shall count towards the satisfaction of the quorum requirement. There shall be no voting unless at least one member carrier is present and possesses the authority for a lawful vote.

(b) Exceptions to the quorum standard may be granted upon a showing to the commission of genuine hardship. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

**82-4-74. Voting on rate proposals.** The organization shall allow any participating member carrier to discuss any rate proposal docketed. Only those carriers with authority to participate in the transportation to which the rate proposal applies shall vote upon the rate proposal. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

**82-4-75. Proxy voting.** (a) The organization shall not allow a carrier to vote for one or more other carriers without specific written authority from the carrier being represented.

(b) While any member carrier may discuss any collectively established rate proposals docketed, only carriers with authority to participate in the transportation to which the proposed rates apply shall vote on the rates.

(c) To vote for an absentee, a carrier shall possess a written proxy containing the grantor or grantors signature, the specific items or items for which the vote is released, directions on voting,

and certification of authority. A written affirmation shall be made by each carrier for itself and by each grantor of a proxy.

(d) The organization shall provide standard proxy forms to members, and a copy of all proxies exercised and the written certification of authority executed by the proxy holder for the grantor shall be made part of the voting record. There is no limit to the number of proxies a carrier may hold. A proxy may be revoked at any time by a subsequent written revocation or by the carrier appearing at the meeting and voting on its own behalf. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

**82-4-76. Notification and consideration of rate proposals.** General rate increases or decreases, joint rates, changes in commodity classification, changes in tariff structures and publishing of tariffs may be discussed and voted on at any meeting only if: (a) Shippers receive detailed notice of meetings and agenda, through docket service, at least 15 days prior to the time a proposal is to be discussed or voted upon;

(b) shippers are accorded the opportunity to present either oral or written comments for consideration at the meeting;

(c) shippers' comments are given appropriate weight and consideration in discussion and voting upon the proposals;

(d) discussion of general rate increase or decrease is limited to industry average carrier cost information;

(e) any person attending those meetings is permitted to take notes and make sound recordings; and

(f) the organization maintains detailed minutes of all meetings. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

**82-4-77. Right of independent action.** (a) An organization shall not interfere with each of that organization's carrier's right to independent action. That organization shall not change or cancel any rate established by independent action other than a general increase or broad rate restructuring. However, changes in the rates may be effected, with the written consent of the carrier or carriers that initiated the independent action, for the purpose of tariff simplification, removal of discrimination, or elimination of obsolete items.

(b) Collective adjustments pursuant to K.S.A. 66-1,112, and amendments thereto, shall not cancel rate or rule differentials or differences in rates or rules existing as a result of any independent action taken previously, unless the proponent and any other participant in that independent action desires to eliminate the rate differential or application and notifies the organization in writing of its consent.

(c) Independent action shall mean any action taken by a common carrier member of an organization to perform any of the following:

(1) Establish a rate to be published in the appropriate rate tariff or cancel a rate for that carrier's account;

(2) instruct the organization publishing the rate tariff that the existing rate or rates, whether established by independent action or collective action, proposed to be changed or cancelled be retained for that carrier's account and published in the appropriate tariff; or

(3) publish for the common carrier's account, in the appropriate tariff, a rate established by the independent action of another carrier. This definition shall apply regardless of the manner in which the carrier joins in the rate, if the rate published for the joining carrier's account is the same as the rate established by the other carrier under independent action. (Authorized by and implementing K.S.A. 2009 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983; amended Oct. 22, 2010.)

**82-4-78. Docketing of independent action.** (a) Proponents of independent actions shall have the absolute right to decide whether or when organizations will docket these actions.

(b) The organization shall comply with the instructions of the proponent of an independent action with regard to whether or not the action should be docketed, and in the absence of explicit instructions shall refrain from docketing until the proposal has been filed with the commission.

(c) There shall be no collective discussion of independent actions as defined in K.A.R. 82-4-77 until they have been filed with the commission. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

**82-4-79. Organization employee limitations.** (a) Employees and employee committees of the organization shall not initiate a proposal nor

determine whether to adopt, reject, or otherwise dispose of a proposal effecting a change in any tariff item published by or for the account of any member carrier.

(b) Employees and employee committees may provide expert analysis and technical assistance to any member carriers or shippers in developing or evaluating a carrier or shipper initiated rate or rule proposal.

(c) Any advice concerning an independent action as defined in K.A.R. 82-4-77 proposal shall remain confidential. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

**82-4-80. Final disposition of dockets.** The organization shall make a final disposition of a rule or rate docketed with it by the 120th day after the proposal is docketed. However, if unusual circumstances require, the organization may extend that period, subject to review by the commission. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

**82-4-81. Organization protest.** The organization shall not file a protest or complaint with the commission against any tariff item published by or for the account of any motor carrier of property or passengers. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

**82-4-82. Burden of proof of violations and effects of violations.** In any proceeding in which a party alleges that a carrier voted, discussed, or agreed on a rate or allowance in violation of collective ratemaking regulations of the commission, that party shall have the burden of showing that the vote, discussion, or agreement occurred. A showing of parallel behavior shall not satisfy that burden by itself. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

**82-4-83. Commission review of collective rate making agreements.** The commission shall review each collective rate making agreement approved under these rules at least once every three years to determine whether the agreement or an organization established or continued under an approved agreement still complies with the requirements of the statutes and applicable rules.

(Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

**82-4-84. Revoking collective rate making agreements.** Upon proper notice and hearing, and a finding that the collective rate making procedures are not being followed, the commission may revoke its approval or order corrections to the activities and procedures of persons, groups, agencies, bureaus and other entities engaging in collective rate making before the commission. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

**82-4-85. Rate applications filed by carriers party to a collective rate-making agreement.** (a) Each carrier that is a party to a collective rate-making agreement and files an application proposing a general increase or decrease in rates shall submit with the application schedules indicating to the commission the nature and extent of the proposed changes to be effected.

(b) Each application shall be based upon data submitted for a test year.

The application and schedules shall be filed with the commission by electronic mail. The size of print used in the application and schedules shall be clearly legible. Negative numbers shall be shown in parentheses. Amounts included in the application shall be cross-referenced between the appropriate summary schedule and supporting schedules, as well as among the various sections. Referencing shall include allocation ratios, when appropriate. All items shall be self-explanatory. Additional information, cross-references, or explanatory footnotes shall be presented on the schedule. The application shall be supported by schedules as specified in this subsection and shall be assembled under topical sections, with each section clearly identified and a page number for each schedule. The form, order, and titles of each section shall be prescribed as follows:

(1) Application, letter of transmittal, and authorization. This section shall contain a copy of the application, a copy of the letter of transmittal, and an appropriate document or documents authorizing the filing of the application, if any.

(2) General information and publicity. This section shall list the means employed by the carriers to acquaint the general public affected by the proposed rate change with the nature and

extent of the proposal. These methods may include meetings with public officials, shippers, and citizen groups; newspaper articles; and advertisements. This section shall include general information concerning the application that will be of interest to the public and suitable for publication. That information shall include the following, if applicable:

(A) The percent and dollar amount of the aggregate annual increase or decrease that the application proposes; and

(B) any other pertinent information that the applicant wants to submit.

(3) List of carriers participating in the application. This list shall show the motor carrier identification number and the name and address of each carrier that is a participant in the application.

(4) List of carriers in the study group. The list shall state the carriers used in the study group. A detailed explanation of how the study group of carriers was selected shall also accompany this section.

(5) Study group carriers' operating ratios. This section shall contain the Kansas intrastate operating ratios for the actual test year for the study group carriers.

(6) Study group carriers: test year and pro forma income statements. This section shall present the following:

(A) An operating income statement for each of the study group carriers and a composite statement of all the study group carriers depicting the unadjusted test year operations for the total system; and

(B) a second schedule that expands the actual system composite income statement to a Kansas intrastate operations income statement. This statement shall be adjusted to show pro forma test year operations. Supporting schedules shall set forth a full and complete explanation of the purpose and rationale for the pro forma adjustments. The pro forma adjustments may include adjustments to reflect the elimination or normalization of nonrecurring and unusual items, and adjustments for known or determinable changes in revenue and expenses.

(7) Capital and cost of money. This section shall be prepared for each participating carrier having total Kansas intrastate system revenue of one million dollars or more. This section shall contain the following:

(A) A schedule indicating the amounts of the major components of the capital structures of the carrier that are outstanding at the beginning and at

the end of the test year. This schedule shall contain the ratios of each component to the total capital;

(B) a schedule disclosing the cost of each issue of debt and preferred stock outstanding, with due allowance for premiums, discounts, and issuance expense. Data relating to the other components of capital shall be shown, if appropriate; and

(C) if the applicant is a part of a consolidated group or a division of another company, the consolidated capital structure shall be included in this section.

(8) The proposed tariffs. The application shall contain the proposed tariffs requested for approval.

(c) Prefiled testimony shall be required in all transportation rate cases filed by a tariff publishing organization, and all prefiled testimony shall be filed simultaneously with the filing of the application.

(d) Each application found to be incomplete or not in the form prescribed in this regulation shall be rejected by the commission. (Authorized by and implementing K.S.A. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983; amended Jan. 4, 1999; amended July 26, 2019.)

**82-4-86.** (Authorized by K.S.A. 1983 Supp. 66-1,112 and K.S.A. 1984 Supp. 66-1313a; implementing K.S.A. 1984 Supp. 66-1313a; effective, T-85-48, Dec. 19, 1984; effective May 1, 1985; revoked July 26, 2019.)

#### Article 5.—RAILROAD SAFETY

**82-5-1.** (Authorized by K.S.A. 66-141, K.S.A. 1971 Supp. 66-101; effective, E-71-15, March 5, 1971; effective Jan. 1, 1972; revoked May 1, 1984.)

**82-5-2.** (Authorized by K.S.A. 66-141; effective, E-71-15, March 5, 1971; amended, E-71-22, May 28, 1971; effective Jan. 1, 1972; amended, E-82-2, Jan. 21, 1981; amended May 1, 1981; revoked May 1, 1984.)

**82-5-3. General duty of carriers.** The officers, officials and agents of every carrier shall comply with the rules and regulations of this commission and with reasonable requests of the commission or its duly authorized agents for inspection of the carrier's right-of-way. (Authorized by K.S.A. 66-231b; and implementing K.S.A. 66-156; effective, E-71-15, March 5, 1971; amended, E-71-22, May 28, 1971; effective Jan. 1, 1972; amended May 1, 1984.)

**82-5-4. Regulations relating to inspection of bridges and other structures.** Every railroad operating in the state of Kansas shall inspect its bridges, trestles and culverts at least once a year and certify to the commission that the bridges, trestles and culverts are safe for the loads imposed upon them. (Authorized by and implementing K.S.A. 66-231b; effective, E-71-15, March 5, 1971; amended, E-71-22, May 28, 1971; effective Jan. 1, 1972; amended May 1, 1984.)

**82-5-5.** (Authorized by K.S.A. 66-141, 66-156; effective, E-71-15, March 5, 1971; amended, E-71-22, May 28, 1971; effective Jan. 1, 1972; revoked May 1, 1984.)

**82-5-6. Regulation relating to inspection, maintenance and repair of trackage, road bed, right-of-way, bridges and other structures.** If, on the inspector's report, the commission has reasonable ground to believe that any track, bridge or other structure of the railroad is in a condition which renders it dangerous, unfit or unsafe, the commission shall immediately give the superintendent or other executive officer of the company operating that railroad notice of the condition thereof and of the repairs or reconstruction necessary to place it in a safe condition. The commission may prescribe the time in which the repairs or reconstruction necessary to place it in a safe condition must be made and the maximum speed that trains may be operated over the dangerous or defective track, bridge or other structure until the repairs or reconstruction required are made. The commission may forbid the running of trains over the defective track, bridge or other structure, if it is of the opinion that such action is necessary and proper. However, the railroad affected by such a prohibition may request a hearing to determine whether or not such action is necessary and proper. Any company operating a railroad in Kansas may designate a representative to confer with the commission or any member thereof, at the time and place designated by the commission, in order to discuss the condition of the railroad property affected by this section. (Authorized by and implementing K.S.A. 66-231b; effective, E-71-15, March 5, 1971; effective Jan. 1, 1972; amended May 1, 1984.)

**82-5-7.** (Authorized by K.S.A. 66-141, 66-156; effective, E-71-15, March 5, 1971; amended, E-71-22, May 28, 1971; effective Jan. 1, 1972; revoked May 1, 1984.)

**82-5-8. Trackage and grade crossings.** (a) “Track Safety Standards,” 49 CFR Part 213, as in effect on September 15, 1983 is hereby adopted by reference.

(b) Grade crossing surfaces shall be adequately maintained for rail movement.

(c) The railroad shall keep its right-of-way clear, for a reasonable distance, of weeds and vegetation and other unnecessary obstructions, including railroad cars, when the vegetation and obstructions may interfere with the visibility of approaching motor vehicles. (Authorized by and implementing K.S.A. 66-231b; effective, E-71-15, March 5, 1971; amended, E-71-22, May 28, 1971; effective Jan. 1, 1972; amended May 1, 1984.)

**82-5-9. Regulations relating to construction, reconstruction and maintenance of walkways adjacent to the railroad trackage; control of vegetation and removal of debris and trash.** (a) In all switching areas within and outside of the yard limits, each railroad shall provide reasonably safe and adequate walkways adjacent to its tracks. All such walkways shall be maintained and kept as reasonably free of vegetation, trash and debris as may be appropriate to prevailing conditions. Each railroad shall provide for the abatement of weeds and brush adjacent to and upon walkways that is necessary to prevent the objectionable vegetation from encroaching upon such walkways.

(b) The commission may order the railroad corporation to eliminate any unsafe walkway condition and may specify a reasonable time for completion of the improvement as may be appropriate under the circumstances.

(c) If any railroad shows good cause and submits an application for a deviation from the provisions of this regulation. The requested deviation may be authorized by the commission. The application shall include a full statement of the conditions which prevail at the time and place involved and the reasons why deviation is deemed necessary. (Authorized by and implementing K.S.A. 66-231b; effective, E-71-15, March 5, 1971; effective Jan. 1, 1972; amended May 1, 1984.)

**82-5-10. Speed restrictions.** Whenever a railroad deems it necessary to protect the movement of trains by placing a speed restriction on a portion of trackage, and the speed restriction remains in force over sixty (60) days, the existence of the speed restriction must be reported to the

commission, the reasons stated for the speed restriction and the reasons why corrective action has not been completed. (Authorized by K.S.A. 66-141, 66-156; effective, E-71-15, March 5, 1971; effective Jan. 1, 1972.)

**82-5-11. Regulation relating to transportation of hazardous materials by railroads.** (a) When the track condition on any railroad makes the transportation of explosives and other dangerous articles hazardous, restriction of the movement over the track may be imposed by the state corporation commission until track conditions are corrected or a satisfactory alternate route is available.

(b) The following parts of the federal hazardous materials rules and regulations promulgated by the U.S. department of transportation are incorporated by reference as the rules and regulations of the state corporation commission of the state of Kansas: Title 49 CFR, Parts 171, 172, 173, 174, 177, 178, and 393.77, except sections 49 CFR 174.45, 174.104(c) and (d), 174.700, 177.825, 177.842, 177.843 and 177.861, as in effect on September 26, 1986.

(c) Whenever the incorporated federal regulations refer to portions of the federal regulations that are not included under subsection (b), that reference shall not be applicable to this regulation.

(d) Any reference to the following publications listed in 49 CFR 171.7. (d)(1); (d)(3)(ii), (iii) and (iv); (d)(5)(i), (ii), (vi), (vii), (ix), (xix), (xx), (xxi), (xxii), (xxiii), (xxiv), (xxv), (xxvi), (xxvii), (xxviii), (xxix), (xxx), (xxxi), (xxxii) and (xxxiii); (d)(6); (d)(7)(i), (ii), (iii) and (iv); (d)(13); (d)(14); (d)(15)(i) and (ii); (d)(16)(i); (d)(17); (d)(18); (d)(19); (d)(20); (d)(21); (d)(22); (d)(25); (d) 26; (d) 27; (d) 28; “Manual on Roof Coverings,” NFPA 203M-1970; and “Specifications, Properties, and Recommendations for Packaging, Transportation, Storage, and Use of Ammonium Nitrate” are excepted from these regulations. Any regulation subsections in which these exceptions appear are not incorporated by reference in this regulation. (Authorized by K.S.A. 66-1,222, 66-141; implementing K.S.A. 66-1,223, 66-156; effective, E-71-15, March 5, 1971; amended, E-71-22, May 28, 1971; effective Jan. 1, 1972; amended May 1, 1985; amended May 1, 1987.)

**82-5-12. Regulations relating to the filing of rules and regulations of the operating departments of railroad corporations.** (a) Each railroad corporation operating in the state of Kansas shall file with the commission, the exist-

ing rules and regulations of the operating department and any future changes or revisions thereof in accordance with the provisions of the following paragraphs:

(1) The rules and regulations of operating departments presently in effect on any railroad operating in the state of Kansas shall be filed no later than 60 days from the effective date of this order and rules.

(2) Each railroad operating in the state of Kansas shall file with the commission any change or reissue, either in whole or in part, of the rules and regulations of the operating department within 30 days after any change or reissue. (Authorized by K.S.A. 66-141; effective, E-71-15, March 5, 1971; amended, E-71-22, May 28, 1971; effective Jan. 1, 1972.)

**82-5-13. Overhead clearance.** Each railroad shall comply with the following provisions regarding the minimum overhead clearance allowed for railroad safety.

(a) Overhead clearance shall be a minimum of 22 feet, six inches, unless excepted in another subsection of this regulation.

(b) In buildings, clearances may be reduced to 18 feet, for those tracks terminating:

(1) within the building; or

(2) in the immediate plant area, if the tracks extend through the building. Overhead clearance of doors may be reduced to 17 feet, no inches.

(c) In tunnels, the minimum clearance shall be defined by the half-circumference of a circle having a radius of eight feet and a tangent to a horizontal line 23 feet above the top of the rail at a point directly over the center line of track.

(d) The clearance under bridges shall be a minimum of 22 feet.

(e) All other structures, except as specifically provided in these regulations, shall have a minimum clearance as defined by starting at the center of the track at the top of the rail, then eight feet, six inches laterally from the center line of track, then vertically upward to a point 16 feet above the top of the rail, then diagonally upward to a point 22 feet, six inches above the top of the rail and four feet horizontally from the center of track, then horizontally to the center of the track. Overhead clearance may be reduced if overhead telltales are maintained for clearance less than 22 feet, six inches. However, any reduction of clearance below 22 feet, six inches shall be approved by the commission.

The minimal vertical clearance requirements

under all wires, including wires, conductors, and cables over railroad tracks, shall be those specified in K.A.R. 82-12-2. (Authorized by and implementing K.S.A. 66-231b and 66-1201; effective, E-82-2, Jan. 21, 1981; effective May 1, 1981; amended May 1, 1984; amended Aug. 11, 1995.)

**82-5-14. Regulations relating to side clearance between railroad equipment and other structures.** The minimum side clearances from center line of track shall be as follows:

(a) in general eight (8) feet six (6) inches;

(b) at platforms eight (8) inches or less above the top of the rail, five (5) feet from the center of the track;

(c) platforms more than eight (8) inches but less than four (4) feet above the top of rail shall be either six (6) feet two (2) inches or eight (8) feet from center line of track with no intermediate clearance permitted. Further, if side clearance is reduced to six (6) feet two (2) inches on one side, a full clearance of eight (8) feet shall be maintained on the opposite side;

(d) platforms on main line tracks or passing tracks shall be eight (8) feet six (6) inches;

(e) platforms more than four (4) feet above the top of the rail shall be a minimum of eight (8) feet six (6) inches on main line, passing tracks, or side tracks;

(f) icing platforms shall be a minimum of six (6) feet eight (8) inches. Further, the supports of this platform shall provide a minimum clearance of eight (8) feet;

(g) retractable platforms, either sliding or hinged, which are attached to a permanent structure, shall be so constructed that, when retracted or in a nonworking position and firmly secured or anchored, the resulting clearance is a minimum of eight (8) feet;

(h) Platforms defined under subsection (b) of this regulation may be combined with platforms defined under subsections (c) and (e) of this regulation, provided that the lower platform presents a level surface to the face of the wall of the platform with which it is combined. No other combinations will be permitted.

(i) bridges and tunnels shall have a minimum side clearance of eight (8) feet. Further, the lower section with structure of bridges including bridges supporting track affected; handrails, water barrels and refuge platforms on bridges and trestles, water columns, oil columns, block signals, cattle guards, or portions thereof, four (4)

feet or less above the top of the rail may have clearances decreased to the extent defined by a line extending diagonally upward from a point level with the top of the rail and five (5) feet six (6) inches distant laterally from the center line of track to a point four (4) feet above the top of the rail and eight (8) feet distant laterally from the center line of track. However, the clearance authorized in this subsection is not permitted on through bridges where the work of trainmen or yardmen requires them to be upon the decks of such bridges for the purpose of coupling or uncoupling cars in the performance of switching service on a switching lead;

(j) switch boxes, switch operating mechanism necessary for the control and operation of signals, and interlockers projecting four (4) inches or less above the top of the rail shall have a minimum clearance of three (3) feet;

(k) signals and switch stands three (3) feet or less above the top of the rail when located between tracks shall have minimum clearance of six (6) feet;

(l) signals and switch stands over three (3) feet above the top of the rail shall have a minimum clearance of eight (8) feet six (6) inches;

(m) mail cranes and train order stands when not in the operative position shall have a minimum clearance of eight (8) feet six (6) inches;

(n) minimum clearances at building entrances shall be seven (7) feet. However, inside clearance of buildings may be reduced on one side of the track to six (6) feet two (2) inches provided eight (8) feet is maintained on the opposite side. Further, clearance at doors may be reduced to six (6) feet two (2) inches on one side of the track provided, full clearance of eight (8) feet three (3) inches is maintained on the opposite side;

(o) minimum clearance on curved track shall be increased to allow for overhang and the tilting of a car eighty-five (85) feet long, sixty (60) feet between centers of trucks and fourteen (14) feet high;

(p) material, merchandise and other articles adjacent to tracks shall be located at a minimum of eight (8) feet six (6) inches from the tracks. (Authorized by K.S.A. 66-141; effective, E-82-2, Jan. 21, 1981; effective May 1, 1981.)

**82-5-15. Regulations relating to track clearance.** (a) Track clearance on main and subsidiary tracks shall be a minimum of fourteen (14) feet as measured between the center lines of parallel standard gauge railroad tracks;

(b) minimum clearance between parallel team, house or industry tracks shall be thirteen (13) feet between center lines;

(c) minimum clearance between ladder track and any parallel track shall be seventeen (17) feet except that the clearance between ladder track and another parallel ladder track shall be at least twenty (20) feet between center lines. (Authorized by K.S.A. 66-141; effective, E-82-2, Jan. 21, 1981; effective May 1, 1981.)

**82-5-16. General conditions.** The space between or beside such tracks as is ordinarily used by train and yard personnel and other employees in the discharge of their duties shall be kept clear of air and water pipes, grass, weeds, and other foreign obstacles which might interfere with the work of the employees or subject the employees to unnecessary hazard. Such space between or beside the tracks and between the rails of the track must be kept in such condition as to permit the employees to pass over or between the tracks or to use the same day or night and under all weather conditions without unnecessary hazard. (Authorized by K.S.A. 66-141; effective, E-82-2, Jan. 21, 1981; effective May 1, 1981.)

**82-5-17. Special provisions.** (a) Exemptions from any of the requirements contained in these rules shall be considered by the commission upon proper application from a carrier, industry or other interested person. A request for such exemption shall be accompanied by a full statement of the conditions existing, and the reasons for requesting the exemption. Any exemption shall be limited to the particular case covered by the application.

(b) No restricted clearance set out in this article shall apply to false works, shoofly tracks or other temporary emergency conditions caused by derailments, washouts, slides, or other unavoidable disasters.

(c) None of the restricted clearances set out shall apply to ballast, track material, or construction material unloaded on or adjacent to tracks for contemplated use thereon or in the immediate vicinity, nor shall they apply to falseworks or temporary construction necessary on any construction project.

(d) All existing structures, operating appurtenances, pole lines, service facilities, and track arrangements shall be exempt from these regulations except as specifically provided.

(e) No change in track location or elevation shall be made which will reduce existing vertical or horizontal structural clearance below the minimum allowed by these rules, except where tracks are constructed as part of the existing facility, and in such cases the clearance shall conform to existing conditions.

(f) No repair or maintenance work shall be done on structures, facilities or appurtenances adjacent to tracks which will reduce existing vertical or horizontal structural clearance below the minimum allowed by these rules.

(g) Where an existing structure does not provide clearance equal to the minimum set out in K.A.R. 82-5-13 or such other minimum herein specified, the portion of the structure producing the impaired clearance may be repaired and maintained by partial replacements, which shall in no case reduce the clearance available at the time this order takes effect.

(h) When the owner shall replace in its entirety the portion of a structure which has not previously provided standard clearance, the rebuilt portion must, when complete, provide the full standard clearance unless otherwise ordered by the commission.

(i) Existing tracks of all kinds may be maintained by rebalasting, resurfacing and replacing rails and ties subject to the limitations of these rules. Where existing yards are completely replaced or are partially replaced as a unit or section of a master plan, the arrangement must meet the provisions of the rules both as to track centers and clearances to structures and other facilities being built in connection with and as a part of such plan. Existing structures which are to remain and which do not provide the minimum clearance with respect to the proposed new track must be approved by the commission for exemption from the requirements of these rules. Existing tracks having less vertical clearance than that specified by these rules may be maintained but the top of the rail may not be raised without a corresponding raise of the overhead structure to maintain the existing available clearance. Existing tracks having less horizontal clearance between them than is specified for new construction or having less horizontal clearance to structures than is specified by these rules may be maintained but they may not be shifted horizontally to reduce either the existing track centers or the existing structural clearance. (Authorized by K.S.A. 66-141; effective, E-82-2, Jan. 21, 1981; effective May 1, 1981.)

## **Article 6.—SUPPRESSION OF DIESEL LOCOMOTIVE ORIGINATED FIRES ON RAILROAD RIGHT OF WAY**

**82-6-1. Definitions.** The following terms used in connection with rules and regulations governing suppression of diesel locomotive originated fires on railroad right of way shall be defined as follows:

(1) The term “commission” refers to the state corporation commission of the state of Kansas.

(2) The term “carrier” means any railroad, railway company or corporation subject to commission jurisdiction, which operates a railroad in the state of Kansas.

(3) The term “right of way” is the property on which the road bed, tracks and fixed facilities necessary for the operation of trains are located. (Authorized by K.S.A. 66-101, 66-106, 66-156; effective, E-72-22, July 28, 1972; effective Jan. 1, 1973.)

**82-6-2. Spark arresters.** (a) No carrier shall use or operate a non-turbo charged diesel locomotive for over-the-road service in the state of Kansas unless it is equipped with a spark arrester. The spark arrester shall be constructed of non-flammable materials that are at least 80 percent efficient in the retention or destruction of all carbon particles .023 inch in diameter and larger for 30 to 100 percent of the locomotive engine’s exhaust flow rate. With the addition of the arrester, the total manifold exhaust back leg pressure shall not exceed 3½ inches of mercury.

(b) Any carrier may make application to the commission for an extension of time to meet the standards of subsection (a) on the grounds of nonavailability of parts and material, or on the grounds of financial inability to meet the provisions of subsection (a). (Authorized by and implementing K.S.A. 66-231b; effective, E-72-22, July 28, 1972; effective Jan. 1, 1973; amended May 1, 1984.)

**82-6-3. High fire areas.** (a) The term “high fire area” means any 10-mile section of a carrier’s right-of-way wherein there has been, during the immediate past three-calendar-year period, an average of three or more diesel locomotive originated fires per year.

(b) Every carrier shall treat high fire areas by either plowing, burning, cutting, or chemically spraying all vegetation for a distance of not less than 25 feet from the outside rails and between

all rails on its right-of-way. Periodic inspections of the high fire areas shall be made by the commission to assure compliance with this standard.

(c) On or before March 1 of each year, every carrier shall report to the commission all high fire areas on its right-of-way in the state of Kansas.

(d) The report shall state the location of the high fire areas by railroad mile post numbers, county, and nearest town or city. The report shall also include, but not be limited to, the date of each fire, the number of fires and the total acres burned in each of the specific high fire areas.

(e) The report shall state the nature of the treatment of high fire areas, and the date of that treatment for each area in the preceding calendar year. (Authorized by K.S.A. 66-231b; implementing K.S.A. 66-156; effective, E-72-22, July 28, 1972; effective Jan. 1, 1973; amended May 1, 1984.)

#### Article 7.—RAILROAD GRADE CROSSING PROTECTION RULES

**82-7-1.** (Authorized by K.S.A. 66-231b; effective, E-72-26, Sept. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1984.)

**82-7-2.** (Authorized by K.S.A. 66-231b; effective, E-72-26, Sept. 1, 1972; effective Jan. 1, 1973; revoked Jan. 31, 2003.)

**82-7-3.** (Authorized by K.S.A. 66-231b; effective, E-72-26, Sept. 1, 1972; effective Jan. 1, 1973; revoked Jan. 31, 2003.)

**82-7-4.** (Authorized by K.S.A. 66-231b; implementing K.S.A. 66-231a; effective, E-72-26, Sept. 1, 1972; effective Jan. 1, 1973; amended May 1, 1984; revoked Jan. 31, 2003.)

**82-7-5.** (Authorized by K.S.A. 66-231b; and implementing K.S.A. 66-231a; effective, E-72-26, Sept. 1, 1972; effective Jan. 1, 1973; amended May 1, 1984; revoked Jan. 31, 2003.)

#### Article 8.—SITING OF NUCLEAR GENERATION FACILITIES

**82-8-1. Definitions.** As used in this article, the following definitions shall apply: (a) “Applicant” means any electric utility making application for a permit pursuant to K.S.A. 66-1,159, and amendments thereto.

(b) “Application” means a request for issuance of a permit authorizing the site preparation for, or the construction of a nuclear generation facility,

which is also referred to as proposed facility or facility, or an addition to a nuclear generation facility at a particular site in accordance with K.S.A. 66-1,159, and amendments thereto.

(c) “Permit” means the authorization granted by the commission that permits the applicant to begin preparation for, or construction of a nuclear generation facility or addition to a nuclear generation facility on the proposed site.

(d) “Site” means any proposed location of a nuclear generation facility or an addition to a nuclear generation facility. (Authorized by K.S.A. 2001 Supp. 66-106; implementing K.S.A. 2001 Supp. 66-1,159; effective May 1, 1981; amended Jan. 31, 2003.)

#### **82-8-2. Formal requirements for a permit application and supporting documents.**

(a) Each application for a permit shall contain the following:

(1) A summary statement of the applicant’s proposal, including a specific statement describing the proposed facility or addition to it;

(2) a legal description of the land to be used, including the total number of acres intended to be used; and

(3) a statement showing the need for the proposed facility or addition to it.

(b) The supporting documents to be filed along with the application shall consist of the following:

(1) The exhibits, information, and plans required by K.S.A. 66-1,158 et seq., and amendments thereto, and these regulations;

(2) the prepared testimony that shall comprise the applicant’s direct case in support of its application and shall meet the requirements of K.A.R. 82-1-229;

(3) a list of all landowners as defined by K.S.A. 66-1,158(c), and amendments thereto, who are to be given notice in connection with the application; and

(4) any additional information that the applicant deems necessary or desirable to support the application.

(c) The applicant’s prepared testimony in support of its application shall meet the following criteria:

(1) Summarize the information contained in any exhibits;

(2) demonstrate the necessity for additional generation capacity;

(3) for each alternate site proposed, compare the site and size of the proposed facility, in rela-

tion to K.A.R. 82-8-3(a) through (k), except that an application for a permit to construct an addition to an existing nuclear generation facility shall not require comparison with an alternate site or sites; and

(4) evaluate the construction, operation, and maintenance of the proposed facility in relation to all applicable federal, state, and municipal laws, ordinances, rules, regulations, land use plans, and interstate contracts or agreements.

(d) The application for a site permit for a nuclear generation facility shall be printed or typed on paper that shall not exceed 8½ inches wide by 11 inches long and that shall be contained in a loose-leaf binder.

(e) If any information required by statute or these regulations is not available, the applicant shall state the reasons it is not available. If this information becomes available or if changes occur in material presented in the application or supporting documents, the applicant shall provide the commission with appropriate amendments to the application or supporting documents. Amendments shall be in the form of page-for-page substitutions.

(f) The applicant shall file the original and 14 copies of the application, supporting documents, and testimony with the commission. (Authorized by K.S.A. 2001 Supp. 66-106; implementing K.S.A. 2001 Supp. 66-1,159; effective May 1, 1981; modified, L. 1981, ch. 425, May 1, 1981; amended Jan. 31, 2003.)

### **82-8-3. Requirements for applications.**

Each application for a permit shall be accompanied by supporting documents as specified below and shall be assembled under topical sections corresponding to the subsections below, with index tabs for each section. The order and material to be included in each section shall be as follows: (a) An economic feasibility study on the proposed facility, setting forth the following:

(1) The estimated capital investment in the site, the proposed facility, and other related facilities;

(2) the anticipated source and the amount of funds to finance the project from each source;

(3) the period proposed for construction and the source of the labor force; and

(4) an economic comparison of the proposed facility and site, with other alternatives. The applicant shall include expansion at existing sites, as well as a discussion of power loss associated with the transmission distance, using a present-value revenue requirement comparison and a levelized

mill per kilowatt-hour cost over the planning horizon with and without estimated cost escalation effects. This analysis shall compare the expected present value or the expected levelized cost with the proposed generation and transmission facility and without the proposed facility. The data used in developing this comparison shall be submitted in the format specified by the commission and shall be consistent with the data used in subsections (c) and (g);

(b) financial information sufficient to demonstrate the financial qualifications of the applicant to construct and operate the proposed facility. This information shall show that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover the estimated construction costs, the operating cost for the design lifetime of the facility, including related fuel costs, and the estimated costs of permanently shutting the facility down and maintaining it in a safe condition;

(c) information and data demonstrating the need for a facility, including the following:

(1) The power requirements for the applicant's electrical system for 10 years before the application date. These requirements shall include the following, at a minimum:

(A) Monthly peak demands;

(B) the date and hour of annual peak;

(C) annual load duration curves;

(D) annual energy requirements; and

(E) the purchases and sales at monthly peak, identified by purchaser and seller; and

(2) a schedule identifying by unit all of the applicant's existing generation facilities, including the following:

(A) The facility location and type, unit number, typical use, and fuel type;

(B) the net capacity;

(C) the on-line date;

(D) forced outage rates, including dates and duration of outage for the last five years;

(E) the annual capacity factor and equivalent availability factor for the last five years; and

(F) estimated unit deratings or projected retirement for 15 years and the reason for the derating. Projections shall be on a year-by-year basis;

(d) a general site description, which shall include the following:

(1) The proposed site location identified by section, township, range, and county, and the total number of acres involved;

(2) a state map, drawn to a scale not less than ½ inch equals 10 miles, showing the site location

with respect to state, county, and other political subdivisions, and prominent features including cities, lakes, rivers, and highways;

(3) detailed maps, drawn to a scale not less than four inches equal one mile, showing the location of the facility perimeter, present and proposed utility development within three miles of the location, utility property abutting adjacent properties, nearby water bodies, wooded areas, farm settlements, parks and other public facilities; and

(4) the location of transmission substations and transmission lines associated with the proposed facility and interconnection with the applicant's electrical transmission system in Kansas;

(e) a general description of the proposed facility, which shall include the following:

(1) The principal design features;

(2) the expected operating and performance characteristics, including the following:

(A) the estimated maximum capacity of the facility;

(B) the estimated capacity if the facility is limited by condenser water;

(C) the estimated annual equivalent availability factors for each of the first five years of commercial operation;

(D) the estimated average operating heat rate (BTU/KWH) at 50%, 75%, and 100% of capacity;

(E) the estimated maintenance schedule for the first five years of commercial operation;

(F) the estimated gross generation, in megawatt hours, for each of the first five years of commercial operation;

(G) the estimated fraction of gross generation attributable to primary fuel for each of the first five years of commercial operation; and

(H) a schedule outlining the proposed plan for testing the unit for commercial operation including an approximate time schedule for this testing;

(3) the general arrangement of typical major structures and equipment by the use of scale plans and elevation drawings in sufficient number and detail to provide understanding of the general layout of the facility;

(4) extrapolation of any significant technology as represented by the design;

(5) the names and addresses, if known, of the prime contractors and major vendors for the project; and

(6) a time chart showing estimated engineering, construction, and start-up schedules for the proposed facility;

(f) approvals by other governmental agencies, according to the following:

(1) A list of all federal, state, and local permits, licenses, and certificates required for construction and operation of the facility, and the status of the application for approval of each. The applicant shall provide copies of all these documents, if issued;

(2) a list of all federal, state, and local government permits, licenses, and certificates required for the construction and operation of the facility in the following categories:

(A) Required before the expiration of the statutory time period for a determination concerning a site permit as provided in K.S.A. 66-1,162, and amendments thereto;

(B) required concurrent with the determination of the site permit by this commission; and

(C) required after a site permit determination by this commission; and

(3) copies submitted of all studies submitted to other agencies as directed by the commission;

(g) information on any transmission lines required to connect the proposed facility to the bulk power transmission network, including the following:

(1) The point or points at which facility transmission lines are planned for connection to the bulk power transmission network;

(2) the length, voltage, and capacity of any required new transmission line;

(3) the probable type of construction of any new line;

(4) a map, drawn to a scale not less than 1/2 inch equals 10 miles, showing the proposed route, and any alternate routes, for each transmission line necessary to connect the proposed facility with the bulk power transmission network;

(5) base case load flow studies as data is available from the Southwest Power Pool, of the existing Kansas interconnected electrical system for a year before the addition of the proposed facility of application modeled with the following:

(A) All Kansas interconnected loads simulated at 115 KV and higher bus;

(B) all out-of-state interconnected load flows simulated at the Kansas state line; and

(C) any unsatisfactory results highlighted;

(6) base case load flow studies of the existing Kansas interconnected electrical system modeled as specified in paragraphs (g)(5)(A) and (B) above, with the addition of the proposed generation and transmission facilities in one of the two years following completion and biennially thereafter

through the tenth year as data is available from the Southwest Power Pool; and

(7) a full explanation of the applicant's load forecasting technique as used in paragraphs (g)(5) and (6) above. The applicant shall include the following at a minimum:

(A) A study of 10 years of historical load growth. Data for each year shall be subdivided into actual or modeled simulation by residential, commercial, industrial, and other load components;

(B) a trending methodology and detailed explanation of it, making use of the historical load growth study and modifying the study results to account for trend changes caused by conservation, load management, price elasticity, econometrics, and additional factors that are themselves trend makers; and

(C) a load forecasting methodology incorporating the results of paragraph (g)(7)(B) above and a detailed explanation of it;

(h) data on the geology and seismology of the site and region surrounding the proposed site including the following:

(1) Maps and charts showing the topography, which shall include the following:

(A) A location map of the proposed structures, test holes, and excavation;

(B) a geologic map of rock types and structural features;

(C) geologic cross sections showing subsurface conditions; and

(D) a map, drawn to a scale not less than four inches equal one mile, showing bedrock contours where the site is covered by unconsolidated material;

(2) the physiographic significance of topographic features and their relationship to the regional pattern;

(3) the stratigraphic significance of the genesis, composition, extent, sequence, and correlation of rock units;

(4) the lithologic significance of the composition and textural character, including the results of any studies necessary to obtain a complete determination, of rock type and mineral composition;

(5) the subsurface structure showing faults, joints, distortion, alteration, weathering, slip planes, fissures, and cavities, and an explanation of the relationship of significant regional structure to site geology, including faulting;

(6) a description of soil types at the site;

(7) information concerning slope stability at the site; and

(8) copies of all studies or other bases used to furnish any information in this subsection;

(i) information on fuel to be used at the proposed facility, including the following:

(1) The specific type of fuel expected to be used; and

(2) a description of the method of fuel delivery to the site as well as the frequency of delivery that will be necessary;

(j) an evaluation of the effect on the environment, which shall be prepared for each alternative site for a new generating facility. The evaluation shall consider the following, at a minimum:

(1) The cultural, scenic, archaeological, and historical characteristics of the site; and

(2) the fauna and flora and, in particular, any endangered species existing in or traversing the site; and

(k) a discussion of the anticipated noise level of the proposed facility and the need and proposals for noise control. (Authorized by K.S.A. 2001 Supp. 66-106; implementing K.S.A. 2001 Supp. 66-1,159; effective May 1, 1981; modified, L. 1981, ch. 425, May 1, 1981; amended Jan. 31, 2003.)

**82-8-4. Waiver provisions.** The commission may for good cause shown waive any of the requirements of these regulations to the extent permitted by law. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-1,159; effective May 1, 1981.)

**82-8-100.** (Authorized by and implementing K.S.A. 66-183; effective May 1, 1983; amended July 23, 1990; revoked Aug. 11, 1995.)

**82-8-101.** (Authorized by and implementing K.S.A. 66-183; effective May 1, 1983; amended May 1, 1985; amended July 23, 1990; revoked Aug. 11, 1995.)

**82-8-102 to 82-8-107.** (Authorized by and implementing K.S.A. 66-183; effective May 1, 1983; revoked Aug. 11, 1995.)

**82-8-108.** (Authorized by and implementing K.S.A. 66-183; effective July 23, 1990; revoked Aug. 11, 1995.)

## Article 9.—RAILROAD RATES

**82-9-1. Railroad tariff filing requirements.** (a)(1) Each railroad tariff for rates or provisions published in connection with a new service, and each railroad tariff change that

would result in increased rates, shall be on file with the commission at least 20 days prior to its effective date.

(2) Each railroad tariff which would result in decreased rates or increased value of service shall be on file at least 10 days prior to its effective date.

(3) Each rate publication filed with the commission shall be on forms prescribed by the commission and shall contain such information as the commission may require, including, but not limited to:

(A) a tariff containing all relevant and material provisions relating to the rate and its application; and

(B) a statement as to whether the rate will increase, decrease, or produce no change in the carrier's revenue.

(4) Each railroad tariff which would result in a decrease in the value of service shall be on file at least 20 days prior to its effective date.

(5) Each railroad tariff which would result in neither increases or reductions of rate or services shall be filed at least 10 days prior to its effective date.

(6) Independently filed new and reduced rail rates may become effective on one day's notice pursuant to 3 I.C.C. 323 (1987) and 49 C.F.R. § 1312.39(h) as in effect on October 1, 1989.

(7) Shorter notice will be available for changes in rail rates upon a showing of good cause pursuant to 49 C.F.R. § 1312.2 as in effect on October 1, 1989.

(b) The interstate commerce commission's decision in *ex parte* No. 355, cost standards for railroad rates 364 I.C.C. 898 (1981) is hereby adopted by reference in implementing minimum rate regulation.

(c) Rate Discrimination.

(1) Differences between rates, classifications, rules and practices of rail carriers providing transportation subject to the jurisdiction of this commission shall not constitute unlawful discrimination if such differences result from different services provided by rail carriers.

(2) The commission recognizes that the following matter are not unjust, unreasonably discriminating or unduly preferential:

(A) contracts approved by the commission except as provided in 49 U.S.C. 10713;

(B) surcharges or cancellations pursuant to 49 U.S.C. 10705a;

(C) separate rates for distinct rail services;

(D) rail rates applicable to different routes; and

(E) expenses authorized under 49 U.S.C. 10751.

(3) The discrimination limitations of 49 U.S.C. § 10741 do not restrict the commission's mandate to eliminate discrimination in the rail transportation of recyclables.

(d) The commission hereby adopts 49 U.S.C. § 10730 by reference, authorizing railroads to publish rates under which the liability of the carrier is limited to a value established by the written declaration of the shipper or by written agreement between the carrier and the shipper.

(e) All actions regarding the operation of railroads within the state of Kansas will be consistent with 49 U.S.C. § 10101a. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-107, 66-110 and K.S.A. 1989 Supp. 66-146; effective May 1, 1984; amended May 1, 1985; amended Oct. 29, 1990.)

### **82-9-2. Commencement of proceedings.**

(a) To determine whether a new individual or joint rate, or an individual or joint classification, rule, or practice related to a rate filed with the commission by a rail carrier, is discriminatory, unreasonable or in any way violates the law, the commission may:

(1) on its own initiative, commence an investigation proceeding; or

(2) upon protest of an interested party, commence an investigation proceeding; or

(3) upon protest of an interested party, commence an investigation and suspension proceeding.

The provisions of this subsection shall not apply to general rate increases, inflation-based increases, or fuel adjustment surcharges filed under the provisions of 49 U.S.C. § 11051(b)(6), over which the commission has no jurisdiction.

(b) Rates based on limited carrier liability may be published and filed with the commission, without prior approval. However, those rates shall be subject to protest on grounds including unreasonableness or nonconformance with the tariff publication requirements found in 49 CFR 1300.4 (i) (11), as in effect on September 23, 1983, which are hereby adopted by reference.

(c) The commission shall give reasonable notice to each interested party before beginning a proceeding. However, the commission may begin the proceeding without allowing an interested party to file an answer.

(d) The commission recognizes that the interstate commerce commission has exclusive authority to prescribe an intrastate rate for transportation provided by a rail carrier, pursuant to 49 U.S.C. § 11051 (d) when:

(1) a rail files with the appropriate state authority a change in an intrastate rate, or a change in a classification, rule, or practice that has the effect of changing an intrastate rate, that adjusts the rate to the rate charged on similar traffic moving in interstate or foreign commerce; and

(2) the state authority does not act finally on the change by the 120th day after it was filed. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984; amended May 1, 1985.)

**82-9-3. Grounds for suspension.** (a) A proposed rate, classification, rule, or practice shall not be suspended unless it appears, from the specific facts shown by a verified statement of a protestant, that:

(1) there is a substantial probability that the protestant will prevail on the merits;

(2) without suspension, the proposed rate change will cause substantial injury to the protestant or the party represented by the protestant; and

(3) because of the peculiar economic circumstances of the protestant, the provisions of K.A.R. 82-9-11 of these rules do not protect the protestant.

(4) A state agency shall not suspend a proposed rail rate classification, rule or practice on its own motion. (Authorized by K.S.A. 66-106; implementing K.S.A. 1989 Supp. 66-146; effective May 1, 1984; amended Oct. 29, 1990.)

**82-9-4. Duration of suspension period.**

(a) Each proceeding commenced under these procedures shall be completed within five months from the effective date of the proposed rate, classification, rule or practice. However, if the commission reports to the interstate commerce commission that it cannot make a final decision within that time and explains the reason for the delay, an extension of three months may be allowed to complete the proceeding and make a final decision.

(b) If the commission does not render a final decision within the applicable time period, the rate, classification, rule or practice shall become effective immediately or, if already in effect, shall remain in effect. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

**82-9-5. Market dominance.** (a) When any new individual or joint rate is alleged to be unreasonably high, a determination of whether or not the railroad proposing the rate has market dominance over the transportation to which the rate applies shall be made by the commission within 90 days after the start of a proceeding under these rules.

(b) If the railroad proposing the rate has market dominance over the transportation to which the rate applies, a determination of whether or not the proposed rate exceeds a maximum reasonable level for that transportation shall be made.

(c) If the railroad proposing the rate does not have market dominance over the transportation to which the rate applies, no determination on the issue of reasonableness will be made.

(d) Any finding by the commission that the proposed rate has a revenue-variable cost percentage which is equal to or greater than the percentages found in 49 U.S.C. § 10709(d)(2) as in effect on September 23, 1983, which is hereby adopted by reference, shall not establish a presumption that:

(1) The railroad has or does not have market dominance over such transportation; or

(2) the proposed rate exceeds or does not exceed a reasonable maximum level.

(e) The interstate commerce commission's decision in Market Dominance Determinations 365 ICC 118, applying to the market dominance standards, is hereby adopted by reference.

(f) Evidentiary guidelines in determining market dominance as set out in 365 I.C.C. 118 (1981) and 2 I.C.C.2d 1 (1985) are hereby adopted by reference. (Authorized by K.S.A. 66-106; implementing K.S.A. 1989 Supp. 66-146; effective May 1, 1984; amended May 1, 1985; amended Oct. 29, 1990.)

**82-9-6. Reasonableness.** (a) Except for nonferrous recyclables, the reasonableness of a rate shall be evaluated by the commission only after market dominance has been established. Authority to determine and prescribe reasonable rules, classifications and practices may not be used directly or indirectly to limit the rates that rail carriers are otherwise authorized to establish. Unless prohibited by specific statutory provision, any reasonable rate may be established. The standards set out in 1 I.C.C.2d 520 (1985) and ex parte no. 347 (Sub-No. 2) (unpublished) as served April 8, 1987, are hereby adopted by reference. In determining whether a rate is reasonable, evidence of the following shall be considered:

(1) The amount of traffic that is transported at revenues which do not contribute to going concern value and the efforts made to minimize that traffic;

(2) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on the traffic can be changed to maximize the revenues from the traffic; and

(3) the carrier's mix of rail traffic, to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues.

(b) Any rate on nonferrous recyclable material shall be presumed to be unreasonable when it is set at a revenue to variable cost ratio greater than 147.7 percent.

(c) Revenue adequacy standards as set out in standards for railroad revenue adequacy, 364 I.C.C. 803 (1981) shall be established by the commission. Where there is a prior interstate commerce commission ruling on revenue adequacy of a particular carrier, a certified state agency is bound by the ICC ruling and may not determine revenue adequacy independently. The return on investment/cost of capital standards as set out in 3 I.C.C.2d 261 (1986) are also adopted by reference.

(d) Intrastate rates in existence on October 1, 1980, shall be conclusively presumed reasonable unless a complaint that was filed under § 229 of the staggers rail act of 1980 with the interstate commerce commission not later than March 31, 1981, was submitted to the commission for disposition.

(1) The cost adjustment factor determined by the interstate commerce commission on a quarterly basis shall be used by the commission to determine the adjusted base rate.

(2) Complaints on adjustments to the base rate which cover inflation will not be investigated, suspended or accepted.

(3) Increases within the zone will not be suspended or investigated unless the increases produce ratios exceeding the year's market dominance threshold plus 20%, or 190%, whichever is less. In deciding whether to investigate, the following shall be considered by the commission:

(A) The amount of traffic below going concern value and efforts to minimize it;

(B) amount of traffic contributing marginally to fixed costs;

(C) traffic impact on revenue adequacy and energy; and

(D) cross subsidization of traffic.

(e) The protestant shall have the burden of justifying an investigation.

(f) A rail carrier may petition the interstate commerce commission to review a decision regarding intrastate rates pursuant to 49 U.S.C. § 11501(c). (Authorized by K.S.A. 66-106; implementing K.S.A. 1989 Supp. 66-146; effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended Oct. 29, 1990.)

**82-9-7. Burden of proof.** (a) General. The burden shall be on the protestant to prove the matters described in K.A.R. 82-9-3 of these rules.

(b) Jurisdiction. The respondent railroad shall bear the burden of showing that the commission lacks jurisdiction to review the proposed rate because the rate produces a revenue—variable cost percentage that is less than the percentages found in 49 U.S.C. Sec. 10709(d)(2), which is hereby adopted by reference, as in effect on September 23, 1983. The railroad may meet its burden of proof by showing the revenue—variable cost percentage for that transportation to which the rate applies is less than the threshold percentage cited in 49 U.S.C. Sec. 10709(d)(2). The protestant may rebut the railroad's evidence with a showing that the revenue—variable cost percentage is equal to or greater than the threshold percentage in 49 U.S.C. Sec. 10709(d)(2).

(c) Intramodal and intermodal competition. The protestant shall bear the burden of demonstrating that there exists no effective intramodal or intermodal competition for the transportation to which the rate applies. The respondent railroad may rebut the protestant's showing with evidence that effective intramodal or intermodal competition exists.

(d) Product and geographic competition. The railroad shall also introduce evidence of product or geographic competition by identifying such competition. Once the railroad has made this identification, the party opposing the rate shall have the burden of proving that the product or geographic competition identified by the railroad is not effective.

(e) Reasonableness of rate increases. Each party protesting a rate increase shall bear the burden of demonstrating its unreasonableness if the rate:

(1) is authorized under 49 U.S.C. § 10707a, as in effect on September 23, 1983; and

(2) results in a revenue—variable cost percentage for the transportation to which the rate applies that is less than the lesser of the percentages described in clauses (i) and (ii) of 49 U.S.C. § 10707a(e)(2)(A), as in effect on September 23, 1983.

(f) Respondent's burden of proof. The respondent railroad shall bear the burden of demonstrating the reasonableness of a rate increase if:

(A) The rate is greater than that authorized under paragraph (e)(1) of this regulation; or

(B) The rate results in a revenue—variable cost percentage, for the transportation to which the rate applies, that is equal to or greater than the

lesser of the percentages described in clauses (i) and (ii) of 49 U.S.C. § 10707a(e)(2)(A), as in effect on September 23, 1983; and

(2) the commission initiates an investigation.

(g) Rate decreases. A party protesting a rate decrease shall bear the burden of demonstrating that the rate does not contribute to the going concern value of the railroad, and is therefore unreasonably low. A party may meet its burden by making a showing that the rate is less than the variable cost for the transportation to which the rate applies. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984; amended May 1, 1985.)

**82-9-8. Zone of rate flexibility.** (a)(1) Any rail carrier may raise any rate subject to the limitations described in 49 U.S.C. Sec. 10707a as in effect on September 23, 1983. Base rates increased by the quarterly rail cost adjustment factor shall not be investigated or suspended.

(2) In addition, any railroad may increase any rate by 6% per annum until October 1984. Railroads not earning adequate revenues, as defined by the interstate commerce commission, after that period, may raise rates 4% per year. Neither the 6% or 4% increase shall be suspended. If either increase results in a revenue to variable cost ratio that equals or exceeds 190%, the rate may be investigated either upon the commission's own motion or on complaint of an interested party. The preceding standards regarding the regulation of intrastate rail rates are adopted by the commission to conform to the staggers rail act of 1980.

(b) In determining whether or not to investigate the rate, the following shall be considered:

(1) the amount of traffic which the railroad transports at revenues which do not contribute to going concern value and efforts made to minimize that traffic;

(2) the amount of traffic which contributes only marginally to fixed costs and the extent to which rates on that traffic can be changed to maximize the revenues from that traffic;

(3) the impact of the challenged rate on national energy goals;

(4) state and national transportation policy; and

(5) the revenue adequacy goals incorporated in the interstate commerce act, as in effect on September 23, 1983.

(6) Increased rates resulting from application of the rail cost adjustment factor (RCAF) are conclusively presumed lawful so long as they do

not exceed the adjusted base rate. (Authorized by K.S.A. 66-106; implementing K.S.A. 1989 Supp. 66-146; effective May 1, 1984; amended May 1, 1985; amended Oct. 29, 1990.)

**82-9-9. Monetary adjustments for suspension actions.** (a) Rate increases with no suspensions. If the commission does not suspend, but investigates, a proposed rate increase under K.A.R. 82-9-3, the rail carrier shall account for all amounts received under the increase until the commission completes its proceedings under K.A.R. 82-9-4. The accounting shall specify by whom and for whom the amounts are paid. When the commission takes final action, the carrier shall refund to the persons for whom the amounts were paid that part of the increased rate found to be unreasonable, plus interest at a rate equal to the average yield, on the date that the "statement of monetary adjustment" is filed, of marketable securities of the United States government having a duration of 90 days.

(b) Rate increases with suspension. If a rate is suspended and any portion of that rate is later found to be reasonable, the carrier shall collect from each person using the transportation to which the rate applies the difference between the original rate and the portion of the suspended rate found to be reasonable for any services performed during the period of suspension. The carrier shall also collect, from such persons, interest at a rate equal to the average yield, on the date that the "statement of monetary adjustment" is filed, of marketable securities of the United States government having a duration of 90 days.

(c) Rate decreases with suspension. If the commission suspends a proposed rate decrease which is later found to be reasonable, the rail carrier may refund any part of the decrease found to be reasonable if the carrier makes the refund available to each shipper who participated in the rate, in accordance with the relative amount of that shipper's traffic which was transported at that rate. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

**82-9-10. Filing requirements.** (a) The protest, reply and any other pleadings relating to the proceeding shall not be considered unless made in writing and filed with the commission.

(b) The protest, reply or other pleadings relating to the proceeding shall be received for filing at the commission's office within the time limits, if

any, for that filing. The date of receipt at the commission, and not the date of deposit in the mail, is determinative.

(c) If, after examination, the commission finds that the protest, reply, "statement of monetary adjustment" or other pleadings relating to the proceeding are not in substantial compliance with the provisions of these regulations, the commission may decline to accept the documents for filing, advise the party submitting the documents of the deficiencies, and require correction of the deficiencies.

(d) The protest, reply, tariff and other pleadings relating to the proceeding shall be signed in ink and the signer's address shall be stated.

(e) The facts alleged in a protest, reply, tariff or other pleading shall be verified by the person on whose behalf it is filed. If a protest or pleading is filed on behalf of a corporation or other organization, it shall be verified by an officer of that corporation or organization.

(f) Identification. The protested tariff shall be identified by making reference to the name of the railroad or its publishing agent, to the KCC docket number, to the specific items of particular provisions protested and to the effective date of the protested publication. Reference shall also be made to the tariff and specific provisions of the tariff that are proposed to be superseded.

(g) Ground for suspension. The protest shall incorporate:

(1) Sufficient facts to meet the criteria for suspension, as set forth in K.A.R. 82-9-3;

(2) Sufficient facts to sustain the applicable burdens of proof, as set forth in K.A.R. 82-9-7; and

(3) Any additional information that would support suspension of the proposed rate.

(h) Timing. When a proposed change is to become effective upon not less than 20 days notice, each protest and request for suspension of a tariff filed by a railroad shall be received by the commission at least 10 days prior to the effective date. When the proposed change is to become effective upon not less than 10 days notice, such protests and requests shall be received at least five days prior to the effective date.

(i) Reply to protest. The reply shall adequately identify the protested tariff. Further, it shall contain sufficient facts to rebut the allegations made in the protest and to sustain the applicable burdens of proof.

(j) When the proposed change is to become effective upon not less than 20 days notice, a reply

to a protest shall be received by the commission not later than the fourth working day prior to the effective date. When the proposed change is to become effective upon not less than 10 days notice, the reply shall be received no later than the second working day prior to the effective date. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

### **82-9-11. Refund or collection of freight charges based upon commission findings.**

(a) Except as otherwise provided, when the commission finds that a railroad must make refunds on freight charges collected, or that the railroad is entitled to collect additional freight charges, but the amount cannot be ascertained upon the record before it, the party entitled to the refund or the railroad entitled to collect additional monies shall immediately prepare a statement showing details of the shipments involved in the proceeding.

(b) The statement shall not include any shipment not covered by the commission's findings. If the shipments moved over more than one route, a separate statement shall be prepared for each route and each statement shall be separately numbered. However, shipments which, in each instance, have the same collecting carrier may be listed in a single statement if grouped according to routes.

(c) Each prepared, certified statement shall be filed with the commission and it shall then consider entry of an order awarding refunds or authorizing collection of additional freight charges.

(d) If a rail carrier wishes to waive the collection of amounts due when such amounts are more than \$2,000, a petition for appropriate authority shall be filed by the carrier on the special docket by submitting a letter of intent to waive insignificant amounts. These petitions shall contain the following information:

(1) The name and address of the customer for whom the carrier wishes to waive collection;

(2) The name and addresses of the carriers involved in the intended waiver and a statement certifying that all carriers concur in the action;

(3) The amount intended to be waived;

(4) The points of origin and destination of the shipments and the routes of movement; and

(5) A brief statement of justification for the intended waiver, including the anticipated costs of billing, collection and/or litigation if the waiver is not permitted.

(e) If the amount to be waived is \$2,000 or less, no petition need be filed prior to the waiver. A letter of disposition informing the commission of the action taken, the date of the action, and the amount waived shall be submitted to the commission within 30 days of the waiver.

(f) Petitions to waive the collection of undercharges or waive the collection of insignificant amounts shall be made available by the commission for public inspection five days after receipt, and shall remain available for 25 days. Any interested person may protest the granting of a petition by filing a letter of objection with the commission within 30 days of commission receipt of the petition. Letters of objection shall clearly state the reasons for the objection, and shall certify that a copy of the letter of objection has been served on all parties named in the petition. A period of 15 days shall be allowed for reply from the respondent.

(g) Any petition which is not contested within 30 days shall be considered an order of the commission authorizing the action contemplated in the petition. In such a case the order shall take effect 45 days after commission receipt of the petition. Within 30 days after the expiration of the 45-day period, the carrier filing the petition shall file a letter of disposition informing the commission of the date of the action and the amount paid or waived. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984; amended May 1, 1985.)

**82-9-12. Zone of rate flexibility.** Base rates increased by the quarterly rail cost adjustment factor shall not be found to exceed a reasonable maximum for the transportation involved. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

**82-9-13. Market dominance.** (a) The commission shall determine, within 90 days of the start of a complaint proceeding, whether the carrier has market dominance over the transportation to which the rate applies. If the commission finds that the carrier has market dominance, it may then determine that rate to be unreasonable if it exceeds a reasonable maximum for that transportation.

(b) If the rail carrier establishing the challenged rate proves that the rate charged results in a revenue-variable cost percentage which is less than that allowed in K.A.R. 82-9-5, the rail carrier

shall not be considered to have market dominance over the transportation to which the rate applied.

(c) If the commission determines that a rail carrier does not have market dominance over the transportation to which a particular rate applies, the rate established by that carrier for the transportation shall be reasonable. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

**82-9-14. Maximum rates.** (a) Rail rates shall not be established below a reasonable minimum. Any rate for transportation by a rail carrier that does not contribute to the going concern value for that carrier is presumed to be not reasonable.

(b) Rail rates which equal or exceed the variable cost of providing the transportation shall be conclusively presumed to contribute to the going concern value of that rail carrier, and therefore shall be presumed not to be below a reasonable minimum.

(c) In determining whether a rate is reasonable, the policy that railroads earn adequate revenues, as well as evidence of the following factors, shall be considered:

(1) the amount of traffic which is transported at revenues which do not contribute to going concern value and efforts made to minimize such traffic;

(2) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on that traffic can be changed to maximize the revenues from such traffic; and

(3) the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues. (Authorized by K.S.A. 66-106; implementing K.S.A. 1989 Supp. 66-146; effective May 1, 1984; amended Oct. 29, 1990.)

**82-9-15. Burden of proof.** (a) Jurisdiction. Each defendant railroad shall bear the burden of showing that the commission lacks jurisdiction to review a rate because the rate produces a revenue—variable cost percentage that is less than the percentages incorporated in K.A.R. 82-9-7. The railroad shall meet its burden of proof by showing the revenue-variable cost percentage for the transportation to which the rate applies is less than the threshold percentage incorporated in K.A.R. 82-9-7. Any complainant may rebut the railroad's evidence with a showing that the

revenue-variable cost percentage is equal to or greater than the applicable threshold percentage.

(b) Reasonableness of existing rates. Any party complaining that an existing rate is unreasonably high shall bear the burden of proving that the rate is not reasonable. Any party complaining that an existing rate is unreasonably low shall bear the burden of demonstrating that the rate does not contribute to the going concern value of the carrier, and that the rate is, for that reason, unreasonably low.

(c) Nonapplicability. Complaints shall not be entertained by the commission to the extent that they challenge the reasonableness of the following rate adjustments:

- (1) general rate increases;
- (2) inflation-based rate increases; or
- (3) fuel adjustment surcharges. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

**82-9-16. Contracts.** (a) Definitions.

(1) "Contract," as used in this regulation, means a written agreement entered into by one or more rail carriers with one or more purchasers of rail services, to provide specified services under specified rates, charges, and conditions.

(2) "Amendment" means written contract modifications signed by the parties.

(b) Filing and approval. Each rail carrier providing transportation subject to commission jurisdiction shall file, with the commission, an original and one copy of all contracts entered into with one or more purchasers of rail services. These contracts shall be accompanied by two copies of the contract tariff that contains a summary of the nonconfidential elements of the contract in the form specified in 49 C.F.R. 1300.300-1300.315, as in effect on September 23, 1983, which is hereby adopted by reference. The following parts of the federal rules and regulations promulgated by the interstate commerce commission, as they existed on September 23, 1984, are hereby incorporated by reference: 49 C.F.R. 1300.300 through 1300.315.

(c) Each contract filed under the section shall specify that the contract is made pursuant to K.A.R. 82-9-16, and shall be signed by duly authorized parties.

(d) Each amendment shall be treated as a new contract. Each amendment shall be lawful only if it is filed and approved in the same manner as a contract. To the extent terms affecting the law-

fulness of the underlying contract are changed, remedies shall be revived and review shall again be available.

(e) Grounds for review of contract. A proceeding to review a contract may be initiated within 30 days of its filing date upon the commission's own motion or complaint of an interested party. Such a review shall be based only on an allegation of violations as described in K.A.R. 83-9-17. For purposes of this subsection, the definition of the term for "agricultural commodities," "forest products," and "paper" will be decided on a case-by-case basis.

(f) Enforcement. The exclusive remedy for an alleged breach of a contract approved by the commission shall be an action in an appropriate state district court, unless the parties otherwise agree in the contract. A rail carrier shall not be required to violate the terms of a contract, except to the extent necessary to comply with 49 U.S.C. § 11128.

(g) A rail carrier may enter into contracts for the transportation of agricultural commodities that involve the use of carrier-owned or based equipment if the involved equipment does not exceed 40 percent of the total number of the carrier's owned or leased equipment, by major car type. Agricultural commodities shall include forest products, excluding wood pulp, wood chips, pulpwood or paper.

(h) Any transportation or service performed under a contract or amendment may begin, without specific commission authorization, on or after the date the contract and contract summary or contract amendment and supplement are filed and before commission approval.

(i) Rules governing railroad contracts as set forth in 4 I.C.C.2d 288 (1988) are hereby adopted by reference. (Authorized by K.S.A. 66-106; implementing K.S.A. 1989 Supp. 66-146; effective May 1, 1984; amended May 1, 1985; amended Oct. 29, 1990.)

**82-9-17. Grounds for complaints.** Any contract may be reviewed by the commission on its motion, or upon complaint. Contracts shall be reviewed only on the following grounds:

(a) In the case of a contract other than a contract for the transportation of agricultural commodities, including forest products and paper, a shipper may file a complaint only on the grounds that the shipper individually will be harmed because the contract unduly impairs the ability of

the contracting carrier or carriers to meet their common obligations under 49 U.S.C. Sec. 11101 (a), as in effect on September 23, 1983.

(b) In the case of a contract for the transportation of agricultural commodities, including forest produce and paper, a shipper may file a complaint only on the grounds that:

(1) The shipper individually will be harmed because the contract unduly impairs the ability of the contracting carrier or carriers to meet common carrier obligations;

(2) The rail carrier or carriers unreasonable discriminated against the shipper; or

(3) The contract constitutes a destructive, competitive practice.

(c) "Unreasonable discrimination," as used in these rules and when applied to agricultural shippers, means that the railroad has refused to enter into a contract with the shipper for rates and services for transportation of the same type of commodity under similar conditions to the contract at issue, and that the shipper was ready, willing, and able to enter into a contract at a time essentially contemporaneous with the period during which the contract at issue was offered. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

#### **82-9-18. Filing and service of complaints.**

(a) An original and six copies of a complaint shall be filed with the commission by the 18th day after the filing date of the contract. A copy of the complaint shall also be served on each railroad listed as a railroad participating in the contract, by hand, express mail, or other overnight delivery service.

(b) An original and six copies of a reply shall be filed by the 23rd day after the filing of the contract and a copy shall be served upon the complainants.

(c) Any appeal of the commission's decision shall be made at least two work days prior to the contract approval date. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

#### **82-9-19. Commission decision upon review of contract.**

(a) Within 30 days after the date a proceeding is begun to review a contract upon the grounds specified in 82-9-17(b), the commission shall decide whether the contract violates the provisions of 49 U.S.C. Sec. 10713, as in effect on September 23, 1983. If the commission finds that a violation exists, it shall:

(1) disapprove the contract;

(2) in the case of agricultural contracts where the commission finds unreasonable discrimination by a carrier, order the carrier to provide rates and services substantially similar to the contract at issue with any differences in terms and conditions that are justified by the evidence; or

(3) allow the carrier to cancel the contract.

(b) Approval date of contract. Each contract shall be approved on the 30th day after the filing date of that contract. If the commission does not institute a proceeding to review the contract, the contract shall be considered "expressly approved" by the commission.

(c) If the commission institutes a proceeding to review a contract, that contract shall be approved:

(1) on the date the commission approves the contract, if the date of approval is 30 or more days after the filing date of the contract;

(2) on the 30th day after the filing date of the contract, if the commission approves the contract prior to the 30th day after the filing date of the contract; or

(3) on the 60th day after the filing date of a contract, if the commission fails to disapprove the contract. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984; amended May 1, 1985.)

#### **82-9-20. Limitation of rights of a rail carrier to enter future contracts.**

The commission may limit the right of any rail carrier to enter into future contracts if it determines that additional contracts would impair the ability of the rail carrier to fulfill its common carrier obligations. That determination shall be handled on a case-by-case basis. The commission may investigate either on its own initiative or upon the filing of a verified complaint, by a shipper, which demonstrates that the carrier's inability to fulfill its common carrier obligations, as a result of existing contracts, harmed that shipper. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

#### **82-9-21. Common carrier responsibility.**

(a) The terms of each contract approved by the commission shall completely determine the duties and service obligations of the parties to the contract with respect to the services provided under the contract. The contract shall not affect the parties' responsibilities for any services which are not included in the contract.

(b) The exclusive remedy for an alleged breach

of a contract approved by the commission shall be an action in an appropriate state court or United States district court, unless the parties otherwise agree in the contract. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

**82-9-22. Filing a contract and contract tariff.** (a) Each railroad entering into a contract for railroad transportation services (or the originating railroad for a contract involving movement over more than one railroad) with one or more purchasers of rail service shall file, with the commission, the original and one copy of the contract and two copies of the contract tariff.

(b) Each contract filed under these rules shall not be available for inspection by persons other than the parties to the contract and authorized commission personnel, except by a petition demonstrating that the petitioner is likely to succeed on the merits of the complaint and that the matter complained of could not be proved without access to the complete contract.

(c) The contract tariff filed under these rules shall include the information specified in 49 CFR 1300.300-1300.315, as in effect on September 23, 1983, which are hereby adopted by reference. The contract tariff shall be made available for inspection by the general public.

(d) Copies of contract summaries shall be available from the commission. When requesting a summary, reference shall be made to the contract docket number.

(e) Each contract and contract tariff shall be filed with the commission at least 30 days, and not more than 60 days, before the date on which it is to become effective, except as otherwise authorized by the commission. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

**82-9-23. Exempt transportation.** (a) The commission may exempt a person, class of person, transaction or service from further rail regulation by the commission when it finds that:

(1) further regulation is not necessary to carry out state and national transportation policy; and

(2) either the transaction or service is of limited scope, or further regulation is not needed to protect shippers from the abuse of market power.

(b) The commission may, on its own initiative, or on application by any interested party, begin a proceeding to exempt rail carrier transportation.

(c) The commission may specify the period of time during which the exemption granted is effective.

(d) The commission may revoke, in whole or in part, an exemption if it determines that a revocation is necessary to carry out state and national transportation policy.

(e) When the interstate commerce commission concludes that a particular category of interstate traffic is exempted, this commission will adopt it as a standard for intrastate traffic. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984; amended May 1, 1985.)

**82-9-24. Joint rate surcharges and cancellations.** (a) 49 U.S.C. 10705a, as it existed on September 15, 1984, is adopted by reference.

(b) Rail variable cost and revenue determinations for joint rates subject to surcharge or cancellation shall be made pursuant to 3 I.C.C.2d 703 and 49 C.F.R. Part 1138 as in effect October 1, 1989.

(c) Cancellation of joint rates and complaints seeking prescription of joint rates and reciprocal switching arrangements shall be made pursuant to 1 I.C.C.2d 822 and 49 C.F.R. Part 1144 as in effect October 1, 1989. (Authorized by K.S.A. 66-106; implementing K.S.A. 1989 Supp. 66-146; effective May 1, 1984; amended May 1, 1985; amended Oct. 29, 1990.)

**82-9-25. Rate discrimination.** Differences between rates, classifications, rules and practices of rail carriers that provide transportation which is subject to the jurisdiction of the commission shall not constitute unlawful discrimination if the differences result from different services provided by rail carriers. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

## Article 10.—OIL AND NATURAL GAS LIQUID PIPELINES

**82-10-1. Definitions.** The following terms as used in this regulation and the identified sections of the regulations adopted by reference are defined as follows:

(1) The term “carrier” as used in 18 C.F.R. 352, means an oil or natural gas liquid pipeline company as defined as a common carrier in K.S.A. 55-501 and 66-1,215.

(2) The term “commission” as used in 18 C.F.R. 352, means the state corporation commission of Kansas. (Authorized by K.S.A. 55-504 and K.S.A. 66-1,218; implementing K.S.A. 55-501 and K.S.A. 66-1,215, effective May 1, 1987.)

**82-10-2. Rate applications of oil and natural gas liquid pipeline companies.** (a) Scope. An oil or natural gas liquid pipeline company whose rates are under review by this commission at the request of the applicant, or as a result of investigation, complaint or any other procedure, shall comply with this regulation. The applicant shall be prepared to establish by appropriate schedules and competent testimony all relevant facts and data pertaining to its business and operations which will assist the commission in arriving at a determination of rates which will be fair, just and reasonable both to the applicant and the public.

(b) In preparing justification statements, prefiled testimony and supporting schedules, the applicant shall utilize the following format:

(1) The first section shall contain a copy of the application, a copy of the letter of transmittal, and the appropriate document or documents authorizing the filing of the application, if any.

(2) The second section shall give general information and shall include:

(A) the amount of dollars of the aggregate annual increase which the application proposes;

(B) a summary of the reasons for filing the application;

(C) such other pertinent information which the applicant may desire to submit or which the commission may in its discretion require;

(D) copies of any press releases issued by the applicant prior to or at the time of filing the application for a rate review, relating to that review; and

(E) a copy of the system diagram map.

(3) The annual report or Federal Energy Regulatory Commission Form 6 shall be included.

(4) The last sections shall include all other schedules, exhibits and data deemed pertinent to the application which may not be properly included under the preceding sections. Such additional evidence may be submitted at the option of the applicant and shall be submitted upon the direction of the commission.

(c) Prefiled testimony shall be filed simultaneously with the filing of the application.

(d) For good cause shown the commission may waive any of the requirements of this rule. (Authorized by K.S.A. 55-504, K.S.A. 66-106 and K.S.A. 66-1,218; implementing K.S.A. 55-504 and K.S.A. 66-1,218; effective May 1, 1987.)

**82-10-3. Revisions of application and schedules.** (a) If an oil or natural gas liquid

pipeline company desires to make revisions to its application and schedules, other than minor corrections and insertions which can only be made by interlineation without unduly prolonging a hearing with respect to the application or schedules, the applicant shall file with the commission revised schedules as are necessary to reflect the desired revisions:

(1) Each page of the revised section or schedule shall bear the same section letter designation, schedule number, and page number as the original page with the word "Revised" and the date of the revision immediately below the original section, schedule, or page designation.

(2) There shall be filed the same number of copies of any revised sections, schedules or pages as the number of copies originally required to be filed.

(3) A copy of each revised section, schedule or page shall also be served upon each party whose intervention has previously been permitted by the commission pursuant to K.A.R. 82-1-225.

(4) All revised sections, schedules and pages shall be filed according to the provisions of K.A.R. 82-1-221, unless otherwise ordered by the commission for good cause shown.

(5) Substantial revisions of the schedules, such as changing to a different test year, may constitute grounds for the commission to continue any scheduled hearing to a later date, if necessary for its staff to conduct further investigation or revise its schedules with respect to these revisions.

(6) Revised prefiled testimony shall be filed simultaneously with the filing of the revised application.

(b) For good cause shown the commission may waive any of the requirements of this rule. (Authorized by K.S.A. 55-504, K.S.A. 66-106 and K.S.A. 66-1,218; implementing K.S.A. 55-504 and K.S.A. 66-1,218; effective May 1, 1987.)

**82-10-4. Annual report.** Every oil or natural gas liquid pipeline company subject to the commission's jurisdiction shall file with the commission a copy of form No. 6, "Annual Report of Oil Pipeline Companies" which has been filed with the Federal Energy Regulatory Commission. This report shall be filed by March 31 of each year for the previous calendar year. (Authorized by K.S.A. 55-504, K.S.A. 66-106, and K.S.A. 66-1,218; implementing K.S.A. 55-504 and K.S.A. 66-1,218; effective May 1, 1987.)

**82-10-5. Suspension of certificate for failure to comply with regulations.** The certificate of any oil or natural gas liquid pipeline company who fails to comply with the rules and regulations of the commission or the laws of the state of Kansas may be suspended. This failure shall be full and sufficient cause for the commission to cancel the certificate upon citation and hearing. (Authorized by and implementing K.S.A. 66-1,216; effective May 1, 1987.)

#### Article 11.—NATURAL GAS PIPELINE SAFETY

**82-11-1. Definitions.** The following terms, as used in this article and in the identified sections of the federal regulations adopted by reference, shall be defined as specified in this regulation:

(a) “Area of residential development” means a location in which over 25 residential customers are being, or are expected to be, added over the period in which the area is to be developed.

(b) “Barhole” means a small hole made near gas piping to extract air from the ground.

(c) “Combustible gas indicator” means a type of leak detection equipment capable of detecting and measuring gas concentrations in the atmosphere with minimum detection accuracy of 0.5% gas in the air.

(d) “Commission” means state corporation commission of Kansas.

(e) “Confined space” means any subsurface structure, including vaults, tunnels, catch basins and manholes, that is of sufficient size to accommodate a person and in which gas could accumulate.

(f) “Construction project” means the construction of either of the following:

(1) Any jurisdictional pipeline installation, including new, replacement, or relocation projects, in which the total piping installed during the project is in excess of 400 feet for small gas operators or 1,000 feet for all other gas operators; or

(2) any other significant pipeline installation that is subject to these safety standards.

(g) “Department of transportation” means U.S. department of transportation.

(h) “Exposed pipeline” means buried pipeline that has become uncovered due to erosion, excavation, or any other cause.

(i) “Flame ionization” means a type of leak detection equipment that uses a technology that continuously draws ambient air through a hydro-

gen flame and thereby provides an indication of the presence of hydrocarbons.

(j) “Gas-associated structure” means a device or facility utilized by a gas company, including a valve box, vault, test box, and vented casing pipe, that is not intended for storing, transmitting, or distributing gas.

(k) “Gas pipeline safety section” means the gas pipeline safety section of the state corporation commission of Kansas.

(l) “Inspector” means an employee of the gas pipeline safety section of the state corporation commission of Kansas.

(m) “Leak detection equipment” means a device, including a flame ionization unit, combustible gas indicator, and other equipment as approved by the gas pipeline safety section, that measures the amount of hydrocarbon gas in an ambient air sample.

(n) “Lower explosive limit” and “LEL” mean the lowest percent of concentration of natural gas in a mixture with air that can be ignited at normal ambient atmospheric temperature and pressure.

(o) “Odorometer” means an instrument capable of determining the percentage of gas in air at which the odor of the gas becomes detectible to an individual with a normal sense of smell.

(p) “Small gas operator” means an operator who engages in the transportation or distribution of gas, or both, in a system having fewer than 5,000 service lines.

(q) “Small substructure” means any subsurface structure, other than a gas-associated structure, that is of sufficient size to accommodate a person and in which gas could accumulate, including telephone and electrical ducts and conduit, and nonassociated valve and meter boxes.

(r) “Sniff test” means a qualitative test performed by an individual with a normal sense of smell. The test is conducted by releasing small amounts of gas in order to determine whether an odorant is detectible.

(s) “Town border station” means a pressure-limiting station that reduces the pressure of the gas stream delivered downstream of the station, normally located within or immediately adjacent to the gas purchase point, at which natural gas ownership passes from one party to another, neither of which is the ultimate consumer.

(t) “Underground leak classification” means the process of sampling the subsurface atmosphere for gas using a combustible gas indicator in a series of available openings or barholes over, or adja-

cent to, the gas facility. If applicable, the sampling pattern shall include sample points that indicate sustained readings of 0% gas in air in the four cardinal directions.

(u) “Utility division” means the utility division of the state corporation commission of Kansas.

(v) “Yard line” means the buried, customer-owned, individually metered piping between the outlet of the meter and the outside wall of a residential premises. (Authorized by and implementing K.S.A. 2014 Supp. 66-1,150 and 66-1,157a; effective, T-82-10-28-88, Oct. 28, 1988; effective, T-82-2-25-89, Feb. 25, 1989; revoked, T-82-3-31-89, April 30, 1989; effective May 1, 1989; amended July 7, 2003; amended Jan. 25, 2008; amended Jan. 9, 2015.)

**82-11-2. Enforcement procedures.** Regulations adopted by the commission pursuant to the gas pipeline safety act, and amendments thereto, shall be investigated by the gas pipeline safety section of the commission. As necessary to ensure compliance with this article of the commission’s regulations, commission staff may bring before the commission a show cause proceeding or any other proceeding or action for consideration by the commission. (Authorized by and implementing K.S.A. 66-106 and 66-1,150; effective, T-82-10-28-88, Oct. 28, 1988; effective, T-82-2-25-89, Feb. 25, 1989; revoked, T-82-3-31-89, April 30, 1989; effective May 1, 1989; amended Dec. 10, 2021.)

**82-11-3. Transportation of natural and other gas by pipeline; annual reports and incident reports.** The federal regulations titled “transportation of natural and other gas by pipeline; annual reports, incident reports, and safety-related condition reports,” 49 C.F.R. Part 191, as in effect on October 1, 2018, are hereby adopted by reference except for the following changes:

(a) The following provisions shall be excluded from adoption:

(1) All portions that include jurisdiction beyond the state of Kansas, including off-shore pipelines, the outer continental shelf, and states other than Kansas;

(2) 49 C.F.R. 191.7;

(3) 49 C.F.R. 191.21; and

(4) all sections labeled “reserved.”

(b) The following revisions shall be made to 49 C.F.R. 191.3:

(1) The following sentence shall be deleted: “Administrator means the Administrator, Pipeline

and Hazardous Materials Safety Administration or his or her delegate.”

(2) The definition of “LNG facility” shall be deleted and replaced by the following: “means a pipeline facility that is used for liquefying natural gas or synthetic gas or transferring, storing, or vaporizing liquefied natural gas.”

(3) The definition of “Underground natural gas storage facility” shall be deleted and replaced by the following: “means an underground natural gas storage facility as defined in 49 C.F.R. 192.3 as adopted by K.A.R. 82-11-4.”

(c) The following revisions shall be made to 49 C.F.R. 191.5:

(1) 49 C.F.R. 191.5(b) shall be deleted and replaced by the following: “(b) Each notice required by paragraph (a) of this section shall be made by telephone to the gas pipeline safety section of the commission and to the U.S. department of transportation. Both notices shall include the following information:

“(1) The names of the operator and the person making the report and their telephone numbers;

“(2) the location of the incident;

“(3) the time of the incident;

“(4) the number of fatalities and personal injuries, if any; and

“(5) all other significant facts known by the operator that are relevant to the cause of the incident or extent of the damages.”

(2) The following text shall be added to 49 C.F.R. 191.5: “(d) Each operator shall notify the gas pipeline safety section of the commission within one hour following confirmed discovery of any incident, as defined in 49 C.F.R. Part 191 as adopted by this regulation, within the operator’s certified areas or operating areas. If an incident occurs outside the commission’s working hours of 8:00 a.m. through 5:00 p.m., Monday through Friday, or any other day on which the commission office is not open, the operator shall contact a designated employee of the gas pipeline safety section of the commission. Each operator shall have a copy of the list of designated employees provided by the Commission.”

(d) 49 C.F.R. 191.9(a) shall be deleted and replaced by the following: “(a) Except as provided in paragraph (c) of this section, each operator of a distribution pipeline system shall submit U.S. department of transportation form RSPA F 7100.1 to the gas pipeline safety section of the commission as soon as practicable but not more than 30 calendar days after detection of an incident re-

quired to be reported under 49 C.F.R. 191.5 as adopted by this regulation.”

(e) 49 C.F.R. 191.9(b) shall be deleted and replaced by the following: “(b) If additional relevant information is required after the report is submitted under paragraph (a), each operator shall submit to the commission a written report providing the additional information pertaining to the incident within 15 calendar days of the commission’s request.”

(f) 49 C.F.R. 191.11(a) shall be deleted and replaced by the following: “(a) Except as provided in paragraph (b) of this section, each operator of a distribution pipeline system shall submit an annual report in duplicate for that system to the commission on U.S. department of transportation form PHMSA F 7100.1-1. This report shall be submitted to the gas pipeline safety section of the commission not later than March 1 of each year, for the preceding calendar year. An operator may satisfy this filing requirement by informing the gas pipeline safety section of the commission in writing of the date of submission of form PHMSA F 7100.1-1 to the U.S. department of transportation.”

(g) 49 C.F.R. 191.12 shall be deleted and replaced by the following: “As required by 49 C.F.R. 192.1009, as adopted by K.A.R. 82-11-4, each mechanical fitting failure shall be submitted on a Mechanical Fitting Failure Report Form PHMSA F-7100.1-2. An operator shall submit a mechanical fitting failure report for each mechanical fitting failure that occurs within a calendar year not later than March 1 of the following year. Alternatively, an operator may elect to submit its reports throughout the year. An operator shall report this information to the commission and the Pipeline and Hazardous Materials Safety Administration by the March 1 reporting date. An operator may satisfy this filing requirement by informing the gas pipeline safety section of the commission in writing of the date of submission of form PHMSA F-7100.1-2 to the U.S. department of transportation.”

(h) 49 C.F.R. 191.15(a) shall be deleted and replaced by the following: “(a) Except as provided in paragraph (c) of this section, each operator of a transmission or a gathering pipeline system shall submit U.S. department of transportation form PHMSA F 7100.2 to the commission as soon as practicable but not more than 30 calendar days after detection of an incident required to be reported under 49 C.F.R. 191.5 as adopted by this regulation.”

(i) 49 C.F.R. 191.15(d) shall be deleted and re-

placed by the following: “(d) If additional relevant information is required by the commission after the report is submitted under paragraph (a), (b) or (c), each operator shall submit to the commission a written report providing the additional information pertaining to the incident within 15 calendar days of the commission’s request.”

(j) 49 C.F.R. 191.17(a), (b), and (c) shall be deleted and replaced by the following:

“(a) Each operator of a transmission or gathering pipeline system shall submit an annual report in duplicate for that system to the commission on U.S. department of transportation form PHMSA F 7100.2.1. This report shall be submitted to the gas pipeline safety section of the commission not later than March 1 of each year, for the preceding calendar year. An operator may satisfy this filing requirement by informing the gas pipeline safety section of the commission in writing of the date of submission of form PHMSA F 7100.2.1 to the U.S. department of transportation.

“(b) Each operator of a liquefied natural gas facility shall submit an annual report in duplicate for that system to the commission on U.S. department of transportation form PHMSA F 7100.3-1. This report shall be submitted to the gas pipeline safety section of the commission not later than March 1 of each year, for the preceding calendar year. An operator may satisfy this filing requirement by informing the gas pipeline safety section of the commission in writing of the date of submission of form F 7100.3-1 to the U.S. department of transportation.

“(c) Each operator of an underground natural gas storage facility shall submit an annual report in duplicate for that system to the commission on U.S. department of transportation form PHMSA F 7100.4-1. This report shall be submitted to the gas pipeline safety section of the commission not later than March 1 of each year, for the preceding calendar year. An operator may satisfy this filing requirement by informing the gas pipeline safety section of the commission in writing of the date of submission of form PHMSA F 7100.4-1 to the U.S. department of transportation.”

(k) 49 C.F.R. 191.22(a) shall be deleted and replaced with the following: “(a) OPID request. Effective January 1, 2012, each operator of a gas pipeline, gas pipeline facility, underground natural gas storage facility, LNG plant or LNG facility must obtain from PHMSA an Operator Identification Number (OPID). An OPID is assigned to an operator for the pipeline or pipeline system for which the operator has a primary responsibility.”

(l) 49 C.F.R. 191.25(a) shall be deleted and replaced with the following: “(a) Each report of a safety-related condition under 49 C.F.R. 191.23, as adopted by K.A.R. 82-11-3, must be filed (received by the gas pipeline safety section of the commission) five business days after the day a representative of the operator first determines that the condition exists, but not later than 10 business days after the day a representative of the operator discovers the condition. Separate conditions may be described in a single report if they are closely related. Reports may be transmitted by electronic mail to: kccpipelinesafety@kcc.ks.gov.” (Authorized by and implementing K.S.A. 66-1,150; effective, T-82-10-28-88, Oct. 28, 1988; effective, T-82-2-25-89, Feb. 25, 1989; revoked, T-82-3-31-89, April 30, 1989; effective May 1, 1989; amended April 16, 1990; amended March 12, 1999; amended July 7, 2003; amended Jan. 25, 2008; amended Dec. 10, 2021.)

**82-11-4. Transportation of natural and other gas by pipeline; minimum safety standards.** The federal regulations titled “transportation of natural and other gas by pipeline: minimum federal safety standards,” 49 C.F.R. Part 192, including appendices B, C, D, and E, as in effect on October 1, 2018, are hereby adopted by reference with the following changes:

(a) The following provisions shall be excluded from adoption:

- (1) 49 C.F.R. 192.7(a);
- (2) 49 C.F.R. 192.57;
- (3) 49 C.F.R. 192.61;
- (4) 49 C.F.R. 192.117 through 192.119;
- (5) 49 C.F.R. 192.455(b);
- (6) 49 C.F.R. 192.491(b);
- (7) 49 C.F.R. 192.607;
- (8) appendix A;
- (9) portions that include jurisdictions beyond the state of Kansas;
- (10) portions that apply to off-shore pipelines;
- (11) portions that apply to the outer continental shelf;
- (12) portions that apply to states other than Kansas; and

(13) all sections labeled “reserved.”

(b) The following provisions shall be modified:

(1) The following definitions in 49 C.F.R. 192.3 shall be modified:

(A) The word “administrator” shall be deleted and replaced with “commission.”

(B) The word “municipality” shall mean a city,

county, or any other political subdivision of the state of Kansas.

(C) The word “state” shall mean the state of Kansas.

(2) In 49 C.F.R. 192.12(f), “PHMSA” shall be deleted and replaced by “gas pipeline safety section of the commission.”

(3) In 49 C.F.R. 192.14(c), “PHMSA” shall be deleted and replaced by “gas pipeline safety section of the commission.”

(4) In 49 C.F.R. 192.112(h), the phrase “each PHMSA pipeline safety regional office” shall be deleted and replaced by “gas pipeline safety section of the commission.”

(5) 49 C.F.R. 192.181(a) shall be deleted and replaced by the following: “(a) Each high-pressure distribution system shall have valves spaced to reduce the time to shut down a section of main in an emergency. Each operator shall specify in its operation and maintenance manual the criteria as to how valve locations are determined using, as a minimum, the considerations of operating pressure, the size of the mains, and the local physical conditions. The emergency manual shall include instructions on where operating personnel can find maps and other means of locating emergency valves during an emergency. Each area of residential development constructed after May 1, 1989, shall be provided with at least one valve to isolate it from other areas.”

(6) 49 C.F.R. 192.199(e) shall be deleted and replaced by the following: “(e) Have discharge stacks, vents, or outlet ports designed to prevent accumulation of water, ice, or snow, located where gas can be discharged into the atmosphere without undue hazard. At town border stations and district regulator settings, the gas shall be discharged upward at a minimum height of six feet from the ground or past the overhang of any adjacent building, whichever is greater.”

(7) 49 C.F.R. 192.199(h) shall be deleted and replaced by the following: “(h) Except for a valve that will isolate the system under protection from its source of pressure, shall be designed to prevent unauthorized access to or operation of any stop valve that will make the pressure-relief valve or pressure-limiting device inoperative including:

“(1) valves that would bypass the pressure regulator or relief devices; and

“(2) shut-off valves in regulator control lines that, if operated, would cause the regulator to be inoperative.”

(8) The following shall be added to 49 C.F.R. 192.199: “(i) At town border stations and district regulator settings, this section shall require pressure-relief or pressure-limiting devices regardless of installation date.”

(9) 49 C.F.R. 192.307 shall be deleted and replaced by the following: “Inspection of materials. Each length of pipe and each other component shall be visually inspected at the site of installation to ensure that it has not sustained any visually determinable damage that could impair its serviceability. Except for short sections of pipe with external coating applied after installation, each coated length of pipe shall be checked for defects in the coating using an instrument that is calibrated according to manufacturer’s specifications prior to lowering the pipe into the ditch.”

(10) The following subsection shall be added to 49 C.F.R. 192.317: “(d) Each existing above-ground pipeline shall be placed underground, with the following exceptions:

“(1) Regulator station piping;

“(2) bridge crossings;

“(3) aerial crossings or spans;

“(4) short segments of piping for valves intentionally brought above the ground, including risers, piping at compressor, processing or treating facilities, block gate settings, sectionalizing valves and district regulator sites;

“(5) distribution mains specifically designed to be above the ground and have the approval of the landowner to provide service to commercial customers from the aboveground main and associated service line or lines; or

“(6) pipelines in class 1 locations that were in natural gas service before May 1, 1989.”

(11) The following shall be added to 49 C.F.R. 192.317: “(e) Each pipeline constructed after May 1, 1989, shall be placed underground, with the following exceptions:

“(1) Regulator station piping;

“(2) bridge crossings;

“(3) aerial crossings or spans;

“(4) short segments of piping for valves intentionally brought above ground, including risers, piping at compressor, processing or treating facilities, block gate settings, sectionalizing valves and district regulator sites; or

“(5) distribution mains specifically designed to be above ground and have the approval of the landowner to provide service to commercial customers from the aboveground main and associated service line or lines.”

(12) 49 C.F.R. 192.453 shall be deleted and replaced by the following: “(a) The corrosion control procedures required by 49 C.F.R. 192.605(b)(2), including those for the design, installation, operation, and maintenance of cathodic protection systems, shall be carried out by, or under the direction of, a person qualified in pipeline corrosion control methods.

“(b) Any unprotected steel service or yard line found to have active corrosion shall be either provided with cathodic protection and monitored annually as required by this regulation or replaced. In areas where there is no active corrosion, each operator shall, at intervals not exceeding three years, reevaluate these pipelines.

“(c) In lieu of conducting electrical surveys on unprotected steel service lines and yard lines, each operator may implement one of the following options:

“(1) Conduct annual leakage surveys at intervals not exceeding 15 months, but at least once each calendar year, on all unprotected steel service lines and yard lines and initiate a program to apply cathodic protection for all unprotected steel service lines and yard lines; or

“(2) conduct annual leakage surveys at intervals not exceeding 15 months, but at least once each calendar year, on all unprotected steel service lines and yard lines and initiate a preventative maintenance program for replacement of service and yard lines. The preventative maintenance program to be used in conjunction with the annual leak survey of unprotected steel service and yard lines shall include the following:

“(A) After the annual leakage survey of all unprotected steel service and yard lines is completed, the operator shall prepare a summary listing of the leak survey results.

“(B) The summary listing shall include the number of leaks found and the number of lines replaced in a defined area.

“(C) An operator’s replacement program for all service or yard lines in the defined area shall be initiated no later than when the sum of the number of unprotected steel service or yard lines with existing or repaired corrosion leaks and the number of unprotected steel service or yard lines already replaced due to corrosion equals 25% or more of the unprotected steel service or yard lines installed within that defined area.

“(D) The replacement program, once initiated for a defined area, shall be completed by an operator within 18 months.

“(E) Operators, at their option, may have separate preventative maintenance programs for service lines and yard lines but shall consistently follow their selection.

“(d) For a city of the third class, or a city having a population of 2,000 or less, which is an operator of a natural gas distribution system, a replacement program for unprotected steel yard lines may comply with paragraph (c)(2)(D) of this section or include the following requirements in their replacement plan:

“(1) Perform leakage surveys at six-month intervals;

“(2) Notify all customers in the defined area with a written recommendation that all unprotected steel yard lines should be scheduled for replacement; and

“(3) Replace all unprotected steel yard lines in the defined area that exhibit active corrosion.”

(13) 49 C.F.R. 192.455(a) shall be deleted and replaced by the following: “(a) Except as provided in paragraphs (c) and (f) of this section, each buried, submerged pipeline, or exposed pipeline, installed after July 31, 1971, shall be protected against external corrosion by various methods, including the following:

“(1) An external protective coating meeting the requirements of 49 C.F.R. 192.461; and

“(2) A cathodic protection system designed to protect the pipeline in accordance with this subpart, installed and placed in operation within one year after completion of construction.”

(14) 49 C.F.R. 192.457(b) shall be deleted and replaced by the following: “(b) Except for cast iron or ductile iron pipelines, each of the following buried, exposed or submerged pipelines installed before August 1, 1971, shall be cathodically protected in accordance with this subpart in areas in which active corrosion is found:

“(1) Bare or ineffectively coated transmission lines;

“(2) bare or coated pipes at compressor, regulator, and measuring stations; and

“(3) bare or coated distribution lines.”

(15) 49 C.F.R. 192.465(a) shall be deleted and replaced by the following: “Each pipeline that is under cathodic protection shall be tested at least once each calendar year, but in intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of 49 C.F.R. 192.463. If tests at those intervals are impractical for separately protected short sections of mains or transmission lines not in excess of 100 feet, or sep-

arately protected service lines, these pipelines may be surveyed on a sampling basis. At least one-third of the separately protected short sections, distributed over the entire system, shall be surveyed each calendar year, with a different one-third checked each subsequent year, so that the entire system is tested in each three-year period.”

(16) 49 C.F.R. 192.465(d) shall be deleted and replaced by the following: “(d) Each operator shall begin corrective measures within 30 days, or more promptly if necessary as determined by the operator, on any deficiencies indicated by the monitoring.”

(17) 49 C.F.R. 192.465(e) shall be deleted and replaced by the following: “(e) After the initial evaluation required by this regulation, each operator shall, at least every three calendar years at intervals not exceeding 39 months, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey, where practical.”

(18) The following shall be added to 49 C.F.R. 192.465: “(f) Electrical surveys shall be conducted in all areas, except the following:

“(1) Where the pipe lies under wall-to-wall pavement;

“(2) where the pipe is in a common trench with other utilities;

“(3) in areas with stray current; or

“(4) in areas where the pipeline is under pavement, regardless of depth, and more than two feet away from an unpaved area.

“(g) Where an electrical survey is excepted as listed in paragraph (f) of this section, the operator shall conduct leakage surveys using leak detection equipment in accordance with this regulation and evaluate for areas of active corrosion. The evaluation for active corrosion shall include review and analysis of leak repair records, corrosion monitoring records, exposed pipe inspection records, and the analysis of the pipeline environment.

“(h) For unprotected steel transmission lines and mains, a repair/replacement program shall be established based upon the number of leaks in a defined area.”

(19) 49 C.F.R. 192.491(a) shall be deleted and replaced by the following: “(a) For as long as the pipeline remains in service, each operator shall maintain records and maps to show the locations of all cathodically protected piping, cathodic protection facilities other than unrecorded galvan-

ic anodes installed before August 1, 1971, and neighboring structures bonded to the cathodic protection system.”

(20) 49 C.F.R. 192.509(b) shall be deleted and replaced by the following: “(b) Each steel main that is to be operated at less than 1 p.s.i. gage shall be tested to at least 10 p.s.i. gage and each main to be operated at or above 1 p.s.i. gage shall be tested to at least 100 p.s.i. gage.”

(21) The following shall be added to 49 C.F.R. 192.517(a): “(8) Test date. (9) Description of facilities being tested.”

(22) 49 C.F.R. 192.517(b) shall be deleted and replaced by the following: “(b) For any pipeline installed after May 1, 1989, each operator shall make, and retain for the useful life of the pipeline, a record of each test performed under §§ 192.509 as modified by this regulation, 192.511 and 192.513.”

(23) 49 C.F.R. 192.553(a)(1) shall be deleted and replaced by the following: “(1) At the end of each incremental increase, the pressure shall be held constant while the entire segment of pipeline that is affected is checked for leaks. This leak survey by flame ionization shall be conducted within eight hours after the stabilization of each incremental pressure increase provided in the uprating procedure. If the operator elects to not conduct the leak survey within the specified time frame because of nightfall or other circumstance, the pressure increment in the line shall be reduced that day with repetition of that particular increment during the next day that the uprating procedure is continued.”

(24) 49 C.F.R. 192.603(b) shall be deleted and replaced by the following: “(b) Each operator shall establish a written operating and maintenance plan meeting the requirements of this part and keep records necessary to administer the plan. This plan and future revisions shall be submitted to the gas pipeline safety section of the commission.”

(25) 49 C.F.R. 192.603(c) shall be deleted and replaced by the following: “(c) The PHMSA designee or the commission, with respect to pipeline facilities governed by an operator’s plans and procedures may, after notice and opportunity for hearing as provided in 49 C.F.R. 190.206 for actions brought by the PHMSA designee or K.A.R. 82-11-6, K.A.R. 82-1-230, and K.A.R. 82-1-232(b) for actions brought by the commission, require an operator to amend its plans and procedures as necessary to provide a reasonable level of safety.”

(26) The following shall be added to 49 C.F.R. 192.603:

“(d) Each operator shall have regulator and relief valve test, maintenance and capacity calculation records in its possession whether the town border station is owned by the operator or by a wholesale supplier, if the supplier’s relief valve capacity is utilized to provide protection for the operator’s system.

“(e) Each operator shall be responsible for ensuring that all work completed by its consultants and contractors complies with this part.”

(27) The following shall be added to 49 C.F.R. 192.605(b):

“(13) Classifying underground leaks according to this regulation.

“(14) Performing leakage surveys of underground pipelines.

“(15) Identifying conditions which will require patrols of a distribution system at intervals shorter than the maximum intervals listed in this regulation.”

(28) In 49 C.F.R. 192.616(h), “PHMSA” shall be deleted and replaced by “gas pipeline safety section of the commission.”

(29) 49 C.F.R. 192.617 shall be deleted and replaced by the following: “Investigation of failures. (a) Each operator shall establish procedures for analyzing accidents and failures, including:

“(1) The maintenance of records that contain information for each pipeline failure, including the type of pipe and the reason for failure.

“(2) The selection of samples of the failed facility or equipment for laboratory examination, where appropriate, for the purpose of determining the causes of the failure and minimizing the possibility of recurrence.

“(b) Each operator shall investigate each accident and failure.”

(30) The following changes shall be made to 49 C.F.R. 192.620:

(A) The first sentence of 49 C.F.R. 192.620(a), (b), (c), (d), and (e) shall be deleted.

(B) All references to “PHMSA” shall be deleted and replaced by “gas pipeline safety section of the commission.”

(C) Each instance of the phrase “each PHMSA pipeline safety regional office” shall be deleted and replaced by “gas pipeline safety section of the commission.”

(31) 49 C.F.R. 192.625(f) shall be deleted and replaced by the following:

“(f) Each operator shall ensure the proper concentration of odorant and shall maintain records

of these samplings for at least two years in accordance with this section. Proper concentration of odorant shall be ensured by conducting periodic sampling of combustible gases as follows:

“(1) Conduct monthly odorometer sampling of combustible gases at selected points in the system; and

“(2) Conduct sniff tests during each service call where access to a source of gas in the ambient air is readily available.

“(g) Operators of master meter systems may comply with this requirement by the following:

“(1) Receiving written verification from their gas source that the gas has the proper concentration of odorant; and

“(2) Conducting periodic sniff tests at the extremities of the system to confirm that the gas contains odorant.”

(32) 49 C.F.R. 192.703 shall be deleted and replaced by the following: “General. (a) No person shall operate a segment of pipeline unless it is maintained in accordance with this subpart.

“(b) Odorometers and leak detection equipment shall be calibrated according to manufacturer’s specifications. Leak detection equipment shall be tested monthly with a calibration gas of known hydrocarbon concentration, except that if equipment is not used, then testing with calibration gas shall be performed prior to the next use.

“(c) Each segment of pipeline that becomes unsafe shall be replaced, repaired or removed from service within five days of the operator being notified of the existence of the unsafe condition. Minimum requirements for response to each class of leak are as follows:

“(1) A class 1 leak requires immediate repair or continuous action until the conditions are no longer hazardous.

“(2) A class 2 leak shall be repaired within six months after detection. When the ground is frozen, a class 2 leak shall be monitored weekly to ensure that the leak will not represent a probable hazard and that it reasonably can be expected to remain nonhazardous.

“(3) A class 3 leak shall be rechecked at least every six months and repaired or replaced within 30 months.

“(d) Each operator shall inspect and classify all reports of gas leaks within two hours of notification.

“(e) Each underground leak shall be classified using the operator’s underground leak classification procedure as follows:

“(1) A class 1 leak means a leak that represents

an existing or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous. This class of leak may include the following conditions:

“(A) Any leak which, in the judgment of operating personnel at the scene, is regarded as an immediate hazard;

“(B) any leak in which escaping gas has ignited;

“(C) any indication that gas has migrated into or under a building, or into a tunnel;

“(D) any percentage reading gas in air at the outside wall of a building, or where gas would likely migrate to an outside wall of a building;

“(E) any reading of 4% gas in air, or greater, in a confined space;

“(F) any reading of 4% gas in air, or greater, in a small substructure from which gas would likely migrate to the outside wall of a building; or

“(G) any leak that can be seen, heard, or felt, and which is in a location that may endanger the general public or property.

“(2) A class 2 leak means a leak that is non-hazardous at the time of detection, but justifies scheduled repair based on probable future hazard. This class of leak may include the following conditions:

“(A) any reading of 2% gas in air, or greater, under a sidewalk in a wall-to-wall paved area that does not qualify as a class 1 leak;

“(B) any reading of 5% gas in air, or greater, under a street in a wall-to-wall paved area that has significant gas migration and does not qualify as a class 1 leak;

“(C) any reading less than 4% gas in air in a small substructure from which gas would likely migrate creating a probable future hazard;

“(D) any reading between 1% gas in air and 4% gas in air in a confined space;

“(E) any reading on a pipeline operating at 30% SMYS, or greater, in a class 3 or 4 location, which does not qualify as a class 1 leak;

“(F) any reading of 4% gas in air, or greater, in a gas-associated substructure; or

“(G) any leak which, in the judgment of operating personnel at the scene, is of significant magnitude to justify scheduled repair.

“(3) A class 3 leak means a leak that is nonhazardous at the time of detection and can reasonably be expected to remain nonhazardous. This class of leak may include the following conditions:

“(A) any reading of less than 4% gas in air in a small gas-associated substructure;

“(B) any reading under a street in areas without wall-to-wall paving where it is unlikely the gas could migrate to the outside wall of a building; or  
“(C) any reading of less than 1% gas in air in a confined space.”

(33) 49 C.F.R. 192.721 shall be deleted and replaced by the following three paragraphs: “(a) The frequency with which pipeline facilities are patrolled shall be determined by the severity of the conditions which could cause failure or leakage, and the consequent hazards to public safety.

“(b) Intervals between patrols shall not be longer than those prescribed in the following table:

**Maximum Intervals Between Patrols**

Location of Line	Mains in places or on structures where anticipated physical movement or external loading could cause failure or leakage	Mains at all other locations
Inside Business Districts	4½ months, but at least four times each calendar year	7½ months, but at least twice each calendar year
Outside Business Districts	7½ months, but at least twice each calendar year	18 months, but at least once each calendar year

“(c) Service lines and yard lines shall be patrolled at least once every three calendar years at intervals not exceeding 42 months.”

(34) 49 C.F.R. 192.723 shall be deleted and replaced by the following:

“Distribution systems: leak surveys and procedures.

“(a) Each operator of a distribution system shall conduct periodic leakage surveys using leak detection equipment in accordance with this section. The leak detection equipment used for this survey shall utilize a continuously sampling technology.

“(b) The type and scope of the leakage control program shall be determined by the nature of the operations and the local conditions. A leakage survey using leak detection equipment shall be conducted on all distribution mains and shall meet the following minimum requirements:

“(1) In business districts, a leakage survey shall include tests of the atmosphere in gas, electric, telephone, sewer and water system manholes, at cracks in pavement and sidewalks, and at other locations providing an opportunity for finding gas leaks. This survey shall be conducted at intervals on the distribution mains within the business district as frequently as necessary as determined by the operator with the maximum interval between

surveys not exceeding 15 months, but at least once each calendar year.

“(2) A leakage survey with leak detection equipment shall be conducted on the distribution mains outside the business areas. The survey shall be made as frequently as necessary, but it shall meet the following minimum requirements:

“i. Cathodically unprotected steel mains and ductile iron mains located in class 2, 3, and 4 areas shall be surveyed at least once each calendar year at intervals not exceeding 15 months.

“ii. Cathodically unprotected steel mains and ductile iron mains located in class 1 areas, cathodically protected bare steel mains, cast iron mains, and mains constructed of PVC plastic shall be surveyed at least once every three calendar years at intervals not exceeding 39 months.

“iii. Cathodically protected externally coated steel mains and mains constructed of polyethylene plastic shall be surveyed at least once every five calendar years at intervals not exceeding 63 months.

“(c) Except for the service lines and yard lines described in paragraph (d) of this section, a leakage survey using leak detection equipment shall be conducted for all service lines and yard lines as follows:

“(1) In business districts, this survey shall be conducted as frequently as necessary, as determined by the operator, with the maximum interval between surveys not exceeding 15 months, but at least once each calendar year.

“(2) Outside business districts, the survey shall be made as frequently as necessary, as determined by the operator, but it shall meet the following minimum requirements:

“i. Cathodically unprotected steel service or yard lines and service or yard lines constructed of PVC plastic, cast iron, or copper shall be surveyed at least once each calendar year at intervals not exceeding 15 months.

“ii. Cathodically protected bare steel service or yard lines shall be surveyed at least once every three years at intervals not exceeding 39 months.

“iii. Cathodically protected externally coated steel service or yard lines and service or yard lines constructed of polyethylene plastic shall be surveyed at least once every five calendar years at intervals not exceeding 63 months.

“(d) For yard lines more than 300 feet in length and operating at a pressure less than 10 p.s.i. gage, only the portion within 300 feet of a habitable dwelling shall be leak surveyed in accordance with these regulations.

“(e) Each operator’s operations and maintenance manual shall state that company-designated employees are to be trained in and conduct vegetation leak surveys where vegetation is suitable to such analysis.

“(f) Each leakage survey record shall be kept for at least six years.”

(35) The following shall be added to 49 C.F.R. 192.755: “(c) Each operator with cast iron piping shall institute all of the following for the purposes of evaluation and replacement of cast iron pipelines:

“(1) Each time a leak in the body of a cast iron pipe is discovered, collect a coupon from the joint of pipe that is leaking within five feet of the leak site.

“(2) Conduct laboratory analysis on all coupons to determine the percentage of graphitization. Using the following equation:

$$\text{Percent of Graphitization} = \frac{(\text{Maximum Depth of Graphitization})}{(\text{Wall Thickness})} \times 100$$

“(3) Replace at least one city block (approximately 500 feet) within 120 days of the operator’s discovery of a leak in cast iron pipe due to external corrosion or each time the laboratory analysis of a coupon shows graphitization equal to or greater than the following:

Diameter	Percent Graphitization
2.0 inch	25%
3.0 inch and 4.0 inch	60%
6.0 inch and 8.0 inch	75%
10.0 inch or greater	90%

“(4) Submit coupons for analysis within 30 days of collection. Retain all sampling records for the life of the facility, but not less than five years.

“(5) For each operator with cast iron piping that is 3 inches or less in nominal diameter, have a replacement program that will remove all cast iron piping with nominal diameter of 3 inches and smaller from natural gas service by January 1, 2013.”

(36) 49 C.F.R. 192.801(b)(3) shall be deleted and replaced by the following: “(3) Is performed as a requirement of this regulation; and.”

(37) 49 C.F.R. 192.805(i) shall be deleted and replaced by the following: “(i) Notify the commission if the operator significantly modifies the program after the commission has verified that it complies with this regulation. Notifications to the commission may be submitted by electronic

mail to [kccpipelinesafety@kcc.ks.gov](mailto:kccpipelinesafety@kcc.ks.gov) or by mail to ATTN: Gas Pipeline Safety Section, Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604.”

(38) 49 C.F.R. 192.909(b) shall be deleted and replaced with the following: “*Notification.* An operator must notify the gas pipeline safety section of the commission in accordance with 49 C.F.R. 192.949 as adopted by this regulation, of any change to the program that may substantially affect the program’s implementation or may significantly modify the program or schedule for carrying out the program elements. Notifications to the commission may be submitted by electronic mail to [kccpipelinesafety@kcc.ks.gov](mailto:kccpipelinesafety@kcc.ks.gov) or by mail to ATTN: Gas Pipeline Safety Section, Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604.”

(39) 49 C.F.R. 192.911(m)(1) and (n)(1) shall be deleted and replaced with the following: “The gas pipeline safety section of the commission.”

(40) In 49 C.F.R. 192.913(b)(1)(vii), “OPS” shall be replaced with “gas pipeline safety section of the commission.”

(41) 49 C.F.R. 192.921(a)(4) shall be deleted and replaced with the following: “Other technology that an operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the gas pipeline safety section of the commission 180 days before conducting the assessment, in accordance with 49 C.F.R. 192.949 as adopted by this regulation. Notifications to the commission may be submitted by electronic mail to [kccpipelinesafety@kcc.ks.gov](mailto:kccpipelinesafety@kcc.ks.gov) or by mail to ATTN: Gas Pipeline Safety Section, Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604.”

(42) In 49 C.F.R. 192.933, all references to “PHMSA” shall be replaced with “gas pipeline safety section of the commission.”

(43) 49 C.F.R. 192.937(c)(4) shall be deleted and replaced with the following: “Other technology that an operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the gas pipeline safety section of the commission 180 days before conducting the assessment, in accordance with 49 C.F.R. 192.949 as adopted by this regulation. Notifications to the commission may be submitted by electronic mail to [kccpipelinesafety@kcc.ks.gov](mailto:kccpipelinesafety@kcc.ks.gov) or by mail to ATTN: Gas Pipeline Safety Section, Kansas

Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604.”

(44) In 49 C.F.R. 192.943(a), “OPS” shall be replaced with “gas pipeline safety section of the commission.”

(45) 49 C.F.R. 192.947(i) shall be deleted and replaced with the following: “Verification that an operator has provided any documentation or notification required by this subpart to be provided to the gas pipeline safety section of the commission. Verifications to the commission may be submitted by electronic mail to [kccpipelinesafety@kcc.ks.gov](mailto:kccpipelinesafety@kcc.ks.gov) or by mail to ATTN: Gas Pipeline Safety Section, Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604.”

(46) 49 C.F.R. 192.949 shall be deleted and replaced with the following: “Notifications to the commission may be submitted by electronic mail to [kccpipelinesafety@kcc.ks.gov](mailto:kccpipelinesafety@kcc.ks.gov) or by mail to ATTN: Gas Pipeline Safety Section, Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604.”

(47) 49 C.F.R. 192.1013(b) shall be deleted and replaced with the following: “An operator must submit its proposal to the gas pipeline safety section of the commission. The commission may accept the proposal with or without conditions and limitations, on a showing that the operator’s proposal, which includes the adjusted interval, will provide an equal or greater overall level of safety.” (Authorized by and implementing K.S.A. 66-106 and 66-1,150; effective, T-82-10-28-88, Oct. 28, 1988; effective, T-82-2-25-89, Feb. 25, 1989; revoked, T-82-3-31-89, April 30, 1989; effective May 1, 1989; amended April 16, 1990; amended March 12, 1999; amended July 7, 2003; amended Jan. 25, 2008; amended June 26, 2009; amended Aug. 5, 2011; amended Jan. 9, 2015; amended Dec. 10, 2021.)

### **82-11-5. Addressee for written reports.**

Each written report required by the regulations of this article shall be made to the commission, gas pipeline safety section, Topeka, Kansas. Annual reports and incident reports shall be submitted in duplicate. A copy of the distribution system incident report shall be submitted by the executive director of the commission to the U.S. department of transportation within 10 calendar days of receipt. Safety-related reports required by K.A.R. 82-11-3 for intrastate pipeline transportation shall be submitted concurrently to the gas pipeline safety section and to the resources manager, office

of pipeline safety, research and special programs administration, U.S. department of transportation, Washington, DC. (Authorized by and implementing K.S.A. 66-1,150; effective, T-82-10-28-88, Oct. 28, 1988; effective, T-82-2-25-89, Feb. 25, 1989; revoked, T-82-3-31-89, April 30, 1989; effective May 1, 1989.)

### **82-11-6. Procedures to ensure compliance with minimum safety standards.**

The following procedures may be utilized by the commission to ensure compliance with the minimum safety standards of this article of the commission’s regulations: (a) Annual audit-inspection. Inspectors from the gas pipeline safety section of the commission may visit each operator annually, or as needed, to inspect the operator’s operation and maintenance records and to perform field surveys and tests as required by this article of the commission’s regulations. Audit-inspection evaluation forms shall be used to record information and test results obtained in each field inspection. The inspector shall record the observations, findings, and test results on an audit-inspection evaluation form. The inspector shall provide a copy of the audit-inspection evaluation form to the operator following the audit-inspection if the operator so requests. If the results of the audit-inspection indicate that the operator does not meet the requirements of this article of the commission’s regulations, the gas pipeline safety section of the commission may issue a notice of probable violation as described in subsection (b).

(b) Issuance of notice of probable violation. If after an annual audit-inspection or any other audit, inspection, or review conducted by commission staff, the commission staff believes that an operator has violated any regulations adopted pursuant to K.S.A. 66-1,150 and amendments thereto, the minimum safety standards adopted by this article of the commission’s regulations, or any regulation or commission order, commission staff may serve a notice of probable violation against the operator. Service of a notice of probable violation may be conducted by standard U.S. mail, certified mail, hand delivery, or, if the operator consents to electronic service, electronic mail.

(c) Notice. Each notice of probable violation issued pursuant to subsection (b) shall include the following:

(1) A statement of each provision of statute, regulation, or commission order that the operator is alleged to have violated;

(2) a statement of the evidence upon which the allegations are made; and

(3) the recommended civil penalty or remedial action.

(d) Response to notice of probable violation. Within 30 days of receipt of a notice of probable violation, the operator shall respond by U.S. mail or electronic mail. Hard-copy responses shall be sent by U.S. mail to the commission's Topeka headquarters, gas pipeline safety section. Responses by electronic mail shall be electronically mailed to the address listed on the notice of probable violation. An operator's response to a notice of probable violation shall be made in at least one of the following ways:

(1) Submit written explanations, a statement of general denial, or other materials contesting the allegations. The written explanations, statements of general denial, or other materials contesting the allegations shall be verified by a signed statement from an authorized representative of the operator. An operator may verify the written explanations, statements of general denial, or other materials contesting the allegations with an electronic signature;

(2) submit a signed acknowledgment of commission staff's findings of violations or instances of noncompliance. An operator may verify its acknowledgment of commission staff's findings of violations or instances of noncompliance with an electronic signature from an authorized representative of the operator; or

(3) submit a signed proposal for the completion of any remedial action that addresses the commission staff's findings of violations or noncompliance. An operator may verify its proposal of remedial action with an electronic signature from an authorized representative of the operator.

(e) Follow-up inspection. If the inspection specified in subsection (a) reveals any instances of noncompliance or violations, the inspector shall return to the operator's premises within 90 calendar days of the date of the inspection, or as soon as is practicable, to perform a follow-up inspection. The inspector shall reinspect the operator's system and record any instances of noncompliance or violations. A follow-up audit-inspection evaluation form shall then be sent to the operator specifying any further action required by the operator.

(f) Amendment. Commission staff may amend a notice of probable violation at any time before the commission issues a civil penalty assessment. If an amendment includes any new material al-

legations of fact or proposes an increased civil penalty assessment or additional remedial action, the operator shall have 30 days from service of the amended notice of probable violation to respond in accordance with subsection (d).

(g) Meeting with commission staff. If the inspector determines during the follow-up inspection that the violations or instances of noncompliance have not been corrected, the operator may be requested to attend an informal meeting at the commission offices or by telephone to discuss the operator's violations or instances of noncompliance with the minimum safety standards of this article of the commission's regulations, regulations adopted pursuant to K.S.A. 66-1,150 and amendments thereto, or any applicable regulation or commission order.

(h) Default admissions. Unless good cause is shown or a consent agreement is executed by commission staff and the operator before the expiration of the 30-day time limit specified in subsection (d), the failure of an operator to timely respond to a notice of probable violation shall constitute an admission to all factual allegations made by commission staff and may be used against the operator in future proceedings.

(i) Consent agreement. Commission staff and an operator may agree to modify a proposed civil penalty assessment or remedial action by joint execution of a consent agreement. Modifications to a civil penalty assessment may include a reduction in the civil penalty assessment or nonmonetary remedial action in lieu of monetary penalties. The consent agreement shall become effective if the commission issues an order approving the consent agreement. Each consent agreement shall include the following:

(1) An admission by the operator of all jurisdictional facts;

(2) an express waiver of any further procedural steps and of the right to seek judicial review or otherwise challenge or contest the validity of the commission's order approving the consent agreement;

(3) an acknowledgment that the notice of probable violation may be used to construe the terms of the order approving the consent agreement; and

(4) a statement of the actions required of the operator and the date by which the actions shall be completed.

(j) Issuance of order. No sooner than 30 days after service of a notice of probable violation upon an operator, an order against an operator may be issued by the commission. The order may impose

a monetary civil penalty or require the operator to undertake remedial action or impose any other obligation or combination thereof for violating the minimum safety standards as adopted by this article of the commission's regulations, regulations adopted pursuant to K.S.A. 66-1,150 and amendments thereto, or any regulation or commission order identified in the notice of probable violation.

(k) Time to remit payment for penalty assessment. If an operator does not request a hearing and the commission issues a penalty order, the operator shall remit payment for any civil penalty assessment imposed by the commission within 20 days of service of a penalty order imposing the civil penalty assessment.

(l) Orders and hearings. Each order issued pursuant to this article of the commission's regulations shall comply with K.A.R. 82-1-232. Any operator may request a hearing on an order issued pursuant to this article of the commission's regulations by filing a request for hearing with the commission within 15 days of service of the order. Each hearing shall be conducted in accordance with the commission's rules of practice and procedure. Except for orders approving a consent agreement, each order issued by the commission pursuant to this article of the commission's regulations shall include information detailing how an operator may request a hearing. Failure to request a hearing within 15 days from service of an order shall be deemed an admission of the alleged violations or instances of noncompliance in the order.

(m) Show cause hearings. A show cause hearing may be held by the commission regarding violations or instances of noncompliance of regulations adopted pursuant to K.S.A. 66-1,150, and amendments thereto, or any regulation or commission order. If the commission issues a show cause order before or during the course of an investigation, the gas pipeline safety section of the commission shall not be required to issue a notice of probable violation before the commission issues an order regarding any actual or potential violations or instances of noncompliance.

(n) Waiver of procedures. The requirements of this regulation may be waived by the commission and an interim order issued pursuant to K.A.R. 82-1-232 if any violations or instances of noncompliance with the safety standards of this article of the commission's regulations present a probable danger to persons or property. (Authorized by and implementing K.S.A. 66-106 and 66-1,150; effective, T-82-10-28-88, Oct. 28, 1988; effective, T-82-

2-25-89, Feb. 25, 1989; revoked, T-82-3-31-89, April 30, 1989; effective May 1, 1989; amended Dec. 10, 2021.)

**82-11-7. Reporting requirements.** (a) Small gas operators.

(1) Each small gas operator shall notify the gas pipeline safety section when the small gas operator has contracted with a consultant to perform a survey or inspection in order to comply with the minimum safety standards. Each small gas operator shall forward electronic or written notice indicating the probable month of the inspection or survey at the time the consultant is authorized to conduct the survey or inspection. In addition, each small gas operator shall forward electronic or written notice to the gas pipeline safety section at least 10 business days before the survey or inspection is to be conducted by the consultant. The form for each type of notification shall be available from the gas pipeline safety section. Written notices shall be mailed to the commission's Topeka, Kansas office, attention: pipeline safety division. Electronic notices shall be electronically mailed to the address listed on the commission-provided form.

(2) Each small gas operator shall maintain complete records relating to the gas system for the life of the system for the purposes of ensuring compliance with the minimum safety standards. Each record shall be made available when an inspector conducts a field inspection.

(b) Construction notices. Each operator shall submit to the gas pipeline safety section electronic notice or written notice using a format substantially similar to the form posted on the commission's web site, at least 10 business days before the commencement of the construction project. Construction notices for each project not started by year-end or in progress at year-end shall be resubmitted to the commission for the subsequent year. Electronic notices shall be electronically mailed to the address listed on the form posted on the commission's web site. Written notices shall be mailed to the commission's Topeka, Kansas office, attention: pipeline safety division. (Authorized by and implementing K.S.A. 66-1,150; effective, T-82-10-28-88, Oct. 28, 1988; effective, T-82-2-25-89, Feb. 25, 1989; revoked, T-82-3-31-89, April 30, 1989; effective May 1, 1989; amended Jan. 25, 2008; amended Dec. 10, 2021.)

**82-11-8. Customer installations: location and monitoring responsibility.** (a) For residen-

tial and small commercial customers, the operator may locate a meter at either the customer's building wall or the customer's property line or easement.

(b) For industrial and large commercial customers, the operator's meter location shall be determined by mutual agreement between the operator and the customer. Each location shall provide for an adequate margin of safety from public road and on-site traffic. Each customer shall be responsible for notifying the operator of any changes in on-site traffic patterns or other conditions that could subsequently render the agreed-upon meter location unsafe. Before installing the meter, each operator shall provide written notice to the customer of the customer's obligation to monitor and report potential unsafe conditions.

(c) For each residential customer installation placed in service after May 1, 1989, the operator shall ensure that the installation or repair of all yard lines meets the design, installation, testing, maintenance, and replacement requirements specified in K.A.R. 82-11-4, K.A.R. 82-11-6, K.A.R. 82-11-7, K.A.R. 82-11-9, and K.A.R. 82-11-10.

(d) For each residential customer installation placed in service before May 1, 1989, the operator shall ensure that the installation or repair of all yard lines meets the testing, maintenance, and replacement requirements specified in K.A.R. 82-11-4, K.A.R. 82-11-6, K.A.R. 82-11-7, K.A.R. 82-11-9, and K.A.R. 82-11-10.

(e) Notwithstanding the requirements of subsections (c) and (d), the following requirements shall apply to residential customer installations located in class 1 areas with maximum operating pressures of 10 p.s.i.g. or less:

(1) For each residential customer installation placed in service before May 1, 1989, the operator shall perform leak surveys in accordance with K.A.R. 82-11-4(dd). All other installation, testing, maintenance, and replacement requirements specified in K.A.R. 82-11-4, K.A.R. 82-11-6, K.A.R. 82-11-7, K.A.R. 82-11-9, and K.A.R. 82-11-10 shall apply only to that portion of the yard line within 150 feet of a building wall.

(2) For each residential customer installation placed in service on or after May 1, 1989, the operator shall perform leak surveys in accordance with K.A.R. 82-11-4(dd). All other design, installation, testing, maintenance, and replacement requirements specified in K.A.R. 82-11-4, K.A.R. 82-11-6, K.A.R. 82-11-7, K.A.R. 82-11-9, and K.A.R. 82-11-10 shall apply only to that portion of the yard line within 150 feet of a building wall.

(f) Each residential, customer-owned installation shall be provided with odorized gas and maintained according to the requirements of K.A.R. 82-11-4(dd). (Authorized by and implementing K.S.A. 66-1,150; effective, T-82-10-28-88, Oct. 28, 1988; effective, T-82-2-25-89, Feb. 25, 1989; revoked, T-82-3-31-89, April 30, 1989; effective May 1, 1989; amended July 7, 2003; amended Jan. 25, 2008.)

**82-11-9. Waiver provisions.** (a) Upon application by any person engaged in the transportation of gas or the operation of pipeline facilities, compliance with any regulation of this article that is not incorporated by reference from 49 CFR 191-192 may be waived, in whole or in part, by the commission if the commission determines that the waiver is consistent with pipeline safety. The provision of notice of the proposed waiver and an opportunity for hearing on the application for waiver may be required by the commission. In addition, the waiver shall be granted only under these circumstances:

(1) By order of the commission; and

(2) after notice and opportunity for hearing, if ordered by the commission.

The waiver shall be subject to any terms, conditions, and limitations deemed appropriate by the commission.

(b) Upon application by any person engaged in the transportation of gas or the operation of pipeline facilities, compliance with any regulation of this article that is incorporated by reference from 49 CFR 191-192 may be waived, in whole or in part, by the commission if the commission determines that the waiver is consistent with pipeline safety. The provision of notice of the proposed waiver and an opportunity for hearing on the application for waiver may be required by the commission. In addition, the waiver shall be granted only under these circumstances:

(1) By order of the commission;

(2) after notice and opportunity for hearing, if ordered by the commission; and

(3) upon approval of the US department of transportation under 49 USC 1671 et seq. The waiver shall be subject to any terms, conditions, and limitations deemed appropriate by the commission. (Authorized by and implementing K.S.A. 66-1,150; effective, T-82-10-28-88, Oct. 28, 1988; effective, T-82-2-25-89, Feb. 25, 1989; revoked, T-82-3-31-89, April 30, 1989; effective May 1, 1989; amended March 12, 1999.)

**82-11-10. Drug and alcohol testing.** The federal regulations titled “drug and alcohol testing,” 49 C.F.R. Part 199 as in effect October 1, 2018, excluding sections labeled “reserved,” are hereby adopted by reference only as they apply to operators of pipeline facilities that deal in the transportation of natural gas by pipeline, with the following modifications:

(a) All references to “DOT agency” shall be replaced with “federal or state agency.”

(b) 49 C.F.R. 199.1 shall be deleted and replaced by the following: “This regulation requires operators of pipeline facilities subject to K.A.R. 82-11-4 to test covered employees for the presence of prohibited drugs and alcohol.”

(c) 49 C.F.R. 199.2 shall be deleted and replaced by the following:

“(a) This part applies to operators of intrastate natural gas pipelines within the state of Kansas.

“(b) This part does not apply to covered functions performed on:

“(1) Master meter systems, as defined in K.A.R. 82-11-3; or

“(2) pipeline systems that transport only petroleum gas or petroleum gas/air mixtures.”

(d) 49 C.F.R. 199.3 shall be deleted and replaced by the following: “As used in this part:

“(a) ‘accident’ means an incident involving gas pipeline facilities or liquefied natural gas facilities reportable under K.A.R. 82-11-3;

“(b) ‘administrator’ means the Administrator, Pipeline and Hazardous Materials Safety Administration;

“(c) ‘covered employee, employee, or individual to be tested’ means a person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors;

“(d) ‘covered function’ means an operations, maintenance, or emergency response function regulated by K.A.R. 82-11-4 and K.A.R. 82-11-8 that is performed on a pipeline or on a liquefied natural gas facility;

“(e) ‘DOT Procedures’ means the Procedures for Transportation Workplace Drug and Alcohol Testing Programs published by the Office of the Secretary of Transportation in 49 C.F.R. Part 40 as in effect on October 1, 2018;

“(f) ‘fail a drug test’ means that the confirmation test results show positive evidence under DOT Procedures of a prohibited drug in the employee’s system;

“(g) ‘operator’ means a person who owns or op-

erates pipeline facilities subject to K.A.R. 82-11-1 through K.A.R. 82-11-11;

“(h) ‘pass a drug test’ means that initial testing or confirmation testing under DOT Procedures does not show evidence of the presence of a prohibited drug in the person’s system;

“(i) ‘performs a covered function’ includes actually performing, ready to perform, or immediately available to perform a covered function;

“(j) ‘positive rate for random drug testing’ means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (i.e., positives, negatives, and refusals) under this part;

“(k) ‘prohibited drug’ means any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. § 812 — marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP);

“(l) ‘refuse to submit, refuse, or refuse to take’ means behavior consistent with DOT Procedures concerning refusal to take a drug test or refusal to take an alcohol test;

“(m) ‘state agency’ means the state corporation commission of the state of Kansas.”

(e) 49 C.F.R. 199.5 shall be deleted and replaced by the following: “The antidrug and antialcohol programs required by this part shall be conducted according to the requirements of this part and K.A.R. 82-4-3b. Terms and concepts used in this part shall have the same meaning as in K.A.R. 82-4-3b. Violations of K.A.R. 82-4-3b with respect to antidrug and antialcohol programs required by this part shall be violations of this part.”

(f) 49 C.F.R. 199.7 shall be deleted and replaced by the following:

“(a) Each operator who seeks a waiver under 49 C.F.R. 40.21 from the stand-down restriction shall submit an application for waiver in duplicate to the gas pipeline safety section of the state agency and the Associate Administrator for Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001;

“(b) If the applicant is granted a waiver pursuant to 49 C.F.R. 40.21, a copy of the waiver shall be submitted to the gas pipeline safety section of the state agency.

“(c) Each operator who seeks a waiver under 49 C.F.R. 40.21 from the stand-down restriction

shall provide the gas pipeline safety section of the commission a copy of the associate administrator's decision regarding the waiver within 10 days from the date the operator receives the associate administrator's decision."

(g) 49 C.F.R. 199.9 shall be deleted.

(h) 49 C.F.R. 199.100 shall be deleted.

(i) 49 C.F.R. 199.101(b) shall be deleted and replaced with the following: "After notice and opportunity for hearing as provided in 49 C.F.R. 190.206 or K.A.R. 82-11-6, K.A.R. 82-1-230, and K.A.R. 82-1-232(b), the associate administrator or the state agency, with respect to pipeline facilities governed by an operator's plans and procedures may require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety."

(j) The last sentence in 49 C.F.R. 199.225(b)(4) (i) shall be deleted and replaced with the following: "Records shall be submitted to PHMSA upon request of the administrator or the gas pipeline safety section upon request from the staff of the gas pipeline safety section of the state agency."

(k) 49 C.F.R. 199.229(d) shall be deleted and replaced with the following: "A service agent (e.g., Consortia/Third Party Service Administrator as defined in 49 C.F.R. Part 40.3) may prepare the MIS report on behalf of an operator. However, each report shall be certified by the operator's antidrug manager or designated representative for accuracy and completeness." (Authorized by and implementing K.S.A. 66-1,150; effective April 16, 1990; amended March 12, 1999; amended July 7, 2003; amended June 26, 2009; amended Aug. 5, 2011; amended Dec. 10, 2021.)

**82-11-11. Fees.** (a) Except as specified in subsection (b), the fee for each person covered under K.S.A. 66-1,153 and K.S.A. 66-1,154, and amendments thereto, shall be \$1.00 per meter for each calendar year.

(b) The minimum annual fee shall not be less than \$100.00 for each calendar year. The maximum annual fee shall not exceed \$10,000.00 for each calendar year. (Authorized by and implementing K.S.A. 2013 Supp. 66-1,153 and K.S.A. 66-1,154; effective March 12, 1999; amended Jan. 9, 2015.)

## Article 12.—WIRE-STRINGING RULES

**82-12-1. Definitions.** The following terms shall have the meaning set out below when applied to these regulations.

(a) "Commission" means the state corporation commission of Kansas.

(b) "Electric supply line" means any overhead or underground transmission or distribution line for electric energy transfer.

(c) "Inductive coordination" means the location, design, construction, operation and maintenance of electric and communication systems methods which will prevent inductive interference.

(d) "Inductive interference" means an effect due to the inductive influence of an electric system, the inductive susceptiveness of a communication system, and the inductive coupling between the two systems of such character and magnitude as to prevent the communication system from rendering satisfactory and economical service.

(e) "Inductive susceptiveness" means those characteristics of a communication circuit with its associated apparatus which determine the extent to which its operation may be affected by inductive influence.

(f) "Overbuilding" means construction of one supply line above another supply line.

(g) "Supply line" means any overhead or underground transmission or distribution line for either telecommunication or electric energy transfer.

(h) "Telecommunication supply line" means any overhead or underground transmission or distribution line for telecommunication transfer.

(i) "Underbuilding" means construction of one supply line under another supply line.

(j) "Utility" means organizations, individuals or others whose supply line construction comes under the jurisdiction of the commission as provided in K.S.A. 66-104. (Authorized by and implementing K.S.A. 66-183; effective Aug. 11, 1995.)

**82-12-2. Adoption by reference of the national electrical safety code, or NESC, 1997 edition.** The standard entitled the "national electrical safety code," or NESC, of the American National Standards Institute, 1997 edition, ANSI C2-1997, approved June 6, 1996, and published by the Institute of Electrical and Electronic Engineers, or IEEE, is adopted by reference. However, the standard for minimum vertical clearance of wires, conductors, and cables over railroad tracks shall be the greatest of the applicable values specified in the NESC Table 232-1, K.S.A. 66-183, and K.S.A. 66-320, and amendments thereto. Copies of the NESC are available from the IEEE. A reference copy of the NESC shall also be available at the commission. (Authorized by and imple-

menting K.S.A. 66-183; effective Aug. 11, 1995; amended March 12, 1999.)

**82-12-3. Utility applications for electric supply lines.** Each utility proposing to build a new electric supply line, or contemplating a change in an existing electric supply line located outside the corporate limits of any city, shall present an application to the commission for approval. The application shall consist of a completed application form as approved by the commission, and any other information required by the form or these regulations including:

(a) Maps and plats, of a scale of at least one inch to the mile, showing any changes or additions to the electric supply lines; and

(b) a cost breakdown of the construction or extensions with unit cost of the plant.

On or before the day the application is submitted to the commission, the utility shall send written notice of the proposed construction or changes as required by K.A.R. 82-12-5. (Authorized by and implementing K.S.A. 66-183; effective Aug. 11, 1995.)

**82-12-4. Exceptions to 82-12-3 application.** (a) Any utility may proceed with necessary construction, in cases of emergency, after written or telephone communication with the commission establishing need and securing emergency approval from the commission, if:

(1) The utility complies with the rules and regulations to the extent practicable under the circumstances; and

(2) the utility files immediately with the commission an application as approved by the commission showing that the construction will ultimately be brought into full conformity with the regulations.

(b) A utility may proceed with construction of any electric supply line without submitting an application under K.A.R. 82-12-3, if all of the following requirements are met.

(1) Prior to beginning construction, the utility shall give written notice to railroads and other utilities having facilities within ½ mile of any contemplated electric supply line construction or change in construction.

(2) The proposed electric supply line shall:

(A) be within the utility's certified area;

(B) not interfere with the supply lines, tracks or facilities of other utilities or railroads; and

(C) be no longer than ½ mile. However, if the proposed extension is to an extension previously

made under this exception, then the combined length of the proposed and original extensions shall be considered as the length of the proposed extension for purposes of this subsection. If the combined length exceeds ½ mile, then K.A.R. 82-12-3 application is required for the combined length. (Authorized by and implementing K.S.A. 66-183; effective Aug. 11, 1995.)

**82-12-5. Notice of construction of electric supply lines.** On or before the day a utility makes an application to the commission for any contemplated electric supply line construction, change in construction, or change in operating conditions to be located outside the corporate limits of any city, the utility shall send written notice of their plan:

(a) To the commission, at least 10 days before commencing construction;

(b) to railroads within ½ mile of the contemplated construction. The application shall not be considered for approval until at least 15 days after that notice is sent; and

(c) to all other utilities within ½ mile of the contemplated construction unless the utilities have executed a joint use or other agreement covering the area in which the construction is proposed. The application shall not be considered for approval until at least 10 days after this notice is sent. (Authorized by and implementing K.S.A. 66-183; effective Aug. 11, 1995.)

**82-12-6. Requirements for the installation of warning buoys and warning spheres installed in connection with electric lines crossing water areas suitable for sailboating.** (a) Each electric utility in Kansas that maintains electric lines over water areas, other than rivers, streams and creeks, which are suitable for sailboating, or other water sports, shall place warning buoys in the water under electric lines and warning spheres on the electric lines, where they cross water.

(b) A waiver, as deemed appropriate, of the sphere and buoy requirement may be granted by the commission for good cause upon application by the utility. Applications for waivers may be submitted by each electric utility at the same time it supplies the information required by subsection (c). Each application for waiver shall specify the reasons for the requested waiver and assess the safety implications of the commission's waiver of the buoy and sphere requirement.

(c) For each newly constructed or reconstructed electric supply line which crosses water areas suitable for sailboating or other water sports, each electric utility shall report the following facts in an attachment to the application form at the time of application:

(1) The name, type, configuration, and location of the electric line that crosses one or more water areas that are subject to this regulation;

(2) the length and primary voltage of the electric line crossing the water area;

(3) the approximate clearance height of the electric line above water, at its lowest point, using the design high water level;

(4) the number of spheres and buoys installed under and on each line; and

(5) the expected date of the installation of the line, spheres and buoys, and the expected date for which the line will initially be energized.

(d) The placement of warning buoys and warning spheres is the minimum level of safety which shall be provided. Each utility may, at its option, provide a greater level of protection for the general public by relocating the electric line or taking other equivalent measures. (Authorized by and implementing K.S.A. 66-183; effective Aug. 11, 1995.)

**82-12-7. Utility requirements for telecommunication supply lines.** A utility may proceed with construction of any telecommunication supply line if both of the following requirements are met:

(a) Before beginning construction, the utility shall give written notice to all of the following entities that have facilities within ½ mile of any contemplated telecommunication supply line construction or change in construction:

(1) Railroads; and

(2) any other utilities, unless the utilities have executed a joint use or other agreement covering the area in which the construction is proposed.

(b) The proposed telecommunication supply line construction shall meet the following requirements:

(1) Be within the utility's certified area; and

(2) not result in any objection from other utilities or railroads that have been given written notice as required by subsection (a). (Authorized by and implementing K.S.A. 66-183; effective Aug. 11, 1995; amended Aug. 5, 2011.)

**82-12-8. Coordinated location of lines.** In order to provide for the efficient and effective

use of the public and private roads, each utility constructing supply lines shall locate those lines in conformance with the following requirements.

(a) When there are two or more practical methods of locating supply lines in a manner that avoids conflicts or prevents objectionable interference between lines, the method involving the least total cost shall be used regardless of which party takes precautionary or special measures.

(b) Each utility shall, to the extent possible, construct and locate supply lines so as to avoid crossing roads or any other features which will cause unnecessary discontinuities. (Authorized by and implementing K.S.A. 66-183; effective Aug. 11, 1995.)

**82-12-9. Inductive coordination.** When there is inductive interference, each affected utility shall work out an agreement to attain inductive coordination. When such an agreement is necessary, the most convenient and economical method consistent with effectiveness shall be employed whether that method limits inductive influence of the electric circuits, the inductive susceptibility of the communication circuits, the inductive coupling between the two kinds of circuits or employs a combination of these methods. If there is a choice of methods, the one selected shall be applied to one or both systems according to the best engineering solution regardless of which circuit will require the greatest cost in corrective measures. (Authorized by and implementing K.S.A. 66-183; effective Aug. 11, 1995.)

## Article 13.—TELECOMMUNICATIONS

**82-13-1. Definitions.** The following terms shall have the meanings specified below when used in these regulations: (a) "Commission" means the state corporation commission of the state of Kansas.

(b) "Competitive local exchange carrier" means a corporation, company, individual, or association of persons, and any trustees, lessees, or receivers of that corporation, company, individual, or association of persons providing switched telecommunication service within the state of Kansas. This term shall not include local exchange carriers or incumbent local exchange carriers as defined in this regulation.

(c) "Incumbent local exchange carrier" shall have the same meaning as that assigned to "local exchange carrier" in K.S.A. 66-1,187, and amendments thereto.

(d) "Underlying local exchange carrier" means the incumbent local exchange carrier or competitive local exchange carrier that owns, operates, or controls the facilities being provided on a wholesale or unbundled basis to another competitive local exchange carrier for the provision of switched telecommunications service to the customer, or the incumbent local exchange carrier that has been issued a certificate to serve the customer. (Authorized by and implementing K.S.A. 66-1,188; effective Jan. 24, 2003.)

**82-13-2. Procedures to protect customers from loss of telephone service when carriers cease operations.** (a) Each competitive local exchange carrier providing local service through a resale arrangement shall provide its customers with at least a 30-day notice before discontinuing service.

(1) The notice shall clearly state the steps that customers must take in order to select another local service provider and shall include a toll-free number that customers with questions can call. The exiting competitive local exchange carrier shall provide sufficient customer support to answer calls to the toll-free number during the 30-day period before discontinuing service. The notice shall also include the customer's billing address and service address, circuit identification number, telephone number, specific service being provided, the date on which service will be discontinued, and any other information that is reasonably necessary to assist the customer in obtaining service from another local service provider. If a customer had a preferred carrier freeze on the account, the exiting carrier shall remove this freeze, and the notice shall inform the customer that the preferred carrier freeze has been removed.

(2) A copy of the notice shall be provided to the commission, each underlying local exchange carrier, and all affected customers' presubscribed interexchange carriers.

(3) Within 10 days after the commission receives a copy of the notice, additional notice requirements may be prescribed by the commission, as it deems necessary.

(4) The exiting competitive local exchange carrier shall not market or solicit the sale of its customer base after notice is provided to customers in accordance with this subsection.

(b) If the competitive local exchange carrier providing local service through a resale arrangement either abandons service without providing

notice consistent with the requirements of subsection (a) of this regulation or abandons service after notice is provided but before 30 days have passed, the underlying local exchange carrier shall provide the customer with equivalent service for a limited time as required in this subsection.

(1) Within five days after the transfer of service, the underlying local exchange carrier shall notify each transferred customer that service is now being provided by the underlying local exchange carrier at that carrier's usual rate for the service. The notice shall inform customers that they have 30 days to select a local service provider. The notice shall include a list of providers approved by the commission and a toll-free number that customers with questions can call. The underlying local exchange carrier shall provide a copy of the notice to the commission when the notice is provided to the customers.

(2) At least 15 days but not more than 20 days after the transfer of service, the underlying local exchange carrier shall send a final notice to the transferred customers that have not chosen a new local service provider, reminding the customers of the date by which they must select a local service provider in order to avoid loss of service. The underlying local exchange carrier may discontinue service to customers who have not chosen a new provider by the specified date.

(3) The exiting competitive local exchange carrier that abandoned service without notice to its customers shall be required to reimburse the underlying local exchange carrier for the expense of the notices required in this subsection.

(4) The exiting competitive local exchange carrier shall not market or solicit the sale of its customer base after notice is provided to customers in accordance with this subsection.

(c) Each competitive local exchange carrier providing local service through an arrangement other than resale shall provide the commission and the underlying local exchange carrier with notice at least 45 days before discontinuing service. The notice shall include the billing address and service address, telephone number, circuit identification number, the specific service being provided, the date for discontinuance of service for each affected customer in the underlying local exchange carrier's service area, and any other information that is reasonably necessary to protect the customer from loss of service.

(1) The exiting competitive local exchange carrier and the underlying local exchange carrier shall

be contacted by the commission's staff to arrange for continuing service to the affected customers.

(2) Unless otherwise directed by the commission, the exiting competitive local exchange carrier shall provide the affected customers with notice at least 30 days before discontinuing service. The notice shall include the information required in subsection (c), a list of providers available to the customer, and a toll-free number that customers with questions can call. The exiting competitive local exchange carrier shall provide sufficient customer support to answer calls to the toll-free number during the 30-day period before discontinuing service. A copy of the notice shall be provided to the commission, the underlying local exchange carrier, and all affected customers' presubscribed interexchange carriers. Within 10 days after the commission receives a copy of the notice, additional notice requirements may be prescribed by the commission, as it deems necessary.

(3) The exiting competitive local exchange carrier shall not market or solicit the sale of its customer base after notice is provided to customers in accordance with this subsection.

(d) The underlying local exchange carrier shall provide notice to the commission and the competitive local exchange carrier before discontinuing service to the competitive local exchange carrier for lack of payment or any other reason. The notice shall be provided in a manner that provides the competitive local exchange carrier with adequate time to comply with the notification requirements in this regulation.

(e) Each carrier that reaches an agreement to purchase or otherwise agrees to serve the entire customer base of another carrier shall provide notice to the affected customers pursuant to 47 C.F.R. 64.1120, as in effect on April 18, 2002, which is adopted by reference. Each carrier shall furnish the commission with a copy of each notice provided pursuant to 47 C.F.R. 64.1120 when the notice is sent to the federal communications commission.

(f) An underlying local exchange carrier shall not be subject to claims of unwanted or unlawful provision of service if the transfers of service are consistent with the requirements of this regulation.

(g) Each competitive local exchange carrier that has discontinued service shall relinquish all assigned central office codes and all assigned blocks of numbers and shall provide written notice of the relinquishment to the North American numbering plan administrator in accordance with the current guidelines of the industry numbering

committee. The competitive local exchange carrier shall furnish the commission with a copy of the notice when the notice is sent to the North American numbering plan administrator. (Authorized by and implementing K.S.A. 66-1,188; effective Jan. 24, 2003.)

#### **Article 14.—THE KANSAS UNDERGROUND UTILITY DAMAGE PREVENTION ACT**

**82-14-1. Definitions.** The following terms as used in the administration and enforcement of the Kansas underground utility damage prevention act, K.S.A. 66-1801 et seq. and amendments thereto, shall be defined as specified in this regulation.

(a) "Backreaming" means the process of enlarging the diameter of a bore by pulling a specially designed tool through the bore from the bore exit point back to the bore entry point.

(b) "Commission" means the state corporation commission of Kansas.

(c) "Drill head" means the mechanical device connected to the drill pipe that is used to initiate the excavation in a directional boring operation. This term is sometimes referred to as the drill bit.

(d) "Excavation scheduled start date" means the later of the start date stated in the notice of intent of excavation filed by the excavator with the notification center or the start date filed by the excavator with a tier 2 member or tier 3 member.

(e) "Excavation site" means the area where excavation is to occur.

(f) "Locatable" has the meaning of that word as used in "locatable facility," which is defined in K.S.A. 66-1802 and amendments thereto. In addition to the requirements for locating underground facilities, as specified in K.S.A. 66-1802 and amendments thereto, the operator shall be able to locate underground facilities within 24 inches of the outside dimensions in all horizontal directions of an underground facility using tracer wire, conductive material, GPS technology, or any other technology that provides the operator with the ability to locate the pipelines for at least 20 years.

(g) "Locate" means the act of marking the tolerance zone of the operator's underground facilities by the operator.

(h) "Locate ball" means an electronic marker device that is buried with the facility and is used to enhance signal reflection to a facility detection device.

(i) “Meet on site” means a meeting between an operator and an excavator that occurs at the excavation site in order for the excavator to provide an accurate description of the excavation site.

(j) “Notice of intent of excavation” means the written notification required by K.S.A. 66-1804 and amendments thereto.

(k) “Notification center,” as defined in K.S.A. 66-1802 and amendments thereto, means the underground utility notification center operated by Kansas one call, inc.

(l) “Pullback operation” means the installation of facilities in a directional bore by pulling the facility from the bore exit point back to the bore entry point.

(m) “Pullback device” means the apparatus used to connect drilling tools to the facility being installed in a directional bore.

(n) “Reasonable care” means the precautions taken by an excavator to conduct an excavation in a careful and prudent manner. Reasonable care shall include the following:

(1) Providing for proper support and backfill around all existing underground facilities;

(2) using nonintrusive means, as necessary, to expose the existing facility in order to visually determine that there will be no conflict between the facility and the proposed excavation path when the path is within the tolerance zone of the existing facility;

(3) exposing the existing facility at intervals as often as necessary to avoid damage when the proposed excavation path is parallel to and within the tolerance zone of an existing facility; and

(4) maintaining the visibility of the markings that indicate the location of underground utilities throughout the excavation period.

(o) “Tier 1 member” means any operator of a tier 1 facility, as defined in K.S.A. 66-1802 and amendments thereto, or any operator of a tier 2 facility, as defined in K.S.A. 66-1802 and amendments thereto, that elects to be a tier 1 member of the notification center pursuant to K.A.R. 82-14-3.

(p) “Tier 2 member” means any operator of a tier 2 facility, as defined in K.S.A. 66-1802 and amendments thereto, that elects to be a tier 2 member of the notification center.

(q) “Tier 3 member” means any operator of a tier 2 facility, as defined in K.S.A. 66-1802 and amendments thereto, that meets the requirements for a tier 3 facility, as defined in K.S.A. 66-1802 and amendments thereto, and elects to be a tier 3 member of the notification center.

(r) “Tolerance zone” has the meaning specified in K.S.A. 66-1802 and amendments thereto. The tolerance zone shall not be greater than the following:

(1) 25 inches for each tier 1 facility; and

(2) 61 inches for each tier 2 facility.

(s) “Trenchless excavation” means any excavation performed in a manner that does not allow the excavator to visually observe the placement of the new facility. This term shall include underground boring, tunneling, horizontal auguring, directional drilling, plowing, and geoprobing. (Authorized by and implementing K.S.A. 2008 Supp. 66-1815; effective Jan. 19, 2007; amended July 6, 2009.)

**82-14-2. Excavator requirements.** In addition to the provisions of K.S.A. 66-1804, K.S.A. 66-1807, K.S.A. 66-1809, and K.S.A. 66-1810 and amendments thereto, the following requirements shall apply to each excavator:

(a) If an excavator directly contacts a tier 2 member or a tier 3 member, the excavation scheduled start date shall be the later of the following:

(1) The excavation scheduled start date assigned by the notification center; or

(2) two full working days after the day of contact with the tier 2 member or tier 3 member.

(b) Unless all affected operators have provided notification to the excavator, excavation shall not begin at any excavation site before the excavation scheduled start date.

(c) If a meet on site is requested by the excavator, the excavation scheduled start date shall be no earlier than the fifth working day after the date on which the notice of intent of excavation was given to the notification center or to the tier 2 member or tier 3 member.

(d) Each notice of intent of excavation shall include the name and telephone number of the individual who will be representing the excavator.

(e) Each description of the excavation site shall include the following:

(1) The street address, if available, and the specific location of the proposed excavation site at the street address; and

(2) an accurate description of the proposed excavation site using any available designations, including the closest street, road, or intersection, and any additional information requested by the notification center.

(f) If the excavation site is outside the boundaries of any city or if a street address is not available, the description of the excavation site shall include one of the following:

(1) An accurate description of the excavation site using any available designations, including driving directions from the closest named street, road, or intersection;

(2) the specific legal description, including the quarter section; or

(3) the longitude and latitude coordinates.

(g) An excavator shall not claim preengineered project status, as defined in K.S.A. 66-1802 and amendments thereto, unless the public agency responsible for the project performed the following before allowing excavation:

(1) Identified all operators that have underground facilities located within the excavation site;

(2) requested that the operators specified in paragraph (g)(1) verify the location of their underground facilities, if any, within the excavation site;

(3) required the location of all known underground facilities to be noted on updated engineering drawings as specifications for the project;

(4) notified all operators that have underground facilities located within the excavation site of the project of any changes to the engineering drawings that could affect the safety of existing facilities; and

(5) complied with the requirements of K.S.A. 66-1804(a), and amendments thereto.

(h) If an excavator wishes to conduct an excavation as a permitted project, as defined in K.S.A. 66-1802 and amendments thereto, the permit obtained by the excavator shall have been issued by a federal, state, or municipal governmental entity and shall have been issued contingent on the excavator's having met the following requirements:

(1) Notified all operators with facilities in the vicinity of the excavation of the intent to excavate as a permitted project;

(2) visually verified the presence of the facility markings at the excavation site; and

(3) complied with the requirements of K.S.A. 66-1804(a) and amendments thereto.

(i) If the excavator requests a meet on site as part of the description of the proposed excavation site given to the notification center, the tier 2 member, or the tier 3 member, then the excavator shall document the meet on site and any subsequent meetings regarding facility locations with a record noting the name and company affiliation for the representative of the excavator and the representative of the operator that attend the meeting. The excavator shall keep this record for at least two years. This documentation shall include the following:

(1) Verification that the description of the excavation site is understood by both parties;

(2) the agreed-upon excavation scheduled start date;

(3) the date and time of the meet on site; and

(4) the name and company affiliation of each attendee of the meet on site.

(j) Each excavator using trenchless excavation techniques shall develop and implement operating guidelines for trenchless excavation techniques. At a minimum, the guidelines shall require the following:

(1) Training in the requirements of the Kansas underground utility damage prevention act;

(2) training in the use of nonintrusive methods of excavation used if there is an indication of a conflict between the tolerance zone of an existing facility and the proposed excavation path;

(3) calibration procedures for the locator and sonde if this equipment is used by the excavator;

(4) recordkeeping procedures for measurements taken while boring;

(5) training in the necessary precautions to be taken in monitoring a horizontal drilling tool when backreaming or performing a pullback operation that crosses within the tolerance zone of an existing facility;

(6) training in the maintenance of appropriate clearance from existing facilities during the excavation operation and during the placement of new underground facilities;

(7) for horizontal directional drilling operations, a requirement to visually check the drill head and pullback device as they pass through potholes, entrances, and exit pits; and

(8) emergency procedures for unplanned utility strikes.

(k) If any contact with or damage to any underground facility or the facility's associated tracer wire, locate ball, or associated surface equipment occurs, the excavator shall immediately inform the operator. (Authorized by K.S.A. 2008 Supp. 66-1815; implementing K.S.A. 66-1803 and K.S.A. 66-1809; effective Jan. 19, 2007; amended July 6, 2009.)

**82-14-3. Operator requirements.** In addition to the provisions of K.S.A. 66-1806, K.S.A. 66-1807, and K.S.A. 66-1810 and amendments thereto, the requirements specified in this regulation shall apply to each operator.

(a) Each operator shall inform the notification center of its election to be considered as a tier 1 member, tier 2 member, or tier 3 member.

(b) Unless otherwise agreed to between the notification center and the operator, any operator of a tier 2 facility may change its membership election once every calendar year by informing the notification center of the operator's intention on or before November 30 of the preceding calendar year.

(c) Each tier 1 member shall perform the following:

(1) File and maintain maps of the operator's underground facilities or a map showing the operator's service area with the notification center; and

(2) file and maintain, with the notification center, the operator's telephone contact number that can be accessed on a 24-hour-per-day basis.

(d) Each tier 2 member shall perform the following:

(1) Establish telephone or internet service with the ability to receive notification from excavators on a 24-hour-per-day basis;

(2) file with the notification center updated maps of the operator's underground facilities or a map showing the operator's service area;

(3) file with the notification center the operator's current telephone contact number or numbers that can be accessed on a 24-hour-per-day basis;

(4) file with the notification center the operator's preferred method of contact for all referrals received from the notification center; and

(5) maintain for at least two years all information provided by the excavator pursuant to K.A.R. 82-14-2(e) and (f).

(e) Each tier 3 member shall perform the following:

(1) File with the notification center updated maps of the operator's underground facilities or a map showing the operator's service area;

(2) file with the notification center the operator's current telephone contact number or numbers that can be accessed on a 24-hour-per-day basis;

(3) file with the notification center the operator's preferred method of contact for all referrals received from the notification center;

(4) maintain for at least two years all information provided by the excavator pursuant to K.A.R. 82-14-2(e) and (f);

(5) develop and operate a locate service web site capable of receiving locate requests;

(6) publish and maintain a dedicated telephone number for locate services;

(7) maintain 24-hour response capability for emergency locates; and

(8) employ at least two technically qualified in-

dividuals whose job function is dedicated to the location of underground utilities.

(f) Except in cases of emergencies or separate agreements between the parties, each operator of a tier 1 facility shall perform one of the following, within the two working days before the excavation scheduled start date assigned by the notification center:

(1) Inform the excavator of the location of the tolerance zone of the operator's underground facilities in the area described in the notice of intent of excavation; or

(2) notify the excavator that the operator has no facilities in the area described in the notice of intent of excavation.

(g) Except in cases of emergencies or separate agreements between the parties, the operator of a tier 2 facility shall perform one of the following within the two working days before the excavation scheduled start date assigned by the notification center or the tier 2 member or tier 3 member, whichever is later:

(1) Mark the location of its facilities according to the requirements of subsections (m) and (n) in the area described in the notice of intent of excavation and, if applicable, notify the excavator of the operator's election to require a tolerance zone of 60 inches; or

(2) inform the excavator that the operator's underground facilities are expected to be at least two feet deeper than the excavator's planned excavation depth and that the location of its facilities will not be provided for the affected tier 2 facilities.

(h) Each operator of a tier 2 facility that notifies an excavator of its election to require a tolerance zone of 60 inches shall record and maintain the following records of the notification for at least two years:

(1) The name of the excavator contacted for the notification of a 60-inch tolerance zone;

(2) the date of the notification; and

(3) a description of the location of the excavation site.

(i) Each operator of a tier 2 facility that notifies an excavator of its election not to provide locates for its facilities that are expected to be two feet deeper than the excavator's maximum planned excavation depth shall record and maintain the following records of the notification for at least two years:

(1) The name of the excavator notified that the operator will not provide locates;

(2) the excavator's maximum planned excavation depth;

(3) the date of the notification; and  
 (4) a description of the location of the excavation site.

(j) If the operator of a tier 2 facility is unable to provide the location of its facilities within a 60-inch tolerance zone, the operator shall mark the approximate location of its facilities to the best of its ability, notify the excavator that the markings could be inaccurate, remain on site or in the vicinity of the excavation, and provide additional guidance to the excavator in locating the facilities as needed during the excavation.

(k) Each tier 2 facility constructed, replaced, or repaired after July 1, 2008 shall be locatable. Location data shall be maintained in the form of maps or any other format as determined by the operator.

(l) The requirement to inform the excavator of the facility location shall be met by marking the location of the operator's facility and identifying the name of the operator with flags, paint, or any other method by which the location of the facility is marked in a clearly visible manner.

(m) In marking the location of its facilities, each operator shall use safety colors substantially similar to five of the colors specified in the American national standards institute standard no. Z535.1-2002, "American national standard for safety color code," not including annex A, dated July 25, 2002 and hereby adopted by reference, according to the following table:

Facility Type	Color
Electric power distribution lines and transmission lines	Safety red
Gas distribution and transmission lines, hazardous liquid distribution and transmission lines	Safety yellow
Telephone, telegraph, and fiber optic system lines; cable television lines; alarm lines; and signal lines	Safety orange
Potable water lines	Safety blue
Sanitary sewer main lines	Safety green

(n) If the facility has any outside dimension that is eight inches or larger, the operator shall mark its facility so that the outside dimensions of the facility can be easily determined by the excavator.

(o) If the facility has any outside dimension that is smaller than eight inches, the operator shall mark its facility so that the location of the facility can be easily determined by the excavator.

(p) The requirement to notify the excavator that

the tier 1 operator has no facilities in the area described in the notice of intent of excavation shall be met by performing one of the following:

(1) Marking the excavation site in a manner indicating that the operator has no facilities at that site; or

(2) contacting the excavator by telephone, facsimile, or any other means of communication. Two documented attempts by the operator to reach an excavator by telephone during normal business hours shall constitute compliance with this paragraph.

(q) If the notice of intent of excavation contains a request for a meet on site, the operator shall meet with the excavator at a mutually agreed-upon time within two working days after the day on which the notice of intent of excavation was given.

(r) After attending a meet on site, the operator shall inform the excavator of the tolerance zone of the operator's facilities in the area of the planned excavation within two working days before the excavation scheduled start date that was agreed to at the meet on site.

(s) Any operator may request that the excavator whitenline the proposed excavation site.

(t) If the operator requests that the excavator white-line the excavation site, the operator shall have two working days after the whitelining is completed to provide the location of the tolerance zone.

(u) If the operator requests that the excavator use whitelining at the excavation site, the operator shall document the whitelining request and any subsequent meetings regarding the facility location for that excavation site. The operator shall maintain records of the whitelining documentation for two years after the excavation scheduled start date. The documentation shall include the following:

(1) A record stating the name and contact information of the excavator contacted for the request for whitelining;

(2) verification that both parties understand the description of the excavation site;

(3) the agreed-upon excavation scheduled start date; and

(4) the date and time of the request for whitelining.

(v) Each operator that received more than 2,000 requests for facility locations in the preceding calendar year shall file a damage summary report at least semiannually with the Kansas corporation

commission. The report shall include information on each incident of facility damage resulting from excavation activity that was discovered by the operator during that period. For each incident, at a minimum the following data, if known, shall be included in the report:

- (1) The type of operator;
- (2) the type of excavation;
- (3) the type of excavation equipment;
- (4) the city or county, or both, in which the damage occurred;
- (5) the type of facility that was damaged;
- (6) the date of damage, specifying the month and year;
- (7) the type of locator;
- (8) the existence of a valid notice of intent of excavation; and
- (9) the primary cause of the damage.

(w) The damage summary report for the first six months of the calendar year shall be due on or before August 1 of the same calendar year. The damage summary report for the last six months of the calendar year shall be due on or before February 1 of the next calendar year. (Authorized by K.S.A. 2008 Supp. 66-1815; implementing K.S.A. 66-1806, as amended by L. 2008, ch. 122, sec. 8; effective Jan. 19, 2007; amended July 6, 2009.)

**82-14-4. Notification center requirements.** In addition to the provisions of K.S.A. 66-1805 and amendments thereto, the executive director of the notification center shall ensure that the following requirements are met:

(a) Notice shall be provided to each affected operator of a tier 1 facility of any excavation site for which the location has been requested pursuant to K.S.A. 66-1804(e), and amendments thereto, and K.A.R. 82-14-2 (e) or (f) if the affected operator is a tier 1 member and has facilities recorded with the notification center in the area of the proposed excavation site.

(b) If the affected operator is a tier 2 member and has a facility recorded with the notification center in the area of the proposed excavation, the notification center shall provide the excavator with the name of the tier 2 member and contact information for the tier 2 member.

(c) If the affected operator is a tier 3 member and has facilities recorded with the notification center in the area of the proposed excavation, the notification center shall provide the excavator with the name of the tier 3 member and the preferred method of contact for the tier 3 member.

(d) Notice provided by the notification center directly to the operators of tier 2 facilities of any excavation site shall be deemed to meet the requirements of subsections (b) and (c) if the operator agrees to the method of notification.

(e) A record of receipts for each notice of intent of excavation shall be maintained by the notification center for two years, including an audio record of each notice of intent of excavation, if available, and a written or electronic version of the notification sent to each operator that is a tier 1 member.

(f) A copy of the notification center's record documenting the notice of intent of excavation shall be provided to the commission or to the person giving the notice of intent of excavation, upon request.

(g) A quality control program shall be established and maintained by the notification center. The program shall ensure that the employees receiving and recording the notices of intent of excavation are adequately trained. (Authorized by K.S.A. 2008 Supp. 66-1815; implementing K.S.A. 66-1805, as amended by L. 2008, ch. 122, sec. 7; effective Jan. 19, 2007; amended July 6, 2009.)

**82-14-5. Tier 3 member notification requirements.** In addition to meeting the requirements of K.A.R. 82-14-3(e), each tier 3 member shall ensure that the following requirements are met:

(a) A record of receipts for each notice of intent of excavation shall be maintained for at least two years, including an audio record, if available, of each notice of intent of excavation and a written or electronic version of the notification.

(b) A copy of the tier 3 member's record documenting the notice of intent of excavation resulting in a response from the member shall be provided to the commission or to the person giving the notice of intent of excavation, upon request.

(c) A quality control program shall be established and maintained. The program shall establish procedures for receiving and recording the notices of intent of excavation. (Authorized by K.S.A. 2008 Supp. 66-1815; implementing K.S.A. 66-1802, as amended by L. 2008, ch. 122, sec. 5; effective Jan. 19, 2007; amended July 6, 2009.)

**82-14-6. Violation of act; enforcement procedures.** (a) After investigation, if the commission staff believes that there has been a violation or violations of K.S.A. 66-1801 et seq. and amendments thereto or any regulation or commission order issued pursuant to the Kansas underground

utility damage prevention act and the commission staff determines that penalties or remedial action is necessary to correct the violation or violations, the commission staff may serve a notice of probable noncompliance on the person or persons against whom a violation is alleged. Service shall be made by registered mail or hand delivery.

(b) Any notice of probable noncompliance issued under this regulation may include the following:

(1) A statement of the provisions of the statutes, regulations, or commission orders that the respondent is alleged to have violated and a statement of the evidence upon which the allegations are based;

(2) a copy of this regulation; and

(3) any proposed remedial action or penalty assessments, or both, requested by the commission staff.

(c) Within 30 days of receipt of a notice of probable noncompliance, the recipient shall respond by mail in at least one of the following ways:

(1) Submit written explanations, a statement of general denial, or other materials contesting the allegations;

(2) submit a signed acknowledgment of commission staff's findings of noncompliance; or

(3) submit a signed proposal for the completion of any remedial action that addresses the commission staff's findings of noncompliance.

(d) The commission staff may amend a notice of probable noncompliance at any time before issuance of a penalty assessment. If an amendment includes any new material allegations of fact or if the staff proposes an increased civil penalty amount or additional remedial action, the respondent shall have 30 days from service of the amendment to respond.

(e) Unless good cause is shown or a consent agreement is executed by the commission staff and the respondent before the expiration of the 30-day time limit, the failure of a party to mail a timely response to a notice of probable noncompliance shall constitute an admission to all factual allegations made by the commission staff and may be used against the respondent in future proceedings.

(f) At any time before an order is issued assessing penalties or requiring remedial action or before a hearing, the commission staff and the respondent may agree to dispose of the case by joint execution of a consent agreement. The consent agreement may allow for a smaller penalty than otherwise required. The consent agreement may also allow for nonmonetary remedial penal-

ties. Upon joint execution, the consent agreement shall become effective when the commission issues an order approving the consent agreement.

(g) Each consent agreement shall include the following:

(1) An admission by the respondent of all jurisdictional facts;

(2) an express waiver of any further procedural steps and of the right to seek judicial review or otherwise challenge or contest the validity of the commission's show cause order;

(3) an acknowledgment that the notice of probable noncompliance may be used to construe the terms of the order approving the consent agreement; and

(4) a statement of the actions required of the respondent and the time by which the actions shall be completed.

(h) If any violation resulting in a notice of probable noncompliance is not settled with a consent agreement, a penalty order may be issued by the commission no sooner than 30 days after the respondent has been served with a notice of probable noncompliance.

(i) The respondent shall remit payment for any civil assessments imposed by a penalty order within 20 days of service of the order.

(j) The respondent may request a hearing to challenge the allegations set forth in the penalty order by filing a motion with the commission within 15 days of service of a penalty order. The respondent's failure to respond within 15 days shall be considered an admission of noncompliance.

(k) An order may be issued by the commission to open a formal investigation docket regarding any potential noncompliance with the Kansas underground utility damage prevention act, and amendments thereto, or any regulations or orders pursuant to that act. If the commission finds evidence that any party to the investigation docket was not in compliance, a show cause order may be issued by the commission. If a show cause order is issued during the course of a formal investigation, the staff shall not be required to issue a notice of probable noncompliance. (Authorized by K.S.A 66-106 and K.S.A 66-1812; implementing K.S.A 66-1812; effective July 6, 2009.)

#### Article 15.—VIDEO SERVICE AUTHORIZATION

**82-15-1. Application for a video service authorization certificate.** (a) Each entity seek-

ing to provide cable or video service on or after July 1, 2006 shall file an application with the commission for a video service authorization certificate. Each cable operator providing video service pursuant to a franchise that is in effect on July 1, 2006 shall file an application for a state-issued video service authorization certificate at least 30 days before the expiration of its franchise agreement in order to continue to provide video service.

(1) Each applicant shall use the application for video service authorization available from the commission, which shall include the information specified in the video competition act, 2006 SB 449, § 3(a)(1) through (5) and amendments thereto.

(2) Each applicant shall file the original and seven copies of the application with the commission, addressed to the executive director of the commission at its Topeka office.

(b)(1) Each entity that seeks statewide authorization to offer cable or video service on or after July 1, 2006 shall file an initial application.

(2) Each entity that holds a video service authorization certificate and wants to revise its original application shall file an amended application, except as provided in subsection (e).

(3) Each entity that holds a video service authorization certificate and wants to terminate its authority to provide cable or video service shall file a termination application.

(4) Each entity that holds a video service authorization certificate and wants to transfer its authority to provide cable or video service shall file a transfer application. Each entity to which the authority to provide cable or video service is transferred shall file an initial or amended application.

(c) Each applicant shall submit an electronic copy of the map of the area where the applicant will provide service, which is also known as the applicant's footprint. This map shall be provided on a compact disc and in the format specified in the application for video service authorization.

(d) Each applicant shall submit one or more of the following fees, as applicable:

(1) A filing fee of \$1,000 with an initial application; and

(2) a filing fee of \$250 with each type of application specified in paragraphs (b)(2) and (4).

(e) Each entity holding a video service authorization certificate shall provide notice of any change in the name of the entity, contact personnel, mailing address, and phone number by sending a notification letter specifying the number of the docket in which the certificate was granted.

The notice shall be provided within 14 business days after the effective date of the change.

(f)(1) Each applicant that submits an incomplete application shall be notified that its application is incomplete within 14 calendar days after the date of filing. If the applicant does not provide a complete application within seven calendar days after the date of the notice, the application shall be dismissed without prejudice within 30 days after the date of filing.

(2) A video service authorization certificate shall be issued in the form of a commission order within 30 days after the date of filing a complete application, if the applicant meets all application requirements. (Authorized by 2006 SB 449, § 3; implementing 2006 SB 449, §§ 3 and 6; effective, T-82-7-5-06, July 5, 2006; effective Oct. 13, 2006.)

## Article 16.—ELECTRIC UTILITY RENEWABLE ENERGY STANDARDS

**82-16-1. Definitions.** As used in these regulations, the following definitions shall apply:

(a) "Act" means renewable energy standards act (RESA), K.S.A. 66-1256, 66-1257, and 66-1259 and amendments thereto.

(b) "Auxiliary power" has the meaning assigned to "station power" in K.S.A. 66-1,170, and amendments thereto.

(c) "Capacity from generation" means the net capacity of renewable energy resources owned or leased by a utility. Net capacity is the gross capacity minus auxiliary power required to operate the resource as determined in a test conducted as soon as possible after commercial operation begins. This test shall reflect operation of the resource over a four-hour period under conditions that do not limit performance due to ambient conditions, equipment, or operating or regulatory restrictions. The determination for a multiunit resource, including a wind farm, may be made through tests for a representative sample of at least 10% of the units. If the tests specified in this subsection are not practicable, the nameplate capacity of the resource minus the associated auxiliary power may be used as the net capacity unless there are factors that would prevent the resource from achieving nameplate capacity, other than ambient conditions, equipment, or operating or regulatory restrictions.

(d) "Capacity from net metering systems" means the rated generating capacity of systems interconnected with a utility pursuant to the net

metering and easy connection act, K.S.A. 66-1263 et seq. and amendments thereto.

(e) “Capacity from purchased energy” means the capacity associated with energy purchased by a utility from renewable energy resources. The capacity from purchased energy shall be the nameplate capacity of the resource minus auxiliary power, adjusted as appropriate to reflect the utility’s share of the output of the resource.

(f) “Capacity from RECs” means the capacity associated with the purchase of renewable energy credits. For each source of RECs, this capacity shall be determined according to the following formulas:

$$\text{Capacity (MWs)} = \frac{\text{RECs}}{\text{Capacity Factor} \times 8760 \text{ hours}}$$

$$\text{Capacity Factor}_i = \frac{12}{n} \sum_{t=1}^n \frac{E_{i,t}}{8760 \times C_{i,t}}$$

where

i = the individual renewable generation facility (source of the RECs)

n = the number of months the facility has been in operation over the past 24 months, with n representing at least 12 months

$E_{i,t}$  = the total energy output (MWh) by renewable generation facility i during compliance period t

$C_{i,t}$  = the average total generator capacity (MW) by renewable generation facility i during compliance period t

The capacity factor shall be calculated for the source of the RECs, if possible. If the utility is unable to calculate the capacity factor for the source of the RECs, the capacity factor shall be the capacity factor of the utility’s own renewable generation from the prior calendar year for the same or similar type of resource as the source of the RECs, if known. If the utility has multiple installations of the same or similar type of resource, the capacity factor shall be the average of the facilities. If the utility did not have the same or similar type of resource as the source of the RECs or if the source is unknown, the overall capacity factor of the utility’s total renewable generation shall be used. In the absence of renewable resource generation, a default capacity factor of 34% shall be used.

(g) “Data year” means the calendar year that occurred before the due date of the utility’s report to the commission specified in K.A.R. 82-16-2.

(h) “Electric distribution cooperative” means a cooperative as defined by K.S.A. 17-4603, and amendments thereto, that is engaged in the retail sale and distribution of electricity and does not own or operate any generation or wholesale transmission facilities within the state of Kansas.

(i) “Electric utility” and “utility” mean any “affected utility,” as defined by K.S.A. 66-1257 and amendments thereto.

(j) “Generation and transmission cooperative” means a cooperative as defined by K.S.A. 17-4603, and amendments thereto, that does not engage in the retail distribution and sale of electricity and operates generation facilities and transmission facilities solely for the wholesale distribution and sale of electricity.

(k) “Nameplate capacity” means the maximum rated output of a generator under specific conditions designated by the manufacturer, generally indicated in units of kilovolt-amperes (kVA) and in kilowatts (kW) on a nameplate attached to the generator.

(l) “REC” means “renewable energy credit,” which means a credit representing energy produced by renewable energy resources and issued as part of a program that has been approved by the commission. For purposes of these regulations, this term is reflected on a certificate representing the attributes associated with one megawatt-hour (MWh) of energy generated by a renewable energy resource.

(m) “Renewable energy resources” has the meaning specified in K.S.A. 66-1257, and amendments thereto. For the purposes of K.S.A. 66-1257(d)(9)(A) and (B) and amendments thereto, the following shall apply:

(1) “Existing hydropower” shall mean hydropower that existed on or before May 27, 2009.

(2) “New hydropower” shall mean hydropower that existed after May 27, 2009.

(n) “Renewable energy goal” means the goal established by K.S.A. 66-1256, and amendments thereto, for energy and energy portfolios of each utility subject to the provisions of the act. (Authorized by K.S.A. 2016 Supp. 66-106; implementing K.S.A. 2016 Supp. 66-1257 and 66-1259; effective Nov. 19, 2010; amended Feb. 24, 2017.)

**82-16-2. Renewable energy goal and report.** (a) Any utility may attain the renewable energy goal in K.S.A. 66-1256, and amendments thereto, by maintaining a portfolio of renewable capacity from generation, purchased energy, RECs, or net metering systems.

(b) Each utility planning to seek commission approval for recovery of reasonable costs incurred under RESA and either related to the previous mandatory requirement or due to attaining the renewable energy goal, pursuant to K.S.A. 66-1259 and amendments thereto, shall submit a report to the commission detailing that utility's efforts related to attainment of the renewable energy goal. A generation and transmission cooperative may submit a collective report on behalf of the electric distribution cooperatives it represents. If this collective report is submitted, the electric distribution cooperatives shall not be required to file their own reports as required by this subsection. The report shall specify the renewable generation that has been put into service or the portion of the utility's portfolio of renewable generation resources served from purchased energy, RECs, or net metering systems on or before December 31 of each data year. An annual report shall be due on or before March 31 of each year. Each report shall contain the following information:

(1) A description of each type of renewable energy resource that was purchased or put into service on or before December 31 of the data year, including type, location, owner, operator, date of commencement of operations, nameplate capacity, and for the data year, the monthly capacity factor, monthly availability factor, and monthly and annual amounts of energy generated;

(2) a narrative supporting the rationale for selecting each capacity resource that was purchased or put into service and each purchased power contract that was executed during the data year;

(3) a description of the utility's plans for attaining the renewable energy goal for the current calendar year, including the utility's assessment of the expected impact to revenue requirements;

(4) the Kansas retail one-hour peak demand for each of the three calendar years before the data year and the average for these three years, with supporting data and calculations if the demand differs from the information reported on the federal energy regulatory commission's FERC form 1. Each electric distribution cooperative that does not file FERC form 1 with the commission shall file a Kansas electric cooperative utility annual report with the commission;

(5) the amount of renewable energy capacity that will qualify as a portion of the year's peak demand as calculated pursuant to paragraph (b)(4), broken down by capacity from generation, purchased energy, RECs, and net metering systems;

(6) the renewable energy capacity identified in paragraph (b)(5) from a facility constructed in Kansas after January 1, 2000; and

(7) total retail energy sales, as measured in kilowatt-hours (kWh), in Kansas for the data year. (Authorized by K.S.A. 2016 Supp. 66-106; implementing K.S.A. 2016 Supp. 66-1259; effective Nov. 19, 2010; amended Feb. 24, 2017.)

**82-16-3.** (Authorized by and implementing K.S.A. 2009 Supp. 66-1261; effective Nov. 19, 2010; revoked Feb. 24, 2017.)

**82-16-4. Retail revenue requirement.** The retail revenue requirement attributable to attainment of the renewable energy goal shall be calculated as follows for each utility:

(a) In conjunction with the reports required by K.A.R. 82-16-2, each affected utility shall calculate the retail revenue requirement for each capacity resource used to attain the renewable energy goal. A capacity resource may result from generation resources, purchased energy, RECs, or net metering systems.

(b) Each determination of the retail revenue requirement shall reflect the total revenues required to allow the utility the opportunity to do the following:

(1) Earn a return on rate base items;

(2) earn a return on plant investments through depreciation;

(3) recover taxes other than income taxes;

(4) recover fuel and purchased power costs, including incremental fuel expense resulting from the inefficient dispatch of power generation if this expense is known;

(5) recover operating and maintenance costs;

(6) recover administrative and general expenses; and

(7) recover income taxes, including current deferred income taxes.

(c) In order to calculate a return on rate base items, each utility shall use the overall rate of return authorized by the commission from its last litigated rate case or specified in a stipulation and agreement authorized by the commission. If an overall rate of return was not specified in a utility's last rate case, then the average of the utility's proposed rate of return and the rate of return proposed by commission staff shall be used. (Authorized by K.S.A. 2016 Supp. 66-106; implementing K.S.A. 2016 Supp. 66-1259; effective Nov. 19, 2010; amended Feb. 24, 2017.)

**82-16-5.** (Authorized by K.S.A. 2009 Supp. 66-1261; implementing K.S.A. 2009 Supp. 66-1257 and 66-1262; effective Nov. 19, 2010; revoked Feb. 24, 2017.)

**82-16-6. Renewable energy credit program.** (a) Renewable energy credits shall be issued and used as part of a REC program either established or approved by the commission. Each application for approval of any program not approved by the commission in any prior year shall be submitted on or before January 1 of the calendar year in which the RECs are proposed to be included in the portfolio.

(b) Any utility may purchase or sell RECs without commission approval. However, each renewable energy credit shall be counted only once. A REC or any attributes associated with renewable energy generation sold or intended for any purpose other than attainment of the renewable energy goal shall not be applied toward attainment of the renewable energy goal.

(c) For the purpose of RESA, unused RECs shall remain valid for up to two years from the end of the calendar year in which the associated electricity was generated and shall be permanently retired when used for attainment of the renewable energy goal prescribed by the act. To the extent that RECs or attributes associated with renewable energy generation are sold or used for any purpose other than attainment of the renewable energy goal, the utilities shall reduce the capacity used for attainment of the renewable energy goal according to the formula specified in this subsection.

Total Renewable Capacity for Voluntary Attainment =  $TRC - C_{OP}$

where

$TRC$  = total renewable capacity

$C_{OP}$  = renewable capacity sold or used for any other purpose than attainment of the renewable energy goal

$E_{OP}$  = energy from RECs or renewable energy attributes sold or used for any other purpose than attainment of the renewable energy goal

$CF$  = capacity factor for source of  $E_{OP}$

(d) Each REC created, sold, or purchased by any Kansas utility shall be reported in an approved registry that documents and verifies attributes and

other compliance conditions as well as tracks the creation, sale, retirement, and other transactions regarding the REC to prevent double counting and misuse, in accordance with these regulations and commission direction. (Authorized by K.S.A. 2016 Supp. 66-106; implementing K.S.A. 2016 Supp. 66-1259; effective Nov. 19, 2010; amended Feb. 24, 2017.)

## Article 17.—NET METERING

**82-17-1. Definitions.** The following terms used in the administration and enforcement of the Kansas net metering and easy connection act, K.S.A. 66-1263 through 66-1271 and amendments thereto, shall be defined as specified in this regulation.

(a) “Act” means the net metering and easy connection act (NMECA), K.S.A. 66-1263 through 66-1271 and amendments thereto.

(b) “Customer” means an entity receiving retail electric service from a utility.

(c) “IEEE” means the institute of electrical and electronics engineers, inc.

(d) “IEEE standard 1547” means the IEEE standard 1547, “IEEE standard for interconnecting distributed resources with electric power systems,” published by the IEEE on July 28, 2003 and hereby adopted by reference.

(e) “IEEE standard 1547.1” means the IEEE standard 1547.1, “IEEE standard conformance test procedures for equipment interconnecting distributed resources with electric power systems,” published by the IEEE on July 1, 2005 and hereby adopted by reference.

(f) “Net metered facility” means the equipment on a customer’s side of a meter that meets the requirements in K.S.A. 66-1264(b)(1) through (b)(5), and amendments thereto.

(g) “Parallel operation” means a net metered facility that is connected electrically to an electric distribution system for longer than 100 milliseconds.

(h) “REC” means renewable energy credit, as defined in K.S.A. 66-1257 and amendments thereto. For purposes of these regulations, this term is reflected on a certificate representing the attributes associated with one megawatt-hour (MWh) of energy generated by a renewable energy resource that is located in Kansas or serves ratepayers in the state.

(i) “UL standard 1741” means the UL standard 1741, “inverters, converters, controllers and interconnection system equipment for use with distrib-

uted energy resources,” published on January 28, 2010 by underwriters laboratories inc. and hereby adopted by reference. (Authorized by K.S.A. 2009 Supp. 66-1269; implementing K.S.A. 2009 Supp. 66-1268 and 66-1269; effective Aug. 6, 2010.)

**82-17-2. Utility requirements pursuant to the act.** (a) In addition to the requirements set forth in the act, any utility may install, at its expense, equipment to allow for load research metering for purposes of monitoring each net metered facility.

(b) Responsibilities for maintenance, repair, or replacement of meters, service lines, and other equipment provided by the utility shall be governed by the utility’s current tariffs and terms of service on file with the commission. This equipment shall be accessible at all times to utility personnel.

(c) Each utility’s interconnection with a customer-generator’s net metered facility shall be subject to the utility’s current tariffs and terms of service on file with the commission.

(d) Each utility shall enter into a written interconnection application or interconnection agreement with each customer-generator that is equivalent to sample forms available from the commission. Each agreement shall include the following information:

(1) Customer name, mailing address, service address, phone number, and emergency contact phone number;

(2) utility account number and number of meters associated with the account;

(3) information about the net metered facility, including AC power rating, voltage, type of system, address of the net metered facility, and the name of the manufacturer and the model number of the inverter or interconnection equipment;

(4) information about the installation of the net metered facility, including the name and license number of the contractor who installed the facility, and verification that the net metered facility meets the standards in K.A.R. 82-17-1(c), (d), (e), and (i);

(5) information regarding dispute resolution opportunities available with the commission as specified in K.A.R. 82-1-20;

(6) information regarding periodic testing requirements necessary to meet the standards in K.A.R. 82-17-1(c), (d), (e), and (i); and

(7) verification by a licensed engineer or licensed electrician that the net metered facility has been installed in a manner that meets the require-

ments of all applicable codes and standards for that net metered facility. (Authorized by K.S.A. 2009 Supp. 66-1269; implementing K.S.A. 2009 Supp. 66-1265, 66-1269, and 66-1270; effective Aug. 6, 2010.)

**82-17-3. Tariff requirements.** Each utility shall file a tariff with the commission setting forth the terms and conditions for net metering interconnection with a customer-generator. In addition to setting forth the terms and conditions required by the act, the tariff shall include the following information:

(a) Any specific criteria and guidelines for determining the appropriate size of generation to fit the expected load;

(b) a provision requiring the customer-generator to furnish, install, operate, and maintain in good repair without cost to the utility any relays, locks and seals, breakers, automatic synchronizers, disconnecting devices, and any other control and protective devices required by an applicable recognized industry standard that is clearly identified in the tariff or in a tariff that is already approved by the commission, or by any requirements adopted by federal, state or local governing authorities for the interconnection of net-metered facilities, for the parallel operation of the net metered facility with the utility’s system;

(c) a provision requiring the customer-generator to supply, at no expense to the utility, a suitable location for the utility’s equipment;

(d) a statement indicating whether or not the utility requires the customer-generator to install a utility-controlled manual disconnect switch located on the line side of a meter that has the capability to be locked out by utility personnel to isolate the utility’s facilities if an electrical outage in the utility’s facilities occurs. If a manual switch is required, the utility shall give notice to the customer-generator, as soon as possible, when the switch is locked out or used by the utility. The disconnect switch may also serve as a means of isolation for the net metered facility during any customer-generator maintenance activities, routine outages, or emergencies;

(e) a requirement that the customer-generator shall notify the utility before the initial energizing or start-up testing, or both, of the net metered facility. The utility shall have the right to be present at these times;

(f) the requirement that, if harmonics, voltage fluctuations, or other disruptive problems on the

utility's system can be directly attributed to the operation of the net metered facility, each problem shall be corrected at the customer-generator's expense. The utility shall provide to the customer-generator a written estimate of all costs that will be incurred by the utility and billed to the customer-generator to accommodate interconnection or correct problems;

(g) a requirement that no net metered facility shall damage the utility's system or equipment or present an undue hazard to utility personnel; and

(h) a requirement that the customer-generator enter into a written interconnection application or interconnection agreement with the utility, as specified in K.A.R. 82-17-2(d). (Authorized by K.S.A. 2009 Supp. 66-1269; implementing K.S.A. 2009 Supp. 66-1264, 66-1268, 66-1269; effective Aug. 6, 2010.)

**82-17-4. Reporting requirements.** (a) Each utility shall annually submit to the commission, by March 1, a report in a format approved by the commission listing all net metered facilities connected with the utility during the prior calendar year, pursuant to the act.

(b) Each report shall specify the following information:

(1) Information by customer type, including the following for each net metered facility:

(A) The type of generation resource in operation;

(B) zip code of the net metered facility;

(C) first year of interconnection;

(D) any excess kilowatt-hours that expired at the end of the prior calendar year;

(E) generator size; and

(F) number and type of meters; and

(2) the utility's system retail peak in Kansas and total rated net metered generating capacity for all net metered facilities connected with the utility's system in Kansas. (Authorized by K.S.A. 2009 Supp. 66-1269; implementing K.S.A. 2009 Supp. 66-1265, 66-1266, 66-1269, and 66-1271; effective Aug. 6, 2010.)

**82-17-5. Renewable energy credit program.** As specified in K.A.R. 82-16-6, neither utilities nor customer-generators may create, register, or sell renewable energy credits (RECs) from energy produced by a net metered facility that is used by a utility to comply with the requirements of the renewable energy standards act. Each utility shall inform a customer-generator if the utility does not intend to use the capacity of the customer-generator's net metered facility, in whole or part, to comply with these requirements for any specified calendar year or years. The utility shall provide this notice on or before October 1 of the year preceding the first such specified year. (Authorized by K.S.A. 2009 Supp. 66-1269; implementing K.S.A. 2009 Supp. 66-1271; effective Aug. 6, 2010.)

## Agency 84

# Public Employee Relations Board

### Articles

- 84-1. GENERAL PROVISIONS.
- 84-2. PROCEDURE.
- 84-3. PROHIBITED PRACTICES.
- 84-4. LOCAL GOVERNMENT PROCEDURES.
- 84-5. IMPASSE.

### Article 1.—GENERAL PROVISIONS

**84-1-1. Definitions.** “Act” means the public employer-employee relations act K.S.A. 75-4321 et seq. and amendments thereto. Terms used in these rules shall have the same meaning as defined in the act unless their context clearly indicates otherwise.

(b) “Party” means any public employee, employee organization, or public employer filing a complaint, petition, or application under the act or these rules; any public employee, employee organization or public employer named as a party in a complaint or petition filed under the act or these rules; any person, organization or public employer whose timely motion to intervene in a proceeding has been granted who has been permitted to intervene in a proceeding under the act or these rules; or any person, employee organization or public employer that has been joined as a necessary party in a complaint or petition filed under the act or these rules by order of the board or presiding officer.

(c) Pleading—For purposes of these rules and regulations, pleadings shall include any petition, complaint, answer, motion, application, or notice. (Authorized by and implementing K.S.A. 75-4323(d); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

**84-1-2. Scope.** (a) Purpose. These rules and regulations are intended as aids to promote the efficient operation of the board and the orderly administration of the act, and to provide meaningful avenues for realizing and for enforcing the statutory rights and obligations of public employees, public employee organizations, and public employers of this state under the act.

(b) Interpretation. These rules shall be liberally

construed to effectuate the purposes and provisions of the act.

(c) Waiver. In the event that the application of these rules would not be feasible or would work an injustice, the rules may be waived or suspended by the board at any time or in any proceeding unless such action would deprive a party of substantial rights.

(d) Separability. If any provisions of these rules be held invalid, it shall not be construed to invalidate any of the other provisions of these rules. (Authorized by and implementing K.S.A. 75-4323(d), 75-4330(b), 75-4334(a), 75-4336, 75-4337; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

**84-1-3. Computation of time.** Whenever the time limited in these rules for any act is seven days or more, Saturdays, Sundays and legal holidays shall be included in making the computation. Whenever the time so limited is less than seven days, Saturdays, Sundays and legal holidays shall be excluded. Whenever the last day of any such period shall fall on a Saturday, Sunday or legal holiday, such day shall be omitted from computation. Any time prescribed in these rules may be extended by the board, its designee or the presiding officer for good cause shown. Computation of time shall commence upon service to a party. (Authorized by and implementing K.S.A. 75-4323(d); effective July 30, 1990.)

**84-1-4. Registration and reports.** (a) Filing annual report. Each employee organization shall file with the board a copy of the annual report required by K.S.A. 75-4337 and amendments thereto.

(b) Proof of employee organization Kansas license registration. Each person who desires to act as a business agent of any public employee orga-

nization shall register with the Kansas secretary of state pursuant to K.S.A. 75-4336 and shall show proof of such registration to the board before that person may participate in any proceedings under the public employer-employee relations act, K.S.A. 1988 Supp. K.S.A. 75-4337. (Authorized by and implementing K.S.A. 75-4336, 75-4337; effective July 30, 1990.)

## Article 2.—PROCEDURE

**84-2-1. Service of pleadings.** (a) Method, proof, complaints, orders, and other processes and papers of the board. Service of pleadings and orders shall be conducted in accordance with K.S.A. 77-531, and amendments thereto. Complaints, decisions, orders, and other processes and papers of the board may be served personally, by certified mail, by telefacsimile machine, by electronic mail, or by leaving a copy in the proper office or place of business of persons to be served. The return by the individual serving any of these documents, setting forth the manner of service, shall be proof of service. The return post office receipt, when certified and mailed as specified in this subsection, shall be proof of service.

(b) Service by a party. The moving party and respondent in any action shall be required to file the original and five copies of any pleadings with the board or its designee in person, by certified mail, by telefacsimile machine, or by electronic mail. If a party files any pleading with the board by telefacsimile machine or by electronic mail, the party shall file the original and five copies of the pleading with the board either in person or by certified mail within five days of electronically filing the pleading. The moving party shall also cause a copy of the pleading to be served, by regular mail or in person, upon all other parties of record with a statement of certification of service appearing upon the pleading.

(c) Service upon attorney. If a party appears by the party's attorney, all papers other than the complaint, notice of original hearings, and decisions and orders may be served as provided in subsection (d), upon the party's attorney with the same force and effect as though served upon the party.

(d) Service by the board. Once a party has been permitted to intervene in a pending action, upon request of the intervening party the other parties shall be ordered by the board, its designee, or the presiding officer to serve upon the intervening party copies of all pleadings of the other parties

filed with the board before the date of intervention. (Authorized by K.S.A. 2007 Supp. 75-4323; implementing K.S.A. 77-519; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990; amended June 19, 2009.)

### **84-2-2. Hearings.** (a) General provisions.

(1) Hearings may be conducted by the board, or any member or members thereof, or any member of its staff or other individual designated by the board.

(2) The hearing shall be limited to pertinent matters necessary to determine questions relating to the immediate controversy.

#### (b) Notice of hearing.

(1) Following the filing of a petition, if it appears to the board or its designee that further proceedings are warranted, a notice of hearing, at a place fixed therein, shall be issued and served upon each of the parties and upon any known individuals or employee organizations claiming to represent any employees directly affected, and, except by agreement of the parties or in unusual circumstances, at a time not less than ten days after the service of such notice.

(2) Any such notice of hearing may be withdrawn or amended prior to the hearing by the presiding officer upon reasonable notice to the parties.

#### (c) Conduct of hearings.

(1) It shall be the duty of the presiding officer to inquire fully into all matters at issue and to obtain a full and complete record.

(2) The presiding officer may continue the hearing from day to day or adjourn it to a later date or another place, by announcement thereof at the hearing or by other appropriate notice.

#### (d) Motions.

(1) All motions made during a hearing shall be made part of the record of the proceedings.

(2) All motions and answers other than those made during a hearing shall be made in writing to the board, or its designee, pursuant to the provisions of 84-2-1(b), and shall briefly state the relief sought. Answers, if any, shall be filed with the board or its designee within seven days after service of the pleading, unless the board or its designee directs otherwise. Motions shall be ruled upon by the board, its designee or the presiding officer who may decide to hear oral argument or testimony relating to the motion. The parties shall be notified of the purpose of the hearing and of

the time and place of oral argument or the taking of testimony. Rulings and orders determinative of all matters presented at the hearing shall be issued by the presiding officer. All such motions and rulings shall be part of the record of the case.

(e) An objection not made before the presiding officer shall be deemed waived unless the failure to make such objection shall be excused by the presiding officer because of extraordinary circumstances.

(f) Introduction of evidence; the rights of parties at hearings.

(1) Any party shall have the right to appear at any hearing in person, by counsel, or by other representative, and any party and the presiding officer shall have the power to call and examine witnesses, and to introduce into the record documentary and other evidence. A party shall, upon offering an exhibit into evidence at a hearing, simultaneously furnish copies to all other parties, unless otherwise ordered by the presiding officer. Witnesses shall be examined orally under oath. Compliance with the technical rules of evidence shall not be required. Stipulations of fact may be introduced in evidence with respect to any issue.

(2) The refusal of a witness at any hearing to answer any question which has been ruled proper by the hearing officer shall be noted in the record. Such refusal shall go to the weight of previous testimony, but shall not be grounds for striking all previous testimony of the particular witness.

(3) Misconduct at any hearing before the board or presiding officer shall be grounds for summary exclusion from the hearing. As used herein, "misconduct" means conduct which disrupts or interferes with the orderly administration of proceedings under the act, or conduct which evinces refusal to obey or disregard a lawful order or ruling of the hearing officer. Misconduct, if of an aggravating character and engaged in by an attorney or other representative of a party, shall be grounds for suspension or disbarment from further practice before the board or its designee. Such suspension or disbarment shall be ordered only after the board, presiding officer or another party in the proceedings files a complaint in writing with the board alleging the acts of misconduct committed by the attorney or other representative of a party, the attorney or other representative of a party has been given thirty days notice of the charges, and the attorney or other representative of a party is given an evidentiary hearing before the entire board.

(g) Upon appointment by the board of a presiding officer to perform any of its functions, the

parties must file within three days any objection to the person appointed. The objection must contain a statement setting forth the reasons for the party's position.

(h) Findings of fact; conclusions of law; initial order. No later than 30 days after the conclusion of the hearing, the presiding officer shall issue findings of fact, conclusions of law, and an initial order unless the 30 day period is waived or extended with the written consent of all parties, or for good cause shown. Such findings of fact, conclusions of law, and initial order shall be in writing and shall contain, but need not be limited to a statement of the case findings of fact, and conclusions of law and initial order to the board. All parties and members of the board shall be served with the presiding officer's decision and initial order.

(i) Appeal Procedure.

(1) Review of initial orders shall be initiated pursuant to and controlled by K.S.A. 77-527 through K.S.A. 77-529.

(2) If the board grants review of an initial order, and unless otherwise extended by the board, the appellant shall have 30 days from the date of service of the board's order setting forth the issues to be reviewed to file its brief with the board. Appellee shall have thirty (30) days from the date of service of appellant's brief in which to file its response brief. No reply briefs will be allowed. Oral arguments will be allowed at the next regularly scheduled board meeting after service of appellee's brief. Briefs shall specifically set forth the issues to be reviewed and transcript references must be cited in the brief where a transcript is available. (Authorized by and implementing K.S.A. 75-4323(c)(d)(4), 75-4327(c)(d)(e), 75-4332(b)(c)(d)(e); and 75-4334(a); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

**84-2-3. Intervention and joinder.** Any third party having a legitimate interest in any proceedings may file a petition of intervention setting forth facts sufficient to establish such interest and requesting that the board resolve contested factual matters in its favor. In the alternative any third party may be joined upon a motion by the board, its designee or the presiding officer. Any organization which has a signed, valid memorandum of agreement encompassing the proposed unit or any portion thereof shall be considered to have a legitimate interest in any proceedings upon presentation of same. If the intervention is pursuant

to K.A.R. 84-2-11(e) the petition must be accompanied with a 30% showing of interest in accordance with K.S.A. 75-4327(d). (Authorized by and implementing K.S.A. 75-4323(d)(4), 75-4324, 75-4327(a)(b)(c)(d) and 75-4328; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

**84-2-4. Authorization cards; acceptability.** Evidence of representation or legitimate interest may be either individual authorization cards, or by petition. In either case, the petition or card must show address of, and be signed and dated by, the employee expressing an intent to be represented by a specific employee organization. A card or petition signed and dated by a public employee less than one year prior to the date on which the petition for certification was filed shall constitute prime facie evidence of continuation of such authorization. (Authorized by and implementing K.S.A. 75-4323(d)(4), 75-4324, 75-4327(a)(b)(c)(d) and 75-4328; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

**84-2-5. Validity of showing of interest.** (a) The proof of interest when submitted becomes the property of the board and shall not be furnished to any of the parties. The adequacy of the showing of interest shall be determined by the board or its designee and such decision shall not be subject to collateral attack at a hearing before the board. Proof of interest shall not be required until after unit determination has been made by the board.

(b) Each public employer shall be required to furnish the board with an alphabetical listing of all employees within the appropriate unit including their work site and home addresses as expeditiously as possible, not to exceed 30 days after the filing of a petition for a certification election following unit determination, unless otherwise directed by the board or its designee. (Authorized by and implementing K.S.A. 75-4323(d)(4), 75-4324, 75-4327(a)(b)(c)(d) and 75-4328; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

**84-2-6. Units.** (a) Determining appropriate unit.

(1) Any unit may consist of all of the employees of the public employer, or any department, division, section or area, or party or combination thereof, if found to be appropriate by the board, except as otherwise provided in the act or these rules.

(2) In considering whether a unit is appropriate, the provisions of K.S.A. 75-4327(e) and whether the proposed unit of the public employees is a distinct and homogeneous group, with significant problems which can be adjusted without regard to the other public employees of the public employer shall be considered by the board or presiding officer, and the relationship of the proposed unit to the total organizational pattern of the public employer may be considered by the board or presiding officer. Neither the extent to which public employees have been organized by an employee organization nor the desires of a particular group of public employees to be represented separately or by a particular employee organization shall be controlling on the question of whether a proposed unit is appropriate. (Authorized by and implementing K.S.A. 75-4323(d)(4) and 75-4327(b)(c); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

**84-2-7. Petition for unit determination, unit clarification and investigation or certification or decertification of employee organization; of petition.** A petition, form to be provided by the board, may be filed with the board by an employee organization or group of public employees or public employer. The original of the petition shall be signed by the petitioner or his authorized representative and the original and five copies thereof shall be filed with the board. (Authorized by and implementing K.S.A. 75-4323(d)(4) and 75-4327(d); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

**84-2-8.** (Authorized by K.S.A. 75-4323(d)(4), 75-4327(d); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; revoked May 1, 1975.)

**84-2-9. Procedure following filing of petitions.** (a) Petition; amendment or withdrawal. Any petition may be amended, in whole or in part, or withdrawn by the petitioner at any time prior to the filing of an answer by an interested party. A petition may be amended or withdrawn by the petitioner after the filing of an answer by any party or after the board has acted thereon, only with the approval of the board, its designee or the presiding officer and upon such conditions as the board, its designee or the presiding officer may deem proper and just.

(b) Answers. Each party shall file an answer to the petition within 20 days after receipt thereof. The time for filing an answer may be extended

by the board, its designee or the presiding officer upon showing of good cause. Failure to answer within 20 days will be deemed as an admission by said party to all allegations in the petition.

(c) Investigation. The parties shall be notified by the board or its designee of the name of the person assigned to investigate the allegations contained in the petition. That person shall direct an investigation of all questions concerning representation, including, if applicable, whether the proof of interest requirement, as set forth in the rules, has been met; whether more than one employee organization seeks to represent some or all of the employees in the allegedly appropriate unit; and whether there is agreement among the parties as to the appropriateness of the alleged unit.

(d) Hearings. The presiding officer may direct a hearing, pursuant to 84-2-2(b), in which event the presiding officer shall prepare and cause to be served upon the parties a notice of hearing before the presiding officer at a time and place fixed therein. (Authorized by and implementing K.S.A. 75-4323(d)(4) and 75-4327(d); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

**84-2-10.** (Authorized by K.S.A. 75-4323(d)(4), 75-4327(d); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; revoked May 1, 1975.)

**84-2-11. Elections; eligibility and conditions.** (a) When an employee organization files a petition for certification a determination shall be made by the board or its designee as to whether a sufficient showing of interest has been filed by said employee organization. If a sufficient showing of interest exists, an order shall be entered by the board or its designee directing an election be conducted by such persons as may be appointed by the board or its designee.

(b) All elections shall be held not later than 30 days from date of validation of the first submitted proof of interest or such other date as the board or its designee may specify, at such times and places and upon such terms or conditions as the board or its designee may specify.

(c) The employees eligible to vote shall be those on the payroll on the date of the validation of proof of interest and who remain on the payroll on the date of the election.

(d) A list of names and work site and home addresses of all eligible employees in the appropriate unit shall be furnished by the board or its

designee to all employee organizations submitting proof of interest immediately upon validation of said proof of interest.

(e) A motion for intervention for purpose of representation on an election ballot at a certification election will not be entertained during the 15 days immediately preceding said election.

(f) A notice of election and sample ballot shall be posted not less than seven days prior to the election in conspicuous areas where employees in the affected unit assemble. Orders to cause such posting shall be issued by the board or its designee. (Authorized by and implementing K.S.A. 75-4323(d)(4) and 75-4327(d); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

**84-2-12. Elections; procedure.** (a) All elections shall be by secret ballot, at times, places, and in such manner as the board or its designee may direct, and shall be conducted by a designee of the board, whose determination of all questions arising shall be final, subject, however, to review by the board.

(b) Ballots shall be prepared and issued by the board or its designee. Ballots shall contain the name of each representative and a choice of "no representative." The place of priority on the ballot shall be determined by the chronological filing or appearance on the dockets of the board but with the petitioner taking first priority. In a run-off election, the place of priority shall be determined by the sequence appearing on the ballot at the prior inclusive election.

(c) Each party to the election shall be entitled to be represented by an equal number of observers watching at each polling place. Observers shall be employees eligible to vote, or in the case of employer's observers, shall be non-supervisory personnel, unless otherwise agreed to by all parties.

(d) Prior to the commencement of the election, the designee of the board shall designate the polling area and no electioneering of any kind shall be permitted within this area. Any violation of this rule by any party or its representative or agent may be grounds for setting aside the election.

(e) Any prospective voter may be challenged for cause.

(f) All employees whose names do not appear upon the list certified by the board as being a complete list of the employees within the defined appropriate unit shall be challenged by the designee of the board.

(g) A challenged voter shall be permitted to vote but his ballot shall not be cast. It shall instead be sealed in a separate, unmarked envelope under the supervision of the agent of the board and then inserted in a special identifiable form envelope provided by the board for that purpose and returned to the board.

(h) In all elections a majority of the valid votes cast shall determine the employee representative designated or selected by the employees in the defined appropriate unit or the determination that no representative has been designated. A tally of ballots shall be made by the board agent immediately following the closing of the polls and a tally sheet shall be furnished to all parties to the election.

(i) Each party to the election shall be permitted to observe the count of the ballots.

(j) All objections to a party's conduct or third person's conduct to the election shall be, by a charge of unfair practice, filed with the board within five days of the holding of the election and such order as required to effectuate the purposes of the act shall be immediately issued by the board or its designee.

(k) All objections to the board's conduct of an election must be filed within five days of the holding of the same and such order as required to effectuate the purposes of the act shall be immediately issued by the board or its designee.

(l) The board shall conduct a runoff election when an election in which the ballot provides for not less than three choices, at least two employee organizations and "no representation," results in none of the choices receiving a majority of the valid ballots cast.

(m) The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of votes.

(n) Runoff elections shall be conducted by the board or its designee as expeditiously as possible not to exceed 30 days following the first election unless otherwise ordered by the board or its designee. (Authorized by and implementing K.S.A. 75-4323(d)(4), 75-4327(d); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

#### **84-2-13. Certification of election results.**

(a) Certification—If no objections are filed within the time set forth above, if the challenged ballots are insufficient in number to affect the result of the election, and if no runoff election is to be

held, a certification of the results of the election, including certification of representative, where appropriate shall forthwith be issued to the parties by the board or its designee. All employee organizations shall be certified as of the last day of election.

(b) Pre-existing contracts. When a governmental sub-division elects to come under the provisions of K.S.A. 75-4321 et seq. and at the time of such election there are formal written agreements between that governmental sub-division and a recognized employee organization representing one or more employee units entered into prior to the election to come under K.S.A. 75-4321 et seq. and those agreements continue and are in force at the time of such election, either the employer or the recognized employee organization may petition the board to certify the recognized employee organization as the exclusive representative of the employees within the unit. After a determination by the board or its designee that the petitioned for employee unit is not in violation of the act notice of the intent to certify the previously recognized employee organization shall be ordered by the board posted in locations conspicuous to all employees within the proposed employee unit not less than 10 days prior to making a final determination. If no protest or counter petition is filed, the board shall certify the employee organization as petitioned. (Authorized by and implementing K.S.A. 75-4323(d)(4), 75-4327(d); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

#### **84-2-14. Mediation and fact-finding.** (a) Mediator.

(1) Any information disclosed to the mediator in the performance of his duties shall not be divulged unless approved by all parties involved. All files, records, reports, documents, or other papers received or prepared by the mediator shall be classified as confidential and not as a public record. Such matters shall not be disclosed to anyone without the prior consent of the board and all parties involved.

(2) The mediator shall not produce any confidential records or testimony with regard to any mediation conducted by the mediator on behalf of the party to any case pending in any proceeding before any court, board, investigatory body, arbitrator, or fact-finder without the written consent of the board and the party furnishing such information.

## (b) Mediation meetings.

(1) The mediator may hold separate or joint meetings with the parties or their representatives, and such meetings shall not be open to the public. Such meetings shall be conducted at such times and places agreed to by the mediator and the parties.

(2) The mediator shall, either orally or in writing, report the status of his mediation efforts.

(3) The mediator shall report in writing the final settlement of the dispute to the board.

## (c) Fact-finding.

(1) Any person, broadly representative of the public, who has been selected by the board or its designee for listing on a register of fact-finders, may act as a fact-finder.

(2) The public employers and employee organizations may submit in writing, from time to time, the names of their proposed fact-finders to the board or its designee. (Authorized by and implementing K.S.A. 75-4323(d)(4), 75-4327(c),(d),(e); 75-4332(b),(c),(d),(e); 75-4334(a); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

**84-2-15. Arbitration.** (a) General provisions. This section governs the general procedure relating to the arbitration proceedings and designation of arbitrators, pursuant to K.S.A. 75-4330(b). The policy of the state primarily is to promote the prompt, peaceful and just settlement of labor disputes arising from the interpretation or application of a memorandum of agreement affecting terms and conditions of employment. Final determination of such disputes may be made by the board or the arbitrators appointed by the board.

## (b) Request to initiate arbitration.

(1) A request that the board initiate arbitration shall be in writing and signed by the party or parties filing the request. If not a joint request, the party filing same, at the same time, shall cause a copy thereof to be sent to the other party.

## (2) Contents of the request should include:

(A) If a joint request, a statement as to the issue or issues in dispute, or if a request by only one of the parties, a statement as to the alleged issue or issues in dispute.

(B) A copy of the memorandum of agreement in effect.

(C) A request that the board either act as an arbitration board, or appoint either one of its members or staff members or an individual not in the employ of the board, for their consideration in the selection of an arbitrator or board of arbitration.

(D) The names, addresses and phone numbers of the principal representatives of the parties involved.

(E) Suggested dates, time and place for the conduct of the hearing, if the board is requested to appoint one of its members or staff members as the arbitrator.

(F) If a joint request, it shall contain a statement as to whether request is for advisory or binding arbitration.

## (c) Board action.

(1) If the request to initiate arbitration is filed by only one party, the other party to the dispute shall immediately be contacted by the board or its designee to inquire as to its acquiescence to arbitration. If the latter opposes the right of the initiating party to proceed to arbitration, the initiating party shall be so advised by the board and no further action taken on the request.

(2) If arbitration has been jointly initiated or acquiesced in, the board shall, as requested or agreed either appoint the arbitrator or arbitrators, or submit to the parties a panel of individuals for their consideration in the selection of an arbitrator or board of arbitration.

(3) A written agreement of the parties as to whether the arbitration shall be binding or advisory shall be obtained by the board or its designee.

## (d) Arbitrators; who may act.

(1) The board of arbitration may be composed of the full board or one of the board members or board staff members appointed by the board. When so acting, neither any member of the board nor any member of the staff shall receive any compensation from the parties in the performance of such function.

(2) Only competent, impartial and disinterested persons shall be appointed by the board to act as arbitrators or to be included in a panel of arbitrators. Such persons, when acting as arbitrators, shall be compensated by the parties, for fees and expenses, at such sum mutually agreed upon by the parties and the arbitrator or arbitrators.

(e) Procedures of the arbitrator. Procedures of the arbitrator shall be as deemed appropriate by the arbitrator subject to review by the board.

(f) Award and report. The arbitrator appointed by the board or selected by the parties from a panel designated by the board shall at the time of serving copies of the award on the parties, file a copy thereof with the board, as well as a report reflecting a breakdown of the arbitrator's fees and expenses, if any.

(g) Registry. The public employers and employee organizations, from time to time, submit in writing the names of their proposed arbitrators to the board. (Authorized by and implementing K.S.A. 75-4323(d)(4), 75-4330(b); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

### Article 3.—PROHIBITED PRACTICES

**84-3-1. Complaints.** (a) Who may file. A complaint that any public employee, employee organization or public employer has engaged in or is engaging in any prohibited practice under the act may be filed by a public employee, a group of public employees, an employee organization or a public employer, any of whom may hereafter be referred to as the party filing the complaint.

(b) Form and filing. Complaint forms shall be provided by the board. The original and file copies of the complaint shall be filed with the board or its designee pursuant to 84-2-1(b).

(c) Answer to complaint; contents. The answer shall contain the following:

(1) A specific admission, denial, or explanation of each allegation of the complaint, or if the filing party is without knowledge thereof, a statement to that effect, such statement operating as a denial. Admissions or denials may be to all or part of an allegation but shall fairly meet the substance of the allegation.

(2) A specific detailed statement of any affirmative defense.

(3) A clear and concise statement of the facts and matters of law relied upon. Any allegation in the complaint not specifically denied in the answer, unless the respondent shall state in the answer that the respondent is without knowledge, and the reasons the respondent is without knowledge, shall be deemed admitted to be true and may be so found by the board.

(d) Answer to the complaint. The party named in the complaint shall file, pursuant to 84-2-1(b), a written answer within seven days after service of the complaint.

(e) Amendment to complaint. Any complaint may be amended, in whole or in part, by the complainant at any time prior to the filing of an answer by the respondent. After an answer has been filed by the respondent, a complaint may be amended by the complainant with approval of the board or its designee at any time before the presiding officer's initial order is served.

(f) Amendment of answer; following amendment of complaint. In any case where a complaint has been amended, the respondent shall have an opportunity to amend the respondent's answer within such period as may be fixed by the presiding officer.

(g) Withdrawal of complaint. Through written notice served on the board, a complaint or any part thereof may be withdrawn at any time. (Authorized by and implementing K.S.A. 75-4323(d)(4); 75-4334(b),(d); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

**84-3-2. Hearing notice.** After a complaint has been filed, if it appears to the board, or its designee, that formal proceedings in respect thereto should be instituted, a notice of hearing pursuant to K.A.R. 84-2-2b shall be served on each party by the board or its designee. (Authorized by and implementing K.S.A. 75-4323 (d) (4);75-4334 (b), (d); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

**84-3-3. Record of proceedings before the board; prohibited practice cases.** (a) The record of the proceedings before the presiding officer in prohibited practice cases shall consist of the complaint or amended complaint, any other pleadings, notices of hearings, motions, orders, stenographic report, exhibits, depositions, proposed and final findings of fact and conclusions of law, initial order, final order or order on reconsideration, and staff memoranda or data.

(b) If a prohibited practice proceeding is predicated in whole or in part upon a prior representation proceeding, the record of such prior representation proceeding shall be deemed a part of the record in the prohibited practice proceeding for all purposes. (Authorized by and implementing K.S.A. 75-4323, 75-4334; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended July 30, 1990.)

**84-3-4. Joinder of parties.** All persons alleged to have engaged in any unfair practices may be joined as parties, whether jointly, severally, or in the alternative, and a decision may be rendered against one or more of them upon all of the evidence, without regard to the party by or against whom such evidence has been introduced. No proceedings will be dismissed because of nonjoinder or misjoinder of parties. Upon motion of any

party or upon motion of the board, its designee or the presiding officer parties may be added, dropped or substituted at any stage of the proceedings, upon such terms as may be deemed as just and proper. Such motions may be made at or prior to the first hearing in any such proceeding unless good and sufficient cause is shown why it could not have been made at such time. Failure to so move shall be deemed a waiver of all objections to a nonjoinder or misjoinder. (Authorized by and implementing K.S.A. 75-4323, 75-4327, 75-4332, 75-4334; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

**84-3-5. Findings of fact; conclusions of law; recommendation.** Findings of fact, conclusions of law, and initial orders shall be issued pursuant to K.S.A. 77-526(c). (Authorized by and implementing K.S.A. 75-4323 (d)(4); 75-4327 (c),(d),(e); 75-4332 (b),(c),(d),(e); 75-4334 (a),(b); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

**84-3-6. Strikes or lockouts.** In the case of an alleged violation of K.S.A. 75-4333(c)(5), the case may be handled in accordance with K.S.A. 77-536 by the board or its designee disregarding normal time limitations. (Authorized by and implementing K.S.A. 75-4323(d)(4), 75-4334(a); effective E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

#### Article 4.—LOCAL GOVERNMENT PROCEDURES

**84-4-1. Application for approval.** (a) Filing. An application may be submitted by a local government which, acting through its legislative body, has adopted or amended by ordinance or resolution its own provisions and procedures, for a determination by the board that such provisions and procedures are substantially equivalent to the provisions and procedures set forth in the act and these rules. Applications under this section shall be in writing and signed by the governing body, or its authorized representative. Such an application may be filed at any time after the applicant has given public notice of its intention to so file and may be withdrawn by the applicant at any time before disposition of it by the board and after giving public notice of such withdrawal. Such public notice shall consist of posting in a conspicuous place at suitable offices of the applicant for not less than

five working days and inclusion in a public advertisement in a newspaper of general circulation in the area of the applicant for not less than one day.

(b) Contents of application. An application for determination that local provisions and procedures are substantially equivalent to the provisions and procedures set forth in the act and these rules shall contain the following:

(1) Name and address of the applicant.

(2) A copy of the local law, ordinance or resolution adopted or amended by the legislative body of the applicant.

(3) If an amendment, a statement as to whether the ordinance or resolution to be amended has been determined to be substantially equivalent to the provisions and procedures set forth in the act and these rules, and if so, whether the board has determined that the continuing implementation of such ordinance or resolution was not substantially equivalent to such provisions and procedures.

(4) A copy of the public notice announcing the application and a description of the manner and date of its publication.

(5) The names and addresses of any employee organizations which have been certified or recognized to represent any public employees of the applicant.

(6) The names and addresses of any other employee organizations which claim to represent any public employees of the applicant. (Authorized by and implementing K.S.A. 75-4323(d)(4), 75-4335; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

**84-4-2. Objections.** Within 15 working days after receipt of the application by the board, any public employee or employee organization may file an objection to the granting of the application. The late filing of an objection may be excused by the board or its designee for extraordinary circumstances. (Authorized by and implementing K.S.A. 75-4323(d)(4), 75-4335; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

**84-4-3. Investigation and hearing.** (a) The applicant and any interested party shall be notified by the board or its designee of the name of the person assigned to investigate the allegations contained in the application. That person shall direct an investigation of any questions raised by the application and such objections to the application as may be filed with the board or its designee. In

conducting such an investigation, the presiding officer may require affidavits or direct a hearing. If a hearing is directed, the presiding officer shall prepare and cause to be served upon the applicant and any interested party a notice of hearing before the presiding officer at a time and place fixed therein.

(b) In the event a hearing is directed, the provisions of section 84-2-2 of these rules shall govern. (Authorized by and implementing K.S.A. 75-4323(d)(4), 75-4335; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

**84-4-4. Determination by the presiding officer.** No later than 30 days after the conclusion of the hearing or after submission of proposed findings of fact, conclusions of law and briefs, the presiding officer shall issue findings of fact, conclusions of law and an initial order, unless the 30 day period is waived or extended with the written consent of all parties or for good cause shown. All parties shall be served with the presiding officer's decision and initial order. (Authorized by and implementing K.S.A. 75-4323, 75-4335; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended July 30, 1990.)

**84-4-5. Termination or amendment of procedures by a local government.** (a) To be approved, the provisions and procedures established by a local government pursuant to K.S.A. 75-4335 must provide, inter alia, that termination of such procedures shall become effective no sooner than 60 days after the filing with the board of a duly certified copy of an ordinance or resolution of such local government terminating the applicability of the local provisions and procedures, or on the date specified in the ordinance or resolution, whichever is later. The provisions and procedures must also provide that the local government will give public notice of the termination of the local procedures at least 45 days prior to the effective date thereof, by posting in a conspicuous place at suitable offices of its own for not less than five working days and inclusion in a public advertisement in a local newspaper of general circulation for not less than one day.

(b) To be approved, the provisions and procedures established by a local government pursuant to K.S.A. 75-4335 must provide, inter alia, that no amendment shall be effective until the board finds that the provisions and procedures as amended,

are substantially equivalent to the provisions and procedures set forth in the Act and these rules. (Authorized by and implementing K.S.A. 75-4323(d)(4), 75-4335; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

**84-4-6. Local regulations.** Upon approval of the provisions and procedures established by a local government pursuant to K.S.A. 75-4335, the local agency shall perform the duties set forth in K.S.A. 75-4327 and K.S.A. 75-4328. Within 45 days from the date of such approval, the local agency must adopt rules of procedure substantially equivalent to K.S.A. 75-4321 et seq., and the regulations adopted by the public employee relations board. (Authorized by K.S.A. 75-4323 (d)(4), 75-4335; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975.)

**84-4-7. Procedures for the review of implementation of local government procedures pursuant to K.S.A. 75-4335.** (a) General provisions. The fact that a local government has not adopted rules and regulations within 45 days after the board has determined that its provisions and procedures are substantially equivalent to the provisions and procedures set forth in the act and these rules, shall be prima facie evidence that the local government has not implemented its provisions and procedures in a manner substantially equivalent to the provisions and procedures as set forth in the act and these rules.

(b) Petition; filing. A petition to review the question of whether provisions and procedures of local government are being implemented in a manner substantially equivalent to the provisions and procedures set forth in the act and these rules, hereinafter called a petition for review, may be filed by any public employee or employee organization. Petitions under this section shall be in writing upon forms to be provided by the board. The original and five copies of the petition shall be filed with the board within 60 days after the act or non-action complained of occurred or failed to occur. Petition forms will be supplied by the board upon request. The petition may be withdrawn any time prior to action by the board, its designee or the presiding officer. Each party shall file an answer to the petition for review within 10 days after receipt thereof.

(c) Time for filing of petitions. A petition for review may be filed at any time.

(d) Contents of petitions for review. A petition for review shall contain the following:

(1) The name, affiliation, if any, and address of petitioner.

(2) The name of the local government involved.

(3) The names and addresses of any other employee organizations which claim to represent any public employees under the jurisdiction of the local government involved.

(4) A clear and concise statement of the grounds for alleging that the local government provisions and procedures, as implemented, are not substantially equivalent to the provisions and procedures set forth in the act and these rules.

(e) Intervention. Any public employee, employee organization or public employer may be permitted, in the discretion of the presiding officer, to intervene in a proceeding. The intervenor must make a motion on notice to all parties in the proceeding. Supporting affidavits establishing the basis for the motion may be required by the presiding officer. If intervention is permitted, the public employee, employee organization or public employer becomes a party for all purposes.

(f) Notice of pending petitions. Upon the filing of a petition under this part, notice thereof, including the date when such petition was filed and the name and address of petitioner and the local government involved, shall be posted by the designee of the board on the public docket maintained by the board at its principal office.

(g) Conduct of hearing. The conduct of hearings under this section shall follow the standard hearing procedures as provided in section 84-2-2.

(h) Determination by the presiding officer. No later than 30 days after the conclusion of the hearing or after submission of proposed findings of fact, conclusions of law and briefs, the presiding officer shall issue findings of fact, conclusions of law and an initial order, unless the 30 day period is waived or extended with the written consent of all parties or for good cause shown. All parties shall be served with the presiding officer's decision and initial order. (Authorized by and implementing K.S.A. 75-4323(d)(4), 75-4335; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

#### Article 5.—IMPASSE

**84-5-1. Impasse; petition; filing.** In the event of an impasse, a request for assistance of the board, may be filed with the board or its designee by an employee organization or public employer organization or public employer, showing whether a joint or single party request is being made. (Authorized by and implementing K.S.A. 75-4323(d)(4), 75-4332(a), (b); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)



## Agency 85

# Abstracters' Board of Examiners

### Articles

- 85-1. APPLICATION AND EXAMINATION. (*Not in active use.*)
- 85-2. ISSUANCE OF LICENSE. (*Not in active use.*)
- 85-3. ABSTRACT BONDS.
- 85-4. LICENSE FEE.
- 85-6. INSURANCE.
- 85-7. EXAMINATION FEES.

### Article 1.—APPLICATION AND EXAMINATION

**85-1-1.** (Authorized by K.S.A. 1970 Supp. 74-3901; effective, E-70-18, March 10, 1970; effective Jan. 1, 1971; revoked, L. 1983, ch. 353, July 1, 1983.)

**85-1-2.** (Authorized by K.S.A. 1970 Supp. 58-2805, 74-3901; effective, E-70-18, March 10, 1970; effective Jan. 1, 1971; revoked, L. 1983, ch. 353, July 1, 1983.)

### Article 2.—ISSUANCE OF LICENSE

**85-2-1 and 85-2-2.** (Authorized by K.S.A. 1970 Supp. 74-3901; effective, E-70-18, March 10, 1970; effective Jan. 1, 1971; revoked, L. 1983, ch. 353, July 1, 1983.)

**85-2-3.** (Authorized by K.S.A. 1970 Supp. 58-2802, 74-3901; effective, E-70-18, March 10, 1970; effective Jan. 1, 1971; revoked, L. 1983, ch. 353, July 1, 1983.)

**85-2-4 and 85-2-5.** (Authorized by K.S.A. 1970 Supp. 74-3901; effective, E-70-18, March 10, 1970; effective Jan. 1, 1971; revoked, L. 1983, ch. 353, July 1, 1983.)

### Article 3.—ABSTRACT BONDS

**85-3-1.** (Authorized by K.S.A. 1970 Supp. 58-2802, 74-3901; effective, E-70-34, March 10, 1970; effective Jan. 1, 1971; revoked, L. 1983, ch. 353, July 1, 1983.)

**85-3-2. Abstract bonds.** Prior to the issuance of a license, each applicant shall file a bond in the amount of \$25,000.00 with the secretary of the abstracters' board of examiners and in each

county in which the applicant intends to do business. (Authorized by K.S.A. 1984 Supp. 74-3901; implementing K.S.A. 58-2802; effective, T-86-8, April 1, 1985; effective May 1, 1986.)

### Article 4.—LICENSE FEE

**85-4-1. License fee.** The annual fee for each abstracter's license shall be \$75.00. (Authorized by K.S.A. 74-3901; implementing K.S.A. 2013 Supp.58-2801; effective, T-86-8, April 1, 1985; effective May 1, 1986; amended Nov. 13, 1989; amended March 13, 2015.)

### Article 6.—INSURANCE

**85-6-1. Insurance.** Prior to the issuance of a license, each applicant shall file with the secretary of the abstracters' board of examiners an errors and omissions insurance policy in an amount of not less than \$25,000.00 and with a deductible of not more than a maximum amount which would be equal to 10 percent of the policy amount. This policy shall be effective throughout the term of the license. (Authorized by K.S.A. 74-3901; implementing K.S.A. 58-2802, as amended by 1989 HB 2222, Sec. 1; effective, T-86-8, April 1, 1985; effective May 1, 1986; amended Nov. 13, 1989.)

### Article 7.—EXAMINATION FEES

**85-7-1. Examination fees.** (a) The fee for the examination shall be \$75.00.

(b) If an applicant does not pass the examination the first time, the applicant's fee for a second examination shall be \$50.00. (Authorized by K.S.A. 74-3901; implementing K.S.A. 58-2805; effective, T-86-8, April 1, 1985; effective May 1, 1986; amended Nov. 13, 1989; amended March 13, 2015.)



## Agency 86

# Kansas Real Estate Commission

### Articles

- 86-1. EXAMINATION AND REGISTRATION.
- 86-2. AUTHORITY OF COMMISSION; PROCEDURE.
- 86-3. PERSONS HOLDING LICENSES; DUTIES.

### Article 1.—EXAMINATION AND REGISTRATION

**86-1-1.** (Authorized by K.S.A. 74-4202; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1975; revoked, E-81-18, July 16, 1980; revoked May 1, 1981.)

**86-1-2.** (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 2006 Supp. 58-3039, as amended by L. 2007, ch. 88, sec. 1; effective Jan. 1, 1966; amended Jan. 1, 1974; amended, E-74-50, Sept. 13, 1974; amended May 1, 1975; amended, E-81-18, July 16, 1980; amended May 1, 1981; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; revoked Nov. 14, 2016.)

**86-1-3. Expiration of licenses.** The expiration date for each original license issued by the commission shall be the first day of the month of issuance two years after the issuance date. Each license renewed by the commission shall expire two years after the expiration date of the preceding license.

This regulation shall be effective on and after January 1, 2019. (Authorized by K.S.A. 2017 Supp. 74-4202; implementing K.S.A. 2017 Supp. 58-3045; effective Jan. 1, 1966; amended, E-73-30, Sept. 28, 1973; amended Jan. 1, 1974; amended, E-81-18, July 16, 1980; amended May 1, 1981; amended, T-87-32, Nov. 19, 1986; amended May 1, 1987; amended, T-86-10-1-97, Oct. 1, 1997; amended Oct. 24, 1997; amended Jan. 1, 2019.)

**86-1-4.** (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 1990 Supp. 58-3045; effective Jan. 1, 1986; amended, E-81-18, July 16, 1980; amended May 1, 1981; amended, T-87-32, Nov. 19, 1986; amended May 1, 1987; amended Nov. 18, 1991; revoked Nov. 14, 2016.)

**86-1-5. Fees.** (a) Each applicant shall pay a fee in an amount equal to the actual cost of the

examination and the administration of the examination to the testing service designated by the commission.

(b) Each applicant shall submit the following fees for licensure to the commission:

(1) For submission of an application for an original salesperson's license, a fee of \$15;

(2) for submission of an application for an original broker's license, a fee of \$50;

(3) for an original salesperson's license, a prorated fee based on a two-year amount of \$125;

(4) for an original broker's license, a prorated fee based on a two-year amount of \$175;

(5) for renewal of a salesperson's license, a two-year fee of \$125;

(6) for renewal of a broker's license, a two-year fee of \$175;

(7) for reinstatement of a license that has been deactivated or that has been canceled pursuant to K.S.A. 58-3047(c), and amendments thereto, a fee of \$15;

(8) for each branch office, a fee of \$100; and

(9) for each primary office of a company created or established by a supervising broker, a fee of \$100.

(c)(1) Each applicant shall meet one of the following requirements:

(A) Submit a paper fingerprint card to the commission and pay a fee of \$60 to the commission; or

(B) submit electronic fingerprints to the Kansas bureau of investigation (KBI) or through a KBI-approved vendor and pay the cost for that service.

(2) Each licensee who is submitting fingerprints in connection with an investigation of that licensee shall pay a fee of \$60 for the cost of submission of the licensee's fingerprints to the KBI for the purpose of obtaining a criminal history check conducted by the KBI and the federal bureau of investigation and for the commission's reasonable costs of administering the criminal history check program in connection with any investigation.

(d) Each course provider seeking course approval pursuant to K.S.A. 58-3046a, and amendments thereto, shall pay a fee of \$75 to the commission.

(e) Each licensee seeking approval of a course of instruction pursuant to K.S.A. 58-3046a(k), and amendments thereto, shall pay a fee of \$10 to the commission. (Authorized by K.S.A. 2017 Supp. 58-3063; implementing K.S.A. 2017 Supp. 58-3039 and 58-3063; effective Jan. 1, 1966; amended, E-73-30, Sept. 28, 1973; amended Jan. 1, 1974; amended, E-74-50, Sept. 13, 1974; amended May 1, 1975; amended, E-81-18, July 16, 1980; amended May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended, T-86-10, May 1, 1985; amended May 1, 1986; amended, T-87-32, Nov. 19, 1986; amended May 1, 1987; amended Sept. 26, 1988; amended July 31, 1991; amended Dec. 20, 1993; amended July 31, 1996; amended, T-86-10-1-97, Oct. 1, 1997; amended Oct. 24, 1997; amended March 13, 1998; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; amended Dec. 1, 2015; amended March 17, 2017; amended Dec. 21, 2018.)

**86-1-6 to 86-1-8.** (Authorized by K.S.A. 74-4202; effective Jan. 1, 1974; revoked, E-81-18, July 16, 1980; revoked May 1, 1981.)

**86-1-9.** (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 58-3046; effective, E-81-18, July 16, 1980; effective May 1, 1981; amended May 1, 1982; revoked, T-83-32, Oct. 25, 1982; revoked May 1, 1983.)

**86-1-10. Approved courses of instructions; procedure.** (a) Definitions. Each of the following terms, as defined in this subsection, shall apply to K.A.R. 86-1-10 through K.A.R. 86-1-12 and K.A.R. 86-1-17:

(1) "Commission" means Kansas real estate commission.

(2) "Coordinator" means an individual who serves as the primary contact for a school and is responsible for complying with the requirements in this regulation.

(3) "Course" means instruction designed to fulfill the education requirements of K.S.A. 58-3046a, and amendments thereto.

(4) "Distance education course" means a course for which the school provides instructional materials by mail or electronic transmission to students who are physically separated from the instructor for all or a portion of the course.

(5) "In-person education course" means a course provided to students who are not physically separated from the instructor.

(6) "Monitoring" means review of approved courses by commission staff to ensure that the attendance, presentation platform, instruction time, outline, and materials provided by schools meet the requirements of the commission.

(7) "School" means an entity eligible under K.S.A. 58-3046a(g), and amendments thereto, to offer courses approved by the commission.

(b) Request for course approval. Each school seeking commission approval of a course shall submit the following information to the commission at least 45 days before the first scheduled class session:

(1) A completed course approval application obtained from the commission;

(2) a copy of all course materials, including textbooks, student workbooks, and examinations with answers;

(3) the total number of sessions, sections, or modules;

(4) the duration of each session, section, or module;

(5) the total number of requested hours for the course;

(6) the course objectives and a detailed course outline; and

(7) the course approval fee prescribed by K.A.R. 86-1-5.

(c) Additional course approval requirements for distance education courses.

(1) In addition to meeting the requirements of subsection (b), each school requesting approval of a distance education course shall submit the following information:

(A) The means to access the distance education course as it will be offered to students;

(B) evidence of sufficient information technology support to enable students to complete the distance education course;

(C) documentation on how the distance education course will require active participation by each student and substantial interaction between the students and the instructor, other students, or a computer program; and

(D) evidence that the system used for testing students will scramble questions and items for any quizzes or examinations to ensure a random presentation.

(2) Each distance education course certified by the association of real estate license law officials

shall be presumed to meet the requirements in paragraph (c)(1).

(3) Each school offering a distance education course approved by the commission under K.S.A. 58-3046a(e) or K.S.A. 58-3046a(f), and amendments thereto, shall require each student to answer at least 10 quiz or examination questions per credit hour.

(4) Each school offering a distance education course approved by the commission under K.S.A. 58-3046a(a), K.S.A. 58-3046a(b), K.S.A. 58-3046a(c) or K.S.A. 58-3046a(d), and amendments thereto, shall require each student to answer at least 50 quiz or examination questions.

(5) Each school shall issue a certificate of completion of each distance education course approved by the commission to meet any requirement of K.S.A. 58-3046a, and amendments thereto, to each student who has answered at least 90 percent of the quiz or examination questions correctly during the distance education course.

(d) Instructors. Each school coordinator shall be responsible for ensuring that the school's instructors have the specialized preparation, training, and experience in the subject matter to be taught to ensure competent instruction.

(e) Changes to an approved course.

(1) Except as provided in paragraph (e)(2), each school shall submit a new application for course approval under subsection (b) if there is any change to the course content, outline, objectives, or presentation platform for an approved course.

(2) A school shall not be required to submit a new application for course approval under subsection (b) if any of the following changes:

- (A) The coordinator;
- (B) the location of the school; or
- (C) the course title.

(3) Each school shall submit notification to the commission of each change described in paragraph (e)(2) at least 15 days before the change is scheduled to occur.

(4) Each school shall submit notification to the commission at least 15 days before the discontinuation of any course or the intent to close the school.

(f) Registration of approved courses; application for renewal.

(1) The registration of courses approved by the commission shall expire on January 31 of each year. Each application to renew the approval of a course shall be submitted on a form provided by the commission.

(2) Each application to renew approval of a course received after the expiration date shall require the submission of a new application for approval pursuant to subsection (b).

This regulation shall be effective on and after July 1, 2020. (Authorized by K.S.A. 2019 Supp. 58-3046a and K.S.A. 2019 Supp. 74-4202; implementing K.S.A. 2019 Supp. 58-3046a; effective, T-83-32, Oct. 25, 1982; effective May 1, 1983; amended May 1, 1984; amended, T-86-31, Sept. 24, 1985; amended May 1, 1986; amended, T-87-32, Nov. 19, 1986; amended May 1, 1987; amended Jan. 29, 1990; amended July 16, 1990; amended Nov. 17, 1995; amended Dec. 14, 2001; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; amended July 1, 2020.)

**86-1-11. Minimum curricula and standards for course.** (a) Each school offering a course approved by the commission under K.S.A. 58-3046a(a), and amendments thereto, shall use a course outline provided by the commission and shall use the title "principles of real estate."

(b) Each school offering a course approved by the commission under K.S.A. 58-3046a(b), and amendments thereto, shall use a course outline provided by the commission and shall use the title "Kansas real estate fundamentals course."

(c) Each school offering a course approved by the commission under K.S.A. 58-3046a(c), and amendments thereto, shall use a course outline provided by the commission and shall use the title "Kansas practice course."

(d) Each school offering a course approved by the commission under K.S.A. 58-3046a(d), and amendments thereto, shall use a course outline provided by the commission and shall use the title "Kansas real estate management course."

(e) Each school offering a course approved by the commission under K.S.A. 58-3046a(e), and amendments thereto, shall use a course outline provided by the commission and shall use the title "Kansas law course."

(f) The 12 hours of additional instruction required by K.S.A. 58-3046a(f), and amendments thereto, shall consist of at least three hours designated as mandatory hours titled "Kansas required core" and not more than nine hours designated as elective hours.

(1) A nonresident of Kansas may receive elective-hour credit by submitting to the commission proof of completion of courses approved by the real estate regulatory agency of the nonres-

ident's state of residence completed during that individual's Kansas license renewal period.

(2) Each approved course shall have a total instruction time of at least three hours.

(3) Any licensee may receive a maximum of three elective hours of credit during any renewal period for real estate appraisal courses approved by the commission.

(4) Any licensee may receive a maximum of three elective hours of credit during any renewal period for attending a commission meeting approved by the commission. The licensee shall sign in at the beginning of the commission meeting and shall be physically present at the commission meeting for at least three consecutive hours of the commission meeting, to receive the three-hour credit.

(5) Any licensee who is an instructor of a course approved by the commission to meet a requirement of K.S.A. 58-3046a, and amendments thereto, may receive credit for the number of hours taught by the instructor. The credit may be received by an instructor only once for each course taught during a renewal period.

The provisions of this subsection shall be effective on and after July 1, 2020. (Authorized by K.S.A. 2019 Supp. 58-3046a and K.S.A. 2019 Supp. 74-4202; implementing K.S.A. 2019 Supp. 58-3046a; effective, T-86-31, Sept. 24, 1985; effective May 1, 1986; amended, T-87-32, Nov. 19, 1986; amended May 1, 1987; amended May 1, 1988; amended Sept. 26, 1988; amended Nov. 18, 1991; amended Dec. 20, 1993; amended Dec. 29, 1995; amended Jan. 1, 1997; amended, T-86-10-1-97, Oct. 1, 1997; amended Oct. 24, 1997; amended Sept. 17, 1999; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; amended, T-86-6-26-19, July 1, 2019; amended Jan. 31, 2020.)

**86-1-12. Monitoring courses; withdrawal of approval.** (a) Each approved course shall be subject to monitoring by the commission, with or without prior notice.

(b) Course approval may be withdrawn by the commission for falsification of attendance records or failure to comply with any provision of K.A.R. 86-1-10, K.A.R. 86-1-11, or K.A.R. 86-1-17.

(c) Withdrawal of course approval during class sessions in process shall not affect credit given to students who are attending the course. Approval of a course may be reinstated by the commission upon satisfactory evidence that deficiencies have been corrected. (Authorized by K.S.A. 2019 Supp. 58-3046a and K.S.A. 2019 Supp. 74-4202; imple-

menting K.S.A. 2019 Supp. 58-3046a; effective, T-86-31, Sept. 24, 1985; effective May 1, 1986; amended Nov. 17, 1995; amended Jan. 31, 2020.)

**86-1-13.** (Authorized by K.S.A. 2006 Supp. 58-3046a, as amended by L. 2007, ch. 88, sec. 6, and K.S.A. 74-4202(b); implementing K.S.A. 2006 Supp. 58-3046a, as amended by L. 2007, ch. 88, sec. 6; effective, T-86-31, Sept. 24, 1985; effective May 1, 1986; amended May 1, 1988; amended Jan. 29, 1990; amended Sept. 21, 1992; amended Nov. 17, 1995; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; revoked Jan. 31, 2020.)

**86-1-14.** (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 58-3046a, as amended by 1985 SB-107; effective, T-86-31, Sept. 24, 1985; effective May 1, 1986; revoked, T-87-32, Nov. 19, 1986; revoked May 1, 1987.)

**86-1-15.** (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 58-3045, as amended by L. 2007, ch. 88, sec. 7 and K.S.A. 2006 Supp. 58-3046a, as amended by L. 2007, ch. 88, sec. 6; effective, T-87-32, Nov. 19, 1986; effective May 1, 1987; amended Nov. 17, 1995; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; revoked Dec. 21, 2018.)

**86-1-16.** (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 1987 Supp. 58-3046a; effective Sept. 26, 1988; revoked Jan. 31, 2020.)

**86-1-17. Responsibilities of schools.** (a) Course registration. Each school shall request that any applicant or licensee registering for a course verify the applicant's or licensee's registration or license number and use the applicant's or licensee's name exactly as it appears on file with the commission to ensure that the applicant or licensee will receive credit for the course.

(b) Issuance of certificates to students.

(1) Within five calendar days of completion of the course, each school shall issue a certificate of completion in person, electronically, or by mail to each student who successfully completes a course approved by the commission. Each school shall use certificate forms approved by the commission.

(2) The school shall not issue a certificate to any student who was absent for more than 10 percent of the classroom hours scheduled for courses registered, pursuant to K.A.R. 86-1-11, under the title "principles of real estate," "Kansas real estate fundamentals course," "Kansas real estate man-

agement course,” “Kansas law course,” or “Kansas practice course.” The school shall not issue a certificate to any student who was absent during any portion of the scheduled classroom hours for any other course approved by the commission pursuant to K.A.R. 86-1-11.

(c) Submission of course completion records to the commission.

(1) Each school shall submit a list of the individuals who completed each course offered by the school, in a format approved by the commission and within five calendar days after the course completion date. If the completion date is less than five calendar days before any expiration date established by K.S.A. 58-3045 and amendments thereto and K.A.R. 86-1-3, the school shall submit the information no later than the expiration date.

(2) Any roster containing incorrect or incomplete information may be returned to the school. No credit hours may be entered into the commission records until the roster is corrected and returned to the commission.

(d) Advertising.

(1) A school shall not advertise a course as meeting the educational requirements of the Kansas real estate brokers’ and salespersons’ license act before the school receives commission approval.

(2) A school shall not advertise a course using a school name different from what was submitted to the commission on the course approval form.

(3) Neither a school nor a representative of a school shall guarantee that successful completion of a course will result in the student’s passing a real estate licensing examination.

(4) The school shall include a statement that the course is approved for a specified number of mandatory hours toward the 12-hour requirement or for a specified number of elective hours toward the 12-hour requirement in any advertising of a course approved pursuant to K.A.R. 86-1-11 and in any course registration form.

(5) A school shall not publish or distribute information that is false, misleading, or inconsistent with Kansas real estate license law.

(e) Maintenance of records.

(1) Each school shall maintain for at least three years a record of each student who has successfully completed a course approved by the commission.

(2) The school shall keep attendance records current and available for inspection by commission representatives upon request. (Authorized by K.S.A. 2019 Supp. 58-3046a and K.S.A. 2019 Supp. 74-4202; implementing K.S.A. 2019 Supp.

58-3046a; effective Nov. 17, 1995; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; amended Jan. 31, 2020.)

**86-1-18.** (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 2006 Supp. 58-3039, as amended by L. 2007, ch. 88, sec. 1; effective Nov. 17, 1995; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; revoked Jan. 31, 2020.)

**86-1-19. Submission of supporting documentation with application.** In addition to submitting the application for original licensure as a real estate broker or salesperson, each applicant shall file the following with the commission:

(a) The applicant’s fingerprints and a completed waiver, on a form approved by the commission, and the fee required by K.A.R. 86-1-5(c)(1)(A);

(b) documentation concerning any final court judgment, memorandum, or other dispositive order or any settlement agreement resulting from litigation filed against the applicant or any real estate company owned in whole or in part by the applicant relating to the business of buying, selling, exchanging, or leasing real estate or to any activity listed in the definition of “broker” in K.S.A. 58-3035 and amendments thereto;

(c) a statement that completely and truthfully discloses any pending charges, plea of guilty or nolo contendere, diversion or suspended imposition of sentence, or conviction of a misdemeanor or felony. If requested by the commission, the applicant shall also submit documentation concerning any matters disclosed pursuant to this subsection;

(d) documentation concerning any denial, revocation, suspension, voluntary surrender, or any other disciplinary action taken by the state of Kansas or another jurisdiction against any professional or occupational license or certificate held by the applicant;

(e) a license history certification from any jurisdiction in which the applicant is currently licensed or has ever been licensed; and

(f) a nonresident service of process appointment form for any applicant who is not a resident of Kansas, which shall be submitted on a form approved by the commission. (Authorized by K.S.A. 2017 Supp. 74-4202; implementing K.S.A. 2017 Supp. 58-3039, K.S.A. 2017 Supp. 58-3040, K.S.A. 2017 Supp. 58-3043, and K.S.A. 2017 Supp. 58-3050; effective Nov. 8, 2002; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; amended Dec. 21, 2018.)

**86-1-20. Age of documentation submitted to the commission.** (a) A certification of licensure history obtained from any jurisdiction in which the applicant has, or has ever had, a real estate license shall not be used for licensing purposes if the certification is issued more than six months before the date on which the completed application for licensure is filed with the commission.

(b) A report concerning an applicant that is the subject of a criminal history check prepared by the Kansas bureau of investigation and the federal bureau of investigation shall not be used for licensing purposes if the report is issued more than six months before the date on which the completed application for licensure is filed with the commission. (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 2006 Supp. 58-3039, as amended by L. 2007, ch. 88, sec. 1, and K.S.A. 2006 Supp. 58-3043, as amended by L. 2007, ch. 88, sec. 2; effective, T-86-7-2-07, July 2, 2007; effective Nov. 16, 2007.)

#### **Article 2.—AUTHORITY OF COMMISSION; PROCEDURE**

**86-2-1.** (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 58-3062(c)(3); effective Jan. 1, 1974; amended, E-81-18, July 16, 1980; amended May 1, 1981; revoked May 1, 1982.)

**86-2-2.** (Authorized by K.S.A. 74-4202; effective Jan. 1, 1966; revoked, E-81-18, July 16, 1980; revoked May 1, 1981.)

**86-2-3.** (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 1980 Supp. 58-3039(e), 58-3043; effective Jan. 1, 1966; amended, E-81-18, July 16, 1980; amended May 1, 1981; revoked Nov. 16, 2007.)

**86-2-4.** (Authorized by K.S.A. 74-4202(b); implementing L. 1984, Ch. 313, Sec. 13; effective, T-86-31, Sept. 24, 1985; effective May 1, 1986; revoked Dec. 29, 1995.)

**86-2-5.** (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 1985 Supp. 77-513, as amended by L. 1986, Ch. 362, Sec. 3; effective, T-86-31, Sept. 24, 1985; effective May 1, 1986; amended, T-87-32, Nov. 19, 1986; amended May 1, 1987; revoked Nov. 16, 2007.)

**86-2-6.** (Authorized by K.S.A. 74-4202(b); implementing L. 1984, Ch. 313, Sec. 36; effective, T-86-31, Sept. 24, 1985; effective May 1, 1986; revoked Dec. 29, 1995.)

**86-2-7.** (Authorized by K.S.A. 74-4202(b); implementing L. 1984, Ch. 313, Sec. 5; effective, T-86-31, Sept. 24, 1985; effective May 1, 1986; revoked Nov. 16, 2007.)

**86-2-8. Examination of records.** (Authorized by K.S.A. 1996 Supp. 74-4202(b), as amended by 1997 H.B. 2264, Sec. 46; implementing K.S.A. 58-3061 and K.S.A. 1996 Supp. 74-4202(b), as amended by 1997 H.B. 2264, Sec. 46; effective Sept. 12, 1994; amended, T-86-10-1-97, Oct. 1, 1997; amended Oct. 24, 1997; revoked Nov. 14, 2016.)

#### **Article 3.—PERSONS HOLDING LICENSES; DUTIES**

**86-3-1 and 86-3-2.** (Authorized by K.S.A. 74-4202; effective Jan. 1, 1966; revoked, E-81-18, July 16, 1980; revoked May 1, 1981.)

**86-3-3.** (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 1980 Supp. 58-3042; effective Jan. 1, 1966; amended Jan. 1, 1974; amended, E-81-18, July 16, 1980; amended May 1, 1981; revoked Nov. 16, 2007.)

**86-3-4 to 86-3-6.** (Authorized by K.S.A. 74-4202; effective Jan. 1, 1966; revoked, E-81-18, July 16, 1980; revoked May 1, 1981.)

**86-3-6a.** (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 58-3060, as amended by L. 1986, Ch. 209, Sec. 12; effective, E-81-18, July 16, 1980; effective May 1, 1981; amended, T-87-32, Nov. 19, 1986; amended May 1, 1987; amended May 1, 1988; revoked Jan. 31, 2020.)

**86-3-7. Advertising.** (a) For the purposes of this regulation and K.S.A. 58-3034 et seq. and amendments thereto, “advertisement” and “advertising” shall mean communication in any form of media between a licensee or other entity acting on behalf of one or more licensees and consumers or the public, for any purpose related to licensed real estate activity. These terms shall include business cards, signs, insignias, letterheads, telephone or electronic mail, radio, television, newspaper and magazine advertisements, internet advertising, web sites, social media or social networking, display or group advertisements in telephone directories, and billboards.

(b) No employed or associated salesperson or associate broker may include in an advertisement a name or team name that meets any of the following conditions:

(1) Uses the term “realty,” “brokerage,” “company,” or any other term that can be construed as a real estate company separate from the supervising broker’s company;

(2) is more than two times larger in font size than the font size of the supervising broker’s trade name or business name; or

(3) is not adjacent to the supervising broker’s trade name or business name in any internet, web site, social media, or social networking advertisement.

(c) The context of an advertisement may be considered by the commission when determining whether the employed or associated salesperson or associate broker committed a violation under subsection (b).

This regulation shall be effective on and after July 1, 2020. (Authorized by K.S.A. 2019 Supp. 74-4202; implementing K.S.A. 2019 Supp. 58-3086; effective Jan. 1, 1966; amended Jan. 1, 1974; amended, E-76-18, April 29, 1975; modified, L. 1976, ch. 332, May 1, 1976; amended, E-81-18, July 16, 1980; amended May 1, 1981; amended Dec. 20, 1993; amended July 1, 2020.)

**86-3-8. Brokerage agreements.** A supervising broker or branch broker, or any salesperson or associate broker employed by or associated with the supervising broker or branch broker, shall not enter into any written brokerage agreement containing a provision that automatically extends the term of the agreement beyond the expiration date. (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 58-30,103; effective Jan. 1, 1966; amended Jan. 1, 1972; amended May 1, 1975; amended, E-79-6, Feb. 16, 1978; amended May 1, 1979; amended, E-81-18, July 16, 1980; amended May 1, 1981; amended Nov. 16, 2007.)

**86-3-9. Legal counsel.** Each broker shall recommend to each client or customer that an attorney be retained by the client or customer to answer any legal questions involved in any real estate transaction. (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 58-30,106, 58-30,107, and 58-30,113; effective Jan. 1, 1966; amended, E-81-18, July 16, 1980; amended May 1, 1981; amended Nov. 16, 2007.)

**86-3-10. Retention of records.** Each broker shall retain, for at least three years, in the broker’s paper or digital files a copy of all records relating to the broker’s real estate business, including the following:

(a) Real estate sales contracts, option agreements, and nonresidential lease agreements for which the broker acts as an employee of, or on behalf of, the owner, purchaser, lessor or lessee;

(b) closing statements;

(c) each receipt from an escrow agent required by K.S.A. 58-3062(d), and amendments thereto;

(d) correspondence; and

(e) the records required by K.A.R. 86-3-18. (Authorized by K.S.A. 2019 Supp. 74-4202; implementing K.S.A. 2019 Supp. 58-3061; effective Jan. 1, 1966; amended, E-81-18, July 16, 1980; amended May 1, 1981; amended Nov. 18, 1991; amended April 23, 2021.)

**86-3-11.** (Authorized by K.S.A. 74-4202; effective Jan. 1, 1966; revoked, E-81-18, July 16, 1980; revoked May 1, 1981.)

**86-3-12.** (Authorized by K.S.A. 74-4202; effective Jan. 1, 1966; revoked May 1, 1975.)

**86-3-13.** (Authorized by K.S.A. 74-4202; effective Jan. 1, 1966; amended May 1, 1975; revoked, E-81-18, July 16, 1980; revoked May 1, 1981.)

**86-3-14.** (Authorized by K.S.A. 74-4202; effective Jan. 1, 1974; revoked, E-81-18, July 16, 1980; revoked May 1, 1981.)

**86-3-15. Reporting of information.** (a) Each licensee shall report any of the following circumstances to the commission, in writing and within 10 days of the date of occurrence:

(1) Any settlement from litigation filed against the licensee or any real estate company owned in whole or in part by the licensee relating to the business of buying, selling, exchanging, or leasing real estate or to any activity listed in the definition of “broker” in K.S.A. 58-3035 and amendments thereto. The licensee shall provide a copy of the settlement agreement;

(2) any final court judgment, memorandum, or other dispositive order against the licensee or any real estate company owned in whole or in part by the licensee;

(3) any charge of, arrest or indictment for, plea of guilty or nolo contendere to, or conviction of any of the following:

(A) Any misdemeanor; or

(B) any felony;

(4) any change in the licensee’s name;

(5) any change in the licensee’s residence address;

(6) any change in the licensee's electronic-mail address on file with the commission;

(7) any denial by another jurisdiction of an application made by the licensee for a broker or salesperson license;

(8) any suspension or revocation of, or any other disciplinary action taken by another jurisdiction against a broker or salesperson license held by the licensee; or

(9) any denial, suspension, revocation, voluntary surrender, or any other disciplinary action taken by the state of Kansas or another jurisdiction against any professional or occupational license or certificate held by the licensee.

(b) Each supervising broker for a partnership, association, or corporation whose members or officers are licensed pursuant to K.S.A. 58-3042, and amendments thereto, shall be responsible for reporting the information required by this regulation as it relates to the partnership, association, or corporation.

(c) Each supervising broker and branch broker shall report to the commission any information pursuant to paragraph (a)(3) that is applicable to any associated or employed salesperson or associate broker. This report shall be submitted in writing within 10 days of the date that knowledge of the information comes to the attention of the broker.

(d) Each licensee shall report to the licensee's supervising broker or branch broker any information pursuant to paragraph (a)(3) within 10 days of the date of occurrence. (Authorized by K.S.A. 2017 Supp. 74-4202; implementing K.S.A. 2017 Supp. 58-3042, 58-3043, 58-3050, 58-3062, and 74-4202; effective Jan. 1, 1974; amended, E-81-18, July 16, 1980; amended May 1, 1981; amended May 1, 1984; amended, T-87-32, Nov. 19, 1986; amended May 1, 1987; amended Nov. 8, 2002; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; amended Dec. 21, 2018.)

**86-3-16 and 86-3-17.** (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 58-3061; effective May 1, 1975; amended, E-81-18, July 16, 1980; amended May 1, 1981; revoked, T-87-32, Nov. 19, 1986; revoked May 1, 1987.)

**86-3-18. Trust account records.** (a) Each supervising broker, and each branch broker who maintains a separate trust account for a branch office pursuant to K.S.A. 58-3061 and amendments thereto, shall maintain in the broker's of-

fice a complete record of all monies received or escrowed on real estate transactions, including the following:

(1) Deposit slips showing the unique transaction number assigned pursuant to K.A.R. 86-3-22, the date of deposit, the amount, and where deposited;

(2) monthly trust account bank, savings and loan association, or credit union statements, including canceled checks and deposit slips;

(3) all voided trust account checks;

(4) a check register that shows the chronological sequence in which funds are received and disbursed. For funds received, the check register shall include the date of deposit, the unique transaction number assigned pursuant to K.A.R. 86-3-22, and the amount. For disbursement, the check register shall include the date, the unique transaction number assigned pursuant to K.A.R. 86-3-22, the payee, and the amount. A balance shall be shown, and the balances shall be kept current;

(5) a ledger for each transaction. The ledger shall include the names of the principals, the property address, and the unique transaction number assigned pursuant to K.A.R. 86-3-22; the amount and date of deposit of all monies received; and the check number, the date, the payee, and the amount of each disbursement. The broker shall note any deposit recorded in the trust account before contract acceptance. If the offer is accepted, the broker shall note the contract acceptance date on the ledger. If the offer is rejected or withdrawn before contract acceptance, the broker shall record the disbursement, note the rejected or withdrawn offer, and return the earnest money to the prospective buyer. A balance shall be shown for each ledger account, and balances shall be kept current; and

(6) a ledger for broker's funds, if those funds are deposited in the trust account pursuant to K.S.A. 58-3061, and amendments thereto. A balance shall be shown for each ledger account, and balances shall be kept current.

(b) The trust account shall be reconciled monthly against bank, savings and loan association, or credit union records, unless there has been no activity during the month.

(c) Trust account liability, as established by ledger sheet balances, shall be compared to the reconciled trust account balance monthly, unless there has been no activity during the month.

(d) Each supervising broker or branch broker who closes a trust account shall notify the commission by filing a "report on closing trust ac-

count” with the commission on a form approved by the commission, accompanied by a copy of the bank, savings and loan association, or credit union statement showing that the trust account has been closed, within 10 days of the occurrence of any of the following:

- (1) Closure of the trust account;
- (2) closure of the primary office or branch office, unless an exemption not to maintain a trust account has been granted by the commission for each trust account that was in existence when the primary office or branch office closed; or
- (3) a change in the account number for the trust account or a change in the bank, savings and loan association, or credit union in which the trust funds are held. (Authorized by K.S.A. 2019 Supp. 74-4202; implementing K.S.A. 2019 Supp. 58-3061; effective May 1, 1975; amended, E-81-18, July 26, 1980; amended May 1, 1981; amended, T-88-32, Jan. 1, 1988; amended May 1, 1988; amended April 23, 2021.)

**86-3-19. Disclosure of interest in property purchased, sold, or leased.** (a) Each licensee shall disclose in the real estate contract or lease any interest that the licensee or the licensee’s immediate family member has or will have in the following, as applicable:

- (1) The real estate being sold or leased by the seller or lessor; and
- (2) the real estate being purchased or leased by the buyer or lessee.

(b) For purposes of this regulation, “interest” shall have the meaning specified in K.S.A. 58-3035, and amendments thereto and “immediate family member” shall mean spouse, parent, child, or sibling. (Authorized by K.S.A. 2015 Supp. 74-4202; implementing K.S.A. 2015 Supp. 58-3035 and 58-3062; effective May 1, 1982; amended, T-86-6-25-08, July 1, 2008; amended Oct. 24, 2008; amended Nov. 14, 2016.)

**86-3-20.** (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 58-3049, as amended by 1985 SB 107; effective, T-86-31, Sept. 24, 1985; effective May 1, 1986; revoked Jan. 31, 2020.)

**86-3-21.** (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 2006 Supp. 58-3061; effective, T-87-32, Nov. 19, 1986; effective May 1, 1987; amended Nov. 18, 1991; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; revoked April 23, 2021.)

**86-3-22. Transaction identification.** (a) Each supervising broker or branch broker shall assign a unique transaction number to each real estate sales contract, option agreement, and non-residential lease agreement for which the broker acts as an employee of, or on behalf of, the owner, purchaser, lessor, or lessee.

(b) If a broker deposits earnest money in the broker’s trust account before contract acceptance, the broker shall assign a unique transaction number to the offer.

(c) Each record required to be maintained pursuant to K.A.R. 86-3-10 and 86-3-18 shall include the unique transaction number. (Authorized by K.S.A. 2019 Supp. 74-4202; implementing K.S.A. 2019 Supp. 58-3061; effective, T-88-32, Jan. 1, 1988; effective May 1, 1988; amended Dec. 20, 1993; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; amended April 23, 2021.)

**86-3-23. Submission of offers to purchase.** (a) A listing agreement may provide that the broker is not obligated to continue to market the property after an offer has been accepted by the seller. The seller’s acceptance of an offer shall not terminate the obligation of the broker to submit all offers to the seller unless the seller instructs the broker in the listing agreement not to submit offers after an offer has been accepted by the seller.

(b) Unless a subsequent offer is contingent upon termination of an existing contract, the licensee shall recommend that the seller obtain the advice of legal counsel prior to acceptance. (Authorized by K.S.A. 74-4202(b); implementing L. 1992, Ch. 120, section 1; effective Jan. 11, 1993.)

**86-3-24.** (Authorized by K.S.A. 74-4202(b); implementing L. 1992, Ch. 120, section 1; effective Jan. 11, 1993; revoked Aug. 9, 1993.)

**86-3-25.** (Authorized by and implementing K.S.A. 1995 Supp. 58-30,110, as amended by 1996 SB 710, § 18; effective Nov. 17, 1995; amended Sept. 13, 1996; revoked, T-86-10-1-97, Oct. 1, 1997; revoked Oct. 24, 1997.)

**86-3-26. Real estate brokerage relationships brochure.** (a) The commission’s document titled “real estate brokerage relationships,” as approved by the commission on October 10, 2017, is hereby adopted by reference.

(b) As required by K.S.A. 58-30,110 and amendments thereto, each licensee shall give

any prospective buyer or seller a brochure titled “real estate brokerage relationships.” Any brokerage firm may either use the commission document adopted by reference in subsection (a) or design a brochure that contains at least the same information contained in that document. Each brochure shall also provide the name of the licensee providing the brochure, the name of the supervising or branch broker of the licensee if applicable, and the name of the brokerage firm as registered with the commission. (Authorized by K.S.A. 58-30,110 and K.S.A. 2017 Supp. 74-4202; implementing K.S.A. 58-30,110; effective, T-86-10-1-97, Oct. 1, 1997; effective Oct. 24, 1997; amended March 16, 2018.)

**86-3-26a. Designated agents; disclosure of brokerage relationships.** (a) If a supervising broker or branch broker designates in a written agency agreement one or more designated agents to represent the interests of a buyer, seller, tenant, or landlord client, any other salespersons or associate brokers that are employed by or associated with the supervising broker or branch broker who are not specifically designated in the written agency agreement to represent the interests of the client shall not be deemed to have a brokerage relationship with the client.

(b) If a designated agent has been appointed to represent a buyer, seller, tenant, or landlord in a transaction, the brokerage relationship disclosure in the contract or lot reservation agreement shall specify that a designated agent was appointed to represent the interests of the client.

(c) Each licensee involved in a transaction as a statutory agent or a transaction broker shall ensure the completeness and accuracy of the disclosure required by K.S.A. 58-30,110(c), and amendments thereto. (Authorized by K.S.A. 2015 Supp. 74-4202; implementing K.S.A. 58-30,109 and 58-30,110; effective Nov. 16, 2007; amended Nov. 14, 2016.)

**86-3-27. Transaction broker addendum.** The commission’s form titled “transaction broker addendum,” as approved by the commission on October 10, 2017, is hereby adopted by reference. Each licensee shall ensure that this form is completed to obtain the informed consent of a seller client and a buyer client pursuant to K.S.A. 58-30,109, and amendments thereto. (Authorized by K.S.A. 58-30,109 and K.S.A. 2017 Supp. 74-4202; implementing K.S.A. 58-30,109; effective, T-86-

10-1-97, Oct. 1, 1997; effective Oct. 24, 1997; amended March 16, 2018.)

**86-3-28. Buyer’s or tenant’s consent.** The commission’s form titled “buyer’s or tenant’s consent to direct negotiation,” as approved by the commission on April 18, 2017, is hereby adopted by reference. Each seller’s agent, landlord’s agent, or transaction broker shall ensure that this form is completed and signed by the buyer or the tenant before engaging in direct negotiations with that buyer or tenant. (Authorized by K.S.A. 2017 Supp. 74-4202; implementing K.S.A. 2017 Supp. 58-30,103; effective, T-86-10-1-97, Oct. 1, 1997; effective Oct. 24, 1997; amended March 16, 2018.)

**86-3-29. Participation of salesperson or associate broker in affiliated business arrangement with title agency.** (a) Any salesperson or associate broker may have a financial interest, as defined in K.S.A. 40-2404(14)(e)(ii) and amendments thereto, in an affiliated business arrangement with a title insurer or title insurance agency created or regulated pursuant to K.S.A. 40-2404(14)(e)-(j) and amendments thereto, 12 U.S.C. §2607(c) of the real estate settlement procedures act (RESPA), and 24 C.F.R. 3500.15 if, upon commencement of the affiliated business arrangement, the salesperson or associate broker notifies the supervising broker or branch broker, by certified mail, of the proposed affiliated business arrangement in order to allow supervision pursuant to K.S.A. 58-3035(d) and (n) and K.S.A. 58-3062(c)(3), and amendments thereto.

(b) Each salesperson or associate broker who has a financial interest in an affiliated business arrangement as specified in subsection (a) shall notify the supervising broker or branch broker in writing within five business days after the effective date of each contract in any real estate transaction from which the salesperson or associate broker will receive compensation due to an affiliated business arrangement. (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 2004 Supp. 58-3035 and 58-3062, as amended by L. 2005, ch. 179, § 19; effective, T-86-5-20-05, May 20, 2005; effective Nov. 18, 2005.)

**86-3-30.** (Authorized by K.S.A. 74-4202(b), as amended by L. 2008, ch. 155, sec. 9; implementing L. 2008, ch. 155, sec. 6; effective, T-86-6-25-08, July 1, 2008; effective Oct. 24, 2008; revoked Nov. 14, 2016.)

**86-3-31. Broker supervision.** (a) Failure of a supervising broker or branch broker to properly supervise the activities of an associated or employed salesperson or associate broker shall include the following:

(1) Allowing a person not licensed by the commission to engage in activities requiring a license on behalf of the broker or brokerage firm, unless the person is exempt from licensure pursuant to K.S.A. 58-3037, and amendments thereto;

(2) allowing an associated or employed salesperson or associate broker to engage in dual agency or activities requiring an active real estate license while that salesperson's or associate broker's license is expired, inactive, pending transfer, suspended, or revoked;

(3) failure to take action to ensure that an associated or employed salesperson or associate broker complies with any restrictions or conditions placed upon that salesperson's or associate broker's license;

(4) directing or instructing an associated or employed salesperson or associate broker to take any action in violation of the real estate brokers' and salespersons' license act, the brokerage relationships in real estate transactions act, or any commission regulations;

(5) failing to take action to prevent an associated or employed salesperson or associate broker from taking any action in violation of the real estate brokers' and salespersons' license act, the brokerage relationships in real estate transactions act, or any commission regulations, if the supervising broker or branch broker has actual knowledge of the impending violation;

(6) failing to timely take action to correct or mitigate a violation of the real estate brokers' and salespersons' license act, the brokerage relationships in real estate transactions act, or any commission regulations by an associated or employed salesperson or associate broker, if the supervising broker or branch broker has actual knowledge of the violation;

(7) failing to ensure that all contracts and forms used by an associated or employed salesperson or associate broker are reviewed for accuracy and compliance with applicable statutes, regulations, and office policies;

(8) failing to ensure that all advertising by associated or employed salespersons or associate brokers complies with applicable statutes, regulations, and office policies; and

(9) failing to ensure that all associated or em-

ployed salespersons and associate brokers are able to maintain reasonable and timely communication with the supervising broker, branch broker, or a competent designee.

(b) Any of the following may be considered mitigating factors regarding an alleged violation of subsection (a):

(1) The supervising broker or branch broker has implemented policies and procedures to prevent an associated or employed salesperson or associate broker from violating a restriction or condition placed upon the license or from committing a violation of the real estate brokers' and salespersons' license act, the brokerage relationships in real estate transactions act, or any commission regulations, as demonstrated by both of the following:

(A) The supervising broker or branch broker has written policies and procedures in place to provide guidance in real estate practice law to the associated or employed salesperson or associate broker.

(B) The supervising broker or branch broker demonstrates that the associated or employed salesperson or associate broker received training on the written policies and procedures specified in paragraph (b)(1)(A).

(2) The supervising broker or branch broker provides access to either of the following:

(A) Ongoing training or education sessions for associated or employed salespersons or associate brokers; or

(B) experienced personnel to review the accuracy of documents and discuss real estate practice law with associated or employed salespersons or associate brokers.

(3) The supervising broker has systems in place to ensure proper management and control of documents and records relating to licensing requirements and transactions.

(c) Any of the following may be considered aggravating factors with respect to an alleged violation of subsection (a):

(1) The commission has previously disciplined the supervising broker or branch broker for failure to properly supervise associated or employed salespersons or associate brokers.

(2) The supervising broker or branch broker did not have policies and procedures in place as described in paragraph (b)(1)(A) at the time of the violation.

(3) The supervising broker or branch broker is unable to demonstrate that the associated or employed salesperson or associate broker who com-

mitted the violation received adequate training on applicable statutory, regulatory, and office policy requirements.

(d) Nothing in this regulation shall prohibit a broker from delegating supervisory duties to competent personnel or affiliated licensees. The supervising broker or branch broker shall be re-

sponsible for ensuring compliance with commission statutes and regulations by all personnel and affiliated licensees under the supervising broker's or branch broker's supervision. (Authorized by K.S.A. 2015 Supp. 74-4202; implementing K.S.A. 2015 Supp. 58-3062; effective Nov. 14, 2016.)

**Agency 87**  
**Education Commission**

**Editor's Note:**

Effective July 1, 1975, the State Education Commission was abolished and its powers and duties transferred to the Kansas Board of Regents. The commission's regulations have been replaced by those of the Kansas Board of Regents, see Agency 88, article 13.



## Agency 88

# State Board of Regents

### Articles

- 88-2. PROCEDURES FOR DETERMINING RESIDENCE FOR FEE PURPOSES.
- 88-3. GUIDELINES FOR THE DETERMINATION OF RESIDENCY FOR FEE PURPOSES.
- 88-4. *TRAFFIC AND PARKING AT STATE EDUCATIONAL INSTITUTIONS. (Not in active use.)*
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**Article 2.—PROCEDURES FOR  
DETERMINING RESIDENCE  
FOR FEE PURPOSES**

**88-2-1. Residence classification.** (a) The registrar of each institution governed by the state board of regents shall determine the residence status for fee purposes of each student who enrolls in the institution. If the registrar determines that the original residency classification of any student was incorrect, the registrar shall give written notice of reclassification to that student, together with a statement of any additional fees owed by or any refund due to that student for any terms or semesters, and the same shall be due and payable immediately.

(b) Any residency determination by an agent duly designated by a registrar to make a determination pursuant to articles 2 and 3 shall be deemed to be the residency determination of that registrar. (Authorized by K.S.A. 76-730; implementing K.S.A. 76-729; effective, E-71-35, Aug. 20, 1971; effective Jan. 1, 1972; amended Nov. 18, 1991; amended July 24, 1998.)

**88-2-2. Appeals.** (a) Each student who is classified as a nonresident for fee purposes upon enrollment and who disagrees with that classification shall be entitled to an appeal if the student files a written appeal thereon with the registrar within 30 days of notification of classification. Any student who is classified as a resident for fee purposes at the time of enrollment, who subsequently is reclassified a nonresident for such purposes, and who disagrees with that reclassification, may make an appeal provided the student files a written appeal thereon with the registrar within 30 days of notification of reclassification.

(b) Each registrar's office shall provide on request a standard appeal form. The payment in full of fees as originally assessed shall be a condition to the right to maintain an appeal from residency classification or reclassification.

(c) If a student fails to file an appeal in the time and manner provided in this regulation, the classification or reclassification determined by the registrar shall, upon expiration of the appeal period, become final. (Authorized by K.S.A. 76-730; implementing K.S.A. 76-729; effective, E-71-35, Aug. 20, 1971; effective Jan. 1, 1972; amended Nov. 18, 1991.)

**88-2-3. Residence committee.** (a) Each institution governed by the state board of regents

shall establish a committee of at least three members to act as an appellate body to hear and determine appeals concerning the status of students as residents or nonresidents of Kansas for fee purposes. Members of the residence committee shall be appointed by the chancellor or president of each institution under a procedure established by the chancellor or president. The procedure shall be consistent with state law and the regulations of the state board of regents. Committee members shall serve at the pleasure of the chancellor or president.

(b) The residence committee shall elect its own chair who shall be eligible to vote in all cases. The registrar shall meet with the university residence committee but shall not be a member of the committee. (Authorized by K.S.A. 76-730; implementing K.S.A. 76-729; effective, E-71-35, Aug. 20, 1971; effective Jan. 1, 1972; amended Nov. 18, 1991.)

**88-2-4. Decisions of residence committee.** (a) Subject to the provisions of K.S.A. 77-601, *et seq.*, decisions of the residence committee shall not be subject to further administrative review by any officer or committee of the university or by the state board of regents.

(b) If the residence committee determines that the appealing student was entitled to be classified as a Kansas resident for fee purposes, an amount equal to the difference between resident fees for the term or semester involved and the nonresident fees paid by the student for that term or semester shall be refunded to the student immediately.

(c) The residence committee may seek advice, through the executive officer of the state board of regents, from the attorney general upon legal questions involved in any case pending before it. Opinions rendered by the attorney general to the executive officer shall be distributed among the registrars of all institutions governed by the state board of regents. (Authorized by K.S.A. 76-730; implementing K.S.A. 76-729; effective, E-71-35, Aug. 20, 1971; effective Jan. 1, 1972; amended Nov. 18, 1991.)

**Article 3.—GUIDELINES FOR  
THE DETERMINATION OF  
RESIDENCY FOR FEE PURPOSES**

**88-3-1. Student information.** Whenever a question arises concerning a person's residence classification for fee purposes, that person shall be provided with a copy of information substantially

as set forth in this regulation, together with K.A.R. 88-3-2 through 88-3-13.

“Carefully read the information, statute, and regulations that follow. Then, if you believe you should be eligible for resident classification for fee purposes, complete the attached application for residence classification and submit it to the registrar within 30 days of your notification of classification as a nonresident for fee purposes. When an appeal is made by a student from a determination that the student is a nonresident, the student must pay nonresident fees at the time designated for payment of fees. If the student is found to be a resident, the difference between resident and nonresident fees will be refunded. Subject to the provisions of K.S.A. 77-601, *et seq.*, decisions of the residence committee shall not be subject to further administrative review by any officer or committee of the university, or by the state board of regents.

### Responsibility

The responsibility of enrolling under proper residence classification for fee purposes is placed on the student. If there is any possible question of residence classification under the regulations of the state board of regents, it is the duty of the student when registering and paying fees to raise the question with the registrar. If a student enrolls incorrectly as a resident of Kansas and it is determined at a later date the student was a nonresident for fee purposes, the student shall be required to pay the nonresident fee for all terms during which the student was incorrectly registered.” (Authorized by K.S.A. 76-730; implementing K.S.A. 76-729; effective, E-71-35, Aug. 20, 1971; effective Jan. 1, 1972; amended, E-76-50, Oct. 10, 1975; amended, E-77-5, March 19, 1976; amended Feb. 15, 1977; amended May 1, 1986; amended Nov. 18, 1991; amended July 24, 1998.)

**88-3-2. Definition of “residence” for fee purposes.** (a) Except as otherwise provided in the rules and regulations of the state board of regents, “residence” means a person’s place of habitation, to which, whenever the person is absent, the person has the intention of returning. A person shall not be considered a resident of Kansas unless that person is in continuous physical residence, except for brief temporary absences, and intends to make Kansas a permanent home, not only while in attendance at an educational institution, but indefinitely thereafter as well.

(b) The factors that, while not conclusive, shall be given probative value in support of a claim for resident status include the following:

(1) Continuous presence in Kansas, except for brief temporary absences, during periods when not enrolled as a student;

(2) employment in Kansas;

(3) payment of Kansas state resident income taxes;

(4) reliance on Kansas sources for financial support;

(5) commitment to an education program that indicates an intent to remain permanently in Kansas;

(6) acceptance of an offer of permanent employment in Kansas;

(7) admission to a licensed practicing profession in Kansas; or

(8) ownership of a home in Kansas.

No factor shall be considered in support of a claim for resident status unless the factor has existed for at least one year before enrollment or re-enrollment.

(c) The following circumstances, standing alone, ordinarily shall not constitute sufficient evidence of a change to Kansas residence:

(1) Voting or registration for voting in Kansas;

(2) employment in any position normally filled by a student;

(3) lease of living quarters in Kansas;

(4) a statement of intention to acquire residence in Kansas;

(5) residence in Kansas of the student’s spouse;

(6) vehicle registration in Kansas;

(7) acquisition of a Kansas driver’s license;

(8) payment of Kansas personal property taxes; or

(9) continuous enrollment in a postsecondary educational institution in Kansas.

(d) If a person is continuously enrolled for a full academic program as defined by the institution where enrolled, it shall be presumed that the student is in Kansas for educational purposes, and the burden shall be on the student to prove otherwise.

(e) Maintenance of ties with another state or country, including financial support, voting, payment of personal property taxes, registering a vehicle or securing a driver’s license in that state or country, may be considered sufficient evidence that residence in the other state or country has been retained. (Authorized by K.S.A. 76-730; implementing K.S.A. 76-729; effective, E-71-35, Aug. 20, 1971; effective Jan. 1, 1972; amended, E-76-50, Oct. 10, 1975; amended, E-77-5, March 19, 1976; amended Feb. 15, 1977; amended May 1, 1986; amended Nov. 18, 1991; amended July 24, 1998.)

**88-3-3. Definition of “12 months.”** The phrase “12 months prior to enrollment for any term or session,” as used in K.S.A. 76-729, means a continuous 365-day period immediately prior to the first day of classes for a specified term or session. (Authorized by K.S.A. 76-730; implementing K.S.A. 76-729; effective, E-71-35, Aug. 20, 1971; effective Jan. 1, 1972; amended, E-76-50, Oct. 10, 1975; amended, E-77-5, March 19, 1976; amended Feb. 15, 1977; amended Nov. 18, 1991.)

**88-3-4. Residence of persons under eighteen years of age.** Generally, the residence of a person who is under 18 years of age is determined by the residence of the person’s custodial parent or parents or of the parent providing the preponderance of the student’s support. If both parents are deceased, residence shall be determined by the residence of the person’s legal guardian or custodian, or if none exists, of the person providing the preponderance of support. Any person under 18 years of age who is legally emancipated shall be considered an adult for residence purposes. (Authorized by K.S.A. 76-730; implementing K.S.A. 76-729, 76-730; effective, E-71-35, Aug. 20, 1971; effective Jan. 1, 1972; amended, E-76-50, Oct. 10, 1975; amended, E-77-5, March 19, 1976; amended Feb. 15, 1977; amended May 1, 1986.)

**88-3-5.** (Authorized by K.S.A. 76-730; implementing K.S.A. 76-729; effective, E-71-35, Aug. 20, 1971; effective Jan. 1, 1972; amended, E-76-50, Oct. 10, 1975; amended, E-77-5, March 19, 1976; amended Feb. 15, 1977; amended Nov. 18, 1991; revoked July 24, 1998.)

**88-3-6. Equal treatment of men and women.** In the application of K.S.A. 1975 Supp. 76-729 and these regulations, men and women shall be treated the same. (Authorized by K.S.A. 1976 Supp. 76-729, 76-730; effective, E-71-35, Aug. 20, 1971; effective Jan. 1, 1972; amended, E-76-50, Oct. 10, 1975; amended, E-77-5, March 19, 1976; amended Feb. 15, 1977.)

**88-3-7. Residence of married persons.** The residence of married persons shall be determined separately for each spouse. (Authorized by K.S.A. 1976 Supp. 76-729, 76-730; effective, E-76-50, Oct. 10, 1975; effective, E-77-5, March 19, 1976; effective Feb. 15, 1977.)

**88-3-8.** (Authorized by K.S.A. 76-730; implementing K.S.A. 2005 Supp. 76-729, K.S.A. 76-730; effective, E-71-35, Aug. 20, 1971; effective

Jan. 1, 1972; amended, E-76-50, Oct. 10, 1975; amended, E-77-5, March 19, 1976; amended Feb. 15, 1977; amended May 1, 1986; amended Nov. 18, 1991; amended Aug. 18, 2006; revoked July 27, 2007.)

**88-3-8a. Military personnel and veterans.** (a) “Armed forces” and “veteran” shall have the meanings specified in K.S.A. 2017 Supp. 48-3601, and amendments thereto.

(b) The resident fee privilege shall be accorded to any person who meets the following conditions:

(1) Is enrolled at any state educational institution, as defined by K.S.A. 76-711 and amendments thereto; and

(2) meets one of the following conditions:

(A)(i) Is currently serving in the armed forces; or

(ii) is a veteran of the armed forces who files with the postsecondary educational institution at which the veteran is enrolled a letter of intent to establish residence in Kansas, lives in Kansas while attending the postsecondary educational institution at which the veteran is enrolled, and is eligible for benefits under the federal post-9/11 veterans educational assistance act or any other federal law authorizing educational benefits for veterans;

(B) is the spouse or dependent child of a person who qualifies for resident tuition rates and fees pursuant to paragraph (b)(2)(A)(i) or who, if qualifying through a veteran, pursuant to paragraph (b)(2)(A)(ii), files with the postsecondary educational institution at which the spouse or dependent child is enrolled a letter of intent to establish residence in Kansas, lives in Kansas while attending the postsecondary educational institution at which the spouse or dependent child is enrolled, and is eligible for benefits under the federal post-9/11 veterans educational assistance act or any other federal law authorizing educational benefits for veterans; or

(C) is a person who is living in Kansas at the time of enrollment and is one of the following:

(i) A veteran who was permanently stationed in Kansas during service in the armed forces or had established residency in Kansas before service in the armed forces; or

(ii) the spouse or dependent of a veteran who was permanently stationed in Kansas during service in the armed forces or had established residency in Kansas before service in the armed forces.

(c) This regulation shall not be construed to prevent a person covered by this regulation from acquiring or retaining a bona fide residence in Kansas.

(d) Each person seeking the resident fee privilege pursuant to this regulation shall be responsible for providing the appropriate office at the state educational institution at which the person seeks admission or is enrolling with the information and written documentation necessary to verify that the person meets the applicable requirements of K.S.A. 2017 Supp. 48-3601 and K.S.A. 76-729, and amendments thereto, and this regulation. This documentation shall include one of the following:

(1) If claiming current status in the armed forces, written documentation verifying that status. For each reserve officers' training corps (ROTC) cadet and midshipman, this documentation shall include a copy of the person's current contract for enlistment or reenlistment in the armed forces;

(2) if claiming veteran status pursuant to paragraph (b)(2)(A)(ii), the following:

(A) Written documentation verifying that the veteran qualifies for benefits under the federal post-9/11 veterans educational assistance act or any other federal law authorizing educational benefits for veterans;

(B) written documentation verifying that the veteran lives or will live in Kansas while attending the state educational institution; and

(C) a letter signed by the veteran attesting an intent to become a resident of Kansas;

(3) if claiming spouse or dependent child status based upon the relationship to a current member of the armed forces, the following:

(A) Written documentation verifying the required relationship to the current member of the armed forces; and

(B) written documentation verifying that the member of the armed forces is currently serving;

(4) if claiming spouse or dependent child status based upon a relationship with a veteran pursuant to paragraph (b)(2)(B), the following:

(A) Written documentation verifying the required relationship to the veteran;

(B) written documentation verifying that the spouse or dependent child qualifies for benefits under the federal post-9/11 veterans educational assistance act or any other federal law authorizing educational benefits for veterans;

(C) written documentation verifying that the spouse or dependent child of the veteran lives or

will live in Kansas while that person is a student attending the state educational institution; and

(D) a written letter signed by the spouse or dependent child of the veteran, attesting that the spouse or dependent child intends to become a resident of Kansas; or

(5) if claiming status as a veteran pursuant to paragraph (b)(2)(C)(i) who is not otherwise eligible for benefits under the federal post-9/11 veterans educational assistance act or any other federal law authorizing educational benefits for veterans, or the spouse or dependent of the veteran pursuant to paragraph (b)(2)(C)(ii), written documentation verifying both of the following:

(A) The veteran was previously assigned to a permanent station in Kansas while on active duty, or the veteran established Kansas residency before the veteran's service in the armed forces.

(B) The veteran, spouse, or dependent of the veteran who is seeking residency status is living in Kansas at the time of enrollment. (Authorized by K.S.A. 76-730; implementing K.S.A. 2017 Supp. 48-3601, K.S.A. 2017 Supp. 76-729, and K.S.A. 76-730; effective July 27, 2007; amended Jan. 18, 2013; amended, T-88-8-10-15, Aug. 10, 2015; amended Dec. 18, 2015; amended May 26, 2017; amended June 7, 2018.)

**88-3-9. Institutional personnel.** (a) Any employee of an institution governed by the state board of regents, classified and unclassified, on a regular payroll appointment for .4 time or more, shall be accorded the resident fee privilege.

(b)(1) The dependent spouse and children of any employee of an institution governed by the state board of regents, whether the employee's position is classified or unclassified, shall be accorded the resident fee privilege, provided that the employee holds a regular payroll appointment for 1.0 time.

(2) The dependent spouse and children of any employee of an institution governed by the state board of regents, whether the employee's position is classified or unclassified, shall be accorded the resident fee privilege, provided that the employee holds a regular payroll appointment for at least .4 time but less than 1.0 time and is enrolled in a graduate program on the effective date of this regulation, until one of the following criteria is met:

(A) the expiration of the time allowed in the relevant university catalog for the employee to complete the aforesaid graduate program;

(B) a break in enrollment by the employee;

(C) the employee's being awarded the graduate degree from the aforesaid graduate program; or

(D) the end of the employee's employment.

(c) The provisions of this regulation shall not apply to seasonal, temporary or hourly employees. (Authorized by K.S.A. 76-730; implementing K.S.A. 76-729; effective, E-71-35, Aug. 20, 1971; effective Jan. 1, 1972; amended, E-76-50, Oct. 10, 1975; amended, E-77-5, March 19, 1976; amended Feb. 15, 1977; amended Nov. 18, 1991; amended March 6, 1998.)

**88-3-10. Kansas high school graduates.**

(a) The resident fee privilege shall be granted to any person graduating from a Kansas high school accredited by the state board of education who:

(1) Qualifies for admission and begins classes at any institution governed by the state board of regents within six months of high school graduation;

(2) was a Kansas resident for fee purposes at the time of graduation from high school or within 12 months prior to graduation from high school; and

(3) provides an official copy of that person's high school transcript to the university of enrollment.

(b) This resident fee privilege shall be granted even if the student is not otherwise qualified for this privilege due to the current residence of the student's parents or guardians.

(c) This privilege shall be granted as long as the student remains continuously enrolled at any institution governed by the state board of regents.

(d) Each person seeking the resident fee privilege pursuant to the provisions of these rules shall be responsible for providing such information necessary to verify graduation from a Kansas high school and resident status at or 12 months prior to graduation from high school. (Authorized by and implementing K.S.A. 76-729, as amended by 1991 S.B. 21, Sec. 2, and K.S.A. 76-730; effective, T-88-30, Aug. 19, 1987; effective May 1, 1988; amended Nov. 18, 1991.)

**88-3-11. Recruited or transferred employees.**

(a) The resident fee privilege shall be granted to any person who upon enrollment has been a domiciliary resident of the state of Kansas for fewer than 12 months and whose current domiciliary residence was established to accept or retain full-time employment in the state of Kansas. The resident fee privilege shall also be granted to the spouse and dependent children of that person.

(b) Any person seeking the resident fee privilege pursuant to the provisions of this regulation

shall provide a statement from the employer that supports the claim and meets these requirements:

(1) Be notarized;

(2) be signed by the personnel director of the employer and one of the following:

(A) The owner;

(B) a partner; or

(C) the chief executive officer of the employer;

(3) indicate whether residence in Kansas was established as the result of a job transfer or recruitment;

(4) indicate the date of initial employment in Kansas in case of a job transfer;

(5) indicate the date of hire in the case of an employment recruitment;

(6) set forth the nature of the position in Kansas as full-time; and

(7) set forth the expected length of employment in Kansas.

(c) An individual who is self-employed shall not be considered eligible for the resident fee privilege under this regulation.

(d) Military personnel shall be considered pursuant to K.A.R. 88-3-8 and not pursuant to the provisions of this regulation.

(e) Each person seeking the resident fee privilege pursuant to the provisions of this regulation shall be responsible for providing information necessary to indicate that the establishment of residence in the state of Kansas was solely as a result of accepting, upon recruitment by an employer, or retaining, upon a transfer request by an employer, full-time employment in the state of Kansas.

(f) The resident fee privilege extended by this regulation shall continue for a maximum of 12 months, but this privilege shall be extended during the pendency of the labor certification process with the United States department of labor or of a petition for adjustment of status with the immigration and naturalization service, when the recruited or transferred employee is a foreign national who has presented proof of each relevant filing. (Authorized by K.S.A. 76-730; implementing K.S.A. 76-729; effective, T-88-30, Aug. 19, 1987; effective May 1, 1988; amended Nov. 18, 1991; amended July 24, 1998.)

**88-3-12.** (Authorized by K.S.A. 76-730; implementing K.S.A. 2006 Supp. 76-729, as amended by 2007 HB 2425, §1 and 2007 HB 2185, §10; effective Nov. 14, 1988; amended Nov. 18, 1991; amended July 27, 2007; revoked, T-88-8-10-15, Aug. 10, 2015; revoked Dec. 18, 2015.)

**88-3-13. Persons with special domestic relations circumstances.** (a) The resident fee privilege shall be granted to any dependent student whose parents are divorced, as long as at least one parent is a Kansas resident pursuant to articles 2 and 3 of these regulations.

(b) A dependent student who is correctly classified as a resident and who maintains continuous fall and spring enrollment and domiciliary residence in Kansas shall maintain the resident fee privilege. Brief temporary absences shall not end the eligibility for the resident fee privilege, as long as domiciliary residence is maintained. (Authorized by K.S.A. 76-730; implementing K.S.A. 76-729; effective July 24, 1998.)

#### **Article 4.—TRAFFIC AND PARKING AT STATE EDUCATIONAL INSTITUTIONS**

##### **Editor's Note:**

Parking and traffic regulations of state educational institutions under the control and supervision of the Kansas Board of Regents are exempt from the filing requirements of K.S.A. 77-415 *et seq.* See K.S.A. 77-415(e).

#### **Article 5.—TRAFFIC AND PARKING; UNIVERSITY OF KANSAS**

**88-5-1 through 88-5-2.** (Authorized by K.S.A. 74-3211; effective Jan. 1, 1966; revoked Oct. 18, 2002.)

**88-5-3.** (Authorized by K.S.A. 74-3212; effective Jan. 1, 1966; revoked Oct. 18, 2002.)

**88-5-4.** (Authorized by K.S.A. 74-3211; effective Jan. 1, 1966; revoked Oct. 18, 2002.)

#### **Article 6.—BICYCLES; UNIVERSITY OF KANSAS**

**88-6-1.** (Authorized by K.S.A. 74-3211; effective Jan. 1, 1966; revoked Oct. 18, 2002.)

**88-6-2 through 88-6-3.** (Authorized by K.S.A. 74-3211, 74-3212; effective Jan. 1, 1966; revoked Oct. 18, 2002.)

#### **Article 7.—TRAFFIC AND PARKING; UNIVERSITY OF KANSAS MEDICAL CENTER**

**88-7-1 to 88-7-12.** (Authorized by K.S.A. 74-3210, 74-3211, 74-3212, 74-3213; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

#### **Article 8.—KANSAS CAREER WORK-STUDY PROGRAM**

**88-8-1. Definitions.** Terms used herein are defined as follows: (a) "Employment" means the opportunity of an eligible student to provide, on a part-time basis and for compensation, services to or on behalf of an employer which complement and enhance the educational preparation of the eligible student's career. The services performed shall be subject to the supervision and control of the employer.

(b) "Employer" means any private business, not-for-profit organization, or public agency with a place of business in Kansas which will pay compensation to an eligible student for services performed on a part-time basis by an eligible student as directed and requested by the employer. The definition of employer shall not include the eligible institutions, or their auxiliary enterprises, affiliated corporations or foundations.

(c) "Cost of attendance" means the amount of tuition, required fees, room and board and other related costs as determined by the eligible institution which a student must pay to attend class and receive credit for coursework at the eligible institution.

(d) "Established financial need" means the cost of attendance minus any scholarship or fellowship monies awarded to the eligible student and minus any financial aid received by the eligible student pursuant to title IV of the higher education act of 1965, as amended. (Authorized by L. 1987, Ch. 282, Sec. 3; implementing L. 1987, Ch. 282; effective, T-88-51, Dec. 16, 1987; effective May 1, 1988.)

**88-8-2. Applicant eligibility.** Each eligible institution shall determine the eligibility of each student to participate in the program and the number of hours which each student may work. To be eligible for program funds, each applicant shall demonstrate to the satisfaction of the eligible institution that the applicant: (a) Is a resident of the state of Kansas;

(b) is enrolled as a student at least half-time at the eligible institution during the fall and spring semesters;

(c) is in need of earnings from employment to assist in the pursuit of a course of study at the eligible institution;

(d) is in good academic standing at the eligible institution as determined by the academic policies of the eligible institution; and

(e) is able to maintain satisfactory academic standing at the eligible institution while participating in the program. (Authorized by K.S.A. 1990 Supp. 74-3276; implementing K.S.A. 1990 Supp. 74-3274 et seq.; effective, T-88-51, Dec. 16, 1987; effective May 1, 1988; amended Dec. 14, 1992.)

**88-8-3. Compensation.** The total earnings of each eligible student participating in the program shall not exceed the total cost of attendance at an eligible institution, or the amount of established financial need on the part of the eligible student, whichever is lesser. The eligible institution shall determine the salary or wages to be paid to each eligible student and shall contribute a minimum of one-half of the minimum federal hourly wage for the eligible student. The employer shall pay the remainder of the salary or wage due. The employer shall also bear the costs of any employee benefits, including all payments due under state or local workers' compensation laws, under the federal insurance contribution act, federal and state income tax or under other applicable laws. (Authorized by L. 1987, Ch. 282, Sec. 3; implementing L. 1987, Ch. 282; effective, T-88-51, Dec. 16, 1987; effective May 1, 1988.)

**88-8-4. Contractual agreement.** Each eligible institution shall require the use of a uniform contractual agreement with the employer and the eligible student. The contract shall be prepared by the state board and shall include provisions which:

- (a) provide a brief description of the work to be performed by each eligible student;
- (b) set forth the hourly rate of pay;
- (c) set forth the average number of hours per week each eligible student will work;
- (d) provide that the employer has the right to control and direct the services of the student with reference to the results to be accomplished and the means by which it shall be accomplished;
- (e) set forth the term of the contract and how the contract may be extended or terminated;
- (f) set forth the benefits to be provided by the employer;
- (g) set forth the manner of reimbursement of the employee by the eligible institution; and
- (h) set forth provisions relating to non-discriminatory treatment. (Authorized by L. 1987, Ch. 282, Sec. 3; implementing L. 1987, Ch. 282; effective, T-88-51, Dec. 16, 1987; effective May 1, 1988.)

**88-8-5. Program availability.** Each eligible institution shall be responsible for taking steps to see that participation in the program is reasonably available for each eligible student who desires to participate. These steps shall include: (a) the encouragement of participation and involvement by employers to provide for a wide variety of employment opportunities to eligible students;

(b) the publication of information about the program where readily accessible to eligible students;

(c) frequent contact and follow-through with employers about operation of the program; and

(d) accurate monitoring of the work records of eligible students to maintain the number of hours worked. (Authorized by L. 1987, Ch. 282, Sec. 3; implementing L. 1987, Ch. 282; effective, T-88-51, Dec. 16, 1987; effective May 1, 1988.)

**88-8-6. Employee displacement.** Each eligible institution shall determine the eligibility of each employer to participate in the program. Each employer seeking employment of an eligible student pursuant to the program shall provide a statement which shall: (a) Be notarized;

(b) be signed by the owner, a partner, chief executive officer, or the personnel director of the employer;

(c) indicate the nature of the intended employment for each eligible student with a brief description of the work to be performed;

(d) indicate the compensation to be paid to the eligible students;

(e) indicate the amount of hours available for employment under the program; and

(f) certify that any position occupied by an eligible student, and funded through the program, does not displace existing employees of the employer or impair existing contracts. (Authorized by L. 1987, Ch. 282, Sec. 3; implementing L. 1987, Ch. 282; effective, T-88-51, Dec. 16, 1987; effective May 1, 1988.)

**88-8-7. Administrative expenses.** Each eligible institution shall be permitted to spend up to 4% of the funds allocated to it under the program to meet expenses which are directly attributable to development or enhancement of the program and to the operation and management thereof. Each eligible institution shall maintain information relating to these administrative records and shall provide the information to the state board as requested. (Authorized by L. 1987, Ch. 282, Sec. 3; implementing L. 1987, Ch. 282; effective, T-88-51, Dec. 16, 1987; effective May 1, 1988.)

**88-8-8. Annual report.** The program shall be evaluated by the board annually and a program report shall be submitted to the governor and the legislature. Each eligible institution shall be prepared to make and file an annual report on campus operations of the program, as requested by the state board, to permit the state board to make the annual report. (Authorized by L. 1987, Ch. 282, Sec. 3; implementing L. 1987, Ch. 282; effective, T-88-51, Dec. 16, 1987; effective May 1, 1988.)

**88-8-9. College certification.** Upon the enrollment of Kansas career work study program recipients, each eligible post-secondary institution shall certify to the board that each recipient attending its institution: (a) Is a resident of the state of Kansas according to K.S.A. 76-729(a) and applicable administrative regulations of the board of regents relating to residency determinations;

(b) is enrolled as a student at least half-time at the eligible institution during the fall and spring semesters;

(c) is in need of earnings from employment to assist in the pursuit of a course of study at the eligible institution;

(d) is in good academic standing at the eligible institution as determined by the academic policies of the eligible institution; and

(e) is able to maintain satisfactory academic standing at the eligible institution while participating in the program. (Authorized by K.S.A. 1990 Supp. 74-3276; implementing K.S.A. 1990 Supp. 74-3274 *et seq.*; effective Dec. 14, 1992.)

## Article 9.—VOCATIONAL EDUCATION SCHOLARSHIP PROGRAM

**88-9-1. Definitions.** Terms used herein are defined as follows: (a) “Vocational education scholarship” means the award of a financial grant-in-aid by this state under K.S.A. 1987 Supp. 72-4460 to K.S.A. 72-4465.

(b) “Vocational education scholar” means a person who:

(1) is a resident of Kansas;

(2) has graduated from a high school accredited by the state board of education or has received general educational development credentials issued by the state board of education;

(3) is enrolled in or has been accepted for admission to a vocational education program operated by a designated educational institution; and

(4) has qualified on the basis of a competitive examination of ability and aptitude for the award of vocational education scholarship, or has previously so qualified and remains qualified on the basis of satisfactory performance for the renewal of the award of a vocational education scholarship.

(c) “Vocational education program” means a vocational education program operated at the postsecondary level by a designated educational institution.

(d) “Designated educational institution” means an educational institution which:

(1) qualifies as an eligible institution for the federal guaranteed-loan program under the higher education act of 1965 (P.L. 89-329) as amended; and

(2) the main campus or principal place of operation of which is located in Kansas.

(e) “Program term” means one-half the duration of the period of time required for completion of a vocational education program when such period of time encompasses more than one school year.

(f) “School year” means the period of time beginning on July 1 in each calendar year and ending on June 30 in the succeeding year.

(g) “Board of regents” or “board” means the state board of regents provided for in the constitution of this state. (Authorized by and implementing K.S.A. 1987 Supp. 72-4463; effective Nov. 14, 1988.)

**88-9-2. Applicant eligibility.** To be eligible for a vocational education scholarship offer, a person shall demonstrate to the executive director of the board that the person: (a) has fulfilled the requirements set forth in K.A.R. 88-9-1(b);

(b) is an undergraduate who has never received a baccalaureate degree;

(c) is or will be enrolled full time in an eligible vocational education program; and

(d) has submitted an application for receipt of scholarship stipends, or if eligible for a second term has submitted an application for a renewal award. (Authorized by and implementing K.S.A. 1987 Supp. 72-4463; effective Nov. 14, 1988.)

**88-9-3. Competitive examination.** (a) Any person desiring designation as a vocational education scholar shall register for and complete the differential aptitude test.

(b) The differential aptitude test shall be administered twice annually on the first Saturday in

November and on the first Saturday in March at various testing sites around the state.

(c) Each registrant is required to pay a fee which covers the cost of purchasing and administering the examination.

(d) Detailed information pertaining to registration for the competitive examination, test sites and the exact amount of the required fee shall be available at all eligible institutions. (Authorized by and implementing K.S.A. 1990 Supp. 72-4463; effective Nov. 14, 1988; amended Dec. 14, 1992.)

**88-9-4. Applications.** (a) Written information and application materials for the vocational scholarship program shall be made available by the board to all eligible institutions.

(b) Applications for scholarship stipends shall be submitted to the board no later than the 15th of May preceding the school year for which the scholarship is sought. (Authorized by and implementing K.S.A. 1987 Supp. 72-4463; effective Nov. 14, 1988.)

**88-9-5. Institutional certification.** Upon the enrollment of each grantee, each institution with an eligible vocational education program shall certify to the board that: (a) the grantee is a full time undergraduate student enrolled in an eligible vocational education program;

(b) if also receiving a state scholarship, the amount awarded under both the vocational scholarship and the state scholarship programs does not exceed the total of tuition and required fees for the vocational education program in which the student is enrolled; and

(c) if receiving a renewal award, the grantee has performed satisfactorily according to the institution's academic policy. (Authorized by and implementing K.S.A. 1987 Supp. 72-4463; effective Nov. 14, 1988.)

**88-9-6. Scholar selection.** (a) One hundred scholars will be selected each year on the basis of greatest ability and aptitude as demonstrated on the differential aptitude test.

(b) The executive director of the board will designate vocational education scholars on or before May 1 of each year.

(c) Recipients of vocational education scholarships will be notified of their awards on or before July 1. (Authorized by and implementing K.S.A. 1987 Supp. 72-4463; effective Nov. 14, 1988.)

## Article 10.—TAX-SHELTERED ANNUITY PROGRAM

**88-10-1, 88-10-2, and 88-10-3.** (Authorized by K.S.A. 1984 Supp. 74-4925; implementing K.S.A. 1984 Supp. 74-4925; effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; revoked Oct. 23, 2020.)

**88-10-4.** (Authorized by and implementing K.S.A. 1991 Supp. 74-4925; effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; amended June 7, 1993; revoked Oct. 23, 2020.)

**88-10-5.** (Authorized by K.S.A. 1984 Supp. 74-4925; implementing K.S.A. 1984 Supp. 74-4925; effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; revoked Oct. 23, 2020.)

**88-10-6.** (Authorized by K.S.A. 1986 Supp. 74-4925; implementing K.S.A. 1986 Supp. 74-4925; effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; amended May 1, 1988; revoked Oct. 23, 2020.)

**88-10-7 and 88-10-8.** (Authorized by K.S.A. 1984 Supp. 74-4925; implementing K.S.A. 1984 Supp. 74-4925; effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; revoked Oct. 23, 2020.)

**88-10-9.** (Authorized by K.S.A. 1974 Supp. 74-4925; effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; revoked, T-85-31, Nov. 14, 1984; revoked May 1, 1985.)

**88-10-10.** (Authorized by K.S.A. 1984 Supp. 74-4925; implementing K.S.A. 1984 Supp. 74-4925; effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; revoked Oct. 23, 2020.)

**88-10-12.** (Authorized by K.S.A. 1984 Supp. 74-4925; implementing K.S.A. 1984 Supp. 74-4925; effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; revoked Oct. 23, 2020.)

**Article 11.—TAX-SHELTERED  
ANNUITY PROGRAMS FOR PERSONS  
COVERED BY K.S.A. 74-4925b**

**88-11-1, 88-11-2, 88-11-3, and 88-11-4.** (Authorized by K.S.A. 74-4925b; implementing K.S.A. 74-4925b; effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; revoked Oct. 23, 2020.)

**88-11-5.** (Authorized by and implementing K.S.A. 74-4925b; effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; amended June 7, 1993; revoked Oct. 23, 2020.)

**88-11-6.** (Authorized by K.S.A. 74-4925b; implementing K.S.A. 74-4925b; effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; revoked Oct. 23, 2020.)

**88-11-7.** (Authorized by K.S.A. 74-4925b; implementing K.S.A. 74-4925b; effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; amended May 1, 1988; revoked Oct. 23, 2020.)

**88-11-8 and 88-11-9.** (Authorized by K.S.A. 74-4925b; implementing K.S.A. 74-4925b; effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; revoked Oct. 23, 2020.)

**88-11-10.** (Authorized by K.S.A. 1974 Supp. 74-4925b; effective, E-74-34, July 2, 1974; effective May 1, 1975; revoked, T-85-31, Nov. 14, 1984; revoked May 1, 1985.)

**88-11-11 and 88-11-12.** (Authorized by K.S.A. 74-4925b; implementing K.S.A. 74-4925b; effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; revoked Oct. 23, 2020.)

**Article 12.—GUIDELINES FOR  
PARTICIPATION IN THE  
REGENTS VOLUNTARY PHASED  
RETIREMENT PROGRAM**

**88-12-1. Eligibility.** Any person who is an unclassified employee at a regents university who has completed at least 10 years of full-time service shall be eligible for participation in the program

upon reaching 55 years of age. (Authorized by and implementing K.S.A. 76-746, as amended by 1994 Substitute for HB 2597, Sec. 30; effective, T-86-22, July 1, 1985; effective May 1, 1986; amended Nov. 28, 1994.)

**88-12-2. Voluntariness.** Entry into a phased retirement agreement shall be voluntary on the part of each regents institution and the individual unclassified employee, except that the institution shall refuse to enter into a phased retirement agreement when entry into the agreement is not in the best interests of the institution. (Authorized by and implementing K.S.A. 76-746, as amended by 1994 Substitute for HB 2597, Sec. 30; effective, T-86-22, July 1, 1985; effective May 1, 1986; amended Nov. 28, 1994.)

**88-12-3. Procedure for application and approval.** (a) Each eligible unclassified employee requesting participation in the program shall submit a written request for participation to the appropriate officer of the institution.

(b) It shall be ascertained by the officer whether entry into the requested agreement is in the best interest of the institution. If so, the final decision on the terms of the agreement shall be made by the officer and approval of the agreement shall be recommended to the chief executive officer of the institution. (Authorized by and implementing K.S.A. 76-746, as amended by 1994 Substitute for HB 2597, Sec. 30; effective, T-86-22, July 1, 1985; effective May 1, 1986; amended Nov. 28, 1994.)

**88-12-4. Revocability.** Each phased retirement agreement shall be irrevocable, except that the agreement may be rescinded within 48 hours of signature at the option of the employee. (Authorized by and implementing K.S.A. 76-746, as amended by 1994 Substitute for HB 2597, Sec. 30; effective, T-86-22, July 1, 1985; effective May 1, 1986; amended Nov. 28, 1994.)

**88-12-5. Provisions of agreement.** (a) Each phased retirement agreement shall specify:

(1) the fractional time appointment to be served. Fractional time appointments shall be calculated on the total academic or fiscal year depending on the term of the appointment at the time of entry into the program, and shall carry with them a proportionate reduction in salary;

(2) the initial salary to be paid for the fractional time appointment;

(3) the full-time benefits to be enjoyed by the unclassified employee; and

(4) the duration of the agreement, which shall not exceed five years, and the date of full retirement.

(b) The final agreement shall contain the signatures of both parties. (Authorized by and implementing K.S.A. 76-746, as amended by 1994 Substitute for HB 2597, Sec. 30; effective, T-86-22, July 1, 1985; effective May 1, 1986; amended Nov. 28, 1994.)

**88-12-6. Full-time benefits.** (a) Participating unclassified employees shall receive the following benefits:

(1) retention of full-time health care benefits until the end of the agreement or full retirement, whichever occurs first;

(2) retention of death and disability coverage until the end of the agreement or full retirement, whichever occurs first;

(3) retention of full-time employer-paid retirement benefits until the end of the agreement or full retirement, whichever occurs first;

(4) for tenured faculty members, retention of tenure until the end of the agreement or full retirement, whichever occurs first;

(5) continued full use of university facilities; and

(6) continued eligibility for annual merit increases.

(b) The full-time equivalent salary shall be used for the calculation of all state-provided benefits. (Authorized by and implementing K.S.A. 76-746, as amended by 1994 Substitute for HB 2597, Sec. 30; effective, T-86-22, July 1, 1985; effective May 1, 1986; amended Nov. 28, 1994.)

**88-12-7. Modification of agreement.** Any participating unclassified employee and the institution may, by mutual consent, modify the agreement by further reducing the participant's fractional time appointment prior to the specified date of retirement or by permitting the employee to take full retirement at an earlier date. (Authorized by and implementing K.S.A. 76-746, as amended by 1994 Substitute for HB 2597, Sec. 30; effective, T-86-22, July 1, 1985; effective May 1, 1986; amended Nov. 28, 1994.)

**88-12-8. Full retirement.** Full retirement shall occur not later than the end of the agreement. Retirement from an institution under this program shall not preclude post-retirement term appointments. (Authorized by and implementing

K.S.A. 76-746, as amended by 1994 Substitute for HB 2597, Sec. 30; effective, T-86-22, July 1, 1985; effective May 1, 1986; amended Nov. 28, 1994.)

### Article 13.—STUDENT ASSISTANCE PROGRAMS

**88-13-1. Definitions.** Terms used herein are defined as follows: (a) "Parent" means a guardian or any person who is legally responsible for the maintenance, care, or support of a dependent who is an applicant under this program.

(b) "Parent's contribution" means the amount parents can reasonably be expected to contribute from their income and assets toward a year's college education costs for a dependent. This amount shall be determined based upon criteria approved by the board and established by the financial needs analysis agency selected by the board.

(c) "Independent student" means a student who demonstrates independence from a parent's support to the satisfaction of the board. Documentation that will meet U.S. education department guidelines for an independent student may be required from the applicant, applicant's parent or parents, or guardian to verify emancipation from the parent or parents.

(d) "Student contribution" means the amount a student can contribute from the student's own work and resources toward a year's college education costs. This amount shall be determined based upon criteria approved by the board and established by the financial needs analysis agency selected by the board. The student contribution shall not be less than \$450.

(e) "Student resources" means assets, earnings, income or benefits from other sources, and any grant or loan coming directly to the student from non-college sources, as defined by the U.S. department of education in 34 C.F.R. 674.14, effective February 2, 1988, which are hereby adopted by reference.

(f) "Family contribution" means the sum of parents' contribution and student contribution. The family contribution shall be determined annually.

(g) "Tuition" means the amount of money charged a full-time student for the cost of educational services for the academic year, excluding any summer session. The amount of the tuition shall be set by the eligible postsecondary institution and shall be the same for the grantee and non-grantee students who are in identical circumstances at the institution.

(h) "Required fees" means fees which are not optional for the full-time student and which are considered by the board to be for educational purposes.

(i) "College budget" means the total amount required for a student to attend the postsecondary institution of the student's choice. The costs of tuition and required fees, room and board, supplies, and incidentals shall be included in the college budget. For married students, a family maintenance budget shall be substituted for room and board. All amounts to be used for maintenance, supplies and incidentals shall be comparable for all eligible institutions.

(j) "Tuition grant offer" means the annual amount offered to a student under this program, rounded to the nearest \$10. Each tuition grant offer shall be the lesser of the following amounts:

(1) an amount equal to one-half of the difference between the average amount of the total tuition and required fees of full-time in-state students who are enrolled at the state universities and the average amount of the total tuition and required fees of full-time in-state students who are enrolled at the accredited independent institutions in Kansas;

(2) the total tuition and required fees for two semesters, or the equivalent thereof, at the college of the student's choice;

(3) the financial need of the student; or

(4) the pro-rata amount determined by the board.

(k) "State scholarship offer" means the annual amount offered to a state scholar under this program, rounded to the nearest \$10. Each state scholarship offer shall be the lesser of the following amounts:

(1) \$1,000 for scholars designated for fall, 1985 and thereafter;

(2) \$500 for any scholar designated prior to fall, 1985;

(3) the financial need of the state scholar;

(4) the pro-rata amount determined by the board.

(l) "Grantee" means a person possessing a valid tuition grant offer, or state scholarship offer, or both.

(m) "Tuition grant payment or state scholarship payment" means the amount awarded to a student to enroll in a course of study of at least 12 hours each semester, or the equivalent thereof. This amount shall be determined by pro-rating the amount of the tuition grant offer, or state scholarship offer, or both.

(n) "Unmet need" means the financial need of a grantee less the amount of the student's tuition grant offer or state scholarship offer, or both. (Authorized by K.S.A. 1987 Supp. 72-6111, K.S.A. 72-6814; implementing K.S.A. 1987 Supp. 72-6107, 72-6109, K.S.A. 72-6110, K.S.A. 1987 Supp. 72-6111, 72-6810, 72-6812, K.S.A. 72-6814, 72-6815; effective, E-76-57, Dec. 12, 1975; effective, E-77-5, March 19, 1976; effective Feb. 15, 1977; amended May 1, 1984; amended, T-86-35, Nov. 20, 1985; amended May 1, 1986; amended Dec. 19, 1988.)

**88-13-2. Financial needs analysis agency.** The board shall contract with one nationally recognized financial needs analysis agency which shall determine the financial need of each eligible applicant. The criteria to be used by the board in its selection of an agency shall be service, cost, and convenience for Kansas students, the eligible postsecondary institutions and the board. (Authorized by K.S.A. 1976 Supp. 72-6111, 72-6814; effective, E-76-57, Dec. 12, 1975; effective, E-77-5, March 19, 1976; effective Feb. 15, 1977.)

**88-13-3. State scholar selection.** The board shall select state scholars according to criteria of scholastic ability selected annually by the board. (Authorized by K.S.A. 1976 Supp. 72-6814; effective, E-76-57, Dec. 12, 1975; effective, E-77-5, March 19, 1976; effective Feb. 15, 1977.)

**88-13-4. Applicant eligibility.** To be eligible for a tuition grant offer, or state scholarship offer, or both, each applicant shall demonstrate to the executive director of the board that the applicant: (a) Is a resident of the state of Kansas;

(b) is initially accepted or enrolled at an eligible Kansas postsecondary institution;

(c) is an undergraduate who has never received a baccalaureate degree;

(d) has financial need as determined by an analysis of information submitted on the current year's American College Testing Service Family Financial Statement, which is hereby adopted as the board's family financial statement;

(e) having received a state scholarship and having completed the initial enrollment in a postsecondary educational institution, has attained the academic standard of a cumulative 3.3 grade point average for all postsecondary academic terms or semesters. The average shall be calculated on a 4.0 scale where an A equals four points;

(f) having received a tuition grant and having completed the initial enrollment in a postsecond-

ary educational institution, has attained the academic standard of a cumulative 2.0 grade point average for all postsecondary academic terms or semesters. The average shall be calculated on a 4.0 scale where an A equals four points;

(g) having received federal financial assistance, does not owe a refund on any federal financial assistance and is not in default on any such federal financial assistance; and

(h) has otherwise complied with the requirements of 34 C.F.R. 692.40 effective February 2, 1988, which are hereby adopted by reference. (Authorized by K.S.A. 1990 Supp. 72-6111, K.S.A. 72-6814; implementing K.S.A. 1990 Supp. 72-6112, K.S.A. 72-6815; effective, E-76-57, Dec. 12, 1975; effective, E-77-5, March 19, 1976; effective Feb. 15, 1977; amended, T-85-6, Feb. 15, 1984; amended May 1, 1984; amended, T-85-14, May 3, 1984; amended, T-85-39, Dec. 17, 1984; amended May 1, 1985; amended, T-86-35, Nov. 20, 1985; amended May 1, 1986; amended Dec. 19, 1988; amended Dec. 14, 1992.)

**88-13-5. Application eligibility.** An application will be eligible for consideration only if it (a) is submitted by an eligible applicant, (b) meets all deadlines of the board listed on the application, and (c) includes all required documentation and information. (Authorized by K.S.A. 1976 Supp. 72-6111, 72-6814; effective, E-76-57, Dec. 12, 1975; effective, E-77-5, March 19, 1976; effective Feb. 15, 1977.)

**88-13-6. Hearing procedure.** If the executive director determines that an applicant is not eligible for a tuition grant offer or state scholarship offer, the applicant may submit written material concerning the determination of the executive director to the board. The board shall review the material and make a determination of the applicant's eligibility. (Authorized by K.S.A. 72-6111, 72-6814; implementing K.S.A. 72-6111, 72-6814; effective, E-76-57, Dec. 12, 1975; effective, E-77-5, March 19, 1976; effective Feb. 15, 1977; amended May 1, 1984.)

**88-13-7. Examination of income tax forms.** All individuals whose financial data are required for a student assistance application shall certify in writing that they will release copies of their state or federal income tax returns to the board upon request. If the request is denied or if discrepancies are found between the application and the copy of the tax return, the application may

be declared ineligible. (Authorized by K.S.A. 1976 Supp. 72-6112, 72-6815; effective, E-76-57, Dec. 12, 1975; effective, E-77-5, March 19, 1976; effective Feb. 15, 1977.)

**88-13-8. Confidentiality of information.** All information received from applicants, parents, and spouses shall remain confidential and shall be released only in anonymous statistical groupings, except as provided in 88-13-7. (Authorized by K.S.A. 1976 Supp. 72-6111, 72-6814; effective, E-76-57, Dec. 12, 1975; effective, E-77-5, March 19, 1976; effective Feb. 15, 1977.)

**88-13-9. Rosters.** If the amount that would be required to fully fund all eligible tuition grant offers, or state scholarship offers, or both exceeds state and federal appropriations, the board shall establish eligibility rosters of applicants so that the board may offer tuition grant offers, or state scholarship offers, or both until all available funds are exhausted. The rosters to be used shall be determined by the board annually and shall not discriminate on the basis of race, sex, religion, creed, national origin, age, or the eligible postsecondary institution of the student's choice. Rosters for apportionment of funds may be established that will rank applicants by earliest date of application, highest grade point average, lowest expected family contribution, student classification or a combination of these criteria.

If available funds are insufficient to fully fund all eligible applicants, the board may pro-rate awards on a percentage basis to all eligible applicants in addition, or as an alternative, to the rosters. (Authorized by K.S.A. 72-6111, 72-6814; implementing K.S.A. 72-6111, 72-6814; effective, E-76-57, Dec. 12, 1975; effective, E-77-5, March 19, 1976; effective Feb. 15, 1977; amended May 1, 1984.)

**88-13-10. Grant offer.** Each grantee shall notify the board before the deadline listed on the grant offer letter as to whether the grantee will accept the grant for the full academic year or a portion thereof. If this information is not received from the applicant by the deadline, the board may withdraw the original grant offer. (Authorized by K.S.A. 72-6111, 72-6814; implementing K.S.A. 72-6111, 72-6814; effective, E-76-57, Dec. 12, 1975; effective, E-77-5, March 19, 1976; effective Feb. 15, 1977; amended May 1, 1984.)

**88-13-11. College certification.** Upon the enrollment of grantees, each eligible postsecond-

ary institution shall certify to the board that each grantee attending its institution: (a) Is a resident of the state of Kansas according to K.S.A. 76-729(a) and applicable administrative regulations of the board of regents relating to residency determinations;

(b) is not receiving more financial aid than the grantee's demonstrated need;

(c) is a full-time undergraduate student in good standing who is responsible for paying full tuition and required fees;

(d) has met the state scholarship academic standard of a cumulative 3.3 grade point average for grantees participating in the state scholarship program;

(e) has met the tuition grant academic standard of a cumulative 2.0 grade point average for grantees participating in the tuition grant program;

(f) has, if selected for verification, satisfactorily completed the institution's verification process as provided in 34 C.F.R. 668.51-668.58, effective April 29, 1986, which are hereby adopted by reference;

(g) for an independent grantee, that the grantee meets the U.S. education department guidelines for an independent student as provided in 34 C.F.R. 668.2, effective February 2, 1988, which are hereby adopted by reference, and as verified by the institution; and

(h) where applicable, is in compliance with the eligibility requirements of 34 C.F.R. 692.40, effective February 2, 1988, which are hereby adopted by reference. (Authorized by K.S.A. 1990 Supp. 72-6111, K.S.A. 72-6814; implementing K.S.A. 1990 Supp. 72-6107, 72-6111, 72-6810, K.S.A. 72-6814; effective, E-76-57, Dec. 12, 1975; effective, E-77-5, March 19, 1976; effective Feb. 15, 1977; amended, T-85-6, Feb. 15, 1984; amended May 1, 1984; amended, T-85-14, May 3, 1984; amended, T-85-39, Dec. 19, 1984; amended May 1, 1985; amended, T-86-35, Nov. 20, 1985; amended May 1, 1986; amended Dec. 19, 1988; amended Dec. 14, 1992.)

**88-13-12. Grant reduction.** If a grantee receives more financial assistance than his unmet need, the amount of the tuition grant and/or state scholarship shall be reduced so that the grantee's financial need is not exceeded. (Authorized by K.S.A. 1976 Supp. 72-6111, 72-6814; effective, E-76-57, Dec. 12, 1975; effective, E-77-5, March 19, 1976; effective Feb. 15, 1977.)

## Article 14.—COMMUNITY RESOURCE PROGRAM

**88-14-1. Definitions.** (a) "Assistant provost" means the assistant provost of the division of continuing education of Kansas state university; and

(b) "Review committee" means the community resource review committee appointed by the assistant provost pursuant to these regulations. (Authorized by K.S.A. 74-5024, as amended by L. 1987, Ch. 305, Sec. 3(b); implementing L. 1987, Ch. 305, Sec. 1(a); effective, T-88-51, Dec. 16, 1987; effective May 1, 1988.)

**88-14-2. Review committee.** (a) Membership. The review committee shall consist of seven persons appointed by the assistant provost. They shall represent diverse geographical and educational backgrounds and shall be knowledgeable in the area of community resource program development;

(b) Terms. Initially, two members shall be appointed for terms of one year each, two members shall be appointed for terms of two years each, and three members shall be appointed for terms of three years each. Thereafter, all terms shall be for three years. No member who has served a full three year term shall be reappointed;

(c) Chair. The chair of the committee shall be designated annually by the assistant provost. After the first year, any person appointed as chair shall have at least one year's prior experience as a member of the committee;

(d) Meetings. The review committee shall meet annually during the month of October. The chair shall preside. The executive director of the university for man and the community resource act program director at Kansas state university shall attend review committee meetings and provide such information and assistance as the committee deems necessary, but shall not have the power to vote;

(e) Duties. The committee shall review and evaluate applications for grants in aid from the community resource funds administered by the division of continuing education at Kansas state university; recommend revisions in applications submitted for such grants in aid to the community resource program director; and present to the assistant provost recommendations for funding of community resource programs; and

(f) Compensation. Review committee members shall serve without compensation. (Authorized by K.S.A. 74-5024, as amended by L. 1987, Ch. 305,

Sec. 3(b); implementing L. 1987, Ch. 305, Sec. 1(a); effective, T-88-51, Dec. 16, 1987; effective May 1, 1988.)

**88-14-3. Applications for funding.** In addition to the information required by K.S.A. 74-5026 and 74-5027, and amendments thereto, every application for a grant in aid shall contain such additional information as required on the application form prescribed by the assistant provost. (Authorized by K.S.A. 74-5024, as amended by L. 1987, Ch. 305, Sec. 3(b); implementing K.S.A. 74-5026, as amended by L. 1987, Ch. 305, Sec. 5, and K.S.A. 74-5027, as amended by L. 1987, Ch. 305, Sec. 6; effective, T-88-51, Dec. 16, 1987; effective May 1, 1988.)

**88-14-4. Standards for approval of applications.** Applications for grants in aid from community resource funds shall be reviewed, evaluated and approved or disapproved taking into consideration the following criteria as established by the assistant provost:

(a) Proper and timely submission of required information shall be important;

(b) County-wide proposals which will promote cooperation between cities shall be given preference;

(c) Proposals from communities with greater economic need, including those with high proportions of elderly, low income or minority residents, shall receive preference;

(d) Geographical balance throughout the state in distribution of funds shall be considered desirable; and

(e) Diversity in the types of organizations sponsoring community resource programs in the state shall be considered desirable. (Authorized by K.S.A. 74-5024, as amended by L. 1987, Ch. 305, Sec. 3(b); implementing K.S.A. 74-5026, as amended by L. 1987, Ch. 305, Sec. 5; effective, T-88-51, Dec. 16, 1987; effective May 1, 1988.)

**Article 15.—REGISTRATION OF COURSES OR PROGRAMS OFFERED IN KANSAS BY FOREIGN INSTITUTIONS OF POSTSECONDARY EDUCATION**

**88-15-1, 88-15-2.** (Authorized by K.S.A. 74-3252, as amended by L. 1988, Ch. 298, Sec. 4; implementing K.S.A. 74-3251, as amended by L. 1988, Ch. 298, Sec. 3; effective, E-79-15, July 1, 1978; effective May 1, 1979; amended Dec. 19, 1988; revoked Oct. 20, 2006.)

**Article 16.—AUTHORIZATION OF INSTITUTIONS OF POSTSECONDARY EDUCATION TO CONFER DEGREES**

**88-16-1.** (Authorized by K.S.A. 74-3252, as amended by L. 1988, Ch. 298, Sec. 4; implementing K.S.A. 74-3250 as amended by L. 1988, Ch. 298, Sec. 2; effective May 1, 1979; amended May 1, 1980; amended Dec. 19, 1988; revoked Oct. 20, 2006.)

**88-16-1a.** (Authorized by K.S.A. 74-3252, as amended by L. 1988, Ch. 298, §4; implementing K.S.A. 74-3249, 74-3250, 74-3251, 74-3252, as amended by L. 1988, Ch. 298, §1-6; effective May 1, 1980; amended May 1, 1986; amended Dec. 19, 1988; revoked, T-88-4-1-02, April 1, 2002; revoked July 26, 2002.)

**88-16-1b.** (Authorized by K.S.A. 74-3252; implementing K.S.A. 74-3249, 74-3250, 74-3251, 74-3252; effective, T-88-4-1-02, April 1, 2002; effective July 30, 2002; revoked Oct. 20, 2006.)

**88-16-2.** (Authorized by K.S.A. 74-3252, as amended by L. 1988, Ch. 298, Sec. 4; implementing K.S.A. 74-3250, as amended by L. 1988, Ch. 298, Sec. 2; effective May 1, 1979; amended May 1, 1980; amended Dec. 19, 1988; revoked Oct. 20, 2006.)

**88-16-3 and 88-16-4.** (Authorized by K.S.A. 1979 Supp. 74-3252; effective May 1, 1979; revoked May 1, 1980.)

**88-16-5.** (Authorized by K.S.A. 74-3252, as amended by L. 1988, Ch. 298, Sec. 4; implementing K.S.A. 74-3250, as amended by L. 1988, Ch. 298, Sec. 2; effective May 1, 1979; amended May 1, 1980; amended Dec. 19, 1988; revoked Oct. 20, 2006.)

**88-16-5b.** (Authorized by and implementing 2004 HB 2795, §§ 5 and 21; effective Dec. 3, 2004; revoked Oct. 20, 2006.)

**88-16-6.** (Authorized by K.S.A. 1979 Supp. 74-3252; effective May 1, 1979; amended May 1, 1980; revoked Oct. 20, 2006.)

**88-16-7.** (Authorized by K.S.A. 1979 Supp. 74-3252; effective May 1, 1979; revoked May 1, 1980.)

**88-16-8.** (Authorized by K.S.A. 1979 Supp. 74-3252; effective May 1, 1980; revoked Oct. 20, 2006.)

**Article 17.—WAIVER OF FEES  
OR TUITION FOR SELECTED  
ROTC MEMBERS**

**88-17-1. Definition.** “Kansas resident” shall mean a person who is determined to be a Kansas resident for fee purposes at the ROTC institution. (Authorized by K.S.A. 1979 Supp. 74-3256; effective May 1, 1980.)

**88-17-2. Responsibilities of the state board of regents.** (a) A common application form and service agreement form for students desiring to participate in the ROTC tuition waiver program shall be provided by the board of regents.

(b) The publicizing of the ROTC tuition waiver program, application procedures, and the distribution of the application and commitment forms to students through the ROTC institutions and the adjutant general’s office shall be coordinated by the board of regents.

(c) The performance requirements of ROTC participants in the tuition waiver program shall be audited by the board of regents. (Authorized by and implementing K.S.A. 74-3256; effective May 1, 1980; amended, T-88-51, Dec. 16, 1987; amended May 1, 1988.)

**88-17-3. Responsibilities of ROTC institutions.** The ROTC institutions shall: (a) Make necessary arrangements for publicizing the ROTC tuition waiver program and for distribution of the application and commitment forms to interested students;

(b) establish procedures for the selection of students who shall be participants in the tuition waiver program;

(c) select annually, new students for participation in the program provided that there shall be no more than 40 students participating under the terms stipulated in K.S.A. 74-3256 in any academic year;

(d) submit annually to the board of regents a roster of students participating in the program indicating the amount of tuition that has been waived for each student; and

(e) notify the board of regents as to the failure of any participant in the program to maintain standards required for continued participation in the program while a student. (Authorized by and implementing K.S.A. 74-3256; effective May 1, 1980; amended, T-88-51, Dec. 16, 1987; amended May 1, 1988.)

**88-17-4. Responsibilities of the adjutant general.** The office of the adjutant general shall:

(a) Assist in the publicizing of the ROTC tuition waiver program through channels of communication available to the adjutant general’s office; and

(b) notify the board of regents as to the failure of any eligible participant in the program to accept a commission and to serve four years in the Kansas national guard. (Authorized by and implementing K.S.A. 74-3256; effective May 1, 1980; amended, T-88-51, Dec. 16, 1987; amended May 1, 1988.)

**Article 18.—KANSAS HONORS PROGRAM**

**88-18-1. Definitions.** (a) “Parent” means a guardian or any person who is legally responsible for the maintenance, care, or support of a dependent who is an applicant under this program.

(b) “Parent’s contribution” means the amount parents can reasonably be expected to contribute from their income and assets toward education costs for a dependent. This amount shall be determined based upon criteria approved by the board and established by the financial needs analysis agency selected by the board.

(c) “Independent student” means a student who demonstrates independence from a parent’s support to the satisfaction of the board. Documentation that will meet U.S. education department guidelines for an independent student may be required from the applicant, applicant’s parent or parents, or guardian to verify emancipation from the parent or parents.

(d) “Student contribution” means the amount a Kansas honors student can contribute from the student’s own work and resources toward education costs. This amount shall be determined based upon criteria approved by the board and established by the financial needs analysis agency selected by the board.

(e) “Student resources” means assets, earnings, income or benefits from other sources, and any grant or loan coming directly to the student from non-college sources, as defined by the U.S. department of education in 34 C.F.R. 674.14, effective February 2, 1988, which are hereby adopted by reference.

(f) “Family contribution” means the sum of parents’ contribution and student contribution. The family contribution shall be determined annually.

(g) “Tuition” means the amount of money charged a Kansas honors student for the cost of participating in an honors or gifted program for college credit. The amount of the tuition shall be set by the eligible institution of postsecondary ed-

ucation and shall be the same for the grantee and non-grantee students who are in identical circumstances at the institution.

(h) "Required fees" means fees which are not optional for the student and which are considered by the board to be for educational purposes.

(i) "Program budget" means the total amount required for a student to attend the institution of postsecondary education of the student's choice. The costs of tuition and required fees, room and board, supplies, and incidentals shall be included in the program budget. All amounts to be used for maintenance, supplies and incidentals shall be comparable for all eligible institutions.

(j) "Unmet need" means the financial need of a Kansas honors student less the amount of the student's Kansas honors scholarship. (Authorized by L. 1988, Ch. 358, Sec. 4; implementing L. 1988, Ch. 358, Sec. 2-6; effective Dec. 19, 1988.)

**88-18-2. Financial need analysis agency.**

One nationally recognized financial needs analysis agency shall be selected by the board and shall, under contract with the board, determine the financial need of each eligible applicant. The criteria to be used by the board in its selection of an agency shall be service, cost, and convenience for Kansas students, the eligible institutions of postsecondary education and the board. (Authorized by L. 1988, Ch. 358, Sec. 4; implementing L. 1988, Ch. 358, Sec. 2-6; effective Dec. 19, 1988.)

**88-18-3. Applicant eligibility.**

Each applicant for a Kansas honors scholarship shall demonstrate to the executive director of the board or the executive director's designee that the applicant:

- (a) Is a resident of the state of Kansas;
- (b) has not graduated from high school;
- (c) has been enrolled or accepted for enrollment in an honors or gifted program for college credit at a Kansas institution of postsecondary education;

(d) has not received a Kansas honors scholarship for more than two honors or gifted programs; and

(e) has financial need as determined by an analysis of information submitted on the current year's American College Testing Service Family Financial Statement, which is hereby adopted as the board of regents' family financial statement. (Authorized by K.S.A. 1990 Supp. 72-9704; implementing K.S.A. 1990 Supp. 72-9701 *et seq.*; effective Dec. 19, 1988; amended Dec. 14, 1992.)

**88-18-4. Application eligibility.** Each application shall be eligible for consideration only if:

(a) Is submitted by an eligible applicant;

(b) meets all deadlines of the board listed on the application; and

(c) includes all required documentation and information. (Authorized by L. 1988, Ch. 358, Sec. 6; implementing L. 1988, Ch. 358, Sec. 2-6; effective Dec. 19, 1988.)

**88-18-5. Examination of income tax forms.**

Each individual whose financial data is required for a Kansas honors scholarship application shall certify in writing that copies of the individual's state or federal income tax returns will be released to the board upon request. If the request of the board is denied or if discrepancies are found between the application and the copy of the tax return, the application may be declared ineligible. (Authorized by L. 1988, Ch. 358, Sec. 6; implementing L. 1988, Ch. 358, Sec. 2-6; effective Dec. 19, 1988.)

**88-18-6. Confidentiality of information.**

All information received from applicants and parents shall remain confidential and shall be released only in anonymous statistical groupings, except as provided in K.A.R. 88-18-5. (Authorized by L. 1988, Ch. 358, Sec. 6; implementing L. 1988, Ch. 358, Sec. 2-6; K.S.A. 1987 Supp. 45-221(a)(17); effective Dec. 19, 1988.)

**88-18-7. Available funds.** If available funds are insufficient to fully fund all eligible applicants, awards may be pro-rated by the board of regents on a percentage basis to each eligible applicant. (Authorized by and implementing L. 1988, Ch. 358, Sec. 4; effective Dec. 19, 1988.)

**88-18-8. College certification.** Upon the enrollment of recipients of Kansas honors scholarships, each eligible institution of postsecondary education shall certify to the executive director of the board of regents or the executive director's designee that each recipient: (a) Is a resident of the state of Kansas according to K.S.A. 76-729(a) and applicable administrative regulations of the board of regents relating to residency determinations;

(b) is enrolled or has been accepted for enrollment in an honors or gifted program;

(c) is attending the honors or gifted program; and

(d) meets all the guidelines for assistance as specified by the board of regents. (Authorized by

K.S.A. 1990 Supp. 72-9704; implementing K.S.A. 1990 Supp. 72-9702 *et seq.*; effective Dec. 19, 1988; amended Dec. 14, 1992.)

### Article 19.—KANSAS-RHODES SCHOLARSHIP PROGRAM

**88-19-1. Definitions.** (a) “Tuition” means the amount of money charged a full-time graduate student for the cost of educational services for one of the two principal terms in the academic year. The amount of the tuition shall be set by the state educational institution and approved by the board of regents.

(b) “Required fees” means fees which are not optional for the full-time graduate student and which are considered by the board to be for educational purposes.

(c) “Specified degree program” means a degree program which leads to the award of a masters or doctoral degree. (Authorized by L. 1988, Ch. 357, Sec. 6; implementing L. 1988, Ch. 357, Sec. 2-6; effective Dec. 19, 1988.)

**88-19-2. Applicant eligibility.** To be eligible for a Kansas-Rhodes scholarship, a person shall demonstrate to the executive director of the board of regents or the executive director’s designee that the person: (a) Is a resident of the state of Kansas;

(b) has been designated as a Rhodes scholar;

(c) has successfully completed the academic work funded by the Rhodes scholarship;

(d) meets the requirements for admission to and will enroll as a full-time student in a specified degree program at a state educational institution;

(e) will not be receiving the full amount of tuition and required fees under any federal program of student assistance; and

(f) will report promptly to the board of regents any information requested relating to the Kansas-Rhodes scholarship program. (Authorized by and implementing K.S.A. 1990 Supp. 74-3283; effective Dec. 19, 1988; amended Dec. 14, 1992.)

**88-19-3. Applications.** (a) Written information and application materials for the Kansas-Rhodes scholarship program shall be made available by the executive director of the board of regents or the executive director’s designee.

(b) Each application for a Kansas-Rhodes scholarship shall be completed and submitted to the board of regents no later than the 1st of June preceding the school year for which the scholarship is

sought. (Authorized by L. 1988, Ch. 357, Sec. 6; implementing L. 1988, Ch. 357, Sec. 5; effective Dec. 19, 1988.)

**88-19-4. Institutional certification.** Upon the enrollment of a recipient of a Kansas-Rhodes scholarship, each state educational institution shall certify to the executive director of the board of regents or the executive director’s designee: (a) That the recipient of the Kansas-Rhodes scholarship is a resident of the state of Kansas according to K.S.A. 76-729(a) and applicable administrative regulations of the board of regents relating to residency determinations;

(b) that the recipient of the Kansas-Rhodes scholarship is enrolled as a full-time student in a specified degree program;

(c) the amount of tuition and required fees to be paid by the recipient for each semester of attendance; and

(d) that the recipient of a Kansas-Rhodes scholarship has completed some of the requirements of a specified degree program, has performed satisfactorily according to the academic policies of the state educational institution, is a student in good standing and is continuing to make satisfactory academic progress. (Authorized by K.S.A. 1990 Supp. 74-3283; implementing K.S.A. 1990 Supp. 74-3281 and 74-3282; effective Dec. 19, 1988; amended Dec. 14, 1992.)

### Article 20.—KANSAS NURSING STUDENT SCHOLARSHIP PROGRAM

**88-20-1. Definitions.** (a) “Parent” means a guardian or any person who is legally responsible for the maintenance, care, or support of a dependent who is an applicant under this program.

(b) “Parent’s contribution” means the amount parents can reasonably be expected to contribute from their income and assets toward education costs for a dependent. This amount shall be determined based upon criteria approved by the board and established by the financial needs analysis agency selected by the board.

(c) “Independent student” means a student who demonstrates independence from a parent’s support to the satisfaction of the board. Documentation that will meet U.S. department of education guidelines for an independent student may be required from the applicant, applicant’s parent or parents, or guardian to verify emancipation from the parent or parents.

(d) “Student contribution” means the amount a student can contribute from the student’s own work and resources toward a year’s college education costs. This amount shall be determined based upon criteria approved by the board and established by the financial needs analysis agency selected by the board. The student contribution shall not be less than \$450.

(e) “Student resources” means assets, earnings, income or benefits from other sources, and any grant or loan coming directly to the student from non-college sources, as defined by the U.S. department of education in 34 C.F.R. 674.14, effective February 2, 1988, which is hereby adopted by reference.

(f) “Family contribution” means the sum of parents’ contribution and student contribution.

(g) “Licensed professional nurse” means a person who is licensed to practice professional nursing as defined in K.S.A. 65-1113(d)(1).

(h) “Registered professional nurse” means a person who is licensed to practice professional nursing as defined in K.S.A. 65-1113(d)(1).

(i) “Licensed practical nurse” means a person who is licensed to practice practical nursing as defined in K.S.A. 1113(d)(2).

(j) “Minority applicant” means an applicant for a nursing student scholarship who is categorized as: (1) American Indian or Alaskan Native; (2) Asian or Pacific Islander; (3) Black, non-Hispanic; or (4) Hispanic.

(k) “American Indian or Alaskan Native” means a person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.

(l) “Asian or Pacific Islander” means a person having origins in any of the original peoples of the far east, southeast Asia, the Indian subcontinent, or Pacific islands. This includes, but not by way of limitation, persons from China, Japan, Korea, the Philippine Islands, Samoa, India and Vietnam.

(m) “Black, non-Hispanic” means a person having origins in any of the black racial groups of Africa (except those of Hispanic origin).

(n) “Hispanic” means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

(o) “Full-time student” means a student who is taking an academic course load of a minimum of 12 semester credit hours or the academic equivalent thereof.

(p) “Full-time employment” means an employment arrangement sufficient to permit an individual to be considered as a full-time employee of the sponsor and which requires a minimum of 1,500 hours of work per year.

(q) “Board of regents” or “board” means the state board of regents provided for in the constitution of this state.

(r) “Qualified sponsor” means any adult care home licensed under the adult care home licensure act, any medical care facility licensed under K.S.A. 65-425 *et seq.* and amendments thereto, any psychiatric hospital licensed under K.S.A. 75-3307(b) and amendments thereto and any state agency which employs licensed practical nurses or licensed professional nurses which has entered into an agreement pursuant to K.A.R. 88-20-5. (Authorized by L. 1989, Ch. 223, Sec. 7; implementing L. 1989, Ch. 223, Sec. 1-7; effective March 19, 1990.)

**88-20-2. Scholarship amount.** An annual scholarship not to exceed \$3,500.00 will be awarded to each qualified recipient enrolled in a course of instruction leading to licensure as a licensed practical nurse or licensure as a registered professional nurse. On or before July 1 of each year, scholarship amounts for the following fiscal year will be published by the executive officer of the board or the executive officer’s designee. (Authorized by L. 1989, Ch. 223, Sec. 7; implementing L. 1989, Ch. 223, Sec. 3; effective March 19, 1990.)

**88-20-3. Applicant eligibility.** Each applicant for a Kansas nursing scholarship shall demonstrate to the executive officer of the board or the executive officer’s designee that the applicant:

(a) Is a resident of the state of Kansas;

(b) has entered into an agreement with a qualified sponsor;

(c) has entered into an agreement with the board; and

(d) is currently enrolled in or has been admitted as a full-time student to a school of nursing in a course of instruction leading to licensure as a licensed professional nurse or licensed practical nurse. (Authorized by K.S.A. 1990 Supp. 74-3297; implementing K.S.A. 1990 Supp. 74-3294; effective March 19, 1990; amended Dec. 14, 1992.)

**88-20-4. Application eligibility.** Each application shall be eligible for consideration only if: (a) Is submitted by an eligible applicant;

(b) meets all deadlines of the board listed on the application; and

(c) includes all required documentation and information. Only one application will be accepted from each eligible student. (Authorized by L. 1989, Ch. 223, Sec. 7; implementing L. 1989, Ch. 223, Sec. 1-7; effective March 19, 1990.)

**88-20-5. Sponsor agreement.** Each agreement between a sponsor and the recipient of a Kansas nursing student scholarship shall: (a) Be consistent with the requirements of the Kansas nursing student scholarship program;

(b) require the scholarship recipient to exhaust institutional policies for degree completion in an effort to satisfy the requirements for graduation from a school of nursing;

(c) require the scholarship recipient to take the Kansas nursing board examination for licensure a minimum of three consecutive times in an effort to successfully complete the examination and satisfy all requirements for a permanent license to practice nursing in Kansas;

(d) require one year of full-time employment by the scholarship recipient as a condition to the receipt of each annual scholarship award;

(e) permit the scholarship recipient to use up to one year of full-time employment in an unlicensed job classification performed for sponsor while the scholarship recipient is seeking to meet the qualifications for nursing licensure as credit in meeting employment responsibilities;

(f) provide that the agreement between the sponsor and the scholarship recipient will be renewed on an annual basis for qualified recipients until satisfaction of the requirements for graduation from a school of nursing; and

(g) provide that upon the failure of the scholarship recipient to engage in the full-time practice of nursing in Kansas for the required period of time, repayment of assistance may be in installment payments sufficient to allow full repayment within 5 years. (Authorized by L. 1989, Ch. 223, Sec. 7; implementing L. 1989, Ch. 223, Sec. 6-7; effective March 19, 1990.)

**88-20-6. Examination of income tax forms.** Each individual whose financial data is required for a Kansas nursing student scholarship shall certify in writing that the individual will release copies of the individual's state or federal income tax returns to the executive officer of the board or the executive officer's designee upon re-

quest. If the request is denied or if discrepancies are found between the application and the copy of the tax return, the application may be declared ineligible. (Authorized by L. 1989, Ch. 223, Sec. 7; implementing L. 1989, Ch. 223, Sec. 1-7; effective March 19, 1990.)

**88-20-7. Confidentiality of information.**

All financial information received from each applicant, parent, or spouse shall remain confidential and shall be released only in anonymous statistical groupings, except as provided in 88-20-6. (Authorized by L. 1989, Ch. 223, Sec. 7; implementing L. 1989, Ch. 223, Sec. 1-7; effective March 19, 1990.)

**88-20-8. Available funds.** If available funds are insufficient to fully fund all eligible applicants, awards may be pro-rated by the executive officer of the board or the executive officer's designee on a percentage basis to each eligible applicant. (Authorized by L. 1989, Ch. 223, Sec. 7; implementing L. 1989, Ch. 223, Sec. 1-7; effective March 19, 1990.)

**88-20-9. College certification.** Upon the enrollment of recipients of Kansas nursing student scholarships, each eligible institution of post-secondary education shall certify to the executive officer of the board of regents or the executive officer's designee that each recipient: (a) Is a resident of the state of Kansas according to K.S.A. 76-729(a) and applicable administrative regulations of the board of regents relating to residency determinations;

(b) is enrolled or has been accepted for enrollment as a full-time student in a nursing program;

(c) is attending the nursing program; and

(d) meets all the guidelines for assistance as specified by the board of regents. (Authorized by K.S.A. 1990 Supp. 74-3297; implementing K.S.A. 1990 Supp. 74-3291 et seq.; effective March 19, 1990; amended Dec. 14, 1992.)

**88-20-10. Grant offer.** Each grantee shall notify the board before the deadline listed on the grant offer letter as to whether the grantee will accept the grant for the full academic year or a portion thereof. If this information is not received from the applicant by the deadline, the board may withdraw the original grant offer. (Authorized by L. 1989, Ch. 223, Sec. 7; implementing L. 1989, Ch. 223, Sec. 1-7; effective March 19, 1990.)

**88-20-11. Financial needs analysis agency.** The board shall contract with one nationally recognized financial needs analysis agency which shall determine the financial need of each eligible applicant. The criteria to be used by the board in its selection of an agency shall be service, cost, and convenience for Kansas students, the eligible postsecondary institutions and the board. (Authorized by L. 1989, Ch. 223, Sec. 7; implementing L. 1989, Ch. 223, Sec. 1-7; effective March 19, 1990.)

**Article 21.—KANSAS ETHNIC MINORITY SCHOLARSHIP PROGRAM**

**88-21-1. Definitions.** (a) “Parent” means a guardian or any person who is legally responsible for the maintenance, care, or support of a dependent who is an applicant under this program.

(b) “Parent’s contribution” means the amount parents can reasonably be expected to contribute from their income and assets toward education costs for a dependent. This amount shall be determined based upon criteria approved by the board and established by the financial needs analysis agency selected by the board.

(c) “Independent student” means a student who demonstrates independence from a parent’s support to the satisfaction of the board. Documentation that will meet U.S. department of education guidelines for an independent student may be required from the applicant, applicant’s parent or parents, or guardian to verify emancipation from the parent or parents.

(d) “Student contribution” means the amount a student can contribute from the student’s own work and resources toward a year’s college education costs. This amount shall be determined based upon criteria approved by the board and established by the financial needs analysis agency selected by the board. The student contribution shall not be less than \$450.

(e) “Student resources” means assets, earnings, income or benefits from other sources, and any grant or loan coming directly to the student from non-college sources, as defined by the U.S. department of education in 34 C.F.R. 674.14, effective February 2, 1988, which is hereby adopted by reference.

(f) “Family contribution” means the sum of parents’ contribution and student contribution.

(g) “Full-time enrollment” means a course load of a minimum of 12 semester credit hours.

(h) “Board of regents” or “board” means the state board of regents provided for in the constitution of this state.

(i) “Kansas ethnic minority scholarship offer” means the annual amount offered to an ethnic minority scholar under this program, rounded to the nearest \$10. Each ethnic minority scholarship offer shall be the lesser of the following amounts:

(1) \$1,500;

(2) the financial need of the ethnic minority scholar; or

(3) the pro-rata amount determined by the board. (Authorized by L. 1989, Ch. 224, Sec. 4; implementing L. 1989, Ch. 224, Sec. 1-6; effective Feb. 12, 1990.)

**88-21-2. Ethnic minority scholar selection.** The board shall select ethnic minority scholars according to criteria of scholastic ability set forth in K.A.R. 88-21-3(e). (Authorized by L. 1989, Ch. 224, Sec. 4; implementing L. 1989, Ch. 224, Sec. 2; effective Feb. 12, 1990.)

**88-21-3. Applicant eligibility.** To be eligible for an ethnic minority scholarship offer, each applicant shall demonstrate to the executive director of the board that the applicant: (a) Is a resident of the state of Kansas;

(b) is a member of an ethnic minority group;

(c) is initially accepted or enrolled at an eligible Kansas post-secondary institution;

(d) is an undergraduate who has never received a baccalaureate degree;

(e) has demonstrated scholastic ability through achievement of any one or more of the following:

(1) recognition by the national merit scholarship corporation as a finalist, semi-finalist, national achievement finalist, Hispanic scholar, or commended scholar;

(2) high school grade point average of 3.0 or higher, on a scale where an A equals 4.00, in the board of regents recommended high school curriculum;

(3) competitive performance on the ACT assessment;

(4) competitive performance on the SAT; or

(5) rank in upper one-third of high school graduating class;

(f) having received a Kansas ethnic minority scholarship and having completed the initial enrollment at an eligible post-secondary educational institution, has attained the academic standard of a cumulative 2.0 grade average for all post-secondary academic terms or semesters. The aver-

age shall be calculated on a 4.0 scale where an A equals four points;

(g) has financial need as determined by an analysis of information submitted on the current year's American College Testing Service Family Financial Statement, which is hereby adopted as the board's family financial statement;

(h) having received federal financial assistance, does not owe a refund on any federal financial assistance and is not in default on any such federal financial assistance; and

(i) has otherwise complied with the requirements of 34 C.F.R. 692.40(b), effective February 2, 1988, which is hereby adopted by reference. (Authorized by K.S.A. 1990 Supp. 74-3287; implementing K.S.A. 1990 Supp. 74-3285; effective Feb. 12, 1990; amended Dec. 14, 1992.)

**88-21-4. Application eligibility.** Each application shall be eligible for consideration only if it:

(a) Is submitted by an eligible applicant;

(b) meets all deadlines of the board listed on the application; and

(c) includes all required documentation and information. Only one application will be accepted from each eligible student. (Authorized by L. 1989, Ch. 224, Sec. 4; implementing L. 1989, Ch. 224, Sec. 4, 5; effective Feb. 12, 1990.)

**88-21-5. Examination of income tax forms.** Each individual whose financial data is required for a Kansas ethnic minority scholarship shall certify in writing that the individual will release copies of the individual's state or federal income tax returns to the executive officer of the board or the executive officer's designee upon request. If the request is denied or if discrepancies are found between the application and the copy of the tax return, the application may be declared ineligible. (Authorized by L. 1989, Ch. 224, Sec. 4; implementing L. 1989, Ch. 224, Sec. 4, 5; effective Feb. 12, 1990.)

**88-21-6. Confidentiality of information.** All financial information received from each applicant, parent, or spouse shall remain confidential and shall be released only in anonymous statistical groupings, except as provided in 88-21-5. (Authorized by L. 1989, Ch. 224, Sec. 4; implementing L. 1989, Ch. 224, Sec. 4, 5; effective Feb. 12, 1990.)

**88-21-7. Available funds.** If available funds are insufficient to fully fund all eligible applicants, awards may be pro-rated by the executive officer

of the board or the executive officer's designee on a percentage basis to each eligible applicant. (Authorized by L. 1989, Ch. 224, Sec. 4; implementing L. 1989, Ch. 224, Sec. 4; effective Feb. 12, 1990.)

**88-21-8. College certification.** Upon the enrollment of Kansas ethnic minority scholarship recipients, each eligible post-secondary institution shall certify to the board that each recipient attending its institution:

(a) Is a resident of the state of Kansas according to K.S.A. 76-729(a) and applicable administrative regulations of the board of regents relating to residency determinations;

(b) is not receiving more financial aid than the recipient's demonstrated need;

(c) is a full-time undergraduate student in good standing who is responsible for paying full tuition and required fees;

(d) has met the Kansas ethnic minority scholarship academic standard of a cumulative 2.0 grade point average for recipients participating in the Kansas ethnic minority scholarship program;

(e) has, if selected for verification, satisfactorily completed the institution's verification process as provided in 34 C.F.R. 668.51-668.58, effective April 29, 1986, which is hereby adopted by reference;

(f) for an independent grantee, that the grantee meets the U.S. department of education guidelines for an independent student as provided in 34 C.F.R. 668.2, effective February 2, 1988, which is hereby adopted by reference, and as verified by the institution; and

(g) where applicable, is in compliance with the eligibility requirements of 34 C.F.R. 692.40, effective February 2, 1988, which is hereby adopted by reference. (Authorized by and implementing K.S.A. 1990 Supp. 74-3285; effective Feb. 12, 1990; amended Dec. 14, 1992.)

**88-21-9. Scholarship offer.** Each recipient shall notify the board before the deadline listed on the scholarship offer letter as to whether the student will accept the scholarship for the full academic year or a portion thereof. If this information is not received from the applicant by the deadline, the board may withdraw the original scholarship offer. (Authorized by L. 1989, Ch. 224, Sec. 4; implementing L. 1989, Ch. 224, Sec. 4, 5; effective Feb. 12, 1990.)

**88-21-10. Financial needs analysis agency.** The board shall contract with one nationally recognized financial needs analysis agency which shall determine the financial need of each eligi-

ble applicant. The criteria to be used by the board in its selection of an agency shall be service, cost, and convenience for Kansas students, the eligible postsecondary institutions and the board. (Authorized by L. 1989, Ch. 224, Sec. 4; implementing L. 1989, Ch. 224, Sec. 1; effective Feb. 12, 1990.)

### **Article 22.—KANSAS TEACHER SCHOLARSHIP PROGRAM**

**88-22-1. Definitions.** (a) “Course of instruction” means the program of study established by a school which leads to eligibility for certification in a hard-to-fill teaching discipline.

(b) “Full time student” means a student who is taking an academic course load of a minimum of 12 semester credit hours.

(c) “Board of regents” or “board” means the state board of regents provided for in the constitution of this state.

(d) “Ethnic minority group” shall be defined as it is in K.S.A. 1991 Supp. 74-3284(e)-(i).

(e) “Student budget” means one of several budgets used by an institution to package financial assistance awards. (Authorized by K.S.A. 1991 Supp. 74-32,106; implementing K.S.A. 1991 Supp. 74-32,100 *et seq.*; effective March 8, 1993.)

**88-22-2. Applicant eligibility, qualified students.** (a) To be designated a teacher scholar by the executive officer of the board, each applicant shall demonstrate to the executive officer that the applicant: (1) Is a resident of the state of Kansas;

(2) has been accepted for admission to or is enrolled full-time in a course of instruction leading to certification in a hard-to-fill teaching discipline as identified by the state board of education; and

(3) has demonstrated scholastic ability which shall be determined on a combination of the following:

(A) High ACT or SAT score;

(B) rank in high school graduation class;

(C) cumulative high school or college grade point average;

(D) completion of the regents recommended secondary school curriculum;

(E) any other indicator of scholastic ability such as participation in academic competitions or activities; and

(F) for applicants who are unable to provide adequate high school information, written recommendation of a counselor who can attest to the applicant’s scholastic achievement and potential for successful completion of a course of instruction

leading to certification in a hard-to-fill teaching discipline.

(b) Each applicant shall enter an agreement with the executive officer pursuant to K.A.R. 88-22-8.

(c) To the extent practicable and consistent with qualification factors, members of ethnic minority groups shall be identified and considered. (Authorized by K.S.A. 1991 Supp. 74-32,106; implementing K.S.A. 1991 Supp. 74-32,102, 74-32,103; effective March 8, 1993.)

**88-22-3. Application eligibility.** Only one application will be accepted from each eligible student. Each application shall be eligible for consideration only if it: (a) Is submitted by an eligible applicant;

(b) meets all deadlines listed on the application; and

(c) includes all required documentation and information. (Authorized by and implementing K.S.A. 1991 Supp. 74-32,106; effective March 8, 1993.)

**88-22-4. Eligibility for renewal.** Each applicant for renewal shall demonstrate to the executive officer that he or she remains qualified for the scholarship in accordance with K.S.A. 1991 Supp. 74-32,102, as amended. (Authorized by and implementing K.S.A. 1991 Supp. 74-32,106; effective March 8, 1993.)

**88-22-5. Confidentiality of information.** All financial information received from each applicant, parent or spouse shall remain confidential and shall be released only with permission of the applicant or in anonymous statistical groupings, except that this section does not preclude communication with any other entity authorized by the applicant to receive the applicant’s state financial aid application or other federally approved financial aid report. (Authorized by and implementing K.S.A. 1991 Supp. 74-32,106; effective March 8, 1993.)

**88-22-6. Available funds.** If available funds are insufficient to fully fund all eligible applicants, fewer new awards shall be made. (Authorized by K.S.A. 1991 Supp. 74-32,106; implementing K.S.A. 1991 Supp. 74-32,100 *et seq.*; effective March 8, 1993.)

**88-22-7. College certification.** Upon the enrollment of an applicant for a teacher scholarship, each eligible post-secondary institution shall certify to the board that each recipient attending its institution: (a) Is a resident of the state of Kan-

sas according to K.S.A. 76-729(a) and applicable administrative regulations of the board of regents relating to residency determinations;

(b) is enrolled full-time in a course of instruction leading to certification in a hard-to-fill teaching discipline;

(c) has demonstrated scholastic ability or has previously demonstrated scholastic ability and remains qualified by maintaining good standing and making satisfactory progress, as defined by the institution, toward completion of requirements of the course of instruction in which enrolled; and

(d) the scholarship, in combination with other student financial assistance, does not exceed the institution's applicable student budget. (Authorized by and implementing K.S.A. 1991 Supp. 74-32,106; effective March 8, 1993.)

**88-22-8. Agreement.** A student who has been designated a teacher scholar by the executive officer shall enter into an agreement with the executive officer which requires the applicant to:

(a) Complete the required course of instruction leading to certification in a hard-to-fill teaching discipline;

(b) engage in teaching in a hard-to-fill teaching discipline in Kansas;

(c) commence teaching in a hard-to-fill teaching discipline in Kansas in an accredited public or private elementary or secondary school no later than the beginning of the term immediately following certification and continue teaching for a period of not less than the length of the course of instruction for which the scholarship was awarded;

(d) maintain records and make reports as required by the executive officer to document the satisfaction of the obligations under these regulations; and

(e) repay amounts to the state as required by K.S.A. 1991 Supp. 74-32,104, and amendments thereto, upon failure to satisfy an agreement to engage in teaching in a hard-to-fill discipline for the required period of time, in the manner set forth in K.A.R. 88-22-11. (Authorized by K.S.A. 1991 Supp. 74-32,106; implementing K.S.A. 1991 Supp. 74-32,103, 74-32,104; effective March 8, 1993.)

**88-22-9. Amount of award, number available.** A designated scholar shall be awarded a scholarship in the amount of \$5,000 per academic year. No more than four awards shall be made for undergraduate study, except that a qualified student enrolled full time in a course of instruction

leading to institutional certification in a hard-to-fill teaching discipline, for which graduate study is required, may be awarded a scholarship for the duration of the course of instruction. (Authorized by K.S.A. 1991 Supp. 74-32,106; implementing K.S.A. 1991 Supp. 74-32,102, 74-32,103; effective March 8, 1993.)

**88-22-10. Failure to satisfy obligations; repayment; interest.** A failure to satisfy the obligation occurs when a scholarship recipient does not fulfill an obligation assumed under the teacher scholarship agreement and when that recipient does not meet the circumstances set out in K.S.A. 74-32,105(a) for postponement, or the circumstances set out in K.S.A. 74-32,105(b) for satisfaction. Such a failure invokes an obligation to repay. Repayment shall occur in the following manner.

(a) Payments shall be made to the executive officer.

(b) The amount owed shall be equal to the amount of scholarship funds received in addition to interest at the rate of fifteen percent annually.

(c) If the recipient has a total obligation to teach for more than one year, and he or she teaches for one school year, or two semesters, the first agreement will be the first discharged.

(d) Teaching for time periods of less than one school year, or less than two semesters, will not reduce the time the recipient is obligated to teach.

(e) Teaching part-time, including substitute teaching arrangements, in a hard-to-fill discipline may satisfy the agreement on a proportional basis.

(f) Repayment may be by installment pursuant to the terms of the agreement and under the following conditions.

(1) The first installment shall be due six months after the date of the action or circumstance which causes the failure of the recipient to satisfy an obligation, as determined by the executive officer based upon the circumstances of each individual case.

(2) A payment schedule shall be provided by the executive officer which specifies payments adequate to repay the total of all scholarship funds received plus statutory interest within five years. (Authorized by K.S.A. 1991 Supp. 74-32,106; implementing K.S.A. 1991 Supp. 74-32,104, 74-32,105; effective March 8, 1993.)

## Article 23.—PROPRIETARY SCHOOLS

**88-23-1.** (Authorized by and implementing K.S.A. 1998 Supp. 72-4921; effective Jan. 28, 2000; revoked Oct. 20, 2006.)

**88-23-2.** (Authorized by K.S.A. 72-4921; implementing K.S.A. 72-4925, 72-4926; effective Jan. 28, 2000; amended March 19, 2004; revoked Oct. 20, 2006.)

**88-23-2a.** (Authorized by K.S.A. 72-4921; implementing K.S.A. 72-4925, 72-4926; effective March 19, 2004; revoked Oct. 20, 2006.)

**88-23-3.** (Authorized by K.S.A. 1998 Supp. 72-4921; implementing K.S.A. 1998 Supp. 72-4925, 72-4926; effective Jan. 28, 2000; revoked March 19, 2004.)

**88-23-3a.** (Authorized by K.S.A. 72-4921; implementing K.S.A. 72-4925, 72-4926, 72-4929, and 72-4932; effective March 19, 2004; revoked Oct. 20, 2006.)

**88-23-4.** (Authorized by K.S.A. 1998 Supp. 72-4921; implementing K.S.A. 1998 Supp. 72-4931; effective Jan. 28, 2000; revoked Oct. 20, 2006.)

**88-23-5.** (Authorized by K.S.A. 1998 Supp. 72-4921; implementing K.S.A. 1998 Supp. 72-4920; effective Jan. 28, 2000; revoked Oct. 20, 2006.)

**88-23-6.** (Authorized by K.S.A. 1998 Supp. 72-4921; implementing K.S.A. 1998 Supp. 72-4932; effective Jan. 28, 2000; revoked Oct. 20, 2006.)

**88-23-7.** (Authorized by and implementing K.S.A. 72-4938, as amended by 2003 HB 2009, §2; effective Oct. 17, 2003; revoked Oct. 20, 2006.)

#### Article 24.—GENERAL EDUCATION DEVELOPMENT (GED) TEST

**88-24-1. Eligibility to take GED test.** (a) Each applicant to take the general education development (GED) test shall meet the following requirements:

(1) Be neither currently enrolled at nor graduated from an accredited public, private, denominational, or parochial high school in the United States or Canada; and

(2) be 16 years of age or older.

(b) In addition to meeting the requirements specified in subsection (a), each applicant who is 16 or 17 years old shall meet the following requirements:

(1) Provide one of the following:

(A) Written permission from a parent or legal guardian; or

(B) written proof of legal emancipation; and

(2) provide proof of meeting one of the following requirements:

(A) Have participated in a final counseling session conducted by the school district where the applicant currently resides and signed a disclaimer pursuant to K.S.A. 72-1111(b)(2), and amendments thereto;

(B) have disenrolled from an alternative education program approved by a Kansas unified school district;

(C) have graduated or disenrolled from a program of instruction approved by the state board of education pursuant to K.S.A. 72-1111(g), and amendments thereto; or

(D) be exempt from compulsory attendance pursuant to a court order. (Authorized by and implementing K.S.A. 2009 Supp. 72-4530; effective Oct. 18, 2002; amended July 27, 2007; amended Oct. 15, 2010.)

**88-24-2. Test score requirements.** Each applicant who meets the test score requirements shall be issued a Kansas state high school diploma. The test score requirements shall be a minimum standard score of 145 on each test in the battery and a cumulative standard score of at least 580 on all four of the tests in the battery.

The test score requirements specified in this regulation shall apply to any test taken on or after January 1, 2014. (Authorized by and implementing K.S.A. 2016 Supp. 72-4530; effective Oct. 18, 2002; amended July 27, 2007; amended April 10, 2015; amended May 26, 2017.)

#### Article 25.—AO-K TO WORK PROGRAM

**88-25-1. Program title.** The AO-K to work program, which is also called the Kansas pathway to career, shall provide a way to earn a Kansas high school equivalency credential to each qualified student. (Authorized by and implementing K.S.A. 2019 Supp. 74-32,267; effective June 19, 2020.)

**88-25-2. AO-K career pathways; industry-recognized credentials.** The AO-K career pathways and industry-recognized credentials shall be the approved pathways and the five categories of credentials listed in the Kansas board of regents' document titled "AO-K career pathways: approved credentials and pathways list," dated August 30, 2019, which is hereby adopted by reference. (Authorized by and implementing K.S.A. 2019 Supp. 74-32,267; effective June 19, 2020.)

**88-25-3. Career readiness certificate.**

The career readiness certificates shall be the following:

- (a) The Kansas WorkReady! earned after July 1, 2008, at the silver, gold, or platinum level; and
- (b) the ACT® WorkKeys® national career readiness certificate® earned after April 1, 2019, at the silver, gold, or platinum level. (Authorized by and implementing K.S.A. 2019 Supp. 74-32,267; effective June 19, 2020.)

**88-25-4. High school equivalency requirements.** In addition to the requirements specified in K.S.A. 2019 Supp. 74-32,267(c)(1) (A)-(C) and amendments thereto, each applicant shall be required to demonstrate high school equivalency in math, English language arts, and civics to earn a high school equivalency credential as specified in this regulation.

(a) High school equivalency in math shall be demonstrated by any of the following:

- (1) Scoring a 145 or above on the general educational development (GED) math test;
- (2) scoring an 18 or above on the ACT® math test;
- (3) scoring a 596 or above on the TABE® 11&12 math test;
- (4) scoring a 250 or above on the Accuplacer quantitative reasoning, algebra, and statistics test;
- (5) passing college algebra with a grade of C or above from an accredited postsecondary institution;
- (6) passing Kansas regents shared number (KRSN) Mat1040, contemporary and essential math, with a C or above from an accredited postsecondary institution; or
- (7) scoring a 5 (level score) or above on the ACT® WorkKeys® applied math test.

(b) High school equivalency in English language arts shall be demonstrated by any of the following:

- (1) Scoring a 145 or above on the GED English language arts test;
- (2) scoring an 18 or above on the ACT® reading test;
- (3) scoring a 576 or above on the TABE® 11&12 reading test;
- (4) scoring a 255 or above on the Accuplacer reading test;
- (5) passing KRSN Eng1010, English composition 101, with a grade of C or above from an accredited postsecondary institution; or
- (6) scoring a 5 (level score) or above on the ACT® WorkKeys® workplace documents test.

(c) High school equivalency in civics shall be demonstrated by scoring at least 70 percent on the Kansas pathway to career civics assessment. (Authorized by and implementing K.S.A. 2019 Supp. 74-32,267; effective June 19, 2020.)

**88-25-5. Fee.** The fee for each application for the issuance or duplication of a Kansas high school equivalency credential shall be \$25. (Authorized by and implementing K.S.A. 2019 Supp. 74-32,267; effective June 19, 2020.)

**Article 26.—COMMUNITY COLLEGES,  
TECHNICAL COLLEGES AND  
WASHBURN INSTITUTE OF  
TECHNOLOGY**

**88-26-1. Definitions.** (a) “Board staff” and “staff” mean the designees of the president and chief executive officer of the state board.

(b) “Community college” has the meaning specified in K.S.A. 74-3201b, and amendments thereto.

(c) “Course of study” and “program” mean a curriculum, the completion of which qualifies a student to receive a degree or a career technical certificate or to engage in a particular field of employment.

(d) “Distance education course” means any course in which faculty and students are physically separated in place or time and in which two-thirds or more of the instruction is provided by means other than face-to-face instruction.

(e) “Distance education program” means any program in which 50 percent or more of the program is delivered by means of distance education courses.

(f) “Institution” means a community college, a technical college, or the Washburn institute of technology.

(g) “Non-accredited private secondary school” means a school that meets all of the following conditions:

- (1) The school regularly offers education at the secondary level.
- (2) Attendance at the school satisfies the requirements of the compulsory school attendance laws of Kansas.
- (3) The school is not accredited by the state board of education.

(h) “Out-of-state or foreign student” means a student who is not a resident of the state of Kansas.

(i) “President and chief executive officer of the state board” means the chief executive officer as

described in K.S.A. 74-3203a, and amendments thereto.

(j) “Satisfactory progress” means the progress required by an institution’s reasonable satisfactory academic progress policy.

(k) “State aid” means any funds appropriated by the Kansas legislature to the state board for allocation or distribution to institutions.

(l) “State board” means Kansas board of regents.

(m) “Technical college” means any technical college designated pursuant to K.S.A. 72-4472, 72-4473, 72-4474, 72-4475, 72-4477, or 72-4477a, and amendments thereto.

(n) “Washburn institute of technology” means the area vocational school that is affiliated with Washburn university pursuant to K.S.A. 72-4479, and amendments thereto. (Authorized by K.S.A. 72-7514, K.S.A. 74-32,140, and K.S.A. 2014 Supp. 74-32,141; implementing K.S.A. 2014 Supp. 71-201, K.S.A. 71-406, 71-407, K.S.A. 2014 Supp. 71-1803, 72-4480, K.S.A. 74-32,140, and K.S.A. 2014 Supp. 74-32,141; effective Oct. 29, 2004; amended April 10, 2015.)

**88-26-2. Accreditation.** (a) Accreditation by the higher learning commission of the north central association of colleges and schools shall be presumptive evidence that the criteria specified in subsection (b) are met.

(b) To be approved by the board for purposes of qualifying to receive state aid, each institution shall be required to meet the following minimum standards:

(1) The curriculum reasonably and adequately ensures achievement of the stated objectives for which the curriculum is offered. The institution shall have policies and procedures in place to evaluate and ensure the quality of its educational programs.

(2) The faculty members hold the credentials appropriate to the academic program offered as follows:

(A) Each faculty member shall possess an academic degree that is relevant to what the individual is teaching and that is at least one level above the level at which the individual is teaching. Alternatively, for each faculty member employed based on equivalent experience, the institution shall establish criteria for minimum equivalent experience that will be used in the appointment process.

(B) Each instructor, including instructors in dual-credit, contractual, and collaborative programs, shall be appropriately credentialed.

(3) The institution makes available to its students support services appropriate for its mission, including advising, academic records, financial aid, and placement, each of which shall meet the following conditions:

(A) The services are readily available and evaluated periodically to determine their overall effectiveness.

(B) The extent of the services provided by the institution and any associated cost to the student are stated in the catalog and other appropriate publications.

(4) The facilities and environs are safe and support learning appropriate for the curriculum.

(5) The institution owns or has secured access to the learning resources and services necessary to support the learning expected of its students, including laboratories, libraries, performance spaces, and clinical practice sites.

(6) The financial resources of the institution are sufficient to reasonably and adequately support its current operations, meet its stated objectives, and continue to do so in the foreseeable future.

(7) The institution engages in systematic and integrated planning. Processes allow the institution to enhance its strengths and minimize its weaknesses in the face of a changing environment.

(8) The institution’s governance and administrative structures promote effective leadership and support collaborative processes that enable the institution to fulfill its mission. The governance structure is consistent with the institution’s stated objectives and provides for the following:

(A) The governing board is knowledgeable about the institution, provides oversight for the institution’s financial and academic policies and practices, and meets its legal and fiduciary responsibilities.

(B) The institution enables the involvement of its administration, faculty, staff, and students in setting academic requirements, policy, and processes through effective structures for contribution and collaborative effort.

(9) The institution operates with integrity in its financial, academic, personnel, and auxiliary functions. The institution demonstrates integrity in the relationship with its internal and external constituents.

(A) The academic freedom of both students and faculty is upheld to the extent permitted by law and governing board policy.

(B) Due process is recognized in the institutional operations.

(C) The institution's practices are consistent with its published procedures.

(D) The institution accurately portrays its practices, services, and programs.

(E) The institution meets all applicable federal and state requirements.

(c) The loss of accreditation by an institution, or for Washburn institute of technology, its affiliated university, shall be presumptive evidence of failure to adhere to the minimum standards set by the board. Each institution that loses its accreditation shall be subject to the loss of state aid unless the institution demonstrates that it meets the minimum standards specified in subsection (b). (Authorized by K.S.A. 72-7514, K.S.A. 74-32,140, and K.S.A. 2014 Supp. 74-32,141; implementing K.S.A. 2014 Supp. 71-601, 71-620, K.S.A. 71-801, K.S.A. 2014 Supp. 71-1803, 72-4480, K.S.A. 74-32,140, and K.S.A. 2014 Supp. 74-32,141; effective Oct. 29, 2004; amended April 10, 2015.)

**88-26-3. Admissions.** To be academically eligible for admission to any community college or technical college or to the Washburn institute of technology, each applicant shall be required to meet one of the following criteria:

(a) Be a graduate of an accredited high school, a graduate of a non-accredited private secondary school, or a recipient of a state-issued or state-recognized high school equivalency credential;

(b)(1) Be enrolled in either an accredited high school or a non-accredited private secondary school, at either of the following:

(A) The tenth-grade, eleventh-grade, or twelfth-grade level; or

(B) the ninth-grade level if the applicant is classified by a school district as gifted, as defined in K.A.R. 91-40-1; and

(2)(A) Have an ACT or SAT score at or above the national average, or have a cumulative high school GPA of 3.0 or above; or

(B) have been determined by the community college or technical college or the Washburn institute of technology, after evaluating the applicant's educational credentials, to be able to benefit from the courses in which the applicant wishes to enroll; or

(c)(1) Be 18 years of age or older; and

(2) have been determined by the community college or technical college or the Washburn institute of technology, after evaluating the applicant's educational credentials, to be able to benefit from the courses in which the applicant wishes to en-

roll. (Authorized by K.S.A. 72-7514, 74-32,140, and K.S.A. 2014 Supp. 74-32,141; implementing K.S.A. 71-801, 72-4469, K.S.A. 2014 Supp. 72-4470a, K.S.A. 74-32,140, and K.S.A. 2014 Supp. 74-32,141; effective Oct. 29, 2004; amended April 10, 2015.)

**88-26-4. Credit.** (a) Transfer credit. Each institution shall accept credits from all courses that are substantially equivalent to those offered at the institution, including courses that have been determined by the state board through the alignment process or the transfer and articulation process to be substantially equivalent. Any institution accepting transfer credit may evaluate the applicability of the credit towards meeting program requirements. Any institution may award credit for other documented learning experiences.

(b) Advanced standing. Any institution may award credit for advanced standing based on the policies adopted by that institution's governing board.

(c) Credit for lecture, laboratory, and other classes. Each institution shall record one semester hour of credit for any student attending a lecture class, if the student has made satisfactory progress in the class and the class consists of at least 750 minutes of class instruction, plus time allocated for a final exam. Each institution shall record one semester hour of credit for any student attending a laboratory class, if the student has made satisfactory progress in the class and the class consists of at least 1,125 minutes. Each institution shall record one semester hour of credit for any student who completes at least 2,700 minutes in on-the-job training, internships, or clinical experiences in health occupations. The number of semester hours of credit recorded for each distance education course shall be assigned by the institution that provided the course, based on the amount of time needed to achieve the course competencies in a face-to-face format. (Authorized by K.S.A. 72-7514, 74-32,140, and K.S.A. 2014 Supp. 74-32,141; implementing K.S.A. 2014 Supp. 71-601, K.S.A. 71-801, 74-32,140, and K.S.A. 2014 Supp. 74-32,141; effective Oct. 29, 2004; amended April 10, 2015.)

**88-26-5. Graduation or completion requirements.** (a) Any community college may award the associate in arts degree, the associate in science degree, or the associate in general studies degree to each student who has satisfactorily completed 60 or more credit hours in a curriculum

that parallels that of a Kansas public university for freshmen and sophomores.

(b) Any community college or technical college may award the associate in applied science degree to each student who has satisfactorily completed a program in a career technical curriculum consisting of at least 60 credit hours but not more than 68 credit hours, in which at least 15 credit hours in general education and at least 30 credit hours in the area of specialized preparation are required. The 68-credit-hour maximum shall not apply to any programs having external accreditation or industry requirements that exceed the 68-credit-hour limit.

(c) Any institution may grant a career technical certificate to each student who has satisfactorily completed any technical program that is less than 60 credit hours in length but is more than 15 credit hours.

(d) Any institution may award a certificate of completion to each student who has satisfactorily completed a course of study not exceeding 15 credit hours. (Authorized by K.S.A. 72-7514, 74-32,140, and K.S.A. 2014 Supp. 74-32,141; implementing K.S.A. 71-801, 74-32,140, and K.S.A. 2014 Supp. 74-32,141; effective Oct. 29, 2004; amended April 10, 2015.)

**88-26-6. Approval of programs.** (a)(1) Except as specified in paragraph (a)(2), each program to be offered by an institution shall be required to be approved by the state board before the program is actually offered by the institution. The institution shall submit an application for approval of the program to the state board.

(2) If an associate in applied science degree program has been approved by the state board in accordance with paragraph (a)(1), the institution may subsequently offer within the program a separate certificate of completion or a separate career technical certificate based on credits earned within that program.

(b) The application for approval shall provide information that establishes each of the following:

(1) There is a documented state, regional, or local need for the proposed program.

(2) The institution has the physical and human resources to deliver the program.

(3) The delivery of the program is financially feasible for the state and the institution.

(4) The program does not unnecessarily duplicate any existing programs of the other institutions within the state.

(c) Upon receipt of an application, the application shall be reviewed by board staff, and a determination shall be made whether the requirements specified in subsection (b) have been met.

(d) If the board staff determines that the requirements specified in subsection (b) have been met, the program shall be recommended by the board staff for approval by the state board. The institution shall be notified by the board staff, in writing, of the recommendation.

(e) If the board staff determines that the information provided does not meet all of the requirements specified in subsection (b), the institution shall be notified by the board staff, in writing, of the determination, which shall include in the notice the reason or reasons for the determination. The institution shall also be notified by the board staff of the right to request a review of the determination. (Authorized by K.S.A. 72-7514, K.S.A. 74-32,140, and K.S.A. 2014 Supp. 74-32,141; implementing K.S.A. 71-801; effective Oct. 29, 2004; amended April 10, 2015.)

**88-26-7. Residence determination for state aid purposes.** (a) Each institution shall determine residency, for state aid purposes, pursuant to statutes or regulations that apply to determination of residency by the institutions, including, for community colleges, K.S.A. 71-406 and K.S.A. 71-407 and amendments thereto. The factors that may be considered in determining residency for state aid purposes shall include, when applicable or appropriate, a Kansas driver's license, evidence of payment of Kansas real estate taxes, payment of Kansas income taxes, reliance on Kansas sources for support, acceptance of permanent employment in Kansas, ownership of a home in Kansas, registration to vote in Kansas, and commitment to an educational program that indicates an intent to maintain a permanent presence in Kansas upon graduation.

(b) The governing board of each institution shall consider L. 2015, ch. 76, sec. 3, and amendments thereto, when setting tuition rates based on residency. (Authorized by K.S.A. 71-406, 72-7514, 74-32,140, and K.S.A. 2014 Supp. 74-32,141; implementing K.S.A. 71-406, 71-407, K.S.A. 2014 Supp. 71-620, 71-1803, and 72-4480; effective Oct. 29, 2004; amended April 10, 2015; amended, T-88-8-10-15, Aug. 10, 2015; amended Dec. 18, 2015.)

**88-26-8. Determination of student residency.** (a) For purposes of state aid, the president of each institution shall designate a person,

referred to in this regulation as the “admissions officer,” to determine the residency of each student enrolled in the institution.

(b) The enrollment forms of each institution shall include questions that enable the admissions officer to identify the residency of each student for state aid purposes. (Authorized by K.S.A. 71-406, 72-7514, 74-32,140, and K.S.A. 2014 Supp. 74-32,141; implementing K.S.A. 71-406, 71-407, K.S.A. 2014 Supp. 71-620, 71-1803, 72-4480; effective Oct. 29, 2004; amended April 10, 2015.)

**88-26-9, 88-26-10, and 88-26-11.** (Authorized by and implementing K.S.A. 71-201, K.S.A. 2003 Supp. 71-301a, K.S.A. 2003 Supp. 71-403, K.S.A. 72-7514, and K.S.A. 74-32,140; effective Oct. 29, 2004; revoked April 10, 2015.)

**88-26-12.** (Authorized by and implementing K.S.A. 71-201, K.S.A. 2003 Supp. 71-306, K.S.A. 72-7514, and K.S.A. 74-32,140; effective Oct. 29, 2004; revoked April 10, 2015.)

**88-26-13.** (Authorized by and implementing K.S.A. 71-201, K.S.A. 2003 Supp. 71-301a, K.S.A. 2003 Supp. 71-403, K.S.A. 72-7514, and K.S.A. 74-32,140; effective Oct. 29, 2004; revoked April 10, 2015.)

**88-26-14.** (Authorized by and implementing K.S.A. 71-201, K.S.A. 71-301a, as amended by 2003 HB 2343, § 10, and K.S.A. 71-403, as amended by 2003 HB 2343, § 17; effective Oct. 29, 2004; revoked April 10, 2015.)

**88-26-15, 88-26-16.** (Authorized by and implementing K.S.A. 71-201, K.S.A. 2003 Supp. 71-301a, K.S.A. 2003 Supp. 71-403, K.S.A. 72-7514, and K.S.A. 74-32,140; effective Oct. 29, 2004; revoked April 10, 2015.)

## Article 27.—WASHBURN MUNICIPAL UNIVERSITY

**88-27-1. Out-district tuition.** (a) In addition to the terms defined in K.S.A. 13-13a25 and amendments thereto, the following terms shall have the meanings assigned in this regulation:

(1) “Board staff” means the designees of the president and chief executive officer of the Kansas board of regents.

(2) “Course of study” and “program” mean a curriculum, the completion of which qualifies a student to receive a degree or an occupational or

technical certificate or to engage in a particular field of employment.

(3) “Out-district student” means a student who is a resident of Kansas but who resides outside the municipal university’s taxing district.

(4) “President and chief executive officer” means the chief executive officer as described in K.S.A. 74-3203a and amendments thereto.

(5) “Release of out-district funds form” means a particular form that is prescribed by and available from the state board and that relates to the payment of out-district tuition.

(b) The board of regents of the municipal university shall designate a person, referred to as the “registrar,” who shall be responsible for identifying those students who are residents of a Kansas community college district.

(c) The enrollment forms of the municipal university shall include questions that enable the registrar to identify those students described in subsection (b) of this regulation.

(d) The municipal university shall not be authorized to charge out-district tuition for any student described in subsection (b) of this regulation, unless the municipal university meets the following criteria:

(1) Completes a release of out-district funds form for the student;

(2) files the release of out-district funds form for the student with state board within 30 days of the student’s enrollment; and

(3) receives written approval from the board staff to charge out-district tuition for the student.

(e) Within 15 days of the receipt of a release of out-district funds form, a determination shall be made by the board staff determining whether the course of study or program selected by the student, or a substantially equivalent course of study or program, is offered in the community college district in which the student resides. This determination shall be made upon the basis of the following:

(1) The information provided on the release of out-district funds form;

(2) the information concerning programs offered at each community college, which is on file with the state board pursuant to K.S.A. 71-306, and amendments thereto; and

(3) the information concerning programs at the municipal university, which is on file with the state board pursuant to K.S.A. 13-13a32, and amendments thereto.

(f) The determination made by the board staff shall be indicated on the form, which shall include the reason or reasons for the determination. The

form shall also include a statement either directing the municipal university to charge out-district tuition for the student or advising the municipal university that out-district tuition shall not be charged for the student.

(g) A copy of the completed form shall be mailed by the board staff in accordance with subsection (f) to the following individuals:

- (1) The registrar;
- (2) the president of the municipal university in which the student is enrolled; and
- (3) the president of the community college of the district in which the student resides.

(h) If the municipal university or community college disagrees with the determination of the board staff, either institution may request a review of the determination by following the procedures set forth in K.A.R. 88-27-2. If a request for review is made, the procedures specified in K.A.R. 88-27-2 shall be followed. (Authorized by and implementing K.S.A. 2002 Supp. 13-13a29, as amended by L. 2003, Ch. 35, § 4; effective Oct. 29, 2004.)

**88-27-2. Review of out-district tuition determinations.** (a) Any municipal university or community college may request a review, by an appeal committee, of any determination made pursuant to K.A.R. 88-27-1. The municipal university or community college shall submit a written request for review to the state board within 15 days of the date that the notice provided for in K.A.R. 88-27-1 was mailed to the municipal university or community college.

(b) Within 10 days of the receipt of a request for review, an appeal committee shall be appointed by the vice president of academic affairs that consists of three persons who are members of the board staff. The appeal committee shall not include any of the board staff who have participated in the initial decision regarding out-district tuition.

(c) A date, time, and place for a hearing on the matter shall be fixed by the vice president for academic affairs upon receipt of a request for review. The county and each of the institutions that is interested in the matter shall be notified by mail. The date for the hearing shall be at least 10 days, but not more than 30 days, after the date the request for review was received by the vice president for academic affairs. The appeal committee shall be provided with the release of out-district funds form completed in accordance with K.A.R. 88-27-1 and a copy of the information concerning

the courses of study or programs upon which the determination was made.

(d) At the hearing of the appeal committee, the county, each of the institutions that has an interest in the matter, and any of the board staff who participated in the initial determination shall be allowed to present information concerning the matter. Based upon information provided in the release of out-district funds form, information concerning courses of study and programs, and information provided at the hearing, the appeal committee shall determine whether the municipal university is authorized to charge out-district tuition for the student.

(e) Within 10 days of the hearing, a written statement indicating the determination of the appeal committee and the reason or reasons for the determination shall be prepared by the vice president for academic affairs. The statement also shall direct the municipal university to charge out-district tuition for the student or shall advise the municipal university that out-district tuition will not be charged for the student.

(f) The statement prepared under subsection (e) shall be mailed by the vice president for academic affairs to the persons and entities specified in K.A.R. 88-27-1. The decision of the appeal committee shall be final. (Authorized by and implementing K.S.A. 2002 Supp. 13-13a27, as amended by L. 2003, Ch. 35, § 3, and K.S.A. 2002 Supp. 13-13a29, as amended by L. 2003, Ch. 35, § 4; effective Oct. 29, 2004.)

## **Article 28.—PRIVATE AND OUT-OF-STATE POSTSECONDARY EDUCATION INSTITUTIONS**

**88-28-1. Definitions.** Each of the following terms, wherever used in this article of the board's regulations, shall have the meaning specified in this regulation:

(a) "Academic year" means instruction consisting of at least 24 semester credit hours over a period of two semesters or the equivalent.

(b) "Associate's degree" means a postsecondary degree consisting of at least 60 semester credit hours or the equivalent of college-level coursework. This term shall include the following types of associate's degree:

(1) "Associate in applied science degree" means a technical-oriented or occupational-oriented associate's degree that meets the following conditions:

(A) Is granted to each student who successfully completes a program that emphasizes preparation in the applied arts and sciences for careers, typically at the technical or occupational level; and

(B) requires at least 15 semester credit hours in general education and at least 30 semester credit hours or the equivalent in the technical content area.

(2) “Associate in arts degree” means an associate’s degree that meets the following conditions:

(A) Is granted to each student who successfully completes a program that emphasizes the liberal arts; and

(B) requires at least 30 semester credit hours or the equivalent in general education, including English, mathematics, humanities, communications, physical sciences, and social and behavioral sciences, or any combination of these subjects.

(3) “Associate in general studies degree” means an associate’s degree that meets the following conditions:

(A) Is granted to each student who successfully completes a program that emphasizes a broad range of knowledge; and

(B) requires at least 24 semester credit hours or the equivalent in general education.

(4) “Associate in science degree” means an associate’s degree that meets the following conditions:

(A) Is granted to each student who successfully completes a program that emphasizes either mathematics or the biological or physical sciences, or both; and

(B) requires at least 30 semester credit hours or the equivalent in general education.

(c) “Bachelor’s degree” and “baccalaureate” mean a degree that meets the following conditions:

(1) Requires the equivalent of at least four academic years of college-level coursework in the liberal arts, sciences, or professional fields meeting the following conditions:

(A) Requires at least 120 semester credit hours or the equivalent;

(B) includes at least 45 semester credit hours or the equivalent in upper-division courses; and

(C) requires at least 60 semester credit hours or the equivalent from institutions that confer a majority of degrees at or above the baccalaureate level; and

(2) requires a distinct specialization, which is known as a “major,” that requires either of the following:

(A) At least one academic year, or the equivalent in part-time study, of work in the major subject

and at least one academic year, or the equivalent in part-time study, in related subjects; or

(B) at least two academic years, or the equivalent in part-time study, in closely related subjects within a liberal arts interdisciplinary program.

(d) “Catalog” means a document delivered in print or on-line containing the elements specified in K.A.R. 88-28-2.

(e) “Closure of an institution” and “closure” mean the practice of no longer allowing students access to the institution to receive instruction. Closure of an institution occurs on the calendar day immediately following the last day on which students are allowed access to the institution to receive instruction.

(f) “Degree program” means a course of study that meets the following conditions:

(1) Leads to an associate’s degree, a bachelor’s degree, a master’s degree, an intermediate (specialist) degree, a first professional degree, or a doctor’s degree; and

(2) consists of at least 30 semester credit hours or the equivalent of coursework in a designated academic discipline area.

(g) “Doctor’s degree” means a degree that may include study for a closely related master’s degree and that meets the following conditions:

(1) Is granted to each student who successfully completes an intensive, scholarly program requiring the equivalent of at least three academic years beyond the bachelor’s degree;

(2) requires a demonstration of mastery of a significant body of knowledge through successful completion of either of the following:

(A) A comprehensive examination; or

(B) a professional examination, the successful completion of which may be required in order to be admitted to professional practice in Kansas; and

(3) requires evidence, in the form of a doctoral dissertation, of competence in independent basic or applied research that involves the highest levels of knowledge and expertise.

(h) “Enrollment documents” means written documentation provided by an institution to a student in which the institution agrees to provide instruction to the student for a fee. The enrollment documents shall meet the requirements of K.A.R. 88-28-7.

(i) “Enrollment period” means the period of time specified in enrollment documents during which instruction, including any examinations given, is to be provided to a student.

(j) “Entering an institution” means commencing class attendance by a student at an on-site institution or first submitting a lesson by a student for evaluation in a distance education program.

(k) “First professional degree” means a degree that meets the following conditions:

(1) Is granted to each student who successfully completes study beyond the fulfillment of undergraduate requirements, as approved by the state board;

(2) requires the equivalent of at least five academic years of study, including work towards a bachelor’s degree; and

(3) includes a specialization in a professional field.

(l) “Honorary degree” means a special degree awarded as an honor that is bestowed upon a person without completion of the usual requirements.

(m) “Intermediate (specialist) degree” means a degree, including an educational specialist degree, granted to each student who successfully completes a program requiring the equivalent of at least one academic year beyond the master’s degree in a professional field.

(n) “Master’s degree” means a degree that meets the following conditions:

(1) Is granted to each student who successfully completes a program in the liberal arts and sciences or in a professional field beyond a bachelor’s degree;

(2) requires the equivalent of at least one academic year in a curriculum specializing in a single discipline or single occupational or professional area; and

(3) culminates in a demonstration of mastery, which may include one or more of the following:

(A) A research thesis;

(B) a work of art; or

(C) the solution of an applied professional problem.

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

(1) A course or series of courses leading to a certificate, diploma, or degree; or

(2) training that prepares a person for a field of endeavor in a business, trade, technical, or industrial occupation.

(p) “Upper-division course” means any course with content and teaching appropriate for students in their third and fourth academic years or for other students with an adequate background in the subject. (Authorized by and implementing K.S.A. 2016 Supp. 74-32,165, effective Oct. 20, 2006; amended March 18, 2011; amended May 26, 2017.)

**88-28-2. Minimum requirements.** (a) Except as provided in subsection (c), in order to qualify for a certificate of approval, each applicant institution shall be required to meet the criteria listed in K.S.A. 74-32,169 and amendments thereto. An owner of each applicant institution or the owner’s designee shall submit evidence that the institution meets the following minimum requirements:

(1) The physical space shall meet the following requirements:

(A) Be free from hazards and be properly maintained;

(B) provide learning environments appropriate for each curriculum in size, seating, lighting, equipment, and resources;

(C) be either owned by the institution or accessed through a long-term lease or other means of access that indicates institutional stability; and

(D) if the physical space includes student housing owned, maintained, or approved by the institution, meet all local standards for public health and safety.

(2) The owner or the owner’s designee has received all required inspections and written reports from the local fire department and other agencies responsible for ensuring public health and safety for the current year and the previous year, which shall be maintained on-site, with one copy sent to the state board annually.

(3) The administrative personnel of the institution shall meet the following requirements:

(A) Be adequate in number to support the programs offered; and

(B) be adequately prepared for operating an institution through training, experience, credentialing, or any combination of these.

(4) The executive and academic leadership of the institution shall have qualifications that reasonably ensure that the purpose and policies of the institution are effectively maintained. The administrative responsibilities and concomitant authority of the executive and academic leadership shall be clearly specified in the institution’s files.

(5) All academic, enrollment, and financial records of the students shall be securely maintained and protected from theft, fire, and other possible loss. These records shall be kept in an accessible format for 50 years from each student’s last date of attendance.

(6) All records describing the personnel related to and the development of the following operations shall be maintained for at least three years:

- (A) The administration;
- (B) the curricula;
- (C) student guidance;
- (D) instructional supplies and equipment;
- (E) the library;
- (F) the institution's physical plant;
- (G) the staff; and
- (H) student activities.

(7) The owner of the institution or the owner's designee shall submit to the state board the most recent financial statements for the institution operating in Kansas and for any parent or holding companies related to that institution. The financial statements provided to the state board shall meet at least one of the following requirements for the most recent fiscal or calendar year or for the two most recent fiscal or calendar years combined:

(A) Demonstrate a minimum ratio of current assets to current liabilities of at least 1:1. This asset ratio shall be calculated by adding the cash and cash equivalents to the current accounts receivable and dividing the sum by the total current liabilities;

(B) exhibit a positive net worth in which the total assets exceed the total liabilities; or

(C) demonstrate a profit earned.

(8) If the institution receives any loans on behalf of a student from a private lender, the institution shall meet all of the following provisions and requirements:

(A) The loan funds may be applied to tuition, fees, or living expenses, or any combination, for a student.

(B) The institution shall not accept all loan funds up front. The funds received shall arrive in multiple disbursements, with the first arriving after the first day of classes and the second arriving at least halfway through the enrollment period. The disbursements shall be at least 90 days apart.

(C) All refunds shall be made to the bank rather than to the borrower.

(D) Upon receipt of loan funds for items to be provided by the institution to the student, the institution shall provide these items to the student, with the exception of test vouchers.

(E) The institution shall not receive any loan funds for a student before the student first attends any course or accepts any on-line materials.

(F) If providing a test voucher for a student, the institution shall not receive any loan funds for the test voucher more than 30 days before the student is scheduled to take the test.

(9) Each institution shall have a tuition refund policy and a student enrollment cancellation policy, called the "refund policy" in these regulations, that meets the following requirements:

(A) Is published in the institution's catalog;

(B) complies with K.S.A. 74-32,169 and amendments thereto;

(C) establishes that each student will be reimbursed for any items for which the student was charged but did not receive, including textbooks and software;

(D) has no more stringent requirements than the following:

(i) All advance monies, other than an initial, nonrefundable registration fee, paid by the student before attending class shall be refunded if the student requests a refund, in writing, within three days after signing an enrollment agreement and making an initial payment;

(ii) for institutions collecting a nonrefundable initial application or registration fee, the student shall be required to sign a written statement acknowledging that the initial application or registration fee is nonrefundable. This statement may be a part of the enrollment documents, as described in K.A.R. 88-28-7;

(iii) each student who has completed 25 percent or less of a course and withdraws shall be eligible for a pro rata refund. The completion percentage shall be based on the total number of calendar days in the course and the total number of calendar days completed. After a student has attended at least 25 percent of the course, tuition and fees shall not be refundable;

(iv) all monies due to a student shall be refunded within 60 days from the last day of attendance or within 60 days from the receipt of payment if the date of receipt of payment is after the student's last date of attendance; and

(v) for institutions with programs consisting of fewer than 100 clock-hours, refunds may be calculated on an hourly, pro rata basis.

(10) All correspondence from the institution regarding the enrollment cancellation of a student, and any refund owed to the student, shall reference the refund policy of the institution.

(11) The required catalog of the institution's operation and services published electronically or in print, or both, shall include the following items:

(A) A table of contents;

(B) a date of publication;

(C) a list of any approvals, including contact information for the state board, and accreditations,

including contact information, affiliations, and memberships that the institution has obtained;

(D) any requirements that students must meet to be admitted;

(E) an academic calendar or a reference to a published calendar used by the institution;

(F) the name and nature of each occupation for which training is given;

(G) the curricula offered, including the number of clock-hours or credit hours for each course in each curriculum;

(H) a description of the physical space and the educational equipment available;

(I) the tuition and fees charged;

(J) a description of the system used to measure student progress;

(K) the graduation requirements or completion requirements, or both;

(L) the institutional mission;

(M) identification of the owner of the institution;

(N) a list of the instructors teaching in Kansas, including their degrees held and the institutions from which their degrees were received;

(O) the institutional rules;

(P) the institution's policies for tuition refund and student enrollment cancellation, as described in paragraph (a)(9);

(Q) the extent to which career services are available; and

(R) the institution's policies for transfers of clock-hours or credit hours and for advanced-standing examinations.

(12) The enrollment documents shall meet the requirements of K.A.R. 88-28-7.

(13) All advertising and promotional materials shall meet the following requirements:

(A) Include the correct name of the institution that is approved by the state board;

(B) be truthful and not misleading by actual statement or omission;

(C) not be located in the employment or "help wanted" classified ads;

(D) not quote salaries for an occupation in the institution's advertising or promotional literature without including the documented median starting wage of a majority of the institution's graduates who graduated within the most recent calendar year;

(E) make no offers of institutional scholarships or partial institutional scholarships, unless the scholarships are bona fide reductions in tuition and are issued under specific, published criteria;

(F) use the word "accredited" only if the ac-

crediting agency is one recognized by the United States department of education;

(G) not make any overt or implied claim of guaranteed employment during training or upon completion of training, in any manner; and

(H) not use letters of endorsement, recommendation, or commendation in the institution's advertising and promotional materials, unless the letters meet the following requirements:

(i) The institution received the prior, written consent of the authors;

(ii) the institution did not provide remuneration in any manner for the endorsements; and

(iii) the institution keeps all letters of endorsement, recommendation, or commendation on file, subject to inspection, for at least three years after the last use of the contents in advertising or promotional materials.

(14) Each curriculum shall meet the following requirements:

(A) Be directly related to the institution's published mission;

(B) evidence a well-organized sequence of appropriate subjects leading to occupational or professional competence;

(C) reasonably and adequately ensure achievement of the stated objectives for which the curriculum is offered;

(D) if the curriculum prepares students for licensure, be consistent with the educational requirements for licensure; and

(E) if courses are delivered by distance education, meet the same standards as those for courses conducted on-site.

(15) The published policies for measuring student progress shall be followed.

(16) All instructional materials shall meet the following requirements:

(A) Reflect current occupational knowledge and practice applicable to the field of study and meet national standards if the standards exist;

(B) be sufficiently comprehensive to meet the learning objectives stated in the institution's published catalog;

(C) include suitable teaching devices and supplemental instructional aids appropriate to the subject matter; and

(D) be applicable to the curricula and the students.

(17) All instructional equipment shall meet the following requirements:

(A) Be current and maintained in good repair; and

(B) be used by students according to written policies for safe usage.

(18) Each faculty member shall be qualified to teach in the field or fields to which the member is assigned. Faculty responsibilities may be defined in terms of the number of hours taught, course development and research required, level of instruction, and administrative, committee, and counseling assignments.

(19) Each faculty member's minimum academic credential shall be at least one degree-level above the degree being taught, unless other credentials are typically used in lieu of the academic degree in a particular field of study. In those cases, qualifications may be measured by technical certifications, relevant professional experience, professional certifications, creative activity, training, or licensure, or any combination of these. The institution shall provide documentation that all faculty appointments meet these standards.

(20) The instructors in all programs shall maintain continuous professional experience through one or more of the following activities:

(A) Maintain membership in and participate in educational, business, technical, or professional organizations;

(B) continue their education in their professional fields; or

(C) have concurrent, related work experience.

(21) In-service training that is consistent with the institution's mission shall be provided for the improvement of both the instructors and the curricula.

(22) All students shall be given the appropriate educational credentials upon completion of the program that indicate satisfactory completion.

(23) Each certificate, diploma, or degree shall include the following information, at a minimum:

(A) The name of the graduate;

(B) the name of the program completed;

(C) the name of the institution issuing the credential; and

(D) the date on which the graduate completed the program.

(b) In addition to meeting the requirements of subsection (a), an owner of the applicant institution for which degree-granting authority is sought, or the owner's designee, shall also submit evidence that the institution meets the following minimum requirements:

(1) Each degree program for which degree-granting authority is sought shall meet the criteria specified in the definition of that degree in K.A.R. 88-28-1.

(2) The library holdings maintained in a physical library or on-line, or in a combination of a physical library and on-line, shall be appropriate to each degree awarded. All of the following requirements shall be met:

(A) A professionally trained librarian shall maintain the holdings.

(B) An annual budget shall be established to maintain and improve the holdings, including the appropriate classification and inventory of the holdings.

(C) Physical holdings, on-line holdings, or a combination of these holdings shall be made available at times when students are not in class, including weekend and evening hours.

(D) The library holdings shall be up-to-date and shall include full-text titles appropriate to the degrees offered.

(E) The faculty shall be given an opportunity to participate in the acquisition of library holdings, whether physical or on-line.

(F) If the institution uses interlibrary agreements, the agreements shall be well documented, and access to other libraries' collections shall be practical for students.

(3) Each institution's governing structure shall clearly delineate the responsibility for all legal aspects of operations, the formulation of policy, the selection of the chief executive officer, and the method of succession. If the institution is governed by a board or group of officers, the following aspects of the board or group shall be clearly defined:

(A) The membership;

(B) the manner of appointment;

(C) the terms of office; and

(D) all matters related to the duties, responsibilities, and procedures of that body.

(4) The financial statements for the institution shall be audited by a CPA.

(c) If an institution has accreditation issued by a regional or national accrediting agency recognized by the United States department of education, that accreditation may be accepted by the state board as presumptive evidence that the institution meets the minimum requirements specified in this regulation. However, each degree program for which degree-granting authority is sought shall meet the criteria specified in the definition of that degree in K.A.R. 88-28-1. (Authorized by K.S.A. 2016 Supp. 74-32,165; implementing K.S.A. 2016 Supp. 74-32,165, 74-32,168 and 74-32,169; effective Oct. 20, 2006; amended May 26, 2017.)

**88-28-3. Certificates of approval.**

(a) A certificate of approval may be issued with degree-granting authority or without degree-granting authority.

(b) An owner of each institution for which a certificate of approval to operate in Kansas is sought, or the owner's designee, shall submit an application on a form provided by the state board. An owner of each institution for which degree-granting authority is sought, or the owner's designee, shall indicate on the application that degree-granting authority is requested and shall specify the degree programs proposed to be offered by the institution.

(c) An owner of each institution or the owner's designee shall submit the following information with the application:

(1) An outline or syllabus of each course offered in Kansas;

(2) a description of the institution's facilities, equipment, and instructional materials;

(3) a certification by an owner of the applicant institution or the owner's designee that the building that is to house the institution meets the requirements of all local, state, and federal regulations;

(4) a resume of each administrator and instructor that includes the individual's education, previous work experience, professional activities, and, if applicable, licensure;

(5) evidence of the institution's professional development and in-service activities;

(6) a copy of the proposed catalog or, if existing, a copy of each of the institution's most recent catalogs, bulletins, and brochures, with any supplements, or functional equivalents;

(7) a copy of the enrollment documents, or functional equivalent;

(8) a copy of the credential to be given to each student upon completion of a program;

(9) a description of how the student and administrative records are maintained as required by K.A.R. 88-28-2;

(10) a copy of any advertising used;

(11) a financial statement showing income and expenditures for the most recent, complete fiscal year. These documents shall be prepared and acknowledged by a certified public accountant and, in the case of an institution requesting degree-granting authority, shall be audited by a certified public accountant;

(12) for an institution in its first calendar year of operation, a business plan with the initial application, which shall include the following:

(A) An income statement that provides projected revenue and expenses for the first year of operation; and

(B) written documentation evidencing the amounts and sources of capital currently available to the institution for payment of start-up costs and any potential losses; and

(13) a copy of any certificate of accreditation issued to the institution by a regional or national accrediting agency recognized by the United States department of education.

(d) If an institution is found to be eligible for a certificate of approval, an owner of the applicant institution or the owner's designee shall be notified of the conditional approval of the institution. Following notification, an owner of the applicant institution or the owner's designee shall furnish a surety bond or other equivalent security acceptable to the state board in the amount of \$20,000, as required by K.S.A. 74-32,175 and amendments thereto. A certificate of approval shall not be issued until the surety bond or other security is filed with and accepted by the state board.

(e) On the state board's own motion or upon a written complaint filed by any person doing business with the institution, an investigation of the institution may be conducted by the state board. Based upon the results of the investigation, the institution may be ordered by the state board to take corrective action, or proceedings may be initiated by the state board to revoke or condition the institution's certificate of approval. The approval to grant degrees may be revoked in whole or for specific degree programs if an institution is not in compliance with the minimum standards specified in K.S.A. 74-32,169, and amendments thereto, and K.A.R. 88-28-2.

(f) An owner or the owner's designee of each institution with degree-granting authority that seeks to begin a new degree program shall file for an amendment to its certificate of approval on a form provided by the state board. Each new degree program shall meet the criteria specified in the definition of that degree in K.A.R. 88-28-1. The owner of the institution or the owner's designee shall submit the following items with the application to amend its certificate of approval:

(1) An outline of the curriculum to be offered for the new degree;

(2) the qualifications of the faculty to be involved in the program of study;

(3) the relationship of the new degree program to the mission of the institution; and

(4) any other information requested by the board. (Authorized by K.S.A. 2016 Supp. 74-32,165; implementing K.S.A. 2016 Supp. 74-32,167, 74-32,168, 74-32,172, and 74-32,175; effective Oct. 20, 2006; amended May 26, 2017.)

**88-28-4. On-site visits.** Each applicant institution shall submit to on-site visits to the institution by state board designees and shall cooperate with these designees by providing immediate access to records and premises, as requested. (Authorized by K.S.A. 2016 Supp. 74-32,165; implementing K.S.A. 2016 Supp. 74-32,165, 74-32,169; effective Oct. 20, 2006; amended May 26, 2017.)

**88-28-5. Registration of representatives.**  
 (a) Each institution shall designate one individual who shall serve as the representative of that institution and who shall complete and submit a representative's application on the form provided by the state board. A separate application shall be submitted for each institution that the individual seeks to represent, unless the institutions that the individual seeks to represent all have common ownership. The applicant and either an owner of the institution that the applicant seeks to represent or the owner's designee shall sign the application and shall attest that if the registration is issued, the applicant will be employed by the institution.

(b) If the state board, upon review and consideration of an application, determines that the application is denied, the applicant shall be notified by the state board of the denial and each reason for the denial. The notice shall also advise the applicant of the right to request a hearing under K.S.A. 74-32,172 and amendments thereto.

(c) A certificate of registration for each institution with separate ownership shall be issued by the state board to the individual upon approval of the application. The certificate shall state the name of the registrant, the name of the institution that the registrant may represent, the date of issuance, and the date of expiration. The representative shall make available proof of the representative's registration to each prospective student or enrollee, if asked, before engaging in any personal solicitation.

(d) On the state board's own motion or upon a written complaint filed by any person doing business with the representative, an investigation of the representative may be conducted by

the state board. Based upon the results of the investigation, the representative or the institution may be ordered by the state board to take corrective action, or proceedings may be initiated by the state board to revoke the representative's certificate of registration pursuant to K.S.A. 74-32,172 and amendments thereto. (Authorized by K.S.A. 2016 Supp. 74-32,165; implementing K.S.A. 2016 Supp. 74-32,174; effective Oct. 20, 2006; amended May 26, 2017.)

**88-28-6. Fees.** Fees for certificates of approval, registration of representatives, and certain transcripts shall be paid to the state board in accordance with this regulation.

(a) For institutions chartered, incorporated, or otherwise organized under the laws of Kansas and having their principal place of business within the state of Kansas, the following fees shall apply:

- (1) Initial application fees:
  - (A) Non-degree-granting institution ..... \$1,000
  - (B) Degree-granting institution ..... \$2,000
- (2) Initial evaluation fee, in addition to initial application fees:
  - (A) Non-degree level ..... \$750
  - (B) Associate degree level ..... \$1,000
  - (C) Baccalaureate degree level ..... \$2,000
  - (D) Master's degree level ..... \$3,000
  - (E) Professional and doctoral degree levels ..... \$4,000
- (3) Renewal application fees:
  - (A) Non-degree-granting institution ..... 2% of gross tuition, but not less than \$500 and not more than \$10,000
  - (B) Degree-granting institution ..... 2% of gross tuition, but not less than \$1,200 and not more than \$10,000
- (4) New program submission fees, for each new program:
  - (A) Non-degree program ..... \$100
  - (B) Associate degree program ..... \$250
  - (C) Baccalaureate degree program ..... \$500
  - (D) Master's degree program ..... \$750
  - (E) Professional and doctoral degree programs ..... \$1,500
- (5) Branch campus site fees, for each branch campus site:
  - (A) Initial non-degree-granting institution ..... \$1,000
  - (B) Initial degree-granting institution ..... \$2,000
- (6) Renewal branch campus site fees, for each branch campus site:

- (A) Non-degree-granting institution .....2% of gross tuition, but not less than \$500 and not more than \$1,000
- (B) Degree-granting institution .....2% of gross tuition, but not less than \$1,000 and not more than \$1,500
- (7) Representative fees:  
Initial registration ..... \$200
- (8) Late submission of renewal of application fee ..... \$500
- (9) Student transcript copy fee..... \$10
- (10) Returned check fee..... \$50

(b) For institutions that are not chartered, incorporated, or otherwise organized under the laws of Kansas or that have their principal place of business outside the state of Kansas, the following fees shall apply:

- (1) Initial application fees:  
(A) Non-degree-granting institution..... \$3,000  
(B) Degree-granting institution ..... \$4,000
- (2) Initial evaluation fee, in addition to initial application fees:  
(A) Non-degree level ..... \$1,500  
(B) Associate degree level ..... \$2,000  
(C) Baccalaureate degree level ..... \$3,000  
(D) Master’s degree level ..... \$4,000  
(E) Professional and doctoral degree levels ..... \$5,000
- (3) Renewal application fees:  
(A) Non-degree-granting institution .....3% of gross tuition received or derived from Kansas students, but not less than \$1,800 and not more than \$10,000  
(B) Degree-granting institution .....3% of gross tuition received or derived from Kansas students, but not less than \$2,400 and not more than \$10,000
- (4) New program submission fees, for each new program:  
(A) Non-degree program..... \$250  
(B) Associate degree program..... \$500  
(C) Baccalaureate degree program ..... \$750  
(D) Master’s degree program ..... \$1,000  
(E) Professional and doctoral degree programs ..... \$2,000
- (5) Branch campus site fees, for each branch campus site:  
(A) Initial non-degree-granting institution..... \$3,000  
(B) Initial degree-granting institution..... \$4,000  
(6) Renewal branch campus site fees, for each branch campus site:

- (A) Non-degree-granting institution .....3% of gross tuition received or derived from Kansas students, but not less than \$1,800 and not more than \$10,000
- (B) Degree-granting institution .....3% of gross tuition received or derived from Kansas students, but not less than \$2,400 and not more than \$10,000
- (7) Representative fees:  
Initial registration ..... \$350
- (8) Late submission of renewal of application fee ..... \$500
- (9) Student transcript copy fee..... \$10
- (10) Returned check fee..... \$50

(Authorized by and implementing K.S.A. 74-32,181; effective Oct. 20, 2006; amended April 16, 2010; amended, T-88-7-20-11, July 20, 2011; amended Oct. 21, 2011; amended April 10, 2015; amended May 26, 2017; amended Dec. 15, 2017; amended Dec. 27, 2019.)

**88-28-7. Enrollment documents.** (a) (1)

Before any institution may accept payment from a student, an official of the institution shall provide that student with enrollment documents that explicitly outline the obligations of the institution and the student and the enrollment period for which the enrollment documents apply. When the official of the institution provides any student with the institution’s enrollment documents, the official shall also physically or electronically provide the student with a copy of the institution’s catalog and any other supporting documents that detail the services to be provided by the institution.

(2) The enrollment documents shall be written so that they can be understood by the prospective student or, if the prospective student is a minor, that prospective student’s parent or legal guardian, regardless of the educational background of the individual.

(b) The enrollment documents shall contain the following elements:

- (1) A title that identifies the enrollment documents as a contract or legal agreement, if applicable;
- (2) the name and address of the institution;
- (3) the title of the program or each course in which the student is enrolling, as identified in the course catalog;
- (4) the number of clock-hours or credit hours and the number of weeks or months required for completion of the program or each course in which the student is enrolling;

(5) identification of the type of certificate, diploma, or degree to be received by the student upon successful completion of the program or each course;

(6) the total amount of tuition required for the program or each course in which the student is currently enrolling. If the total number of clock-hours or credit hours required for completion of the program will span more than one enrollment period, the enrollment documents shall include a statement that tuition is subject to change;

(7) the cost of any required books and supplies, which may be estimated if necessary;

(8) any other costs and charges to be paid by the student;

(9) the scheduled start and end dates of the program or each course and a description of the class schedule;

(10) the grounds for termination of enrollment by the institution before the student's completion of the program or each course. These grounds may include the student's insufficient progress, nonpayment, and failure to comply with the institution's published rules;

(11) the method by which the student can cancel or voluntarily terminate enrollment;

(12) the institution's refund policy for cancellations and terminations, as described in K.S.A. 74-32,169 and amendments thereto and K.A.R. 88-28-2. Reference may be given to the page where the refund policy is listed in the institution's catalog in effect at the time of enrollment;

(13) a statement disclaiming any guarantee of employment for the student after the program or each course is completed;

(14) the reasons why the institution could postpone the scheduled starting date or the class schedule, the maximum period of any possible delay, and any effect that the postponement could have on the institution's refund policy;

(15) a description of the nature and extent of any possible major or unusual change in any course content, program content, or materials and the amount of any extra expenses that could be charged to the student;

(16) the date on which the enrollment documents become effective, if applicable;

(17) an acknowledgment that the student who signs the enrollment documents has read and received a copy of the enrollment documents, if applicable;

(18) the signature of the student or the student's legal representative, if the student is a minor, and the date of this signature, if applicable;

(19) the signature of an official at the institution who is authorized to sign for the institution and the date of this signature, if applicable;

(20) if any extra charges are assessed, a description of what each charge is for and, if payment of these charges is collected in advance, a reasonable refund policy; and

(21) a description of any items or services required to be purchased from sources other than the institution, if any. (Authorized by K.S.A. 2016 Supp. 74-32,165; implementing K.S.A. 2016 Supp. 74-32,165, 74-32,169, and 74-32,176; effective Oct. 20, 2006; amended May 26, 2017.)

**88-28-8. Student records upon closure of an institution.** (a) Upon closure of an institution, an owner of the institution or the owner's designee shall deliver or make available to the state board all records of the students who are or have been in attendance at the institution. These records shall be delivered or made available no more than 15 calendar days following the closure.

(b) If the student records are not delivered or made available to the state board as required by subsection (a), any action deemed necessary may be commenced by the state board to obtain possession of the records. (Authorized by K.S.A. 2016 Supp. 74-32,165; implementing K.S.A. 2016 Supp. 74-32,175; effective Oct. 20, 2006; amended May 26, 2017.)

## Article 29.—QUALIFIED ADMISSION

**88-29-1.** (Authorized by and implementing K.S.A. 2014 Supp. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011; amended April 13, 2012; amended Feb. 1, 2013; amended April 24, 2015; revoked Oct. 16, 2020.)

**88-29-2.** (Authorized by and implementing K.S.A. 76-717; effective Aug. 1, 2007; revoked Jan. 13, 2017.)

**88-29-3. Categories of admission.** (a) In the admission policies of each state educational institution, which are required by K.A.R. 88-29a-9 and K.A.R. 88-29c-9, each state educational institution shall adopt the regular admission category, which shall include any applicant who is given permission from the state educational institution to enroll as a degree-seeking student at the state educational institution without any conditions or restrictions other than that the stu-

dent will be subject to all policies of the state educational institution.

(b) In the admission policies of each state educational institution, which are required by K.A.R. 88-29a-9 and K.A.R. 88-29c-9, any state educational institution may adopt one or more admission categories in addition to the regular admission category specified in subsection (a). These additional categories shall be limited to the following:

(1) The temporary admission category, which shall include any applicant who is given permission from the state educational institution to enroll as a degree-seeking student at the state educational institution for a specified period of time not to exceed one calendar year, during which period the student shall be required to provide the state educational institution with the student's complete application file; and

(2) the provisional admission category, which shall include any applicant who is given permission from the state educational institution to enroll as a degree-seeking student at the state educational institution for a probationary period of time, subject to restrictions that may include any of the following requirements:

(A) The applicant shall enroll only in a limited number of credit hours each semester as specified by the state educational institution;

(B) the applicant shall enroll in the developmental or college preparatory courses specified by the state educational institution;

(C) the applicant shall participate in an advising program specified by the state educational institution;

(D) the applicant shall achieve a certain grade point average specified by the state educational institution at the end of a period of time specified by the state educational institution; and

(E) the applicant shall meet any other provisions established in the state educational institution's admission policy for provisional admission established in accordance with K.A.R. 88-29a-9 or K.A.R. 88-29c-9.

(c) A student in the regular admission category shall not be in any other admission category.

(d) The temporary and provisional admission categories shall not be mutually exclusive. Each student who is not in the regular admission category shall be admitted into any other category or categories of admission adopted by the state educational institution for which the student is eligible. (Authorized by and implementing K.S.A.

76-717; effective Aug. 1, 2007; amended July 22, 2011; amended Oct. 16, 2020.)

**88-29-4. Qualifications required for the admission of an applicant with 24 or more transferable credit hours.** (a) The requirements established in this regulation shall apply to any applicant who has earned 24 or more credit hours from an institution of higher education that are transferable to a state educational institution. If an applicant to whom this regulation is applicable does not meet the requirements of this regulation, the applicant may be admitted by means of the exception window for resident transfer admissions described in K.A.R. 88-29-8a or the exception window for nonresident transfer admissions described in K.A.R. 88-29-8b.

(b) Each state educational institution shall admit any Kansas resident who meets the following criteria:

(1) Has earned 24 or more credit hours from an institution of higher education that are transferable to a state educational institution; and

(2) has earned a cumulative grade point average of 2.0 or higher on a 4.0 scale in all postsecondary coursework.

(c) Any state educational institution may admit a nonresident who meets the following criteria:

(1) Has earned 24 or more credit hours from an institution of higher education that are transferable to a state educational institution; and

(2) has earned a cumulative grade point average of 2.0 or higher on a 4.0 scale in all postsecondary coursework. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011.)

**88-29-5.** (Authorized by and implementing K.S.A. 2014 Supp. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011; amended April 13, 2012; amended April 24, 2015; revoked Jan. 13, 2017.)

**88-29-6.** (Authorized by and implementing K.S.A. 2014 Supp. 76-717; effective Aug. 1, 2007; amended July 22, 2011; amended April 13, 2012; amended April 24, 2015; revoked Jan. 13, 2017.)

**88-29-7.** (Authorized by and implementing K.S.A. 2014 Supp. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011; amended

April 13, 2012; amended Feb. 1, 2013; amended April 24, 2015; revoked Jan. 13, 2017.)

**88-29-7a.** (Authorized by and implementing K.S.A. 2014 Supp. 76-717; effective July 22, 2011; amended April 13, 2012; amended April 24, 2015; revoked Jan. 13, 2017.)

**88-29-8.** (Authorized by K.S.A. 76-712 and K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; implementing K.S.A. 76-725 and K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011; amended Feb. 1, 2013; revoked Jan. 13, 2017.)

**88-29-8a. The exception window for resident transfer admissions.** Any state educational institution may admit any Kansas resident who has earned 24 or more transferable college credit hours, but who does not meet the applicable requirements specified in K.A.R. 88-29-4, by means of the exception window for resident transfer admissions.

(a) The maximum number of students admitted by means of this exception window shall be calculated as follows:

(1) The total number of admitted new resident students who have earned at least 24 transferable college credit hours, regardless of admission category, shall be counted on the twentieth day of the fall, spring, and summer sessions of each academic year.

(2) The maximum number of admissions calculated using this exception window shall be equal to 10 percent of the sum of the three numbers counted in paragraph (a)(1).

(b) In determining which students to admit as exceptions pursuant to this regulation, the state educational institution shall give preference to persons who are in military service, as defined in K.S.A. 76-717 and amendments thereto.

(c) If the state educational institution exceeds the allotted number of admissions using this exception window, the excess over the allowable total number of exceptions shall be subtracted from the subsequent year's allowable total number of exceptions for resident transfer admissions.

(d) Beginning with students admitted for the 2013 fall session, each state educational institution shall require each student who is admitted as an exception to the minimum qualified admission standards pursuant to this regulation to adopt an individual plan for success, before enrollment, and subsequently review that individual plan for

success, as required by K.S.A. 76-717 and amendments thereto. (Authorized by K.S.A. 76-712 and K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; implementing K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11, and K.S.A. 76-725; effective, T-88-6-26-09, July 1, 2009; effective Nov. 13, 2009; amended Feb. 1, 2013.)

**88-29-8b. The exception window for nonresident transfer admissions.** Any state educational institution may admit any nonresident who has earned 24 or more transferable college credit hours, but who does not meet the applicable requirements specified in K.A.R. 88-29-4, by means of the exception window for nonresident transfer admissions.

(a) The maximum number of students admitted by means of this exception window shall be calculated as follows:

(1) The total number of admitted new nonresident students who have earned at least 24 transferable college credit hours, regardless of admission category, shall be counted on the twentieth day of the fall, spring, and summer sessions of each academic year.

(2) The maximum number of admissions calculated using this exception window shall be equal to 10 percent of the sum of the three numbers counted in paragraph (a)(1).

(b) In determining which students to admit as exceptions pursuant to this regulation, the state educational institution shall give preference to persons who are in military service, as defined in K.S.A. 76-717 and amendments thereto.

(c) If the state educational institution exceeds the allotted number of admissions using this exception window, the excess over the allowable total number of exceptions shall be subtracted from the subsequent year's allowable total number of exceptions for nonresident transfer admissions.

(d) Beginning with students admitted for the 2013 fall session, each state educational institution shall require each student who is admitted as an exception to the minimum qualified admission standards pursuant to this regulation to adopt an individual plan for success, before enrollment, and subsequently review that individual plan for success, as required by K.S.A. 76-717 and amendments thereto. (Authorized by K.S.A. 76-712 and K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; implementing K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168,

sec. 11, and K.S.A. 76-725; effective, T-88-6-26-09, July 1, 2009; effective Nov. 13, 2009; amended Feb. 1, 2013.)

**88-29-8c.** (Authorized by K.S.A. 76-712 and K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; implementing K.S.A. 76-725 and K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; effective July 22, 2011; amended Feb. 1, 2013; revoked Jan. 13, 2017.)

**88-29-9.** (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011; revoked Jan. 13, 2017.)

**88-29-10.** (Authorized by and implementing K.S.A. 2011 Supp. 76-717; effective Aug. 1, 2007; amended July 22, 2011; amended April 13, 2012; revoked Jan. 13, 2017.)

**88-29-11.** (Authorized by and implementing K.S.A. 2016 Supp. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011; amended Oct. 19, 2012; amended April 24, 2015; amended Jan. 13, 2017; revoked Oct. 16, 2020.)

**88-29-12. Establishment of a qualified admission precollege curriculum by an accredited high school in Kansas.** (a) Any accredited high school in Kansas may establish a qualified admission precollege curriculum. Failure to establish a qualified admission precollege curriculum shall render the high school's graduates ineligible for admission to a state educational institution under the qualified admission precollege curriculum criteria specified in K.A.R. 88-29a-5 and K.A.R. 88-29a-7. If an accredited high school establishes a qualified admission precollege curriculum, the curriculum shall meet the requirements of this regulation.

(b) Each course to be included in an accredited high school's qualified admission precollege curriculum shall be approved in advance by the chief executive officer of the board of regents or the chief executive officer's designee. Each accredited high school in Kansas that wants to establish and maintain a qualified admission precollege curriculum shall submit materials to the board of regents in accordance with procedures established and distributed to Kansas accredited high schools by the board of regents or the board's designee. Failure to submit materials in a timely manner may

disqualify the high school's students for admission to a state educational institution under the qualified admission precollege curriculum criteria specified in K.A.R. 88-29a-5 and K.A.R. 88-29a-7.

(c) Each course for inclusion in an accredited high school's qualified admission precollege curriculum shall be approved according to the following procedures:

(1) A course shall be approved only if it is among those courses listed in "Kansas board of regents precollege curriculum courses approved for university admissions," as adopted by reference in K.A.R. 88-29a-11.

(2) Two ½-unit courses may be approved to fulfill one unit of the qualified admission precollege curriculum.

(3) Any college course offered by an eligible institution of higher education may be approved for inclusion in an accredited high school's qualified admission precollege curriculum if the course meets all of the following conditions:

(A) The course is among those listed in "Kansas board of regents precollege curriculum courses approved for university admissions," as adopted by reference in K.A.R. 88-29a-11.

(B) The number of credit hours for the college course is three or more.

(C) The college course appears on the official high school transcript.

(d) The list of courses that have been approved to be included in the qualified admission precollege curriculum for each accredited high school in Kansas shall be available from the board.

(e) Upon receipt of information that a course does not meet the requirements specified in subsection (c), the content of that course may be reviewed by the chief executive officer of the board of regents or the chief executive officer's designee to determine whether it should be approved.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011; amended Oct. 16, 2020.)

**88-29-13. Content requirements for qualified admission computer technology courses.** Each qualified admission computer technology course shall include instruction in the following:

(a) The meaning of at least 90 of the terms in the following sets of terms:

- (1) Disk operating system, MS-DOS, Mac OS, Microsoft Windows, operating system, OS/2, and UNIX;
  - (2) American standard code for information interchange (ASCII), binary, command, compression, directory or folder, file, format, menu, prompt, server, and utility programs;
  - (3) clipboard, graphical user interface (GUI), multiprocessing, multitasking, and root directory;
  - (4) central processing unit (CPU), computer hardware, keyboard, monitor, motherboard, mouse, printer, random-access memory (RAM), scanner, and video resolution color depth;
  - (5) bit, byte, compact disc read-only memory (CD-ROM), diskette, gigabyte, hard disk, kilobyte, magnetic storage media, megabyte, and optical storage;
  - (6) baud and modem;
  - (7) boldface, center, cut, edit, font, format, justify, paste, spell-check, type size, underline, and word processor;
  - (8) absolute reference, attributes of a cell, cell, chart, copy across, copy down, formula, relative reference, and spreadsheet;
  - (9) database, field, filter, record, report, and sort;
  - (10) presentation software and slides;
  - (11) client/server, ethernet, file transfer protocol, gopher, host, local area network, and network;
  - (12) bookmark, browser, bulletin board system (BBS), download and upload, hypertext, hypertext markup language (HTML), internet, uniform resource locator (URL), and world wide web;
  - (13) discussion list, e-mail, flame, frequently asked questions (FAQs), online telecommuting, teleconferencing, telnet, usenet, and virus; and
  - (14) computer crime, copyright, ethics, fraud, laws, legislation, and privacy;
- (b) the following hardware skills:
    - (1) Entering commands from the keyboard, mouse, or other input device;
    - (2) turning a machine on and off; and
    - (3) identifying the operating system type and version;
    - (c) at least three of the following file management skills:
      - (1) Creating a directory, subdirectory, and folder;
      - (2) copying files from one directory to another directory;
      - (3) finding a file located on a hard disk or other storage device;
      - (4) renaming or deleting files and either directories or folders; or
      - (5) decompressing a file using a given decompression program;
      - (d) the following diskette skills:
        - (1) Copying files to and from a diskette;
        - (2) formatting a diskette; and
        - (3) checking a diskette for viruses using a virus check program;
        - (e) the following word processing skills:
          - (1) Launching a word processor and creating documents;
          - (2) formatting a document according to certain specifications, including the following skills:
            - (A) Entering text and changing margins, paragraph format, and page numbering;
            - (B) changing text styles, including the font, type size, and other special characteristics;
            - (C) entering a title and text; and
            - (D) centering the lines of text on the page, with the title in boldface and a larger type size than the body of the text;
          - (3) opening a saved document that is stored on a hard disk or floppy disk;
          - (4) checking for spelling and grammatical errors using the software;
          - (5) rearranging sentences and paragraphs using cut-and-paste methods; and
          - (6) saving and printing documents;
          - (f) the following spreadsheet skills:
            - (1) Launching a spreadsheet program and saving and printing a spreadsheet in portrait or landscape;
            - (2) creating a spreadsheet using formulas;
            - (3) changing cell text and number attributes;
            - (4) inserting or deleting a row into or from a spreadsheet;
            - (5) copying a formula with both relative and absolute references down a column or across a row;
            - (6) copying a formula from one cell and pasting the formula into another cell; and
            - (7) creating a chart from a spreadsheet;
            - (g) the following database software skills:
              - (1) Creating a database;
              - (2) sorting a database on any field in any order;
              - (3) creating a report that filters out some of the data; and
              - (4) printing a report;
              - (h) presentation software skills, including creating and printing a presentation document that meets specified requirements;
                - (i) the following multitasking skills:
                  - (1) Opening several programs at once; and
                  - (2) inserting material from one program, including e-mail, spreadsheet, database, and presentation software, into another program;

- (j) the following networking and internet skills:
- (1) Transferring a file by connecting to another computer to upload and download files in any format, including ASCII, binary, and binary hexadecimal (binhex);
  - (2) receiving, saving, and decoding attachments;
  - (3) creating e-mail messages, with attachments;
  - (4) accessing a site on the world wide web and copying a file from the site to disk; and
  - (5) following hypertext links from that site to several others and bookmarking the path;
- (k) the following ethical standards:
- (1) Making copies of copyrighted software without permission is software piracy;
  - (2) misusing passwords or otherwise using computers without permission is unethical; and
  - (3) interfering with the transmission, storage, or retrieval of data through deliberate virus infection, alteration of codes, or destruction or damage of operating systems is unethical; and
- (l) additional topics, upon prior approval of the chief executive officer of the board of regents or the chief executive officer's designee.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Aug. 1, 2007; amended Oct. 16, 2020.)

**88-29-14. Content requirements for qualified admission English courses.** Each qualified admission English course shall meet all of the following requirements:

(a) If the course is offered for high school credit only, the course shall be taught by an instructor who is licensed to teach English at the secondary level.

(b) The course shall include formal writing assignments, excluding answers to essay exams, that meet the following requirements for each grade level:

(1) Each ninth-grade course shall include at least two graded assignments of 250 or more words each, two graded assignments of 350 or more words each, and two graded assignments of 500 or more words each.

(2) Each tenth-grade course shall include at least three graded assignments of 500 or more words each and three graded assignments of 1,000 or more words each.

(3) Each eleventh-grade course shall include at least three graded assignments of 500 or more words each, two graded assignments of 1,000 or more words each, and a research paper of 750 or more words.

(4) Each twelfth-grade course shall include at least five graded assignments of 1,000 or more words each and a research paper of 1,500 or more words.

(c) The course shall include written assignments about the literature studied in class.

(d) The course shall include at least two written assignments according to the following criteria:

(1) Writing about local, regional, national, or international events;

(2) creative writing; and

(3) writing associated with research projects.

(e) The course shall include study of the writing process using the six-trait model or another model.

(f) The course shall include the study of complete works of literature rather than excerpts or abridged versions.

(g) The course shall include a study of literature that shall not be limited to a single audience or content area. A single audience or content area may include children's literature, sports literature, science fiction or fantasy, and literature of the old American west.

(h) The course shall include a study of the literary elements and devices of plot, setting, character, theme, point of view, mood, tone, style, personification, alliteration, assonance, simile, metaphor, idiom, flashback, foreshadowing, analogy, and symbolism in written literature that meets the following criteria:

(1) Treats universal themes;

(2) offers sufficient complexity for multiple interpretations; and

(3) includes language that is demonstrative of the literary elements and devices specified in this subsection.

(i) The course shall include study of novels, plays, short stories, and poetry in the amount specified for each grade level as follows:

(1) Each ninth-grade course shall include at least 12 works distributed as follows:

(A) At least three works selected from novels and plays, with at least one work in each genre;

(B) at least five short stories; and

(C) at least four poems.

(2) Each tenth-grade course shall include at least 16 works distributed as follows:

(A) At least three works selected from novels and plays, with at least one work in each genre;

(B) at least eight short stories; and

(C) at least five poems.

(3) Each eleventh-grade course shall include at least 18 works distributed as follows:

(A) At least four works selected from novels and plays, with at least one work in each genre;

(B) at least eight short stories; and

(C) at least six poems.

(4) Each twelfth-grade course shall include at least 19 works distributed as follows:

(A) At least four works selected from novels and plays, with at least one work in each genre;

(B) at least eight short stories; and

(C) at least seven poems.

(j) The course may include additional genres or excerpts of literary works, upon prior approval of the chief executive officer of the board of regents or the chief executive officer's designee.

(k) The course shall include experience in speaking and listening, including at least two oral presentations, with reasonable accommodations made for any student who has a visual, auditory, or speech impairment.

(l) The course shall include the use of audiovisual materials.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Aug. 1, 2007; amended Oct. 16, 2020.)

**88-29-15. Content requirements for qualified admission mathematics courses.** Each qualified admission mathematics course shall meet all of the following requirements:

(a) The course shall be classified as a mathematics course in the course description.

(b) If the course is offered for high school credit only, the course shall be taught by an instructor who is licensed to teach mathematics at the secondary level.

(c) The course shall emphasize the following skills:

(1) Algebraic and geometric thought;

(2) mathematical reasoning in the context of real-world problem solving;

(3) communicating about mathematics; and

(4) using technology in mathematical contexts.

(d) The course shall meet the criteria for one of the following:

(1) A qualified admission algebra I course, which shall include instruction in the following topics:

(A) Linear equations and functions, including both symbolic and graphic representations;

(B) data analysis, including linear regression for a data set;

(C) solution of linear equations and inequalities,

both singularly and in systems, with sufficient emphasis to produce proficiency;

(D) properties of positive and negative real numbers, with sufficient emphasis to produce proficiency;

(E) absolute value;

(F) exponents and radicals;

(G) factoring patterns;

(H) solutions of quadratic equations; and

(I) additional topics upon approval of the chief executive officer of the board of regents or the chief executive officer's designee;

(2) a qualified admission algebra II course, which shall meet the following requirements:

(A) Enrollment in the course shall be limited to students who have successfully completed qualified admission algebra I and qualified admission geometry; and

(B) the course shall include instruction in the following topics:

(i) Linear functions and equations;

(ii) the solution of quadratic equations by a variety of methods with sufficient emphasis to produce proficiency;

(iii) exponential and logarithmic equations and functions;

(iv) manipulation of algebraic fractions;

(v) connections between symbolic, numeric, and graphical representations;

(vi) the use of matrices to solve systems of equations and to organize and analyze data;

(vii) fundamentals of probability and combinatorics; and

(viii) additional topics upon approval of the chief executive officer of the board of regents or the chief executive officer's designee;

(3) a qualified admission geometry course, which shall meet the following requirements:

(A) Enrollment in the course shall be restricted to students who have successfully completed algebra I; and

(B) the course shall include instruction in the following topics:

(i) Euclidean, transformational, and coordinate geometry;

(ii) the Pythagorean theorem and distance formula, with sufficient emphasis to produce proficiency;

(iii) properties of polygons, circles, and three-dimensional figures, including prisms, cylinders, and cones;

(iv) measurement concepts related to perimeter, area, and volume;

(v) the use of similarity and congruence in solving problems and as tools in developing proofs and constructions;

(vi) development of mathematical reasoning, including several approaches to proof, with sufficient emphasis to produce proficiency; and

(vii) additional topics upon approval of the chief executive officer of the board of regents or the chief executive officer's designee; or

(4) any mathematics course for which enrollment is restricted to students who have successfully completed qualified admission algebra II.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Aug. 1, 2007; amended Oct. 16, 2020.)

**88-29-16. Content requirements for qualified admission natural science courses.**

Each qualified admission natural science course shall meet all of the following requirements:

(a) The course shall be classified as a science course in the course description.

(b) The course shall include an average of at least one laboratory or field experience each week. The laboratory or field experiences shall meet both of the following requirements:

(1) At least two-thirds of the laboratory or field experiences shall be conducted with face-to-face contact with an instructor and with direct exposure to the organisms or processes, or both, to be studied.

(2) The laboratory or field experiences shall include instruction in the following skills:

(A) Designing and conducting scientific investigations;

(B) using technology and mathematics in science;

(C) formulating and revising scientific explanations and models using logic and evidence;

(D) recognizing and analyzing alternative explanations and models; and

(E) communicating and defending a scientific argument.

(c) The course shall meet one of the following requirements:

(1) Qualified admission advanced biology. This course shall meet all of the following requirements:

(A) If the course is offered for high school credit only, the course shall be taught by an instructor licensed to teach biology at the secondary level.

(B) Enrollment in the course shall be limited according to the following requirements:

(i) Junior or senior standing or gifted status shall be required for enrollment in the course.

(ii) A qualified admission biology course shall be a prerequisite for enrollment in the course.

(iii) If successful completion of a course in addition to a qualified admission biology course is required before enrollment in the qualified admission advanced biology course, the prerequisite course shall meet the requirements of subsections (a) and (b) and the applicable requirements of subsection (c).

(C) The course shall be limited to instruction in one or more of the following topics:

(i) The structure and function of the cell;

(ii) chromosomes, genes, the molecular basis of heredity, and the major concepts of biological evolution;

(iii) the interdependence of organisms and the interaction of organisms with the physical environment;

(iv) the behavior of animals and the connection between their nervous systems and behavior; or

(v) the structure, function, and diversity of organisms.

(2) Qualified admission biology. This course shall meet all of the following requirements:

(A) If the course is offered for high school credit only, the course shall be taught by an instructor who is licensed to teach biology at the secondary level.

(B) The course shall meet the requirements in "standard 3: life science" for grades eight through 12 established by the Kansas state board of education in the "Kansas curricular standards for science education," as approved on November 8, 2005 and hereby adopted by reference.

(C) The course may include additional content upon approval of the chief executive officer of the board of regents or the chief executive officer's designee.

(3) Qualified admission chemistry. This course shall meet all of the following requirements:

(A) If the course is offered for high school credit only, the course shall be taught by an instructor who is licensed to teach chemistry at the secondary level.

(B) The course shall meet the requirements in "standard 2A: chemistry" for grades eight through 12 established by the Kansas state board of education in the "Kansas curricular standards for science education," as approved on November 8, 2005 and hereby adopted by reference.

(C) The course may include additional content upon approval of the chief executive officer of the

board of regents or the chief executive officer's designee.

(4) Qualified admission earth-space science. This course shall meet all of the following requirements:

(A) If the course is offered for high school credit only, the course shall be taught by an instructor who is licensed to teach earth-space science at the secondary level.

(B) The course shall meet the requirements in "standard 4: earth and space science" for grades eight through 12 established by the Kansas state board of education in the "Kansas curricular standards for science education," as approved on November 8, 2005 and hereby adopted by reference.

(C) The course may include additional content upon approval of the chief executive officer of the board of regents or the chief executive officer's designee.

(5) Qualified admission physics. This course shall meet all of the following requirements:

(A) If the course is offered for high school credit only, the course shall be taught by an instructor who is licensed to teach physics at the secondary level.

(B) The course shall meet the requirements in "standard 2B: physics" for grades eight through 12 established by the Kansas state board of education in the "Kansas curricular standards for science education," as approved on November 8, 2005 and hereby adopted by reference.

(C) The course may include additional content upon approval of the chief executive officer of the board of regents or the chief executive officer's designee.

(6) Principles of technology. This course shall include "principles of technology: unit and sub-unit objectives," second edition, established by the center for occupation research and development (CORD), copyrighted 2005 and hereby adopted by reference.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Aug. 1, 2007; amended Oct. 16, 2020.)

**88-29-17. Content requirements for qualified admission social science courses.** Each qualified admission social science course shall meet all of the requirements specified for one of the following courses:

(a) Qualified admission anthropology course. This course shall include instruction in the following topics:

(1) Different theoretical approaches to anthropology;

(2) research methods in anthropology;

(3) cross-cultural examination of marriage and family;

(4) cross-cultural examination of politico-economic organizations;

(5) cross-cultural examination of belief systems;

(6) ethnocentrism compared to cultural relativity;

(7) expressive culture;

(8) cultural change; and

(9) other related topics as approved in advance by the chief executive officer of the board of regents or the chief executive officer's designee.

(b) Qualified admission current social issues course. This course shall include instruction in the following topics:

(1) Theoretical perspectives on social problems;

(2) research methods in social problems;

(3) cross-cultural perspectives in politico-economic problems;

(4) social problems related to social inequities;

(5) social problems related to social institutions;

(6) social problems related to social change; and

(7) other related topics as approved in advance by the chief executive officer of the board of regents or the chief executive officer's designee.

(c) Qualified admission economics course. This course shall meet the curricular standards for high school for economics established by the Kansas state board of education on pages 232 through 239 in the "Kansas curricular standards for history and government; economics and geography" as approved in December 2004, revised on August 22, 2005, and hereby adopted by reference.

(d) Qualified admission United States government course. This course shall meet the curricular standards for high school for civics-government established by the Kansas state board of education on pages 225 through 231 in the "Kansas curricular standards for history and government; economics and geography" as approved in December 2004, revised on August 22, 2005, and hereby adopted by reference.

(e) Qualified admission United States history course. This course shall meet the curricular standards for high school for United States history established by the Kansas state board of education on pages 255 through 262 in the "Kansas curricular standards for history and government; economics and geography" as approved in December 2004, revised on August 22, 2005, and hereby adopted by reference.

(f) Qualified admission international relations course. This course shall include instruction in the following topics:

- (1) Theories of international relations;
- (2) historical background, including the Cold War;
- (3) international law;
- (4) international organizations;
- (5) armed conflict and its causes;
- (6) balance of power, deterrence, and arms control;
- (7) political and economic globalization;
- (8) trade and politics, including economic sanctions;
- (9) religious, ethnic, nationalistic, and humanitarian challenges to global order, including the following:
  - (A) Poverty;
  - (B) disease;
  - (C) militant ideologies;
  - (D) environmental issues;
  - (E) human rights; and
  - (F) terrorism; and
- (10) other related topics as approved in advance by the chief executive officer of the board of regents or the chief executive officer's designee.

(g) Qualified admission psychology course. This course shall include instruction in the following topics:

- (1) Ways to access information on the principles and principal proponents of psychological theories, using accepted methods of scientific inquiry;
- (2) the biological basis of behavior, including the following:
  - (A) Physiology of the brain and nervous system;
  - (B) physiology of the sensory systems; and
  - (C) perceptual processes;
- (3) learning theories and cognitive processes;
- (4) theories of motivation and emotion;
- (5) human life span development;
- (6) major theories of personality;
- (7) major disorders of abnormal psychology and their treatment;
- (8) how the individual, group, and environment influence human interactions; and
- (9) other related topics as approved in advance by the chief executive officer of the board of regents or the chief executive officer's designee.

(h) Qualified admission race and ethnic relations course. This course shall include instruction in the following topics:

- (1) Racism and prejudice in the United States;
- (2) historical issues;

(3) similarities and differences in racial and ethnic group experiences;

- (4) theoretical approaches to race and ethnicity;
- (5) immigration, assimilation, and separatism;
- (6) cultural, economic, and political implications of race and ethnicity;
- (7) current debates related to cultural politics;
- (8) legal issues including antidiscrimination laws, hate crimes, and affirmative action; and
- (9) other related topics as approved in advance by the chief executive officer of the board of regents or the chief executive officer's designee.

(i) Qualified admission sociology course. This course shall include instruction in the following topics:

- (1) The foundations of sociology, including the following:
  - (A) The history and philosophy of sociology;
  - (B) applications of sociology;
  - (C) major sociological perspectives; and
  - (D) sociological research methods and related ethical issues;

(2) the foundations of society, including the following:

- (A) Major components of culture;
- (B) major types of societies;
- (C) the process of socialization;
- (D) the components of social structure;
- (E) social interaction; and
- (F) theories of deviance and types of social control;

(3) social inequality, including the following:

- (A) Major theoretical explanations of social inequality;
- (B) local, national, and global perspectives on social stratification; and
- (C) inequalities associated with gender, sexual orientation, age, race, and ethnicity;

(4) social institutions, including the following:

- (A) Economic institutions; and
- (B) the interrelationships between major social institutions;

(5) social change, including dynamics of population change, environment, and urbanization;

(6) perspectives on collective behavior, social movements, and social change in local, national, and global contexts; and

(7) other related topics as approved in advance by the chief executive officer of the board of regents or the chief executive officer's designee.

(j) Qualified admission world geography course. This course shall meet the curricular standards for high school geography established by the Kansas

state board of education on pages 240 through 249 in the “Kansas curricular standards for history and government; economics and geography” as approved in December 2004, revised on August 22, 2005, and hereby adopted by reference.

(k) Qualified admission world history course. This course shall meet the curricular standards for high school for world history established by the Kansas state board of education on pages 263 through 271 in the “Kansas curricular standards for history and government; economics and geography” as approved in December 2004, revised on August 22, 2005, and hereby adopted by reference.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Aug. 1, 2007; amended Oct. 16, 2020.)

**88-29-18 and 88-29-19.** (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011; revoked Oct. 16, 2020.)

#### Article 29a.—STATE UNIVERSITY ADMISSIONS

**88-29a-1. Definitions.** This regulation shall be applicable to each state educational institution’s review of applications beginning with the 2016 summer session and through the end of the 2021 spring session. Each of the following terms, wherever used in this article or in article 29 of the board of regents’ regulations, shall have the meaning specified in this regulation:

(a) “Accredited high school” means one or more educational institutions that provide secondary instruction to students in grades 9, 10, 11, and 12 and that are designated accredited, or are within an education system designated accredited, by an accrediting agency recognized by the United States department of education, by the Kansas state board of education, or by an agency with standards equivalent to those of the United States department of education or the Kansas state board of education.

(b) “Admission” means the permission given by the admission officer of a state educational institution to an applicant to enroll as a degree-seeking student in a state educational institution.

(c) “Admission category” means one of the admission categories adopted by a state educational institution pursuant to K.A.R. 88-29-3.

(d) “Complete application file” means the entire set of the following student records that have been received in the admission office of a state educational institution:

(1) A completed application to the state educational institution;

(2) verification that all applicable application fees have been paid;

(3) an official copy of the final transcript from each high school attended, including a transcript documenting graduation from high school, or a high school equivalency credential;

(4) when required pursuant to K.A.R. 88-29a-5 or K.A.R. 88-29a-7, an official copy of all ACT or SAT scores; and

(5) any other materials required by the state educational institution for advising or placement purposes.

(e) “Degree-seeking student” means a student who has been accepted for enrollment at a state educational institution and who has formally indicated to the state educational institution the intent to complete a program of study that is designated by the United States department of education as a program that is eligible for federal financial aid.

(f) “Earned a high school equivalency credential with at least the prescribed minimum scores” means one of the following:

(1) Took the GED test on or after January 1, 2014, with an overall score of at least 680 points and a minimum score of 150 points on each subset;

(2) took the high school equivalency test (HISSET) on or after January 1, 2014, with an overall score of at least 75 points and a minimum score of 8 points on each subtest;

(3) took the GED test on or after January 1, 2002 and before January 1, 2014, with an overall score of at least 2,550 points and a minimum score of 510 points on each subtest; or

(4) took the GED test before January 1, 2002, with an overall score of at least 250 points and a minimum score of 50 points on each subtest.

(g) “Exception window for nonresident freshman class admissions” means a method by which any state educational institution, pursuant to K.A.R. 88-29a-8c, may admit a person who is not a resident of Kansas, who does not meet the applicable requirements specified in K.A.R. 88-29-4, K.A.R. 88-29a-7, or K.A.R. 88-29a-7a, and who is not eligible for admission pursuant to the exception window for nonresident transfer admissions.

(h) “Exception window for nonresident transfer admissions” means a method by which any state

educational institution, pursuant to K.A.R. 88-29-8b, may admit a person who is not a resident of Kansas and who has earned at least 24 transferable college credit hours but who is not eligible for admission pursuant to K.A.R. 88-29-4.

(i) “Exception window for resident freshman class admissions” means a method by which any state educational institution, pursuant to K.A.R. 88-29a-8, may admit a Kansas resident who does not meet the applicable requirements specified in K.A.R. 88-29-4, K.A.R. 88-29a-5, or K.A.R. 88-29a-6 and who is not eligible for admission pursuant to the exception window for resident transfer admissions.

(j) “Exception window for resident transfer admissions” means a method by which any state educational institution, pursuant to K.A.R. 88-29-8a, may admit a Kansas resident who has earned at least 24 transferable college credit hours but who is not eligible for admission pursuant to K.A.R. 88-29-4.

(k) “Institution of higher education” means an educational institution in any state, territory, or country that meets the following criteria:

(1) Meets one of the following requirements:

(A) Offers a course of instruction designated by the United States department of education as a program that is eligible for federal financial aid; or

(B) offers a course of instruction that is equivalent to a program designated by the United States department of education as a program that is eligible for federal financial aid;

(2) is legally authorized within the state, territory, or country that appears on the transcript to provide a program of education beyond secondary education; and

(3) meets one of the following requirements:

(A) Is accredited by an accrediting agency or association that is recognized by the United States department of education or an international accrediting agency; or

(B) has been granted preaccreditation status by an accrediting agency or association that is recognized by either the United States department of education or an international accrediting agency.

(l) “Integrated course” means a course that redistributes the content of two or more qualified admission precollege curriculum courses into a nontraditional combination. A nontraditional combination may combine the content of qualified admission algebra I and qualified admission geometry over a period of four semesters in a sequence of courses titled integrated math I and II.

(m) “Kansas resident” means a person determined to be a resident for fee purposes, pursuant to K.S.A. 76-729 and amendments thereto.

(n) “Non-accredited private secondary school” has the meaning specified in K.A.R. 88-26-1. This term may include a home school.

(o) “Non-degree-seeking student” means a student who has been accepted for enrollment in a state educational institution and who has formally indicated to the state educational institution the intent to enroll for self-enrichment or other reasons, excluding the intent to complete a course of study that is designated by the United States department of education as a program that is eligible for federal financial aid.

(p) “Precollege,” when used to describe a course or curriculum, means a type of course or curriculum offered at an accredited high school that meets both of the following conditions:

(1) The course or curriculum is designed for a student performing at or above the student’s grade level as determined by standardized testing.

(2) The content and requirements of the course or curriculum have been determined by the board of regents or the board’s designee to reflect a pace of instruction, intensity and depth of material, level of abstraction, and application of critical thinking necessary to prepare students for study at state educational institutions.

(q) “State educational institution” has the meaning specified in K.S.A. 76-711, and amendments thereto, except that, as used in this article or in article 29 of the board of regents’ regulations, the term shall not include the university of Kansas.

(r) “Transferable college credit hours” means postsecondary coursework that an admitting state educational institution will accept.

(s) “Unit” means a measure of secondary credit that may be awarded to a student for satisfactory completion of a particular course or subject, as determined by the local school district.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Feb. 1, 2013; amended April 24, 2015; amended Oct. 16, 2020.)

**88-29a-2. Scope.** This regulation shall be applicable to each state educational institution’s review of applications beginning with the 2015 summer session. Unless expressly stated as applicable to non-degree-seeking students, this article shall apply only to undergraduate degree-seeking students at any state educational institution. (Au-

thorized by and implementing K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; effective Feb. 1, 2013.)

**88-29a-5. Qualifications required for the admission of a Kansas resident who is under the age of 21.** This regulation shall be applicable to each state educational institution's review of applicants beginning with the 2015 summer session and through the end of the 2021 spring session.

(a) The requirements in this regulation shall apply to any applicant who is a Kansas resident and is under the age of 21, except that the requirements shall not apply to any applicant who has earned 24 or more credit hours from an institution of higher education that are transferable to a state educational institution. If an applicant to whom this regulation is applicable does not meet the requirements of this regulation, the applicant may be admitted by means of the exception window for resident freshman class admissions described in K.A.R. 88-29a-8.

(b) Each state educational institution shall admit any Kansas resident under the age of 21 who meets the following requirements:

(1) Has graduated from an accredited high school in Kansas or, pursuant to K.S.A. 76-717b and amendments thereto, an accredited high school located out of state;

(2) has completed one of the following with a minimum grade point average of 2.0 on a 4.0 scale:

(A) The qualified admission precollege curriculum described in K.A.R. 88-29a-11;

(B) the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3; or

(C) for eligible applicants, the qualified admission precollege curriculum functional equivalent described in K.A.R. 88-29a-18 (a) through (e) or in K.A.R. 88-29a-18(f);

(3) meets at least one of the following criteria:

(A) Has achieved a composite score or a super-score on the ACT of at least 21; or

(B) has ranked in the top third of the applicant's high school class upon completion of seven or eight semesters; and

(4) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours.

(c) Each state educational institution shall admit any Kansas resident under the age of 21 who meets the following requirements:

(1) Has graduated from a non-accredited private secondary school;

(2) has completed one of the following:

(A) Coursework equivalent to the qualified admission precollege curriculum as described in K.A.R. 88-29a-11; or

(B) coursework equivalent to the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3;

(3) has achieved a composite score or a super-score on the ACT of at least 21; and

(4) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours.

(d) Each state educational institution shall admit any Kansas resident who is under the age of 21 and who meets the following requirements:

(1) Has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29a-1;

(2) has achieved a composite score or a super-score on the ACT of at least 21; and

(3) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective July 22, 2011; amended April 13, 2012; amended April 24, 2015; amended Oct. 16, 2020.)

**88-29a-6. Qualifications required for the admission of a Kansas resident who is 21 or older.**

(a) The requirements in this regulation shall apply to any applicant who is a Kansas resident and who will be 21 or older on the first day of classes at the state educational institution to which the student is applying, except that the requirements shall not apply to any applicant who has earned 24 or more credit hours from an institution of higher education that are transferable to a state educational institution. If an applicant to whom this regulation is applicable does not meet the requirements of this regulation, the applicant may be admitted by means of the exception window described in K.A.R. 88-29a-8.

(b) Each state educational institution shall admit any Kansas resident who is 21 or older and who meets one of the following criteria:

(1) Has graduated from an accredited high school in Kansas or, pursuant to K.S.A. 76-717b and amendments thereto, an accredited high school located out of state;

(2) has graduated from a non-accredited private secondary school; or

(3) has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29a-1. (Authorized by and implementing K.S.A. 76-717; effective July 22, 2011; amended April 13, 2012; amended April 24, 2015; amended Oct. 16, 2020.)

**88-29a-7. Qualifications required for the admission of a nonresident who is under the age of 21.** This regulation shall be applicable to each state educational institution's review of applicants beginning with the 2015 summer session and through the end of the 2021 spring session.

(a) The requirements in this regulation shall apply to any applicant who is a nonresident and is under the age of 21, except that the requirements shall not apply to any applicant who has earned 24 or more transferable college credit hours. If an applicant to whom this regulation is applicable does not meet the requirements in this regulation, the applicant may be admitted by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29a-8c.

(b) Any state educational institution may admit any nonresident under the age of 21 who meets the following requirements:

(1) Has graduated from an accredited high school;

(2) has completed one of the following with a minimum grade point average of 2.5 on a 4.0 scale:

(A) The qualified admission precollege curriculum described in K.A.R. 88-29a-11;

(B) the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3; or

(C) the qualified admission precollege curriculum functional equivalent described in K.A.R. 88-29a-19;

(3) meets at least one of the following criteria:

(A) Has achieved a composite score or a super-score on the ACT of at least 21; or

(B) has ranked in the top third of the applicant's high school class upon completion of seven or eight semesters; and

(4) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours.

(c) Any state educational institution may admit any nonresident under the age of 21 who meets the following requirements:

(1) Has graduated from a non-accredited private secondary school;

(2) has completed one of the following with a minimum grade point average of 2.5 on a 4.0 scale:

(A) Coursework equivalent to the qualified admission precollege curriculum as described in K.A.R. 88-29a-11; or

(B) coursework equivalent to the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3;

(3) has achieved a composite score or a super-score on the ACT of at least 21; and

(4) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours.

(d) Any state educational institution may admit any nonresident under the age of 21 who meets the following requirements:

(1) Has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29a-1;

(2) has achieved a composite score or a super-score on the ACT of at least 21; and

(3) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective July 22, 2011; amended April 13, 2012; amended Feb. 1, 2013; amended April 24, 2015; amended Oct. 16, 2020.)

**88-29a-7a. Qualifications required for the admission of a nonresident who is 21 or older.**

(a) The requirements of this regulation shall apply to any applicant who is a nonresident and who will be 21 or older on the first day of classes at the state educational institution to which the student is applying, except that this regulation shall not apply to any applicant who has earned 24 or more credit hours from an institution of higher education that are transferable to a state educational institution. If an applicant to whom this regulation is applicable does not meet the requirements of this regulation, the applicant may be admitted by means of the exception window described in K.A.R. 88-29a-8c.

(b) Any state educational institution may admit any nonresident who is 21 or older and who meets one of the following criteria:

(1) Has graduated from an accredited high school; or

(2) has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29a-1 or K.A.R. 88-29c-1. (Authorized by and implementing K.S.A. 76-717; effective July 22, 2011; amended April 13, 2012; amended April 24, 2015; amended Oct. 16, 2020.)

**88-29a-8. The exception window for resident freshman class admissions.** This regulation shall be applicable to each state educational institution's review of applicants beginning with the 2015 summer session. (a) Any state educational institution may admit any Kansas resident who does not meet the applicable requirements specified in K.A.R. 88-29a-5 or K.A.R. 88-29a-6 and who has earned fewer than 24 transferable college credit hours by means of the exception window for resident freshman class admissions. The maximum number of students admitted by means of this exception window shall be calculated as follows:

(1) The total number of admitted new students who have earned fewer than 24 transferable college credit hours, regardless of admission category, shall be counted on the twentieth day of the fall, spring, and summer sessions of each academic year.

(2) The maximum number of admissions calculated using this exception window shall be equal to 10 percent of the sum of the three numbers counted in paragraph (a)(1).

(b) In determining which students to admit as exceptions pursuant to this regulation, the state educational institution shall give preference to persons who are in military service, as defined in K.S.A. 76-717 and amendments thereto.

(c) If the state educational institution exceeds the allotted number of admissions using this exception window, the excess over the allowable total number of exceptions shall be subtracted from the subsequent year's allowable total number of exceptions for resident freshman class admissions.

(d) Each state educational institution shall require each student who is admitted as an exception to the minimum qualified admission standards pursuant to this regulation to adopt an individual plan for success, before enrollment, and subsequently review that individual plan for success, as required by K.S.A. 76-717 and amendments thereto. (Authorized by and implementing K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; effective July 22, 2011; amended Feb. 1, 2013.)

**88-29a-8c. The exception window for nonresident freshman class admissions.** This regulation shall be applicable to each state educational institution's review of applicants beginning with the 2015 summer session. (a) Any state educational institution may admit any nonresident who does not meet the applicable requirements

specified in K.A.R. 88-29a-7 or K.A.R. 88-29a-7a and who has earned fewer than 24 transferable college credit hours, by means of the exception window for nonresident freshman class admissions. The maximum number of students admitted by means of this exception window shall be calculated as follows:

(1) The total number of admitted new nonresident students who have earned fewer than 24 transferable college credit hours, regardless of admission category, shall be counted on the twentieth day of the fall, spring, and summer sessions of each academic year.

(2) The maximum number of admissions that may be made using this exception window shall be equal to 10 percent of the sum of the three numbers counted in paragraph (a)(1) or 50 students, whichever is greater.

(b) In determining which students to admit as exceptions pursuant to this regulation, the state educational institution shall give preference to persons who are in military service, as defined in K.S.A. 76-717 and amendments thereto.

(c) If the state educational institution exceeds the allotted number of admissions using this exception window, the excess over the allowable total number of exceptions shall be subtracted from the subsequent year's allowable total number of exceptions for nonresident freshman class admissions.

(d) Each state educational institution shall require each student who is admitted as an exception to the minimum qualified admission standards pursuant to this regulation to adopt an individual plan for success, before enrollment, and subsequently review that individual plan for success, as required by K.S.A. 76-717 and amendments thereto. (Authorized by and implementing K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; effective July 22, 2011; amended Feb. 1, 2013.)

**88-29a-9. Admission policies for state educational institutions.** This regulation shall be applicable to each state educational institution's review of applicants beginning with the 2015 summer session and through the end of the 2021 spring session. The president of each state educational institution or a designee shall establish admission policies that meet all of the following requirements:

(a) The policies shall not conflict with the provisions of this article of the board of regents' regulations.

(b) The policies shall specify the materials required for a complete application file.

(c) The policies shall address the enrollment of both degree-seeking and non-degree-seeking students as well as each student's transition from degree-seeking to non-degree-seeking status or from non-degree-seeking to degree-seeking status. Policies shall mandate that each non-degree-seeking student who applies to enroll as a degree-seeking student shall be admitted only if one of the following conditions is met:

(1) The student meets the applicable requirements specified in K.A.R. 88-29-4 and K.A.R. 88-29a-5 through 88-29a-7a.

(2) The student is admitted by means of the exception window for resident freshmen class admissions described in K.A.R. 88-29a-8.

(3) The student is admitted by means of the exception window for resident transfer admissions described in K.A.R. 88-29-8a.

(4) The student is admitted by means of the exception window for nonresident transfer admissions described in K.A.R. 88-29-8b.

(5) The student is admitted by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29a-8c.

(d) The policies shall include an explanation of the exception windows and the state educational institution's method to determine which applicants would be admitted if there were more applicants than the state educational institution is allowed under K.A.R. 88-29a-8, K.A.R. 88-29-8a, K.A.R. 88-29-8b, or K.A.R. 88-29a-8c.

(e) The policies may include the establishment of subcategories of non-degree-seeking students.

(f) The policies shall include a statement indicating whether the state educational institution will consider, in the admission decision, any post-secondary credit from an institution that is not accredited and has not been granted preaccreditation status by an agency recognized by the United States department of education or by an equivalent international agency. If the state educational institution considers these credits, the admission decision shall be made in accordance with K.A.R. 88-29-4.

(g) The policies shall include a statement of whether the state educational institution enrolls students in the temporary or provisional admission category.

(1) If the state educational institution enrolls any students in the temporary admission category, the policies shall include the following:

(A) A description of requirements for exiting the temporary admission category and entering another admission category;

(B) a statement that a temporarily admitted student may be denied admission to a specific degree program;

(C) a statement that each student who fails to exit from the temporary admission category within the specified period of time shall be disenrolled;

(D) a statement that each applicant who is admitted in the temporary admission category pursuant to K.A.R. 88-29a-10(a)(2) or K.A.R. 88-29a-10(b)(2) shall be allowed to exit from the temporary admission category and enter the regular admission category only upon verification of high school graduation; and

(E) a statement that each applicant who is admitted into the temporary admission category pursuant to K.A.R. 88-29a-10(b)(3) shall be allowed to exit the temporary admission category and enter the regular admission category only upon verification that the applicant meets both of the following requirements:

(i) Remained in the top third of the class after the applicant's seventh semester or returned to the top third of the applicant's class during the eighth semester; and

(ii) graduated from high school.

(2) If the state educational institution enrolls any students in the provisional admission category, the policies shall include the following:

(A) A description of requirements for exiting the provisional admission category and entering another admission category;

(B) a statement that any student admitted in the provisional admission category may be denied admission to a specific degree program; and

(C) a statement that each student who fails to exit from the provisional admission category within the period of time specified by the state educational institution shall be disenrolled.

(3) The state educational institution's policy shall mandate that a student who meets the criteria for both the temporary and the provisional admission categories shall not be granted regular admission until the student fulfills the requirements for exiting each of the categories in which the student is initially enrolled.

(h) The admission policy of each state educational institution shall be required to be approved in advance by the board of regents.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and im-

plementing K.S.A. 76-717; effective July 22, 2011; amended Oct. 16, 2020.)

**88-29a-10. Methods for state educational institutions to use when evaluating qualifications for admission.** This regulation shall be applicable to each state educational institution's review of applicants beginning with the 2015 summer session and through the end of the 2021 spring session.

(a) Each admission officer at a state educational institution shall consider an applicant's ACT or SAT scores as follows:

(1) A documented score of 1060 on the SAT, excluding the writing portion of the SAT, shall be deemed the equivalent of a composite score of 21 or superscore of 21 on the ACT for purposes of this article of the board of regents' regulations.

(2) A documented composite score or a documented superscore of 21 or above on the ACT may be used to admit an applicant in the temporary admission category after the applicant's completion of the sixth high school semester, without further review of the applicant's materials.

(3) The admission officer shall consider the applicant's best ACT-issued composite score or superscore for admission decisions.

(4) If an applicant has taken both the ACT and the SAT, the admission officer shall consider the applicant's better score on the two tests for admission decisions.

(b) Each admission officer at a state educational institution shall consider class rank as follows:

(1) If class rank cannot be determined, the admission officer shall not admit an applicant under this criterion.

(2) If an applicant's documented class rank is in the top third of the applicant's class after the applicant's seventh semester of high school, the class rank may be used to admit an applicant into the temporary admission category without further review of the applicant's materials.

(3) If an applicant's documented class rank is in the top third of the applicant's class after the applicant's sixth semester of high school, the class rank may be used to admit an applicant into the temporary admission category without further review of the applicant's materials.

(c) If the high school has not already calculated the grade point average in the qualified admission precollege curriculum and provided that information on the official high school transcript, each admission officer at a state educational institu-

tion shall calculate the grade point average in the qualified admission precollege curriculum for any applicant seeking admission pursuant to K.A.R. 88-29a-11, as follows:

(1) The admission officer shall ensure that the requirements of K.A.R. 88-29a-11 are met before calculating the grade point average.

(2) The admission officer shall calculate a grade point average only for approved qualified admission precollege curriculum courses appearing on the official high school transcript.

(3) The admission officer shall consider a course to be part of the approved qualified admission precollege curriculum only if the course was approved in accordance with K.A.R. 88-29a-11 for the semester and year in which the applicant completed the course and if the applicant earned a grade of D or better.

(4) The admission officer shall consider a course to be part of the approved qualified admission precollege curriculum only if the course code that appears on the official high school transcript is the same as the course code of the approved course.

(5)(A) If the high school transcript reports grades on a four-point scale, the admission officer shall calculate grade point averages in the approved qualified admission precollege curriculum by assigning four points to a grade of A, three points to a grade of B, two points to a grade of C, and one point to a grade of D. Pluses and minuses shall not be considered in the calculation.

(B) If the high school transcript reports grades on a scale other than a four-point scale, the admission officer shall mathematically convert the grades to a four-point scale and assign points as described in paragraph (c)(5)(A).

(6) The admission officer shall consider grades of P or pass as follows:

(A) If the high school transcript indicates that a P is equivalent to a grade of D or higher, the admission officer shall assign one grade point to each grade of P.

(B) If the high school transcript indicates that a P is equivalent to a grade of C or higher, the admission officer shall assign two grade points to each grade of P.

(C) If the high school transcript does not indicate the minimum letter grade corresponding to a P, the admission officer shall assign one grade point to each grade of P.

(7) If an applicant has retaken an approved qualified admission precollege course, the admission officer shall use the highest grade when cal-

culating the grade point average for the approved qualified admission precollege curriculum.

(8) If an applicant has taken a college course to meet the requirements for the approved qualified admission precollege curriculum and if this college course appears on the applicant's official high school transcript, the admission officer shall calculate the grade for the college course, for purposes of determining the precollege curriculum grade point average as follows:

(A) Each college course with three or more credit hours, but no more than five credit hours, shall be treated as a one-unit high school course.

(B) Each college course with more than five credit hours shall be treated as a two-unit high school course.

(d) If the high school has not already calculated the grade point average in the Kansas scholars curriculum and provided that information on the official high school transcript, each admission officer at a state educational institution shall calculate the grade point average in the Kansas scholars curriculum for any applicant seeking admission pursuant to K.A.R. 88-13-3, as follows:

(1) The admission officer shall ensure that the requirements established pursuant to K.A.R. 88-13-3 are met before calculating the grade point average.

(2) The admission officer shall calculate a grade point average only for approved Kansas scholars curriculum courses appearing on the official high school transcript.

(3) The admission officer shall consider a course to be part of the approved Kansas scholars curriculum only if the course was approved in accordance with guidelines established pursuant to K.A.R. 88-13-3 and if the applicant earned a grade of D or better.

(4)(A) If the high school transcript reports grades on a four-point scale, the admission officer shall calculate grade point averages in the approved Kansas scholars curriculum by assigning four points to a grade of A, three points to a grade of B, two points to a grade of C, and one point to a grade of D. Pluses and minuses shall not be considered in the calculation.

(B) If the high school transcript reports grades on a scale other than a four-point scale, the admission officer shall mathematically convert the grades to a four-point scale and assign points as described in paragraph (c)(5)(A).

(5) The admission officer shall consider grades of P or pass as follows:

(A) If the high school transcript indicates that a P is equivalent to a grade of D or higher, the admission officer shall assign one grade point to each grade of P.

(B) If the high school transcript indicates that a P is equivalent to a grade of C or higher, the admission officer shall assign two grade points to each grade of P.

(C) If the high school transcript does not indicate the minimum letter grade corresponding to a P, the admission officer shall assign one grade point to each grade of P.

(6) If an applicant has retaken an approved Kansas scholars course, the admission officer shall use the highest grade when calculating the grade point average for the approved Kansas scholars curriculum.

(7) If an applicant has taken a college course to meet the requirements for the approved Kansas scholars curriculum and this college course appears on the applicant's official high school transcript, the admission officer shall calculate the grade in the college course, for purposes of determining the Kansas scholars curriculum grade point average, as follows:

(A) Each college course with at least three but no more than five credit hours shall be treated as a one-unit high school course.

(B) Each college course with more than five credit hours shall be treated as a two-unit high school course.

(e) If the high school has not already calculated the grade point average in the qualified admission precollege curriculum and provided that information on the official high school transcript, each admission officer at a state educational institution shall calculate the grade point average in the qualified admission precollege curriculum for any resident applicant seeking admission pursuant to K.A.R. 88-29a-18(a) through (e), as follows:

(1) The admission officer shall ensure that the requirements of K.A.R. 88-29a-18(a) through (e) are met before calculating the grade point average.

(2) The admission officer shall calculate the grade point average of approved qualified admission precollege curriculum courses taken from an accredited Kansas high school as described in paragraphs (c)(2) through (c)(8)(B).

(3) The admission officer shall calculate the grade point average of college preparatory courses taken from a high school located outside the state of Kansas as follows:

(A) The applicant shall have earned a grade of D or better.

(B)(i) If the high school transcript reports grades on a four-point scale, the admission officer shall calculate grade point averages in the qualified admission precollege curriculum by assigning four points to a grade of A, three points to a grade of B, two points to a grade of C, and one point to a grade of D. Pluses and minuses shall not be considered in the calculation.

(ii) If the high school transcript reports grades on a scale other than a four-point scale, the admission officer shall mathematically convert the grades to a four-point scale and assign points as described in paragraph (c)(5)(A).

(4) The admission officer shall consider grades of P or pass as follows:

(A) If the high school transcript indicates that a P is equivalent to a grade of D or higher, the admission officer shall assign one grade point to each grade of P.

(B) If the high school transcript indicates that a P is equivalent to a grade of C or higher, the admission officer shall assign two grade points to each grade of P.

(C) If the high school transcript does not indicate the minimum letter grade corresponding to a P, the admission officer shall assign one grade point to each grade of P.

(5) If an applicant has retaken a qualified admission precollege course, the admission officer shall use the highest grade when calculating the grade point average for the qualified admission precollege curriculum.

(6) If an applicant has taken a college course to meet the requirements for the qualified admission precollege curriculum and this college course appears on the applicant's official high school transcript, the admission officer shall calculate the grade in the college course, for purposes of determining the precollege curriculum grade point average, as follows:

(A) Each college course with at least three but no more than five credit hours shall be treated as a one-unit high school course.

(B) Each college course with more than five credit hours shall be treated as a two-unit high school course.

(f) For any resident applicant seeking admission pursuant to K.A.R. 88-29a-18(f), the admission officer shall calculate the grade point average in the qualified admission precollege curriculum as follows:

(1) The admission officer shall ensure that the requirements of K.A.R. 88-29a-18(f) are met before calculating the grade point average.

(2) The admission officer shall calculate the grade point average of qualified admission precollege curriculum courses taken from an accredited Kansas high school as described in paragraphs (c)(2) through (c)(8)(B).

(3) The admission officer shall calculate the grade point average of college preparatory courses taken from high schools located outside the state of Kansas as described in paragraphs (e)(3) through (e)(6)(B).

(4) The admission officer shall calculate the grade point average of qualified admission precollege curriculum courses taken after high school graduation as described in paragraphs (e)(6)(A) and (e)(6)(B).

(g) If the high school has not already calculated the grade point average in the college preparatory curriculum established by the state in which the applicant is a resident and provided that information on the official high school transcript, each admission officer at a state educational institution shall calculate the grade point average for that state's college preparatory curriculum for any nonresident applicant seeking admission pursuant to K.A.R. 88-29a-19(a) as follows:

(1) The admission officer shall ensure that the requirements of K.A.R. 88-29a-19(a) are met before calculating the grade point average.

(2) The admission officer shall calculate a grade point average only for college preparatory courses appearing on the official high school transcript.

(3) The admission officer shall consider a course to be part of the approved college preparatory curriculum only if the applicant earned a grade of D or better.

(4)(A) If the high school transcript reports grades on a four-point scale, the admission officer shall calculate grade point averages in the approved college preparatory curriculum by assigning four points to a grade of A, three points to a grade of B, two points to a grade of C, and one point to a grade of D. Pluses and minuses shall not be considered in the calculation.

(B) If the high school transcript reports grades on a scale other than a four-point scale, the admission officer shall mathematically convert the grades to a four-point scale and assign points as described in paragraph (c)(5)(A).

(5) The admission officer shall consider grades of P or pass as follows:

(A) If the high school transcript indicates that a P is equivalent to a grade of D or higher, the admission officer shall assign one grade point to each grade of P.

(B) If the high school transcript indicates that a P is equivalent to a grade of C or higher, the admission officer shall assign two grade points to each grade of P.

(C) If the high school transcript does not indicate the minimum letter grade corresponding to a P, the admission officer shall assign one grade point to each grade of P.

(6) If an applicant has retaken a college preparatory course, the admission officer shall use the highest grade when calculating the grade point average for the college preparatory curriculum.

(7) If an applicant has taken a college course to meet the requirements for the college preparatory curriculum and this college course appears on the applicant's official high school transcript, the admission officer shall calculate the grade in the college course, for purposes of determining the college preparatory curriculum grade point average, as follows:

(A) Each college course with at least three but no more than five credit hours shall be treated as a one-unit high school course.

(B) Each college course with more than five credit hours shall be treated as a two-unit high school course.

(h) At the time of admission of an applicant, the state educational institution shall notify the applicant of the following:

(1) The category or categories in which the applicant is admitted;

(2) any enrollment restrictions associated with the applicant's category or categories of admission; and

(3) the requirements for removing any enrollment restrictions associated with the applicant's category or categories of admission.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective July 22, 2011; amended April 13, 2012; amended Oct. 16, 2020.)

**88-29a-11. Requirements for the qualified admission precollege curriculum.** This regulation shall be applicable to each state educational institution's review of applicants beginning with the academic year 2014-2015 summer session and through the end of the 2021 spring session. In order to admit any applicant under

the qualified admission precollege curriculum criteria, each state educational institution shall require the applicant to provide an official high school transcript documenting completion of the approved qualified admission precollege curriculum specified in this regulation.

For each student graduating from high school in or after academic year 2014-2015 and in or before academic year 2020-2021, the qualified admission precollege curriculum shall consist of courses that are among those listed in the document titled "Kansas board of regents precollege curriculum courses approved for university admissions," revised May 4, 2016, which is hereby adopted by reference. If a course was approved by the board and included in the March 11, 2014 list of "Kansas board of regents precollege curriculum courses approved for university admissions," which is hereby adopted by reference, and the student successfully completed the course in an academic year for which the course was approved, then that course shall count toward the student's qualified admission curriculum requirements in the subject area for which the course was approved. The qualified admission precollege curriculum shall consist of the following distribution of courses:

(a) One of the following:

(1) Four units of approved qualified admission English courses, which shall include reading, writing, and literature; or

(2) four units of approved qualified admission English courses, of which three and  $\frac{1}{2}$  units shall include reading, writing, and literature and  $\frac{1}{2}$  unit of speech;

(b)(1) If the student has achieved the ACT or SAT college readiness math benchmark, three units of approved qualified admission mathematics courses that meet the following requirements:

(A) The course shall be completed in the ninth through twelfth grades; and

(B) the course shall be selected from any of the following courses:

(i) Qualified admission algebra I;

(ii) qualified admission geometry;

(iii) qualified admission algebra II;

(iv) any mathematics course that has qualified admission algebra II as a prerequisite; or

(v) any other course approved by the chief executive officer of the board of regents or the chief executive officer's designee; or

(2) if the student has not achieved the ACT or SAT college readiness math benchmark, four units of approved qualified admission mathemat-

ics courses, one of which shall be taken in the year the student graduates high school, that meet the following requirements:

(A) The course shall be completed in the ninth through twelfth grades;

(B) at least three of the courses shall be selected from any of the following courses:

- (i) Qualified admission algebra I;
- (ii) qualified admission geometry;
- (iii) qualified admission algebra II;
- (iv) any mathematics course that has qualified admission algebra II as a prerequisite; or

(v) any other course approved by the chief executive officer of the board of regents or the chief executive officer's designee; and

(C) the fourth unit may be selected from any other mathematics courses prescribed by the local school district and designed to prepare students for college;

(c) three units of approved qualified admission natural science courses that meet the following requirements:

(1) The three units shall be selected from any of the following courses:

- (A) Qualified admission biology;
- (B) qualified admission advanced biology;
- (C) qualified admission chemistry;
- (D) qualified admission physics;
- (E) qualified admission earth-space science;
- (F) qualified admission principles of technology; or

(G) any other course approved by the chief executive officer of the board of regents or the chief executive officer's designee; and

(2) at least one unit shall be selected from a qualified admission chemistry course or a qualified admission physics course;

(d) three units of approved qualified admission social science courses, which shall include instruction in United States history, United States government, and geography; and

(e) three units of elective courses selected from any of the following categories:

- (1) English;
- (2) mathematics;
- (3) natural science;
- (4) social science;
- (5) foreign language;
- (6) personal finance;
- (7) speech, debate, or forensics;
- (8) journalism;
- (9) computer or information systems;
- (10) fine arts;

(11) career and technical education; or

(12) any other course approved by the chief executive officer of the board of regents or the chief executive officer's designee.

This regulation shall have no force and effect after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective July 22, 2011; amended April 13, 2012; amended Oct. 16, 2020.)

**88-29a-18. Functional equivalents of the qualified admission precollege curriculum; residents.** In order to admit an applicant under the criterion of successful completion of the functional equivalent of the precollege curriculum, the admission officer of each state educational institution shall require each applicant who is a resident of Kansas, who graduates from high school in academic year 2014-2015 or later, and who applies for admission to attend before the 2021 summer semester to meet the requirements specified in subsections (a) through (e) or in subsection (f). An admission officer of a state educational institution shall not grant any exception to this regulation. The admission officer shall utilize subsections (a) through (e) only for resident applicants who have completed 15 or fewer quarters of high school in Kansas.

(a) To demonstrate successful completion of the functional equivalent of the qualified admission precollege English courses described in K.A.R. 88-29a-11, each applicant shall provide documentation on the official high school transcript of completion of any four units of high school English. A general education English course consisting of three or more semester hours taken before high school graduation and either offered by or accepted in transfer by a state educational institution may be substituted for one unit of high school English. The course shall be documented on the official high school transcript.

(b) To demonstrate successful completion of the functional equivalent of the qualified admission precollege natural science courses described in K.A.R. 88-29a-11, each applicant shall provide documentation on the official high school transcript of completion of any three units of high school natural science courses chosen from one of the following areas:

- (1) Biology;
- (2) chemistry;
- (3) physics;
- (4) earth or space science;
- (5) principles of technology;

- (6) integrated science;
- (7) physical science; or
- (8) environmental science.

A general education natural science course consisting of three or more semester hours taken before high school graduation and either offered by or accepted in transfer by a state educational institution may be substituted for one unit of high school natural science. The course shall be documented on the official high school transcript.

(c) To demonstrate successful completion of the functional equivalent of the qualified admission precollege social science courses described in K.A.R. 88-29a-11, each applicant shall provide documentation on the official high school transcript of completion of any three units of high school social science courses that meet Kansas high school graduation requirements.

A general education social science course consisting of three or more semester hours taken before high school graduation and either offered by or accepted in transfer by a state educational institution may be substituted for one unit of high school social science. The course shall be documented on the official high school transcript.

(d) To demonstrate successful completion of the functional equivalent of the qualified admission precollege elective courses described in K.A.R. 88-29a-11, each applicant shall provide documentation on the official high school transcript of completion of any three units of fine arts, computer or information systems, foreign languages, personal finance, speech, debate, forensics, journalism, career and technical education courses, or units of English, mathematics, social science, or natural science that are in addition to those required in subsections (a) through (c) and subsection (e).

A general education course consisting of three or more semester hours in English, mathematics, social science, natural science, fine arts, computer or information systems, foreign language, personal finance, speech, debate, forensics, journalism, or career and technical education taken before high school graduation and either offered by or accepted in transfer by a state educational institution may be substituted for one unit of high school electives. The course shall be documented on the official high school transcript.

(e) Each applicant shall provide official documentation of successful completion of the math requirements specified in K.A.R. 88-29a-11(b)(1) or (b)(2).

(f) Any admission officer may utilize this subsection for any resident applicant who, upon high school graduation, has met most but not all of the precollege curriculum requirements specified in K.A.R. 88-29a-11, or the functional equivalents specified in subsections (a) through (e). Any resident applicant not meeting the precollege curriculum requirements of K.A.R. 88-29a-11, or the functional equivalents specified in subsections (a) through (e), may complete college credit courses to meet the unfulfilled precollege curriculum requirements, if all the following requirements are met:

(1) The course shall be transferable to a state educational institution.

(2) The course shall be three or more semester hours.

(3) The course shall be in the same subject area as the identified deficiency.

(4) The applicant shall submit documentation on the official college transcript of completion of the course.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective July 22, 2011; amended April 13, 2012; amended Oct. 16, 2020.)

**88-29a-19. Functional equivalents of the qualified admission precollege curriculum; nonresidents.** In order to admit an applicant under the criterion of successful completion of the functional equivalent of the precollege curriculum, the admission officer of each state educational institution shall require each applicant who is not a resident of Kansas, who graduates from high school in academic year 2014-2015 or later, and who applies for admission to attend before the 2021 summer session to meet at least one of the sets of requirements specified in subsections (a) and (b). An admission officer of a state educational institution shall not grant any exception to this regulation.

To demonstrate successful completion of the functional equivalent of the qualified admission precollege curriculum described in K.A.R. 88-29a-11, each applicant shall provide one of the following:

(a) Documentation on the official high school transcript of completion of the college preparatory curriculum established by the state in which the applicant is a resident. This option may be used only if the resident state's college preparatory curriculum is at least as rigorous as that required by K.A.R. 88-29a-11; or

(b) official documentation of achievement of all four ACT college readiness benchmarks.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective July 22, 2011; amended April 13, 2012; amended Oct. 16, 2020.)

**Article 29b.—UNIVERSITY OF  
KANSAS ADMISSIONS**

**88-29b-1. Definitions.** This regulation shall be applicable to the university of Kansas' review of applications beginning with the 2016 summer session and through the end of the 2021 spring session. Each of the following terms, wherever used in this article of the board of regents' regulations, shall have the meaning specified in this regulation:

(a) "Accredited high school" means one or more educational institutions that provide secondary instruction to students in grades 9, 10, 11, and 12 and that are designated accredited, or are within an education system designated accredited, by an accrediting agency recognized by the United States department of education, by the Kansas state board of education, or by an agency with standards equivalent to those of the United States department of education or the Kansas state board of education.

(b) "Admission" means the permission given by the admission officer of the university of Kansas to an applicant to enroll as a degree-seeking student in the university of Kansas.

(c) "Admission category" means one of the admission categories adopted by the university of Kansas pursuant to K.A.R. 88-29b-3.

(d) "Complete application file" means the entire set of the following student records that have been received in the admission office of the university of Kansas:

(1) A completed application to the university of Kansas;

(2) verification that all applicable application fees have been paid;

(3) an official copy of the final transcript from each high school attended, including a transcript documenting graduation from high school, or a high school equivalency credential;

(4) when required pursuant to K.A.R. 88-29a-5, K.A.R. 88-29b-5, K.A.R. 88-29a-7, or K.A.R. 88-29b-7, an official copy of all ACT or SAT scores; and

(5) any other materials required by the university of Kansas for advising or placement purposes.

(e) "Degree-seeking student" means a student who has been accepted for enrollment at the university of Kansas and who has formally indicated to the university of Kansas the intent to complete a program of study that is designated by the United States department of education as a program that is eligible for federal financial aid.

(f) "Earned a high school equivalency credential with at least the prescribed minimum scores" means one of the following:

(1) Took the GED test on or after January 1, 2014, with an overall score of at least 680 points and a minimum score of 150 points on each subset;

(2) took the high school equivalency test (HiSET) on or after January 1, 2014, with an overall score of at least 75 points and a minimum score of 8 points on each subset;

(3) took the GED test on or after January 1, 2002 and before January 1, 2014, with an overall score of at least 2,550 points and a minimum score of 510 points on each subset; or

(4) took the GED test before January 1, 2002, with an overall score of at least 250 points and a minimum score of 50 points on each subset.

(g) "Exception window for nonresident freshman class admissions" means a method by which the university of Kansas, pursuant to K.A.R. 88-29b-8c, may admit a person who is not a resident of Kansas, who does not meet the applicable requirements specified in K.A.R. 88-29-4, K.A.R. 88-29b-4, K.A.R. 88-29a-7, K.A.R. 88-29b-7, K.A.R. 88-29a-7a, or K.A.R. 88-29b-7a, and who is not eligible for admission pursuant to the exception window for nonresident transfer admissions.

(h) "Exception window for nonresident transfer admissions" means a method by which the university of Kansas, pursuant to K.A.R. 88-29b-8b, may admit a person who is not a resident of Kansas and has earned at least 24 transferable college credit hours but who is not eligible for admission pursuant to K.A.R. 88-29-4 or K.A.R. 88-29b-4.

(i) "Exception window for resident freshman class admissions" means a method by which the university of Kansas, pursuant to K.A.R. 88-29b-8, may admit a Kansas resident who does not meet the applicable requirements specified in K.A.R. 88-29-4, K.A.R. 88-29b-4, K.A.R. 88-29a-5, K.A.R. 88-29b-5, K.A.R. 88-29a-6, or K.A.R. 88-29b-6 and who is not eligible for admission pursuant to the exception window for resident transfer admissions.

(j) "Exception window for resident transfer admissions" means a method by which the universi-

ty of Kansas, pursuant to K.A.R. 88-29b-8a, may admit a Kansas resident who has earned at least 24 transferable college credit hours but is not eligible for admission pursuant to K.A.R. 88-29-4 or K.A.R. 88-29b-4.

(k) “Institution of higher education” means an educational institution in any state, territory, or country that meets the following criteria:

(1) Meets one of the following requirements:

(A) Offers a course of instruction designated by the United States department of education as a program that is eligible for federal financial aid; or

(B) offers a course of instruction that is equivalent to a program designated by the United States department of education as a program that is eligible for federal financial aid;

(2) is legally authorized within the state, territory, or country that appears on the transcript to provide a program of education beyond secondary education; and

(3) meets one of the following requirements:

(A) Is accredited by an accrediting agency or association that is recognized by the United States department of education or an international accrediting agency; or

(B) has been granted preaccreditation status by an accrediting agency or association that is recognized by either the United States department of education or an international accrediting agency.

(l) “Integrated course” means a course that redistributes the content of two or more qualified admission precollege curriculum courses into a nontraditional combination. A nontraditional combination may combine the content of qualified admission algebra I and qualified admission geometry over a period of four semesters in a sequence of courses titled integrated math I and II.

(m) “Kansas resident” means a person determined to be a resident for fee purposes, pursuant to K.S.A. 76-729 and amendments thereto.

(n) “Non-accredited private secondary school” has the meaning specified in K.A.R. 88-26-1. This term may include a home school.

(o) “Non-degree-seeking student” means a student who has been accepted for enrollment at the university of Kansas and who has formally indicated to the university the intent to enroll for self-enrichment or other reasons, excluding the intent to complete a course of study that is designated by the United States department of education as a program that is eligible for federal financial aid.

(p) “Precollege,” when used to describe a course or curriculum, means a type of course or

curriculum offered at an accredited high school that meets both of the following conditions:

(1) The course or curriculum is designed for a student performing at or above the student’s grade level as determined by standardized testing.

(2) The content and requirements of the course or curriculum have been determined by the board of regents or the board’s designee to reflect a pace of instruction, intensity and depth of material, level of abstraction, and application of critical thinking necessary to prepare students for study at state educational institutions.

(q) “State educational institution” has the meaning specified in K.S.A. 76-711, and amendments thereto.

(r) “Transferable college credit hours” means postsecondary coursework that the university of Kansas will accept.

(s) “Unit” means a measure of secondary credit that may be awarded to a student for satisfactory completion of a particular course or subject, as determined by the local school district.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Feb. 1, 2013; amended April 24, 2015; amended Oct. 16, 2020.)

**88-29b-2. Scope.** This regulation shall be applicable to the university of Kansas’ review of applications beginning with the 2016 summer session. Unless expressly stated as applicable to non-degree-seeking students, this article shall apply only to undergraduate degree-seeking students at the university of Kansas. (Authorized by and implementing K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; effective Feb. 1, 2013.)

**88-29b-3. Categories of admission.** (a) In the admission policies that are required by K.A.R. 88-29b-9 and K.A.R. 88-29d-9, the university of Kansas shall adopt the regular admission category, which shall include any applicant who is given permission from the university to enroll as a degree-seeking student at the university without any conditions or restrictions other than that the student will be subject to all policies of the university.

(b) In the admission policies that are required by K.A.R. 88-29b-9 and K.A.R. 88-29d-9, the university of Kansas may adopt one or more admission categories in addition to the regular admission category specified in subsection (a). These additional categories shall be limited to the following:

(1) The temporary admission category, which shall include any applicant who is given permission from the university to enroll as a degree-seeking student at the university for a specified period of time not to exceed one calendar year, during which period the student shall be required to provide the university with the student's complete application file; and

(2) the provisional admission category, which shall include any applicant who is given permission from the university to enroll as a degree-seeking student at the university for a probationary period of time, subject to restrictions that may include any of the following requirements:

(A) The applicant shall enroll only in a limited number of credit hours each semester as specified by the university;

(B) the applicant shall enroll in the developmental or college preparatory courses specified by the university;

(C) the applicant shall participate in an advising program specified by the university;

(D) the applicant shall achieve a certain grade point average specified by the university at the end of a period of time specified by the university; and

(E) the applicant shall meet any other provisions established in the university's admission policy for provisional admission established in accordance with K.A.R. 88-29b-9 or K.A.R. 88-29d-9.

(c) A student in the regular admission category shall not be in any other admission category.

(d) The temporary and provisional admission categories shall not be mutually exclusive. Each student who is not in the regular admission category shall be admitted into any other category or categories of admission adopted by the university for which the student is eligible. (Authorized by and implementing K.S.A. 76-717; effective Feb. 1, 2013; amended Oct. 16, 2020.)

**88-29b-4. Qualifications required for the admission of an applicant with 24 or more transferable college credit hours.** This regulation shall be applicable to the university of Kansas' review of applications beginning with the 2016 summer session.

(a) The requirements established in this regulation shall apply to any applicant who has earned 24 or more transferable college credit hours. If an applicant to whom this regulation is applicable does not meet the requirements of subsection (b) or paragraph (d)(1) and does not meet the re-

quirements of K.A.R. 88-29-4, the applicant may be admitted by means of the exception window for resident transfer admissions described in K.A.R. 88-29b-8a or the exception window for nonresident transfer admissions described in K.A.R. 88-29b-8b. Applicants who are admitted pursuant to subsection (c) or paragraph (d)(2) and who do not meet the requirements of K.A.R. 88-29-4 may be admitted only by means of the exception window for resident transfer admissions described in K.A.R. 88-29b-8a or the exception window for nonresident transfer admissions described in K.A.R. 88-29b-8b.

(b) The university of Kansas shall admit any Kansas resident who submits an application for admission to the university on or before July 1 of the academic year for which the student is applying and who meets the following criteria:

(1) Has earned 24 or more transferable college credit hours; and

(2) has earned a cumulative grade point average of 2.5 or higher on a 4.0 scale in all transferable postsecondary coursework.

(c)(1) The university of Kansas may admit any Kansas resident applicant who meets the following conditions:

(A)(i) Submits an application for admission to the university after July 1 of the academic year for which the student is applying; or

(ii) submits an application for admission on or before July 1 but does not meet the criteria specified in subsection (b); and

(B) is recommended for admission by the university's admission review committee.

(2) The admission review committee shall consider the following factors in making admission recommendations:

(A) The applicant's completed coursework in relation to the admission standards in K.A.R. 88-29-4;

(B) the applicant's grade point average in all postsecondary coursework;

(C) the degree of difficulty of the applicant's postsecondary coursework;

(D) the applicant's grade trend;

(E) the applicant's ability to enhance the cultural, economic, or geographic diversity of the university;

(F) the applicant's academic potential;

(G) any outstanding talent in a particular area that the applicant has demonstrated;

(H) the applicant's personal challenges or family circumstances that have affected academic performance;

(I) the applicant's eligibility for and likelihood of benefitting from organized support services available at the university; and

(J) any other factors that the admission review committee deems appropriate and that have been included in the university's admission policies established pursuant to K.A.R. 88-29b-9.

(d) The university of Kansas may admit any nonresident applicant who meets one of the following conditions:

(1) Submits an application for admission to the university on or before July 1 of the academic year for which the student is applying and meets the following conditions:

(A) Has earned 24 or more transferable college credit hours; and

(B) has earned a cumulative grade point average of 2.5 or higher on a 4.0 scale in all transferable postsecondary coursework;

(2) submits an application for admission to the university after July 1 of the academic year for which the student is applying and is recommended for admission by the university's admission review committee upon consideration of the factors listed in paragraph (c)(2); or

(3) submits an application for admission on or before July 1, does not meet the criteria specified in paragraph (d)(1), and is recommended for admission by the university's admission review committee upon consideration of the factors listed in paragraph (c)(2). (Authorized by and implementing K.S.A. 2014 Supp. 76-717; effective Feb. 1, 2013; amended April 24, 2015.)

**88-29b-5. Qualifications required for the admission of a Kansas resident who is under the age of 21.** This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2016 summer session and through the end of the 2021 spring session.

(a) The requirements in this regulation shall apply to any applicant who is a Kansas resident and is under the age of 21, except that the requirements shall not apply to any applicant who has earned 24 or more transferable college credit hours. If an applicant to whom this regulation is applicable does not meet the requirements of subsections (b), (c), and (d) and does not meet the requirements of K.A.R. 88-29a-5, the applicant may be admitted by means of the exception window for resident freshman class admissions described in K.A.R. 88-29b-8. Any applicant who is admitted pursuant to subsection (e) and does not

meet the requirements of K.A.R. 88-29a-5 may be admitted only by means of the exception window for resident freshman class admissions described in K.A.R. 88-29b-8.

(b) The university of Kansas shall admit any Kansas resident under the age of 21 who submits an application for admission to the university on or before February 1 and meets either of the following requirements:

(1)(A) Has graduated from an accredited high school in Kansas or, pursuant to K.S.A. 76-717b and amendments thereto, an accredited high school located out of state, with a minimum cumulative grade point average of 3.0 on a 4.0 scale;

(B) has completed one of the following with a minimum grade point average of 2.0 on a 4.0 scale:

(i) The qualified admission precollege curriculum described in K.A.R. 88-29a-11;

(ii) the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3; or

(iii) for eligible applicants, the qualified admission precollege curriculum functional equivalent described in K.A.R. 88-29a-18 (a) through (e) or in K.A.R. 88-29a-18(f);

(C) has achieved a composite score or a super-score on the ACT of at least 24; and

(D) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours; or

(2)(A) Has graduated from an accredited high school in Kansas or, pursuant to K.S.A. 76-717b and amendments thereto, an accredited high school located out of state, with a minimum cumulative grade point average of 3.25 on a 4.0 scale;

(B) has completed one of the following with a minimum grade point average of 2.0 on a 4.0 scale:

(i) The qualified admission precollege curriculum described in K.A.R. 88-29a-11;

(ii) the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3; or

(iii) for eligible applicants, the qualified admission precollege curriculum functional equivalent described in K.A.R. 88-29a-18 (a) through (e) or in K.A.R. 88-29a-18(f);

(C) has achieved a composite score or a super-score on the ACT of at least 21; and

(D) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(c) The university of Kansas shall admit any Kansas resident under the age of 21 who submits

an application for admission to the university on or before February 1 and meets either of the following requirements:

(1)(A) Has graduated from a non-accredited private secondary school with a minimum cumulative grade point average of 3.0 on a 4.0 scale;

(B) has completed one of the following:

(i) Coursework equivalent to the qualified admission precollege curriculum as described in K.A.R. 88-29a-11; or

(ii) coursework equivalent to the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3;

(C) has achieved a composite score or a super-score on the ACT of at least 24; and

(D) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours; or

(2)(A) Has graduated from a non-accredited private secondary school with a minimum cumulative grade point average of 3.25 on a 4.0 scale;

(B) has completed one of the following:

(i) Coursework equivalent to the qualified admission precollege curriculum as described in K.A.R. 88-29a-11; or

(ii) coursework equivalent to the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3;

(C) has achieved a composite score or a super-score on the ACT of at least 21; and

(D) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(d) The university of Kansas shall admit any Kansas resident under the age of 21 who submits an application for admission to the university on or before February 1 and who meets the following requirements:

(1) Has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29b-1;

(2) has achieved a composite score or a super-score on the ACT of at least 21; and

(3) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(e)(1) The university of Kansas may admit any Kansas resident under the age of 21 who meets the following conditions:

(A)(i) Submits an application for admission to the university after February 1; or

(ii) submits an application for admission on or before February 1 but does not meet the criteria specified in subsections (b), (c), and (d); and

(B) is recommended for admission by the university's admission review committee.

(2) The admission review committee shall consider the following factors in making admission recommendations:

(A) The applicant's completed coursework in relation to the admission standards in K.A.R. 88-29a-5;

(B) the applicant's academic performance, including the following:

(i) Grade point average in all high school coursework;

(ii) ACT scores; and

(iii) high school class rank;

(C) the degree of difficulty of the applicant's high school coursework;

(D) the applicant's grade trend;

(E) the applicant's ability to enhance the cultural, economic, or geographic diversity of the university;

(F) the applicant's academic potential;

(G) any outstanding talent in a particular area that the applicant has demonstrated;

(H) the applicant's successful completion of advanced placement, international baccalaureate, and dual-credit coursework while in high school;

(I) specification of whether the applicant is a first-generation postsecondary student;

(J) the applicant's personal challenges or family circumstances that have affected academic performance;

(K) the applicant's eligibility for and likelihood of benefitting from organized support services available at the university; and

(L) any other factors that the admission review committee deems appropriate and that have been included in the university's admission policies established pursuant to K.A.R. 88-29b-9.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Feb. 1, 2013; amended April 24, 2015; amended Oct. 16, 2020.)

**88-29b-6. Qualifications required for the admission of a Kansas resident who is 21 or older.** This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2016 summer session.

(a) The requirements in this regulation shall apply to any applicant who is a Kansas resident and who will be 21 or older on the first day of classes at the university of Kansas, except that the requirements shall not apply to any applicant

who has earned 24 or more transferable college credit hours. If an applicant to whom this regulation is applicable does not meet the requirements of subsection (b) and does not meet the requirements of K.A.R. 88-29a-6, the applicant may be admitted by means of the exception window for resident freshman class admissions described in K.A.R. 88-29b-8. Any applicant who is admitted pursuant to subsection (c) and does not meet the requirements of K.A.R. 88-29a-6 may be admitted only by means of the exception window for resident freshman class admissions described in K.A.R. 88-29b-8.

(b) The university of Kansas shall admit any Kansas resident who is 21 or older, submits an application for admission to the university on or before February 1, and meets one of the following criteria:

(1) Has graduated from an accredited high school in Kansas or, pursuant to K.S.A. 76-717b and amendments thereto, an accredited high school located out of state;

(2) has graduated from a non-accredited private secondary school; or

(3) has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29b-1 or K.A.R. 88-29d-1.

(c) The university of Kansas may admit any Kansas resident who is 21 or older and meets the following conditions:

(1)(A) Submits an application for admission to the university after February 1; or

(B) submits an application for admission on or before February 1 but does not meet the criteria specified in subsection (b); and

(2) is recommended for admission by the university's admission review committee upon consideration of the factors listed in K.A.R. 88-29b-5(e)(2) or K.A.R. 88-29d-5(e)(2). (Authorized by and implementing K.S.A. 76-717; effective Feb. 1, 2013; amended April 24, 2015; amended Oct. 16, 2020.)

**88-29b-7. Qualifications required for the admission of a nonresident who is under the age of 21.** This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2016 summer session and through the end of the 2021 spring session.

(a) The requirements in this regulation shall apply to any applicant who is a nonresident and is under the age of 21, except that the requirements shall not apply to any applicant who has earned

24 or more transferable college credit hours. If an applicant to whom this regulation is applicable does not meet the requirements in subsections (b), (c), and (d) and does not meet the requirements of K.A.R. 88-29a-7, the applicant may be admitted by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29b-8c. Any applicant who is admitted pursuant to subsection (e) and does not meet the requirements of K.A.R. 88-29a-7 may be admitted only by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29b-8c.

(b) The university of Kansas may admit any nonresident under the age of 21 who submits an application for admission to the university on or before February 1 and meets either of the following requirements:

(1)(A) Has graduated from an accredited high school with a minimum cumulative grade point average of 3.0 on a 4.0 scale;

(B) has completed one of the following with a minimum grade point average of 2.5 on a 4.0 scale:

(i) The qualified admission precollege curriculum described in K.A.R. 88-29a-11;

(ii) the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3; or

(iii) the qualified admission precollege curriculum functional equivalent described in K.A.R. 88-29a-19;

(C) has achieved a composite score or a super-score on the ACT of at least 24; and

(D) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours; or

(2)(A) Has graduated from an accredited high school with a minimum cumulative grade point average of 3.25 on a 4.0 scale;

(B) has completed one of the following with a minimum grade point average of 2.5 on a 4.0 scale:

(i) The qualified admission precollege curriculum described in K.A.R. 88-29a-11;

(ii) the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3; or

(iii) the qualified admission precollege curriculum functional equivalent described in K.A.R. 88-29a-19;

(C) has achieved a composite score or a super-score on the ACT of at least 21; and

(D) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(c) The university of Kansas may admit any nonresident under the age of 21 who submits an application for admission to the university on or before February 1 and meets either of the following requirements:

(1)(A) Has graduated from a non-accredited private secondary school with a minimum cumulative grade point average of 3.0 on a 4.0 scale;

(B) has completed one of the following with a minimum grade point average of 2.5 on a 4.0 scale:

(i) Coursework equivalent to the qualified admission precollege curriculum as described in K.A.R. 88-29a-11; or

(ii) coursework equivalent to the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3;

(C) has achieved a composite score or a super-score on the ACT of at least 24; and

(D) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours; or

(2)(A) Has graduated from a non-accredited private secondary school with a minimum cumulative grade point average of 3.25 on a 4.0 scale;

(B) has completed one of the following with a minimum grade point average of 2.5 on a 4.0 scale:

(i) Coursework equivalent to the qualified admission precollege curriculum as described in K.A.R. 88-29a-11; or

(ii) coursework equivalent to the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3;

(C) has achieved a composite score or a super-score on the ACT of at least 21; and

(D) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(d) The university of Kansas may admit any nonresident under the age of 21 who submits an application for admission to the university on or before February 1 and meets the following requirements:

(1) Has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29b-1;

(2) has achieved a composite score or a super-score on the ACT of at least 21; and

(3) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(e) The university of Kansas may admit any nonresident under the age of 21 who meets the following conditions:

(1)(A) Submits an application for admission to the university after February 1; or

(B) submits an application for admission on or before February 1 but does not meet the criteria specified in subsections (b), (c), and (d); and

(2) is recommended for admission by the university's admission review committee upon consideration of the factors listed in K.A.R. 88-29b-5(e)(2).

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Feb. 1, 2013; amended April 24, 2015; amended Oct. 16, 2020.)

**88-29b-7a. Qualifications required for the admission of a nonresident who is 21 or older.** This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2016 summer session.

(a) The requirements of this regulation shall apply to any applicant who is a nonresident and who will be 21 or older on the first day of classes at the university of Kansas, except that this regulation shall not apply to any applicant who has earned 24 or more transferable college credit hours. If an applicant to whom this regulation is applicable does not meet the requirements of subsection (b) and does not meet the requirements of K.A.R. 88-29a-7a, the applicant may be admitted by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29b-8c. Any applicant who is admitted pursuant to subsection (c) and does not meet the requirements of K.A.R. 88-29a-7a may be admitted only by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29b-8c.

(b) The university of Kansas may admit any nonresident who is 21 or older, submits an application for admission to the university on or before February 1, and meets one of the following criteria:

(1) Has graduated from an accredited high school; or

(2) has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29b-1 or K.A.R. 88-29d-1.

(c) The university of Kansas may admit any nonresident who is 21 or older and meets the following conditions:

(1)(A) Submits an application for admission to the university after February 1; or

(B) submits an application for admission on or before February 1 but does not meet the criteria specified in subsection (b); and

(2) is recommended for admission by the university's admission review committee upon consideration of the factors listed in K.A.R. 88-29b-5(e)(2) or K.A.R. 88-29d-5(e)(2). (Authorized by and implementing K.S.A. 76-717; effective Feb. 1, 2013; amended April 24, 2015; amended Oct. 16, 2020.)

**88-29b-8. The exception window for resident freshman class admissions.** This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2016 summer session. (a) The university of Kansas may admit any Kansas resident who does not meet the applicable requirements specified in K.A.R. 88-29b-5(b), (c), or (d), K.A.R. 88-29b-6, K.A.R. 88-29a-5, or K.A.R. 88-29a-6 and who has earned fewer than 24 transferable college credit hours by means of the exception window for resident freshman class admissions. The maximum number of students admitted by means of this exception window shall be calculated as follows:

(1) The total number of admitted new students who have earned fewer than 24 transferable college credit hours, regardless of admission category, shall be counted on the twentieth day of the fall, spring, and summer sessions of each academic year.

(2) The maximum number of admissions calculated using this exception window shall be equal to 10 percent of the sum of the three numbers counted in paragraph (a)(1).

(b) In determining which students to admit as exceptions pursuant to this regulation, the university of Kansas shall give preference to persons who are in military service, as defined in K.S.A. 76-717 and amendments thereto.

(c) If the university of Kansas exceeds the allotted number of admissions using this exception window, the excess over the allowable total number of exceptions shall be subtracted from the subsequent year's allowable total number of exceptions for resident freshman class admissions.

(d) The university of Kansas shall require each student who is admitted as an exception to the minimum qualified admission standards pursuant to this regulation to adopt an individual plan for success, before enrollment, and subsequently review that individual plan for success, as required by K.S.A. 76-717 and amendments thereto. (Authorized by and implementing K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; effective Feb. 1, 2013.)

**88-29b-8a. The exception window for resident transfer admissions.** This regulation shall be applicable to the university of Kansas' review of applications beginning with the 2016 summer session. The university of Kansas may admit any Kansas resident who has earned 24 or more transferable college credit hours, but who does not meet the applicable requirements specified in K.A.R. 88-29b-4(b) or K.A.R. 88-29-4, by means of the exception window for resident transfer admissions.

(a) The maximum number of students admitted by means of this exception window shall be calculated as follows:

(1) The total number of admitted new resident students who have earned at least 24 transferable college credit hours, regardless of admission category, shall be counted on the twentieth day of the fall, spring, and summer sessions of each academic year.

(2) The maximum number of admissions calculated using this exception window shall be equal to 10 percent of the sum of the three numbers counted in paragraph (a)(1).

(b) In determining which students to admit as exceptions pursuant to this regulation, the university of Kansas shall give preference to persons who are in military service, as defined in K.S.A. 76-717 and amendments thereto.

(c) If the university of Kansas exceeds the allotted number of admissions using this exception window, the excess over the allowable total number of exceptions shall be subtracted from the subsequent year's allowable total number of exceptions for resident transfer admissions.

(d) The university of Kansas shall require each student who is admitted as an exception to the minimum qualified admission standards pursuant to this regulation to adopt an individual plan for success, before enrollment, and subsequently review that individual plan for success, as required by K.S.A. 76-717 and amendments thereto. (Authorized by and implementing K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; effective Feb. 1, 2013.)

**88-29b-8b. The exception window for nonresident transfer admissions.** This regulation shall be applicable to the university of Kansas' review of applications beginning with the 2016 summer session. The university of Kansas may admit any nonresident who has earned 24 or more transferable college credit hours, but who does

not meet the applicable requirements specified in K.A.R. 88-29b-4(d)(1) or K.A.R. 88-29-4, by means of the exception window for nonresident transfer admissions.

(a) The maximum number of students admitted by means of this exception window shall be calculated as follows:

(1) The total number of admitted new nonresident students who have earned at least 24 transferable college credit hours, regardless of admission category, shall be counted on the twentieth day of the fall, spring, and summer sessions of each academic year.

(2) The maximum number of admissions calculated using this exception window shall be equal to 10 percent of the sum of the three numbers counted in paragraph (a)(1).

(b) In determining which students to admit as exceptions pursuant to this regulation, the university of Kansas shall give preference to persons who are in military service, as defined in K.S.A. 76-717 and amendments thereto.

(c) If the university of Kansas exceeds the allotted number of admissions using this exception window, the excess over the allowable total number of exceptions shall be subtracted from the subsequent year's allowable total number of exceptions for nonresident transfer admissions.

(d) The university of Kansas shall require each student who is admitted as an exception to the minimum qualified admission standards pursuant to this regulation to adopt an individual plan for success, before enrollment, and subsequently review that individual plan for success, as required by K.S.A. 76-717 and amendments thereto. (Authorized by and implementing K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; effective Feb. 1, 2013.)

**88-29b-8c. The exception window for nonresident freshman class admissions.** This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2016 summer session. (a) The university of Kansas may admit any nonresident who does not meet the applicable requirements specified in K.A.R. 88-29b-7(b), (c), or (d), K.A.R. 88-29b-7a(b), K.A.R. 88-29a-7, or K.A.R. 88-29a-7a and who has earned fewer than 24 transferable college credit hours, by means of the exception window for nonresident freshman class admissions. The maximum number of students admitted by means of this exception window shall be calculated as follows:

(1) The total number of admitted new nonresident students who have earned fewer than 24 transferable college credit hours, regardless of admission category, shall be counted on the twentieth day of the fall, spring, and summer sessions of each academic year.

(2) The maximum number of admissions that may be made using this exception window shall be equal to 10 percent of the sum of the three numbers counted in paragraph (a)(1) or 50 students, whichever is greater.

(b) In determining which students to admit as exceptions pursuant to this regulation, the university of Kansas shall give preference to persons who are in military service, as defined in K.S.A. 76-717 and amendments thereto.

(c) If the university of Kansas exceeds the allotted number of admissions using this exception window, the excess over the allowable total number of exceptions shall be subtracted from the subsequent year's allowable total number of exceptions for nonresident freshman class admissions.

(d) The university of Kansas shall require each student who is admitted as an exception to the minimum qualified admission standards pursuant to this regulation to adopt an individual plan for success, before enrollment, and subsequently review that individual plan for success, as required by K.S.A. 76-717 and amendments thereto. (Authorized by and implementing K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; effective Feb. 1, 2013.)

**88-29b-9. Admission policies.** This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2016 summer session and through the end of the 2021 spring session. The chancellor of the university of Kansas or a designee shall establish admission policies that meet all of the following requirements:

(a) The policies shall not conflict with the provisions of this article of the board of regents' regulations or, where applicable, the provisions of articles 29 and 29a of the board of regents' regulations.

(b) The policies shall specify the materials required for a complete application file.

(c) The policies shall address the enrollment of both degree-seeking and non-degree-seeking students as well as each student's transition from degree-seeking to non-degree-seeking status or from non-degree-seeking to degree-seeking

status. Policies shall mandate that each non-degree-seeking student who applies to enroll as a degree-seeking student shall be admitted only if one of the following conditions is met:

(1) The student meets the applicable requirements specified in K.A.R. 88-29b-4 through 88-29b-7a.

(2) The student is admitted by means of the exception window for resident freshmen class admissions described in K.A.R. 88-29b-8.

(3) The student is admitted by means of the exception window for resident transfer admissions described in K.A.R. 88-29b-8a.

(4) The student is admitted by means of the exception window for nonresident transfer admissions described in K.A.R. 88-29b-8b.

(5) The student is admitted by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29b-8c.

(d) The policies shall include an explanation of the exception windows and the university of Kansas' method to determine which applicants would be admitted if there were more applicants than the university is allowed under K.A.R. 88-29b-8, K.A.R. 88-29b-8a, K.A.R. 88-29b-8b, or K.A.R. 88-29b-8c.

(e) The policies may include the establishment of subcategories of non-degree-seeking students.

(f) The policies shall include a statement indicating whether the university of Kansas will consider, in the admission decision, any postsecondary credit from an institution that is not accredited and has not been granted preaccreditation status by an agency recognized by the United States department of education or by an equivalent international agency. If the university considers these credits, the admission decision shall be made in accordance with K.A.R. 88-29-4 or K.A.R. 88-29b-4.

(g) The policies shall include a statement of whether the university of Kansas enrolls students in the temporary or provisional admission category.

(1) If the university of Kansas enrolls any students in the temporary admission category, the policies shall include the following:

(A) A description of requirements for exiting the temporary admission category and entering another admission category;

(B) a statement that a temporarily admitted student may be denied admission to a specific degree program;

(C) a statement that each student who fails to exit from the temporary admission category with-

in the specified period of time shall be disenrolled; and

(D) a statement that each applicant who is admitted in the temporary admission category pursuant to K.A.R. 88-29b-10(a)(2) or (b)(2) shall be allowed to exit from the temporary admission category and enter the regular admission category only upon verification of high school graduation.

(2) If the university of Kansas enrolls any students in the provisional admission category, the policies shall include the following:

(A) A description of requirements for exiting the provisional admission category and entering another admission category;

(B) a statement that any student admitted in the provisional admission category may be denied admission to a specific degree program; and

(C) a statement that each student who fails to exit from the provisional admission category within the period of time specified by the university shall be disenrolled.

(3) The policies shall mandate that a student who meets the criteria for both the temporary and provisional admission categories shall not be granted regular admission until the student fulfills the requirements for exiting each of the categories in which the student is initially enrolled.

(h) The policies shall be required to be approved in advance by the board of regents.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Feb. 1, 2013; amended Oct. 16, 2020.)

**88-29b-10. Methods for evaluating qualifications for admission.** This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2016 summer session and through the end of the 2021 spring session.

(a) The admission officer at the university of Kansas shall consider each applicant's ACT or SAT scores as follows:

(1) A documented score of 1060 on the SAT, excluding the writing portion of the SAT, shall be deemed the equivalent of a composite score of 21 or superscore of 21 on the ACT for purposes of this article of the board of regents' regulations. A documented score of 1160 on the SAT, excluding the writing portion of the SAT, shall be deemed the equivalent of a composite score of 24 on the ACT for purposes of this article of the board of regents' regulations.

(2) A documented composite score or a doc-

umented superscore of 21 or above on the ACT may be used to admit an applicant in the temporary admission category after the applicant's completion of the sixth high school semester, without further review of the applicant's materials.

(3) The admission officer shall consider the applicant's best ACT-issued composite score or superscore for admission decisions.

(4) If an applicant has taken both the ACT and the SAT, the admission officer shall consider the applicant's better score on the two tests for admission decisions.

(b) The admission officer at the university of Kansas shall consider class rank as follows:

(1) If class rank cannot be determined, the admission officer shall not admit an applicant under this criterion.

(2) If an applicant's documented class rank is in the top third of the applicant's class after the applicant's sixth semester of high school, the class rank may be used to admit an applicant into the temporary admission category without further review of the applicant's materials.

(c) If the high school has not already calculated the overall grade point average or the grade point average in the qualified admission precollege curriculum and provided that information on the official high school transcript, the admission officer at the university of Kansas shall calculate the overall grade point average and the grade point average in the qualified admission precollege curriculum for any applicant seeking admission pursuant to K.A.R. 88-29a-5, K.A.R. 88-29b-5, K.A.R. 88-29a-7, or K.A.R. 88-29b-7, as follows:

(1) The admission officer shall ensure that the requirements of K.A.R. 88-29a-11 are met before calculating the grade point average.

(2) The admission officer shall calculate a grade point average only for courses appearing on the applicant's official high school transcript.

(3) The admission officer shall consider a course to be part of the approved qualified admission precollege curriculum only if the course was approved in accordance with K.A.R. 88-29a-11 for the semester and year in which the applicant completed the course and if the applicant earned a grade of D or better.

(4) The admission officer shall consider a course to be part of the approved qualified admission precollege curriculum only if the course code that appears on the applicant's official high school transcript is the same as the course code of the approved course.

(5)(A) If the high school transcript reports grades on a four-point scale, the admission officer shall calculate grade point averages by assigning four points to a grade of A, three points to a grade of B, two points to a grade of C, and one point to a grade of D. Pluses and minuses shall not be considered in the calculation.

(B) If the high school transcript reports grades on a scale other than a four-point scale, the admission officer shall mathematically convert the grades to a four-point scale and assign points as described in paragraph (c)(5)(A).

(6) The admission officer shall consider grades of P or pass as follows:

(A) If the high school transcript indicates that a P is equivalent to a grade of D or higher, the admission officer shall assign one grade point to each grade of P.

(B) If the high school transcript indicates that a P is equivalent to a grade of C or higher, the admission officer shall assign two grade points to each grade of P.

(C) If the high school transcript does not indicate the minimum letter grade corresponding to a P, the admission officer shall assign one grade point to each grade of P.

(7) If an applicant has retaken an approved qualified admission precollege course, the admission officer shall use the highest grade when calculating the grade point average for the approved qualified admission precollege curriculum.

(8) If an applicant has taken a college course to meet the requirements for the approved qualified admission precollege curriculum and if this college course appears on the official high school transcript, the admission officer shall calculate the grade for the college course, for purposes of determining the precollege curriculum grade point average, as follows:

(A) Each college course with three or more credit hours, but no more than five credit hours, shall be treated as a one-unit high school course.

(B) Each college course with more than five credit hours shall be treated as a two-unit high school course.

(d) If the high school has not already calculated the overall grade point average or the grade point average in the Kansas scholars curriculum and provided that information on the official high school transcript, the admission officer at the university of Kansas shall calculate the overall grade point average and the grade point average in the Kansas scholars curriculum for any applicant

seeking admission pursuant to K.A.R. 88-13-3, as follows:

(1) The admission officer shall ensure that the requirements established pursuant to K.A.R. 88-13-3 are met before calculating the grade point average.

(2) The admission officer shall calculate a grade point average only for courses appearing on the applicant's official high school transcript.

(3) The admission officer shall consider a course to be part of the approved Kansas scholars curriculum only if the course was approved in accordance with guidelines established pursuant to K.A.R. 88-13-3 and if the applicant earned a grade of D or better.

(4) The admission officer shall calculate grade point averages in accordance with paragraphs (c)(5) through (8).

(e) If the high school has not already calculated the overall grade point average and the grade point average in the qualified admission precollege curriculum and provided that information on the official high school transcript, the admission officer at the university of Kansas shall calculate the overall grade point average and the grade point average in the qualified admission precollege curriculum for any resident applicant seeking admission pursuant to K.A.R. 88-29a-18(a) through (e), as follows:

(1) The admission officer shall ensure that the requirements of K.A.R. 88-29a-18(a) through (e) are met before calculating the grade point average.

(2) The admission officer shall calculate the applicant's grade point average for approved qualified admission precollege curriculum courses taken from an accredited Kansas high school as described in paragraphs (c)(2) through (c)(8)(B).

(3) The admission officer shall calculate the applicant's grade point average for college preparatory courses taken from a high school located outside the state of Kansas, as follows:

(A) The applicant shall have earned a grade of D or better.

(B) The admission officer shall calculate grade point averages in accordance with paragraphs (c)(5) through (8).

(f) For any resident applicant seeking admission pursuant to K.A.R. 88-29a-18(f), the admission officer at the university of Kansas shall calculate the overall grade point average and the grade point average in the qualified admission precollege curriculum, as follows:

(1) The admission officer shall ensure that the

requirements of K.A.R. 88-29a-18(f) are met before calculating the grade point average.

(2) The admission officer shall calculate the applicant's grade point average for qualified admission precollege curriculum courses taken from an accredited Kansas high school as described in paragraphs (c)(2) through (c)(8)(B).

(3) The admission officer shall calculate the applicant's grade point average for college preparatory courses taken from high schools located outside the state of Kansas as described in paragraph (e)(3).

(4) The admission officer shall calculate the applicant's grade point average for qualified admission precollege curriculum courses taken after high school graduation as described in paragraphs (c)(8)(A) and (c)(8)(B).

(g) If the high school has not already calculated the overall grade point average or the grade point average in the college preparatory curriculum established by the state in which the applicant is a resident and provided that information on the official high school transcript, the admission officer at the university of Kansas shall calculate the overall grade point average and the grade point average for that state's college preparatory curriculum for any nonresident applicant seeking admission pursuant to K.A.R. 88-29a-19(a), as follows:

(1) The admission officer shall ensure that the requirements of K.A.R. 88-29a-19(a) are met before calculating the grade point average.

(2) The admission officer shall calculate a grade point average only for college preparatory courses appearing on the applicant's official high school transcript.

(3) The admission officer shall consider a course to be part of the approved college preparatory curriculum only if the applicant earned a grade of D or better.

(4) The admission officer shall calculate grade point averages in accordance with paragraphs (c)(5) through (8).

(h) At the time of admission of an applicant, the university of Kansas shall notify the applicant of the following:

(1) The category or categories in which the applicant is admitted;

(2) any enrollment restrictions associated with the applicant's category or categories of admission; and

(3) the requirements for removing any enrollment restrictions associated with the applicant's category or categories of admission.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Feb. 1, 2013; amended Oct. 16, 2020.)

**Article 29c.—STATE UNIVERSITY  
ADMISSIONS BEGINNING WITH  
REVIEW OF APPLICATIONS FOR 2021  
SUMMER SESSION**

**88-29c-1. Definitions.** This regulation shall be applicable to each state educational institution's review of applications beginning with the 2021 summer session. Each of the following terms, wherever used in this article, in article 29, or in article 29a of the board of regents' regulations, shall have the meaning specified in this regulation:

(a) "Accredited high school" means one or more educational institutions that provide secondary instruction to students in grades 9, 10, 11, and 12 and that are designated accredited, or are within an education system designated accredited, by an accrediting agency recognized by the United States department of education, by the Kansas state board of education, or by an agency with standards equivalent to those of the United States department of education or the Kansas state board of education.

(b) "Admission" means the permission given by the admission officer of a state educational institution to an applicant to enroll as a degree-seeking student in a state educational institution.

(c) "Admission category" means one of the admission categories adopted by a state educational institution pursuant to K.A.R. 88-29-3.

(d) "Complete application file" means the entire set of the following student records that have been received in the admission office of a state educational institution:

(1) A completed application to the state educational institution;

(2) verification that all applicable application fees have been paid;

(3) an official copy of the final transcript from the high school from which the student graduated, including a transcript documenting graduation from high school, or a high school equivalency credential;

(4) when required pursuant to K.A.R. 88-29c-5 or K.A.R. 88-29c-7, an official copy of all ACT or SAT scores; and

(5) any other materials required by the state educational institution for advising or placement purposes.

(e) "Degree-seeking student" means a student who has been accepted for enrollment at a state educational institution and who has formally indicated to the state educational institution the intent to complete a program of study that is designated by the United States department of education as a program that is eligible for federal financial aid.

(f) "Earned a high school equivalency credential with at least the prescribed minimum scores" means one of the following:

(1) Took the GED test on or after January 1, 2014, with an overall score of at least 680 points and a minimum score of 150 points on each subset;

(2) took the high school equivalency test (HiSET) on or after January 1, 2014, with an overall score of at least 75 points and a minimum score of 8 points on each subset;

(3) took the GED test on or after January 1, 2002 and before January 1, 2014, with an overall score of at least 2,550 points and a minimum score of 510 points on each subset; or

(4) took the GED test before January 1, 2002, with an overall score of at least 250 points and a minimum score of 50 points on each subset.

(g) "Exception window for nonresident freshman class admissions" means a method by which any state educational institution, pursuant to K.A.R. 88-29a-8c, may admit a person who is not a resident of Kansas, who does not meet the applicable requirements specified in K.A.R. 88-29-4, K.A.R. 88-29c-7, or K.A.R. 88-29a-7a, and who is not eligible for admission pursuant to the exception window for nonresident transfer admissions.

(h) "Exception window for nonresident transfer admissions" means a method by which any state educational institution, pursuant to K.A.R. 88-29-8b, may admit a person who is not a resident of Kansas and who has earned at least 24 transferable college credit hours but who is not eligible for admission pursuant to K.A.R. 88-29-4.

(i) "Exception window for resident freshman class admissions" means a method by which any state educational institution, pursuant to K.A.R. 88-29a-8, may admit a Kansas resident who does not meet the applicable requirements specified in K.A.R. 88-29-4, K.A.R. 88-29c-5, or K.A.R. 88-29a-6 and who is not eligible for admission pursuant to the exception window for resident transfer admissions.

(j) "Exception window for resident transfer admissions" means a method by which any state educational institution, pursuant to K.A.R. 88-29-8a, may admit a Kansas resident who has earned at

least 24 transferable college credit hours but who is not eligible for admission pursuant to K.A.R. 88-29-4.

(k) “Institution of higher education” means an educational institution in any state, territory, or country that meets the following criteria:

(1) Meets one of the following requirements:

(A) Offers a course of instruction designated by the United States department of education as a program that is eligible for federal financial aid; or

(B) offers a course of instruction that is equivalent to a program designated by the United States department of education as a program that is eligible for federal financial aid;

(2) is legally authorized within the state, territory, or country that appears on the transcript to provide a program of education beyond secondary education; and

(3) meets one of the following requirements:

(A) Is accredited by an accrediting agency or association that is recognized by the United States department of education or an international accrediting agency; or

(B) has been granted preaccreditation status by an accrediting agency or association that is recognized by either the United States department of education or an international accrediting agency.

(l) “Kansas resident” means a person determined to be a resident for fee purposes, pursuant to K.S.A. 76-729 and amendments thereto.

(m) “Non-accredited private secondary school” has the meaning specified in K.A.R. 88-26-1. This term may include a home school.

(n) “Non-degree-seeking student” means a student who has been accepted for enrollment in a state educational institution and who has formally indicated to the state educational institution the intent to enroll for self-enrichment or other reasons, excluding the intent to complete a course of study that is designated by the United States department of education as a program that is eligible for federal financial aid.

(o) “State educational institution” has the meaning specified in K.S.A. 76-711, and amendments thereto, except that, as used in this article, in article 29, or in article 29a of the board of regents’ regulations, the term shall not include the university of Kansas.

(p) “Transferable college credit hours” means postsecondary coursework that an admitting state educational institution will accept. (Authorized by and implementing K.S.A. 76-717; effective Oct. 16, 2020.)

**88-29c-5. Qualifications required for the admission of a Kansas resident who is under the age of 21.** This regulation shall be applicable to each state educational institution’s review of applicants beginning with the 2021 summer session.

(a) The requirements in this regulation shall apply to any applicant who is a Kansas resident and is under the age of 21, except that the requirements shall not apply to any applicant who has earned 24 or more credit hours from an institution of higher education that are transferable to a state educational institution. If an applicant to whom this regulation is applicable does not meet the requirements of this regulation, the applicant may be admitted by means of the exception window for resident freshman class admissions described in K.A.R. 88-29a-8.

(b) Each state educational institution shall admit any Kansas resident under the age of 21 who meets the following requirements:

(1) Has graduated from an accredited high school in Kansas or, pursuant to K.S.A. 76-717b and amendments thereto, an accredited high school located out of state;

(2) meets at least one of the following criteria:

(A) Has achieved a composite score or a super-score on the ACT of at least 21; or

(B)(i) For applicants to Emporia state university, Fort Hays state university, Pittsburg state university, and Wichita state university, graduated from high school with a minimum cumulative grade point average of 2.25 on a 4.0 scale; and

(ii) for applicants to Kansas state university, graduated from high school with a minimum cumulative grade point average of 3.25 on a 4.0 scale; and

(3) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours.

(c) Each state educational institution shall admit any Kansas resident under the age of 21 who meets the following requirements:

(1) Has graduated from a non-accredited private secondary school;

(2) has achieved a composite score or a super-score on the ACT of at least 21; and

(3) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours.

(d) Each state educational institution shall admit any Kansas resident who is under the age of 21 and who meets the following requirements:

(1) Has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29c-1;

(2) has achieved a composite score or a super-score on the ACT of at least 21; and

(3) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours. (Authorized by and implementing K.S.A. 76-717; effective Oct. 16, 2020.)

**88-29c-7. Qualifications required for the admission of a nonresident who is under the age of 21.** This regulation shall be applicable to each state educational institution's review of applicants beginning with the 2021 summer session.

(a) The requirements in this regulation shall apply to any applicant who is a nonresident and is under the age of 21, except that the requirements shall not apply to any applicant who has earned 24 or more transferable college credit hours. If an applicant to whom this regulation is applicable does not meet the requirements in this regulation, the applicant may be admitted by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29a-8c.

(b) Any state educational institution may admit any nonresident under the age of 21 who meets the following requirements:

(1) Has graduated from an accredited high school;

(2) meets at least one of the following criteria:

(A) Has achieved a composite score or a super-score on the ACT of at least 21; or

(B)(i) For applicants to Emporia state university, Fort Hays state university, Pittsburg state university, and Wichita state university, graduated from high school with a minimum cumulative grade point average of 2.25 on a 4.0 scale; and

(ii) for applicants to Kansas state university, graduated from high school with a minimum cumulative grade point average of 3.25 on a 4.0 scale; and

(3) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours.

(c) Any state educational institution may admit any nonresident under the age of 21 who meets the following requirements:

(1) Has graduated from a non-accredited private secondary school;

(2) has achieved a composite score or a super-score on the ACT of at least 21; and

(3) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours.

(d) Any state educational institution may admit any nonresident under the age of 21 who meets the following requirements:

(1) Has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29c-1;

(2) has achieved a composite score or a super-score on the ACT of at least 21; and

(3) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours. (Authorized by and implementing K.S.A. 76-717; effective Oct. 16, 2020.)

**88-29c-9. Admission policies for state educational institutions.** This regulation shall be applicable to each state educational institution's review of applicants beginning with the 2021 summer session. The president of each state educational institution or a designee shall establish admission policies that meet all of the following requirements:

(a) The policies shall not conflict with the provisions of this article of the board of regents' regulations.

(b) The policies shall specify the materials required for a complete application file.

(c) The policies shall address the enrollment of both degree-seeking and non-degree-seeking students as well as each student's transition from degree-seeking to non-degree-seeking status or from non-degree-seeking to degree-seeking status. Policies shall mandate that each non-degree-seeking student who applies to enroll as a degree-seeking student shall be admitted only if one of the following conditions is met:

(1) The student meets the applicable requirements specified in K.A.R. 88-29-4, K.A.R. 88-29c-5, K.A.R. 88-29a-6, K.A.R. 88-29c-7, and 88-29a-7a.

(2) The student is admitted by means of the exception window for resident freshmen class admissions described in K.A.R. 88-29a-8.

(3) The student is admitted by means of the exception window for resident transfer admissions described in K.A.R. 88-29-8a.

(4) The student is admitted by means of the exception window for nonresident transfer admissions described in K.A.R. 88-29-8b.

(5) The student is admitted by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29a-8c.

(d) The policies shall include an explanation of the exception windows and the state educational institution's method to determine which applicants would be admitted if there were more applicants than the state educational institution is allowed under K.A.R. 88-29a-8, K.A.R. 88-29-8a, K.A.R. 88-29-8b, or K.A.R. 88-29a-8c.

(e) The policies may include the establishment of subcategories of non-degree-seeking students.

(f) The policies shall include a statement indicating whether the state educational institution will consider, in the admission decision, any post-secondary credit from an institution that is not accredited and has not been granted preaccreditation status by an agency recognized by the United States department of education or by an equivalent international agency. If the state educational institution considers these credits, the admission decision shall be made in accordance with K.A.R. 88-29-4.

(g) The policies shall include a statement of whether the state educational institution enrolls students in the temporary or provisional admission category.

(1) If the state educational institution enrolls any students in the temporary admission category, the policies shall include the following:

(A) A description of requirements for exiting the temporary admission category and entering another admission category;

(B) a statement that a temporarily admitted student may be denied admission to a specific degree program;

(C) a statement that each student who fails to exit from the temporary admission category within the specified period of time shall be disenrolled; and

(D) a statement that each applicant who is admitted in the temporary admission category pursuant to K.A.R. 88-29c-10(a)(2) shall be allowed to exit from the temporary admission category and enter the regular admission category only upon verification of high school graduation.

(2) If the state educational institution enrolls any students in the provisional admission category, the policies shall include the following:

(A) A description of requirements for exiting the provisional admission category and entering another admission category;

(B) a statement that any student admitted in the provisional admission category may be denied admission to a specific degree program; and

(C) a statement that each student who fails to exit from the provisional admission category with-

in the period of time specified by the state educational institution shall be disenrolled.

(3) The state educational institution's policy shall mandate that a student who meets the criteria for both the temporary and provisional admission categories shall not be granted regular admission until the student fulfils the requirements for exiting each of the categories in which the student is initially enrolled.

(h) The admission policy of each state educational institution shall be required to be approved in advance by the board of regents. (Authorized by and implementing K.S.A. 76-717; effective Oct. 16, 2020.)

**88-29c-10. Methods for state educational institutions to use when evaluating qualifications for admission.** This regulation shall be applicable to each state educational institution's review of applicants beginning with the 2021 summer session.

(a) Each admission officer at a state educational institution shall consider an applicant's ACT or SAT scores as follows:

(1) A documented score of 1060 on the SAT, excluding the writing portion of the SAT, shall be deemed the equivalent of a composite score of 21 or superscore of 21 on the ACT for purposes of this article of the board of regents' regulations.

(2) A documented composite score or a documented superscore of 21 or above on the ACT may be used to admit an applicant in the temporary admission category after the applicant's completion of the sixth high school semester, without further review of the applicant's materials.

(3) The admission officer shall consider the applicant's best ACT-issued composite score or superscore for admission decisions.

(4) If an applicant has taken both the ACT and the SAT, the admission officer shall consider the applicant's better score on the two tests for admission decisions.

(b) If the high school has not already calculated the applicant's final cumulative grade point average and provided that information on the official high school transcript, each admission officer at a state educational institution shall calculate the grade point average for any applicant seeking admission pursuant to K.A.R. 88-29c-5 or 88-29c-7, as follows:

(1) The admission officer shall calculate a grade point average only for courses appearing on the official high school transcript.

(2)(A) If the high school transcript reports grades on a four-point scale, the admission officer shall calculate grade point averages by assigning four points to a grade of A, three points to a grade of B, two points to a grade of C, one point to a grade of D, and zero points to a grade of F. Pluses and minuses shall not be considered in the calculation.

(B) If the high school transcript reports grades on a scale other than a four-point scale, the admission officer shall mathematically convert the grades to a four-point scale and assign points as described in paragraph (b)(2)(A).

(3) The admission officer shall consider grades of P or pass as follows:

(A) If the high school transcript indicates that a P is equivalent to a grade of D or higher, the admission officer shall assign one grade point to each grade of P.

(B) If the high school transcript indicates that a P is equivalent to a grade of C or higher, the admission officer shall assign two grade points to each grade of P.

(C) If the high school transcript does not indicate the minimum letter grade corresponding to a P, the admission officer shall assign one grade point to each grade of P.

(4) If an applicant has retaken a course, the admission officer shall use the highest grade when calculating the grade point average.

(5) If an applicant has taken a college course and if this college course appears on the applicant's official high school transcript, the admission officer shall calculate the grade for the college course, for purposes of determining the grade point average, as follows:

(A) Each college course with three or more credit hours, but no more than five credit hours, shall be treated as a one-unit high school course.

(B) Each college course with more than five credit hours shall be treated as a two-unit high school course.

(c) At the time of admission of an applicant, the state educational institution shall notify the applicant of the following:

(1) The category or categories in which the applicant is admitted;

(2) any enrollment restrictions associated with the applicant's category or categories of admission; and

(3) the requirements for removing any enrollment restrictions associated with the applicant's category or categories of admission. (Authorized

by and implementing K.S.A. 76-717; effective Oct. 16, 2020.)

**Article 29d.—UNIVERSITY OF KANSAS  
ADMISSIONS BEGINNING WITH  
REVIEW OF APPLICATIONS FOR 2021  
SUMMER SESSION**

**88-29d-1. Definitions.** This regulation shall be applicable to the university of Kansas' review of applications beginning with the 2021 summer session. Each of the following terms, wherever used in this article or in article 29b of the board of regents' regulations, shall have the meaning specified in this regulation:

(a) "Accredited high school" means one or more educational institutions that provide secondary instruction to students in grades 9, 10, 11, and 12 and that are designated accredited, or are within an education system designated accredited, by an accrediting agency recognized by the United States department of education, by the Kansas state board of education, or by an agency with standards equivalent to those of the United States department of education or the Kansas state board of education.

(b) "Admission" means the permission given by the admission officer of the university of Kansas to an applicant to enroll as a degree-seeking student in the university of Kansas.

(c) "Admission category" means one of the admission categories adopted by the university of Kansas pursuant to K.A.R. 88-29b-3.

(d) "Complete application file" means the entire set of the following student records that have been received in the admission office of the university of Kansas:

(1) A completed application to the university of Kansas;

(2) verification that all applicable application fees have been paid;

(3) an official copy of the final transcript from the high school from which the student graduated, including a transcript documenting graduation from high school, or a high school equivalency credential;

(4) when required pursuant to K.A.R. 88-29c-5, K.A.R. 88-29d-5, K.A.R. 88-29c-7, or K.A.R. 88-29d-7, an official copy of all ACT or SAT scores; and

(5) any other materials required by the university of Kansas for advising or placement purposes.

(e) "Degree-seeking student" means a student who has been accepted for enrollment at the uni-

versity of Kansas and who has formally indicated to the university of Kansas the intent to complete a program of study that is designated by the United States department of education as a program that is eligible for federal financial aid.

(f) “Earned a high school equivalency credential with at least the prescribed minimum scores” means one of the following:

(1) Took the GED test on or after January 1, 2014, with an overall score of at least 680 points and a minimum score of 150 points on each subset;

(2) took the high school equivalency test (HiSET) on or after January 1, 2014, with an overall score of at least 75 points and a minimum score of 8 points on each subset;

(3) took the GED test on or after January 1, 2002 and before January 1, 2014, with an overall score of at least 2,550 points and a minimum score of 510 points on each subset; or

(4) took the GED test before January 1, 2002, with an overall score of at least 250 points and a minimum score of 50 points on each subset.

(g) “Exception window for nonresident freshman class admissions” means a method by which the university of Kansas, pursuant to K.A.R. 88-29b-8c, may admit a person who is not a resident of Kansas, who does not meet the applicable requirements specified in K.A.R. 88-29-4, K.A.R. 88-29b-4, K.A.R. 88-29c-7, K.A.R. 88-29d-7, K.A.R. 88-29a-7a, or K.A.R. 88-29b-7a, and who is not eligible for admission pursuant to the exception window for nonresident transfer admissions.

(h) “Exception window for nonresident transfer admissions” means a method by which the university of Kansas, pursuant to K.A.R. 88-29b-8b, may admit a person who is not a resident of Kansas and has earned at least 24 transferable college credit hours but who is not eligible for admission pursuant to K.A.R. 88-29-4 or K.A.R. 88-29b-4.

(i) “Exception window for resident freshman class admissions” means a method by which the university of Kansas, pursuant to K.A.R. 88-29b-8, may admit a Kansas resident who does not meet the applicable requirements specified in K.A.R. 88-29-4, K.A.R. 88-29b-4, K.A.R. 88-29c-5, K.A.R. 88-29d-5, K.A.R. 88-29a-6, or K.A.R. 88-29b-6 and who is not eligible for admission pursuant to the exception window for resident transfer admissions.

(j) “Exception window for resident transfer admissions” means a method by which the university of Kansas, pursuant to K.A.R. 88-29b-8a, may admit a Kansas resident who has earned at least

24 transferable college credit hours but is not eligible for admission pursuant to K.A.R. 88-29-4 or K.A.R. 88-29b-4.

(k) “Institution of higher education” means an educational institution in any state, territory, or country that meets the following criteria:

(1) Meets one of the following requirements:

(A) Offers a course of instruction designated by the United States department of education as a program that is eligible for federal financial aid; or

(B) offers a course of instruction that is equivalent to a program designated by the United States department of education as a program that is eligible for federal financial aid;

(2) is legally authorized within the state, territory, or country that appears on the transcript to provide a program of education beyond secondary education; and

(3) meets one of the following requirements:

(A) Is accredited by an accrediting agency or association that is recognized by the United States department of education or an international accrediting agency; or

(B) has been granted preaccreditation status by an accrediting agency or association that is recognized by either the United States department of education or an international accrediting agency.

(l) “Kansas resident” means a person determined to be a resident for fee purposes, pursuant to K.S.A. 76-729 and amendments thereto.

(m) “Non-accredited private secondary school” has the meaning specified in K.A.R. 88-26-1. This term may include a home school.

(n) “Non-degree-seeking student” means a student who has been accepted for enrollment at the university of Kansas and who has formally indicated to the university the intent to enroll for self-enrichment or other reasons, excluding the intent to complete a course of study that is designated by the United States department of education as a program that is eligible for federal financial aid.

(o) “State educational institution” has the meaning specified in K.S.A. 76-711, and amendments thereto.

(p) “Transferable college credit hours” means postsecondary coursework that the university of Kansas will accept. (Authorized by and implementing K.S.A. 76-717; effective Oct. 16, 2020.)

**88-29d-5. Qualifications required for the admission of a Kansas resident who is under the age of 21.** This regulation shall be applicable

to the university of Kansas' review of applicants beginning with the 2021 summer session.

(a) The requirements in this regulation shall apply to any applicant who is a Kansas resident and is under the age of 21, except that the requirements shall not apply to any applicant who has earned 24 or more transferable college credit hours. If an applicant to whom this regulation is applicable does not meet the requirements of subsections (b), (c), and (d) and does not meet the requirements of K.A.R. 88-29c-5, the applicant may be admitted by means of the exception window for resident freshman class admissions described in K.A.R. 88-29b-8. Any applicant who is admitted pursuant to subsection (e) and does not meet the requirements of K.A.R. 88-29c-5 may be admitted only by means of the exception window for resident freshman class admissions described in K.A.R. 88-29b-8.

(b) The university of Kansas shall admit any Kansas resident under the age of 21 who submits an application for admission to the university on or before February 1 and meets either of the following requirements:

(1)(A) Has graduated from an accredited high school in Kansas or, pursuant to K.S.A. 76-717b and amendments thereto, an accredited high school located out of state, with a minimum cumulative grade point average of 3.0 on a 4.0 scale;

(B) has achieved a composite score or a super-score on the ACT of at least 24; and

(C) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours; or

(2)(A) Has graduated from an accredited high school in Kansas or, pursuant to K.S.A. 76-717b and amendments thereto, an accredited high school located out of state, with a minimum cumulative grade point average of 3.25 on a 4.0 scale;

(B) has achieved a composite score or a super-score on the ACT of at least 21; and

(C) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(c) The university of Kansas shall admit any Kansas resident under the age of 21 who submits an application for admission to the university on or before February 1 and meets either of the following requirements:

(1)(A) Has graduated from a non-accredited private secondary school with a minimum cumulative grade point average of 3.0 on a 4.0 scale;

(B) has achieved a composite score or a super-score on the ACT of at least 24; and

(C) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours; or

(2)(A) Has graduated from a non-accredited private secondary school with a minimum cumulative grade point average of 3.25 on a 4.0 scale;

(B) has achieved a composite score or a super-score on the ACT of at least 21; and

(C) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(d) The university of Kansas shall admit any Kansas resident under the age of 21 who submits an application for admission to the university on or before February 1 and who meets the following requirements:

(1) Has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29d-1;

(2) has achieved a composite score or a super-score on the ACT of at least 21; and

(3) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(e)(1) The university of Kansas may admit any Kansas resident under the age of 21 who meets the following conditions:

(A)(i) Submits an application for admission to the university after February 1; or

(ii) submits an application for admission on or before February 1 but does not meet the criteria specified in subsections (b), (c), and (d); and

(B) is recommended for admission by the university's admission review committee.

(2) The admission review committee shall consider the following factors in making admission recommendations:

(A) The applicant's completed coursework;

(B) the applicant's academic performance, including the following:

(i) Grade point average in all high school coursework;

(ii) ACT scores; and

(iii) high school class rank;

(C) the degree of difficulty of the applicant's high school coursework;

(D) the applicant's grade trend;

(E) the applicant's ability to enhance the cultural, economic, or geographic diversity of the university;

(F) the applicant's academic potential;

(G) any outstanding talent in a particular area that the applicant has demonstrated;

(H) the applicant's successful completion of advanced placement, international baccalaureate, and dual-credit coursework while in high school;

(I) specification of whether the applicant is a first-generation postsecondary student;

(J) the applicant's personal challenges or family circumstances that have affected academic performance;

(K) the applicant's eligibility for and likelihood of benefitting from organized support services available at the university; and

(L) any other factors that the admission review committee deems appropriate and that have been included in the university's admission policies established pursuant to K.A.R. 88-29d-9. (Authorized by and implementing K.S.A. 76-717; effective Oct. 16, 2020.)

**88-29d-7. Qualifications required for the admission of a nonresident who is under the age of 21.** This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2021 summer session.

(a) The requirements in this regulation shall apply to any applicant who is a nonresident and is under the age of 21, except that the requirements shall not apply to any applicant who has earned 24 or more transferable college credit hours. If an applicant to whom this regulation is applicable does not meet the requirements in subsections (b), (c), and (d) and does not meet the requirements of K.A.R. 88-29c-7, the applicant may be admitted by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29b-8c. Any applicant who is admitted pursuant to subsection (e) and does not meet the requirements of K.A.R. 88-29c-7 may be admitted only by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29b-8c.

(b) The university of Kansas may admit any nonresident under the age of 21 who submits an application for admission to the university on or before February 1 and meets either of the following requirements:

(1)(A) Has graduated from an accredited high school with a minimum cumulative grade point average of 3.0 on a 4.0 scale;

(B) has achieved a composite score or a super-score on the ACT of at least 24; and

(C) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours; or

(2)(A) Has graduated from an accredited high school with a minimum cumulative grade point average of 3.25 on a 4.0 scale;

(B) has achieved a composite score or a super-score on the ACT of at least 21; and

(C) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(c) The university of Kansas may admit any nonresident under the age of 21 who submits an application for admission to the university on or before February 1 and meets either of the following requirements:

(1)(A) Has graduated from a non-accredited private secondary school with a minimum cumulative grade point average of 3.0 on a 4.0 scale;

(B) has achieved a composite score or a super-score on the ACT of at least 24; and

(C) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours; or

(2)(A) Has graduated from a non-accredited private secondary school with a minimum cumulative grade point average of 3.25 on a 4.0 scale;

(B) has achieved a composite score or a super-score on the ACT of at least 21; and

(C) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(d) The university of Kansas may admit any nonresident under the age of 21 who submits an application for admission to the university on or before February 1 and meets the following requirements:

(1) Has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29d-1;

(2) has achieved a composite score or a super-score on the ACT of at least 21; and

(3) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(e) The university of Kansas may admit any nonresident under the age of 21 who meets the following conditions:

(1)(A) Submits an application for admission to the university after February 1; or

(B) submits an application for admission on or before February 1 but does not meet the criteria specified in subsections (b), (c), and (d); and

(2) is recommended for admission by the university's admission review committee upon consideration of the factors listed in K.A.R. 88-29d-5(e)

(2). (Authorized by and implementing K.S.A. 76-717; effective Oct. 16, 2020.)

**88-29d-9. Admission policies.** This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2021 summer session. The chancellor of the university of Kansas or a designee shall establish admission policies that meet all of the following requirements:

(a) The policies shall not conflict with the provisions of this article of the board of regents' regulations or, where applicable, the provisions of articles 29, 29a, and 29c of the board of regents' regulations.

(b) The policies shall specify the materials required for a complete application file.

(c) The policies shall address the enrollment of both degree-seeking and non-degree-seeking students as well as each student's transition from degree-seeking to non-degree-seeking status or from non-degree-seeking to degree-seeking status. Policies shall mandate that each non-degree-seeking student who applies to enroll as a degree-seeking student shall be admitted only if one of the following conditions is met:

(1) The student meets the applicable requirements specified in K.A.R. 88-29b-4 through 88-29b-7a, K.A.R. 88-29d-5, and K.A.R. 88-29d-7.

(2) The student is admitted by means of the exception window for resident freshmen class admissions described in K.A.R. 88-29b-8.

(3) The student is admitted by means of the exception window for resident transfer admissions described in K.A.R. 88-29b-8a.

(4) The student is admitted by means of the exception window for nonresident transfer admissions described in K.A.R. 88-29b-8b.

(5) The student is admitted by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29b-8c.

(d) The policies shall include an explanation of the exception windows and the university of Kansas' method to determine which applicants would be admitted if there were more applicants than the university is allowed under K.A.R. 88-29b-8, K.A.R. 88-29b-8a, K.A.R. 88-29b-8b, or K.A.R. 88-29b-8c.

(e) The policies may include the establishment of subcategories of non-degree-seeking students.

(f) The policies shall include a statement indicating whether the university of Kansas will consider, in the admission decision, any postsecondary

credit from an institution that is not accredited and has not been granted preaccreditation status by an agency recognized by the United States department of education or by an equivalent international agency. If the university considers these credits, the admission decision shall be made in accordance with K.A.R. 88-29-4 or K.A.R. 88-29b-4.

(g) The policies shall include a statement of whether the university of Kansas enrolls students in the temporary or provisional admission category.

(1) If the university of Kansas enrolls any students in the temporary admission category, the policies shall include the following:

(A) A description of requirements for exiting the temporary admission category and entering another admission category;

(B) A statement that a temporarily admitted student may be denied admission to a specific degree program;

(C) A statement that each student who fails to exit from the temporary admission category within the specified period of time shall be disenrolled; and

(D) A statement that each applicant who is admitted in the temporary admission category pursuant to K.A.R. 88-29d-10(a)(2) shall be allowed to exit from the temporary admission category and enter the regular admission category only upon verification of high school graduation.

(2) If the university of Kansas enrolls any students in the provisional admission category, the policies shall include the following:

(A) A description of requirements for exiting the provisional admission category and entering another admission category;

(B) A statement that any student admitted in the provisional admission category may be denied admission to a specific degree program; and

(C) A statement that each student who fails to exit from the provisional admission category within the period of time specified by the university shall be disenrolled.

(3) The policies shall mandate that a student who meets the criteria for both the temporary and provisional admission categories shall not be granted regular admission until the student fulfills the requirements for exiting each of the categories in which the student is initially enrolled.

(h) The policies shall be required to be approved in advance by the board of regents. (Authorized by and implementing K.S.A. 76-717; effective Oct. 16, 2020.)

**88-29d-10. Methods for evaluating qualifications for admission.** This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2021 summer session.

(a) The admission officer at the university of Kansas shall consider each applicant's ACT or SAT scores as follows:

(1) A documented score of 1060 on the SAT, excluding the writing portion of the SAT, shall be deemed the equivalent of a composite score of 21 or superscore of 21 on the ACT for purposes of this article of the board of regents' regulations. A documented score of 1160 on the SAT, excluding the writing portion of the SAT, shall be deemed the equivalent of a composite score of 24 on the ACT for purposes of this article of the board of regents' regulations.

(2) A documented composite score or a documented superscore of 21 or above on the ACT may be used to admit an applicant in the temporary admission category after the applicant's completion of the sixth high school semester, without further review of the applicant's materials.

(3) The admission officer shall consider the applicant's best ACT-issued composite score or superscore for admission decisions.

(4) If an applicant has taken both the ACT and the SAT, the admission officer shall consider the applicant's better score on the two tests for admission decisions.

(b) If the high school has not already calculated the overall grade point average and provided that information on the official high school transcript, the admission officer at the university of Kansas shall calculate the overall grade point average for any applicant seeking admission pursuant to K.A.R. 88-29d-5, or K.A.R. 88-29d-7, as follows:

(1) The admission officer shall calculate a grade point average only for courses appearing on the applicant's official high school transcript.

(2)(A) If the high school transcript reports grades on a four-point scale, the admission officer shall calculate grade point averages by assigning four points to a grade of A, three points to a grade of B, two points to a grade of C, one point to a grade of D, and zero points to a grade of F. Pluses and minuses shall not be considered in the calculation.

(B) If the high school transcript reports grades on a scale other than a four-point scale, the admission officer shall mathematically convert the grades to a four-point scale and assign points as described in paragraph (b)(2)(A).

(3) The admission officer shall consider grades of P or pass as follows:

(A) If the high school transcript indicates that a P is equivalent to a grade of D or higher, the admission officer shall assign one grade point to each grade of P.

(B) If the high school transcript indicates that a P is equivalent to a grade of C or higher, the admission officer shall assign two grade points to each grade of P.

(C) If the high school transcript does not indicate the minimum letter grade corresponding to a P, the admission officer shall assign one grade point to each grade of P.

(4) If an applicant has retaken a course, the admission officer shall use the highest grade when calculating the grade point.

(5) If an applicant has taken a college course and if this college course appears on the official high school transcript, the admission officer shall calculate the grade for the college course, for purposes of determining the grade point average, as follows:

(A) Each college course with three or more credit hours, but no more than five credit hours, shall be treated as a one-unit high school course.

(B) Each college course with more than five credit hours shall be treated as a two-unit high school course.

(c) At the time of admission of an applicant, the university of Kansas shall notify the applicant of the following:

(1) The category or categories in which the applicant is admitted;

(2) any enrollment restrictions associated with the applicant's category or categories of admission; and

(3) the requirements for removing any enrollment restrictions associated with the applicant's category or categories of admission. (Authorized by and implementing K.S.A. 76-717; effective Oct. 16, 2020.)

## **Article 30.—STUDENT HEALTH INSURANCE PROGRAM**

**88-30-1. Definitions.** Each of the following terms, wherever used in this article of the board of regents' regulations, shall have the meaning specified in this regulation:

(a) "Degree-seeking undergraduate student" means a student who has formally indicated to the state educational institution the intent to com-

plete a program of study that is designated by the United States department of education as a program that is eligible for federal financial aid.

(b) “Dependent” means a student’s unmarried child under the age of 19 who is not self-supporting.

(c) “Employer contribution” means the amount paid by a state educational institution for the coverage of a student employee that equals 75 percent of the cost of student-only coverage.

(d) “State board” means the state board of regents.

(e) “State educational institution” has the meaning specified in K.S.A. 76-711, and amendments thereto, except that for purposes of this article of the board of regents’ regulations, the university of Kansas medical center shall be considered a state educational institution separate from the university of Kansas, Lawrence, and its campuses.

(f)(1) “Student” means any individual who meets the following conditions:

(A) Is enrolled at a state educational institution, except as provided in paragraph (f)(1)(C)(iv);

(B) is not eligible for coverage under K.A.R. 108-1-1; and

(C) meets one of the following conditions:

(i) Is a degree-seeking undergraduate student who is enrolled in at least six hours in the fall or spring semesters or at least three hours in the summer semester or is participating in an internship approved or sponsored by the state educational institution;

(ii) is a master’s degree student who is enrolled in at least three hours each semester;

(iii) is an individual with J-1 or other nonimmigrant status;

(iv) is an individual with nonimmigrant status who is engaged in optional practical training or academic training, even though the individual is not enrolled;

(v) is a doctoral student;

(vi) is a master’s or doctoral student who is participating in an internship approved or sponsored by the state educational institution; or

(vii) has been appointed as a postdoctoral fellow.

(2) “Student” shall not include either of the following:

(A) Except as provided in paragraph (f)(3), any individual who is enrolled exclusively in any of the following:

(i) One or more semester-based internet courses;

(ii) one or more semester-based television courses;

(iii) one or more home study courses; or

(iv) one or more correspondence courses; or

(B) a concurrent enrollment pupil, as defined in K.S.A. 72-11a03 and amendments thereto.

(3) The limitations of paragraph (f)(2)(A) shall not apply to any student employee whose official workstation is on the main campus of a state educational institution. On and after August 1, 2020, the limitations of paragraph (f)(2)(A) shall not apply during any semester for which a state educational institution suspends or substantially modifies its in-person attendance requirements.

(4) Each individual who meets the criteria for being a “student,” as specified in this subsection, at the time of application for coverage under the student health insurance program shall remain eligible for coverage throughout the coverage period.

(g) “Student employee” means a student who meets one of the following conditions:

(1) Is appointed for the current semester to a graduate assistant, graduate teaching assistant, or graduate research assistant position that is at least a 50 percent appointment; or

(2) holds concurrent appointments to more than one graduate assistant, graduate teaching assistant, or graduate research assistant position that total at least a 50 percent appointment.

(h) “Student health insurance program” means the health and accident insurance coverage or health care services of a health maintenance organization for which the state board has contracted pursuant to K.S.A. 75-4101, and amendments thereto. (Authorized by and implementing K.S.A. 75-4101; effective, T-88-6-14-07, June 14, 2007; effective Oct. 12, 2007; amended Aug. 1, 2011; amended, T-88-6-26-20, June 26, 2020; amended Oct. 23, 2020.)

**88-30-2. Election of coverage.** Any student may elect coverage under the student health insurance program for any of the following sets of people, to the extent that the coverage is offered by the state board:

(a) The student;

(b) the student and the student’s spouse;

(c) the student and any dependents; or

(d) the student, the student’s spouse, and any dependents. (Authorized by and implementing K.S.A. 75-4101; effective, T-88-6-14-07, June 14, 2007; effective Oct. 12, 2007; amended Oct. 23, 2020.)

**88-30-3. Payment of premiums.** Each student who elects coverage under the student health insurance program as described in K.A.R. 88-30-2 shall pay the costs of the coverage as follows:

(a) Each student who is not a student employee shall pay the full cost of the elected coverage.

(b) Each student employee's cost of elected coverage shall be reduced by the employer's contribution. (Authorized by and implementing K.S.A. 2006 Supp. 75-4101; effective, T-88-6-14-07, June 14, 2007; effective Oct. 12, 2007.)

## Agency 89

# School Budget Review Board

**Editor's Note:**

The statute establishing the School Budget Review Board was repealed in 1973, see L. 1973, Ch. 292, Sec. 56. The functions previously performed by the School Budget Review Board are now performed by the State Board of Tax Appeals, see K.S.A. 72-7071. For regulations of the State Board of Tax Appeals, see Agency 94.

*Articles*

89-1. *GENERAL. (Not in active use.)*

**Article 1.—GENERAL**

**89-1-1 through 89-1-6.** (Authorized by K.S.A. 1969 Supp. 72-7016; effective Jan. 1, 1966; amended Jan. 1, 1968; amended by E-68-18, June 19, 1968; amended Jan. 1, 1969; amended by E-69-15, July 16, 1969; amended Jan. 1, 1970; revoked May 1, 1979.)



**Agency 90**  
**School Retirement Board**

**Editor's Note:**

Effective July 1, 1970, the State School Retirement Board was abolished and its powers devolved upon the board of trustees of the Kansas Public Employees Retirement System. The rules and regulations formerly appearing under this agency have been transferred to Agency 80, article 45.



# Agency 91

## State Department of Education

### Editor's Note:

Regulations adopted under constitutional authority are exempt from the general filing act. See, Opinion of Attorney General No. 81-236. See K.S.A. 72-7514b for filing requirements for regulations adopted under constitutional authority.

### Articles

- 91-1. CERTIFICATE REGULATIONS.
- 91-2. STANDARDS AND PROCEDURES FOR ACCREDITING HIGH SCHOOLS. (*Not in active use.*)
- 91-3. STANDARDS AND PROCEDURES FOR ACCREDITING JUNIOR HIGH SCHOOLS. (*Not in active use.*)
- 91-4. STANDARDS AND PROCEDURES FOR ACCREDITING ELEMENTARY SCHOOLS. (*Not in active use.*)
- 91-5. DRIVER AND TRAFFIC SAFETY EDUCATION COURSES.
- 91-6. KANSAS SCHOLARSHIP PROGRAM. (*Not in active use.*)
- 91-7. COMMERCIAL DRIVERS' TRAINING SCHOOLS.
- 91-8. ACCREDITING COMMUNITY COLLEGES; CRITERIA. (*Not in active use.*)
- 91-9. WASHBURN MUNICIPAL UNIVERSITY; STATE AID. (*Not in active use.*)
- 91-10. GENERAL EDUCATIONAL DEVELOPMENT TESTS. (*Not in active use.*)
- 91-11. N.D.E.A. GUIDANCE AND COUNSELING. (*Not in active use.*)
- 91-12. SPECIAL EDUCATION. (*Not in active use.*)
- 91-13. THIRTY UNIT REQUIREMENT. (*Not in active use.*)
- 91-14. STANDARDS AND PROCEDURES FOR ACCREDITING EARLY CHILDHOOD SCHOOLS. (*Not in active use.*)
- 91-15. SCHOOL CONDUCT RULES.
- 91-16. VOCATIONAL EDUCATION.
- 91-17. SPECIAL HIGH SCHOOLS. (*Not in active use.*)
- 91-18. PRIVATE SCHOOLS. (*Not in active use.*)
- 91-19. STUDENT TEACHERS.
- 91-20. SCREENING AND ADOPTION OF TEXTBOOKS. (*Not in active use.*)
- 91-21. DISORGANIZATION OF A UNIFIED SCHOOL DISTRICT BY ELECTION.
- 91-22. PROFESSIONAL PRACTICES COMMISSION.
- 91-23. STANDARDS AND PROCEDURES FOR ACCREDITING SPECIAL HIGH SCHOOLS. (*Not in active use.*)
- 91-24. STANDARDS AND PROCEDURES FOR ACCREDITING SPECIAL ELEMENTARY SCHOOLS. (*Not in active use.*)
- 91-25. COMMUNITY COLLEGES. (*Not in active use.*)
- 91-26. NONPROFIT SCHOOL FOOD SERVICE PROGRAMS.
- 91-27. STANDARDS AND PROCEDURES FOR ACCREDITING AREA VOCATIONAL-TECHNICAL SCHOOLS AND VOCATIONAL SCHOOLS. (*Not in active use.*)
- 91-28. STANDARDS AND PROCEDURES FOR ACCREDITING SPECIAL PURPOSE SCHOOLS C1310. (*Not in active use.*)
- 91-29. PROCEDURES FOR EMPLOYEES OF THE KANSAS STATE SCHOOLS FOR THE DEAF AND VISUALLY HANDICAPPED TO PARTICIPATE IN TAX SHELTERED ANNUITIES.
- 91-30. ACCREDITATION. (*Not in active use.*)
- 91-31. ACCREDITATION.
- 91-32. REGULATIONS FOR ACCREDITING AREA VOCATIONAL-TECHNICAL SCHOOLS AND AREA VOCATIONAL SCHOOLS. (*Not in active use.*)
- 91-33. ACCREDITING SPECIAL PURPOSE SCHOOLS. (*Not in active use.*)
- 91-34. REGULATIONS FOR ACCREDITING YOUTH CENTER SCHOOLS. (*Not in active use.*)

*Articles*

- 91-35. *EDUCATIONAL EXCELLENCE GRANT PROGRAM.* (Not in active use.)  
 91-37. PARENTS AS TEACHERS GRANTS.  
 91-38. SCHOOL BUS TRANSPORTATION.  
 91-40. SPECIAL EDUCATION.  
 91-41. MENTOR TEACHER PROGRAM.  
 91-42. EMERGENCY SAFETY INTERVENTIONS.

**Article 1.—CERTIFICATE REGULATIONS**

**91-1-1.** (Authorized by K.S.A. 72-1388; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked May 1, 1979.)

**91-1-1a.** (Authorized by and implementing K.S.A. 72-1388; effective May 1, 1979; amended May 1, 1980; revoked May 1, 1982.)

**91-1-2.** (Authorized by and implementing K.S.A. 72-1387, 72-1388; effective Jan. 1, 1966; amended Jan. 1, 1967; amended Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended, E-71-38, Sept. 22, 1971; amended Jan. 1, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1975; amended May 1, 1976; amended, E-79-34, Dec. 20, 1978; amended May 1, 1979; amended May 1, 1980; revoked May 1, 1982.)

**91-1-3.** (Authorized by K.S.A. 72-1388; effective Jan. 1, 1966; amended Jan. 1, 1967; amended Jan. 1, 1969; amended Jan. 1, 1970; amended, E-70-30, June 22, 1970; amended Jan. 1, 1971; amended, E-71-38, Sept. 22, 1971; amended Jan. 1, 1972; amended Jan. 1, 1973; amended, E-79-34, Dec. 20, 1978; amended May 1, 1979; amended May 1, 1980; revoked May 1, 1982.)

**91-1-4.** (Authorized by K.S.A. 72-1388; effective Jan. 1, 1966; amended Jan. 1, 1967; amended, E-68-19, June 19, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended, E-70-30, June 22, 1970; amended Jan. 1, 1971; amended, E-71-38, Sept. 22, 1971; amended Jan. 1, 1972; modified, L. 1975, ch. 359, May 1, 1975; amended May 1, 1978; amended, E-79-34, Dec. 20, 1978; amended May 1, 1979; amended May 1, 1980; revoked May 1, 1982.)

**91-1-5.** (Authorized by K.S.A. 72-1388; effective Jan. 1, 1966; amended Jan. 1, 1967; amended Jan. 1, 1968; amended, E-68-10, March 19, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended, E-70-30, June 22, 1970; amended Jan.

1, 1971; amended Jan. 1, 1972; amended May 1, 1975; amended Feb. 15, 1977; amended, E-79-34, Dec. 20, 1978; amended May 1, 1979; amended May 1, 1980; revoked May 1, 1982.)

**91-1-6.** (Authorized by K.S.A. 72-1388; effective Jan. 1, 1966; amended Jan. 1, 1967; amended, E-67-16, Aug. 25, 1967; amended Jan. 1, 1968; amended Jan. 1, 1969; revoked May 1, 1979.)

**91-1-7.** (Authorized by K.S.A. 72-1388; effective Jan. 1, 1966; amended Jan. 1, 1967; amended Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1980; revoked May 1, 1982.)

**91-1-8.** (Authorized by K.S.A. 72-1388; effective Jan. 1, 1966; amended Jan. 1, 1967; amended Jan. 1, 1968; amended Jan. 1, 1969; amended Feb. 15, 1977; amended May 1, 1979; amended May 1, 1980; revoked May 1, 1982.)

**91-1-9.** (Authorized by K.S.A. 72-1388; effective Jan. 1, 1966; amended Jan. 1, 1972; amended May 1, 1975; amended May 1, 1979; amended May 1, 1980; revoked May 1, 1982.)

**91-1-10.** (Authorized by and implementing K.S.A. 72-1388; effective Jan. 1, 1966; amended Jan. 1, 1967; amended Jan. 1, 1968; amended May 1, 1979; amended May 1, 1980; revoked May 1, 1982.)

**91-1-11.** (Authorized by K.S.A. 72-1388; effective Jan. 1, 1966; amended Jan. 1, 1970; amended May 1, 1979; revoked May 1, 1980.)

**91-1-12.** (Authorized by K.S.A. 72-1388; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended, E-71-38, Sept. 22, 1971; amended Jan. 1, 1972; revoked May 1, 1979.)

**91-1-12a.** (Authorized by and implementing K.S.A. 72-1388; effective May 1, 1979; amended May 1, 1980; revoked May 1, 1982.)

**91-1-13.** (Authorized by K.S.A. 72-1388; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked May 1, 1979.)

**91-1-14.** (Authorized by K.S.A. 72-1388; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended May 1, 1979; amended May 1, 1980; revoked May 1, 1982.)

**91-1-15.** (Authorized by K.S.A. 71-1388, and implementing K.S.A. 72-1383, 72-1388, 72-5412; effective Jan. 1, 1966; amended, E-67-7, June 1, 1967; amended Jan. 1, 1968; amended Jan. 1, 1970; amended May 1, 1979; revoked May 1, 1982.)

**91-1-16.** (Authorized by K.S.A. 72-1388; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1970; amended May 1, 1979; revoked May 1, 1980.)

**91-1-17.** (Authorized by K.S.A. 72-1388; effective Jan. 1, 1966; amended Jan. 1, 1967; amended Jan. 1, 1969; amended Jan. 1, 1970; amended, E-74-10, Dec. 7, 1973; amended May 1, 1975; amended May 1, 1979; revoked May 1, 1982.)

**91-1-18.** (Authorized by K.S.A. 72-1388; effective Jan. 1 1966; amended Jan. 1, 1970; revoked May 1, 1979.)

**91-1-19.** (Authorized by and implementing K.S.A. 72-1388; effective Jan. 1, 1966; amended Jan. 1, 1967; amended Jan. 1, 1970; amended Jan. 1, 1971; amended, E-73-3, Nov. 16, 1972; amended May 1, 1975; amended May 1, 1976; amended May 1, 1979; amended May 1, 1980; revoked May 1, 1982.)

**91-1-20.** (Authorized by K.S.A. 72-1388; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked May 1, 1979.)

**91-1-21.** (Authorized by K.S.A. 72-1388; effective Jan. 1, 1966; amended Jan. 1, 1970; amended May 1, 1979; revoked May 1, 1982.)

**91-1-22.** (Authorized by K.S.A. 72-1388; effective Jan. 1, 1966; amended Jan. 1, 1967; amended Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended, E-70-30, June 22, 1970; amended Jan. 1, 1971; amended, E-71-38, Sept. 22, 1971; amended Jan. 1, 1972; amended, E-72-25, Aug. 25, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; amended, E-74-24, April

22, 1974; modified, L. 1975, ch. 360, May 1, 1975; amended Feb. 15, 1977; amended May 1, 1979; amended May 1, 1980; revoked May 1, 1982.)

**91-1-23.** (Authorized by K.S.A. 72-1388; effective Feb. 15, 1977; amended May 1, 1978; amended May 1, 1979; amended, E-80-22, Dec. 12, 1979; amended May 1, 1980; revoked May 1, 1982.)

**91-1-24.** (Authorized by K.S.A. 1979 Supp. 72-7513; effective May 1, 1978; amended May 1, 1979; amended May 1, 1980; revoked May 1, 1982.)

**91-1-25.** (Authorized by K.S.A. 72-1388; effective May 1, 1980; revoked May 1, 1982.)

**91-1-26. This regulation shall be revoked on June 30, 2003.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; revoked June 30, 2003.)

**91-1-27. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Jan. 8, 1982; amended May 1, 1984; amended June 1, 1988; revoked June 30, 2003.)

**91-1-27a. This regulation shall be revoked on June 30, 2003.** (Authorized by K.S.A. 1984 Supp. 72-1388, as amended by sec. 1 of 1985 HB 2461; implementing K.S.A. 1984 Supp. 72-1388, as amended by sec. 1 of 1985 HB 2461, 72-1394; effective May 1, 1986; revoked June 30, 2003.)

**91-1-27b. This regulation shall be revoked on June 30, 2003.** (Authorized by K.S.A. 72-1388; implementing K.S.A. 72-1396; effective May 1, 1986; amended March 13, 1989; amended Sept. 3, 1990; revoked June 30, 2003.)

**91-1-27c. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 3, 1990; revoked June 30, 2003.)

**91-1-27d. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Sec. 2(a) of the Kansas

Constitution; effective June 29, 1992; revoked June 30, 2003.)

**91-1-28. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Jan. 8, 1982; amended May 1, 1986; amended May 1, 1987; amended June 1, 1988; revoked June 30, 2003.)

**91-1-29.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1987.)

**91-1-30. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; amended June 1, 1993; amended Jan. 5, 1996; revoked June 30, 2003.)

**91-1-30a. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1986; amended Aug. 15, 1994; revoked June 30, 2003.)

**91-1-31. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Kans. Const. Art. 6, Sec. 2; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended May 1, 1984; revoked June 30, 2003.)

**91-1-32. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Jan. 8, 1982; amended May 1, 1984; amended July 1, 1989; amended July 1, 1991; revoked June 30, 2003.)

**91-1-32a. This regulation shall be revoked on and after July 1, 1989.** (Authorized by, and implementing, Kansas Constitution Article 6, Section 2(a); effective July 12, 1985; amended March 12, 1986; revoked July 1, 1989.)

**91-1-33. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Jan. 8, 1982; amended May 1, 1986; amended June 1, 1988; amended March 13, 1989; revoked June 30, 2003.)

**91-1-34. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended May 1, 1986; amended Jan. 28, 1991; amended Jan. 5, 1996; revoked June 30, 2003.)

**91-1-35. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended Jan. 5, 1996; revoked June 30, 2003.)

**91-1-36.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked Jan. 5, 1996.)

**91-1-37. This regulation shall be revoked on June 30, 2003.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked June 30, 2003.)

**91-1-38. This regulation shall be revoked on and after July 1, 1989.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked July 1, 1989.)

**91-1-39. This regulation shall be revoked on June 30, 2003.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked June 30, 2003.)

**91-1-40. This regulation shall be revoked on June 30, 2003.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked June 30, 2003.)

**91-1-41. This regulation shall be revoked on June 30, 2003.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked June 30, 2003.)

**91-1-42. This regulation shall be revoked on June 30, 2003.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked June 30, 2003.)

**91-1-43. This regulation shall be revoked on June 30, 2003.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked June 30, 2003.)

**91-1-44. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Jan. 8, 1982; amended June 1, 1988; amended Jan. 5, 1996; revoked June 30, 2003.)

**91-1-45. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended Jan. 5, 1996; revoked June 30, 2003.)

**91-1-46. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended Jan. 5, 1996; revoked June 30, 2003.)

**91-1-47. This regulation shall be revoked on June 30, 2003.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked June 30, 2003.)

**91-1-48. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended Jan. 5, 1996; revoked June 30, 2003.)

**91-1-49. This regulation shall be revoked on June 30, 2003.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked June 30, 2003.)

**91-1-50. This regulation shall be revoked on June 30, 2003.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked June 30, 2003.)

**91-1-51. This regulation shall be revoked on June 30, 2003.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked June 30, 2003.)

**91-1-52. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Kansas Constitution Article 6, Section 2, effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended May 1, 1986; revoked June 30, 2003.)

**91-1-53. This regulation shall be revoked on June 30, 2003.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked June 30, 2003.)

**91-1-54. This regulation shall be revoked on June 30, 2003.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked June 30, 2003.)

**91-1-55. This regulation shall be revoked on June 30, 2003.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked June 30, 2003.)

**91-1-56.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended April 25, 1994; revoked Sept. 15, 2000.)

**91-1-57. This regulation shall be revoked on June 30, 2003.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; revoked June 30, 2003.)

**91-1-58. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Jan. 8, 1982; amended May 1, 1983; amended May 1, 1985; amended May 1, 1987; amended July 1, 1989; amended Sept. 3, 1990; revoked June 30, 2003.)

**91-1-59.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1985.)

**91-1-60. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; effective (permanent) May 1, 1982; amended May 1, 1984; amended July 1, 1989; revoked June 30, 2003.)

**91-1-61.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended (temporary) Dec. 14, 1984; amended (permanent) May 1, 1985; revoked May 19, 2000.)

**91-1-62. This regulation shall be revoked July 1, 1991.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended May 1, 1986; revoked July 1, 1991.)

**91-1-63.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended May 1, 1983; revoked Sept. 15, 2000.)

**91-1-64.** (Authorized by and implementing Kans. Const., Art. 6, Sec. 2; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended May 1, 1984; revoked May 1, 1986.)

**91-1-65.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended (temporary) July 9, 1982; (permanent) May 1, 1983; revoked Sept. 15, 2000.)

**91-1-66. School nurse endorsement.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked July 9, 1982.)

**91-1-67.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked Sept. 15, 2000.)

**91-1-68.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1982; revoked Sept. 2, 1991.)

**91-1-68a.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 2, 1991; amended June 26, 1995; amended Oct. 6, 2000; revoked Aug. 6, 2004.)

**91-1-68b.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 2, 1991; amended June 26, 1995; amended Oct. 6, 2000; revoked Aug. 6, 2004.)

**91-1-68c.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 2, 1991; amended June 26, 1995;

amended Dec. 27, 1996; amended Oct. 6, 2000; revoked Aug. 6, 2004.)

**91-1-68d.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 2, 1991; amended June 26, 1995; amended Oct. 6, 2000; revoked Aug. 6, 2004.)

**91-1-68e.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective June 26, 1995; amended Oct. 6, 2000; revoked Aug. 6, 2004.)

**91-1-69.** (Authorized by and implementing Kansas Constitution, Article 6, Section 2; effective May 1, 1982; amended May 1, 1983; revoked Sept. 2, 1991.)

**91-1-70.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked Sept. 15, 2000.)

**91-1-70a. Accreditation.** The following portions of the document titled "CAEP accreditation standards," as approved by the council for the accreditation of educator preparation (CAEP) board of directors on August 29, 2013, are hereby adopted by reference:

(a) Standard 1 on pages 2 and 3 and the related glossary on page 3;

(b) standard 2 and the related glossary on page 6;

(c) standard 3 on pages 8 and 9 and the related glossary on page 10, except for the following text in 3.2:

(1) The second and third bulleted items; and

(2) the three paragraphs immediately following the bulleted list;

(d) standard 4 on page 13; and

(e) standard 5 on pages 14 and 15 and the related glossary on page 15. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 1997; amended Jan. 4, 2002; amended July 7, 2017.)

**91-1-70b.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 1997; revoked Oct. 6, 2000.)

**91-1-71.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked Sept. 15, 2000.)

**91-1-72.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (tempo-

rary) Jan. 8, 1982; (permanent) May 1, 1982; revoked Sept. 15, 2000.)

**91-1-73.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked Sept. 15, 2000.)

**91-1-74.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked Sept. 15, 2000.)

**91-1-75.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked Sept. 15, 2000.)

**91-1-76.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked Sept. 15, 2000.)

**91-1-77.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked Sept. 15, 2000.)

**91-1-78.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked Sept. 15, 2000.)

**91-1-79.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Jan. 8, 1982; amended July 1, 1989; revoked Sept. 15, 2000.)

**91-1-80.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Jan. 8, 1982; amended May 1, 1984; amended Sept. 3, 1990; amended July 1, 1994; revoked Sept. 15, 2000.)

**91-1-81.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended May 1, 1987; revoked Sept. 15, 2000.)

**91-1-82. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Jan. 8, 1982; amended Sept. 3, 1990; revoked June 30, 2003.)

**91-1-83. This regulation shall be revoked**

**on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended May 1, 1986; amended May 1, 1987; revoked June 30, 2003.)

**91-1-84.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1986.)

**91-1-84a. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Kansas Constitution, Article 6, Sec. 2(a); effective May 1, 1984; revoked June 30, 2003.)

**91-1-85. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Jan. 8, 1982; amended July 1, 1989; amended Aug. 15, 1994; revoked June 30, 2003.)

**91-1-86. This regulation shall be revoked on June 30, 2003.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked June 30, 2003.)

**91-1-87. This regulation shall be revoked on June 30, 2003.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked June 30, 2003.)

**91-1-88. This regulation shall be revoked on June 30, 2003.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked June 30, 2003.)

**91-1-89. This regulation shall be revoked on June 30, 2003.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked June 30, 2003.)

**91-1-90. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Kansas Constitution, Article 6, Sect. 2; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended May 1, 1984; revoked June 30, 2003.)

**91-1-91. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas

Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended May 1, 1986; revoked June 30, 2003.)

**91-1-91a.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Kansas Constitution, Article 6, Section 2(a); effective May 1, 1985; amended June 11, 1986; revoked June 30, 2003.)

**91-1-92.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Jan. 8, 1982; amended July 1, 1989; amended Aug. 15, 1994; revoked June 30, 2003.)

**91-1-93.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1986.)

**91-1-93a.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1985; amended July 12, 1985; amended June 11, 1986; amended March 11, 1987; amended Aug. 15, 1994; revoked June 30, 2003.)

**91-1-94.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1986.)

**91-1-95.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1986.)

**91-1-96.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1986.)

**91-1-97.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1986.)

**91-1-98.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1986.)

**91-1-99.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (tempo-

rary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1986.)

**91-1-100.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1986.)

**91-1-101.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective Jan. 8, 1982; revoked Sept. 3, 1990.)

**91-1-101a.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Kansas Constitution, Article 6, Section 2(a); effective May 1, 1985; amended June 11, 1986; revoked June 30, 2003.)

**91-1-101b.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective June 1, 1988; amended Sept. 2, 1991; revoked June 30, 2003.)

**91-1-102.** This regulation shall be revoked July 1, 1994. (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked July 1, 1994.)

**91-1-102a.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective June 1, 1993; amended April 25, 1994; revoked June 30, 2003.)

**91-1-103.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked Jan. 5, 1996.)

**91-1-104.** This regulation shall be revoked July 1, 1994. (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked July 1, 1994.)

**91-1-104a.** This regulation shall be revoked July 1, 1994. (Authorized by and implementing Kansas Constitution, Article 6, Section 2(a); effective May 1, 1985; amended June 11, 1986; revoked July 1, 1994.)

**91-1-104b.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kan-

sas Constitution; effective June 1, 1993; amended April 25, 1994; revoked June 30, 2003.)

**91-1-104e.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective June 1, 1993; amended April 25, 1994; revoked June 30, 2003.)

**91-1-105.** This regulation shall be revoked on June 30, 2003. (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked June 30, 2003.)

**91-1-106.** This regulation shall be revoked on June 30, 2003. (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked June 30, 2003.)

**91-1-106a.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 3, 1990; revoked June 30, 2003.)

**91-1-106b.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 3, 1990; revoked June 30, 2003.)

**91-1-106c.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 3, 1990; revoked June 30, 2003.)

**91-1-106d.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 3, 1990; revoked June 30, 2003.)

**91-1-106e.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 3, 1990; revoked June 30, 2003.)

**91-1-106f.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 3, 1990; revoked June 30, 2003.)

**91-1-106g.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 3, 1990; revoked June 30, 2003.)

**91-1-106h.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 3, 1990; revoked June 30, 2003.)

**91-1-106i.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 3, 1990; revoked June 30, 2003.)

**91-1-106j.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 3, 1990; revoked June 30, 2003.)

**91-1-106k.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 3, 1990; revoked June 30, 2003.)

**91-1-106l.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 3, 1990; revoked June 30, 2003.)

**91-1-106m.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 3, 1990; revoked June 30, 2003.)

**91-1-107.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1986.)

**91-1-107a.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1984; amended June 1, 1988; amended July 1, 1989; revoked June 30, 2003.)

**91-1-108.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (tempo-

rary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1986.)

**91-1-108a.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Kansas Constitution, Article 6, Section 2(a); effective May 1, 1984; revoked June 30, 2003.)

**91-1-108b.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Kansas Constitution, Article 6, Section 2(a); effective May 1, 1985; amended June 11, 1986; amended May 1, 1987; revoked June 30, 2003.)

**91-1-108c.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Kansas Constitution, Article 6, Section 2(a); effective May 1, 1985; amended June 11, 1986; revoked June 30, 2003.)

**91-1-109.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1986.)

**91-1-109a.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Kansas Constitution, Article 6, Sec. 2(a); effective May 1, 1984; revoked June 30, 2003.)

**91-1-110.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution, effective Jan. 8, 1982; revoked Sept. 3, 1990.)

**91-1-110a.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1984; amended July 12, 1985; amended June 1, 1993; revoked June 30, 2003.)

**91-1-110b.** This regulation shall be revoked July 1, 1994. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective June 1, 1988; revoked July 1, 1994.)

**91-1-110c.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective June 1, 1993; amended April 25, 1994; revoked June 30, 2003.)

**91-1-111.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1986.)

**91-1-111a.** (Authorized by and implementing Kansas Constitution, Article 6, Sec. 2(a); effective May 1, 1984; revoked Sept. 15, 2000.)

**91-1-112.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1987.)

**91-1-112a.** This regulation shall be revoked July 1, 1994. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1985; amended June 1, 1988; amended Sept. 2, 1991; revoked July 1, 1994.)

**91-1-112b.** This regulation shall be revoked July 1, 1994. (Authorized by and implementing Kansas Constitution, Article 6, Section 2(a); effective May 1, 1985; amended June 11, 1986; revoked July 1, 1994.)

**91-1-112c.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective June 1, 1993; amended April 25, 1994; revoked June 30, 2003.)

**91-1-112d.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective June 1, 1993; amended April 25, 1994; revoked June 30, 2003.)

**91-1-113.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1987.)

**91-1-113a.** This regulation shall be revoked July 1, 1994. (Authorized by and implementing Kansas Constitution, Article 6, Section 2(a); effective May 1, 1985; revoked July 1, 1994.)

**91-1-113b.** This regulation shall be revoked on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective June 1, 1993; amended April 25, 1994; amended Jan. 5, 1996; revoked June 30, 2003.)

**91-1-114.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1987.)

**91-1-114a. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1985; amended Jan. 5, 1996; revoked June 30, 2003.)

**91-1-115.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1987.)

**91-1-115a. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1985; amended Jan. 5, 1996; revoked June 30, 2003.)

**91-1-116.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1987.)

**91-1-117.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1987.)

**91-1-117a. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1985; amended Jan. 5, 1996; revoked June 30, 2003.)

**91-1-118.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1987.)

**91-1-118a. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1985; amended Jan. 5, 1996; revoked June 30, 2003.)

**91-1-119.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1987.)

**91-1-119a. This regulation shall be revoked on June 30, 2003.** (Authorized by and

implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1985; amended June 10, 1987; revoked June 30, 2003.)

**91-1-119b. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1985; amended June 10, 1987; revoked June 30, 2003.)

**91-1-119c. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1985; amended June 10, 1987; revoked June 30, 2003.)

**91-1-119d. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1985; amended June 10, 1987; revoked June 30, 2003.)

**91-1-119e. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1985; amended June 10, 1987; revoked June 30, 2003.)

**91-1-119f. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Kansas Constitution, Article 6, Section 2(a); effective May 1, 1985; amended June 11, 1986; revoked June 30, 2003.)

**91-1-119g. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective June 10, 1987; revoked June 30, 2003.)

**91-1-120. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended May 1, 1986; revoked June 30, 2003.)

**91-1-121. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended May 1, 1986; revoked June 30, 2003.)

**91-1-122. This regulation shall be revoked on June 30, 2003.** (Authorized by Article

6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended May 1, 1986; revoked June 30, 2003.)

**91-1-123.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked Jan. 5, 1996.)

**91-1-123a. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 3, 1990; revoked June 30, 2003.)

**91-1-124.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1987.)

**91-1-125.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked Sept. 15, 2000.)

**91-1-126.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1987.)

**91-1-127.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1986.)

**91-1-127a. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1984; amended Jan. 5, 1996; revoked June 30, 2003.)

**91-1-128.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1986.)

**91-1-128a.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1984; amended July 1, 1989; revoked Jan. 5, 1996.)

**91-1-128b. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 1991; revoked June 30, 2003.)

**91-1-129.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1986.)

**91-1-129a. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1984; amended March 12, 1986; amended July 1, 1989; revoked June 30, 2003.)

**91-1-130. This regulation shall be revoked on June 30, 2003.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked June 30, 2003.)

**91-1-131. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Jan. 8, 1982; amended May 1, 1986; amended July 1, 1989; revoked June 30, 2003.)

**91-1-132.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1987.)

**91-1-132a. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a), of the Kansas Constitution; effective May 1, 1985; amended June 1, 1988; amended Sept. 3, 1990; revoked June 30, 2003.)

**91-1-133.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1986.)

**91-1-134.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1986.)

**91-1-135.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1987.)

**91-1-135a.** (Authorized by and implementing Kansas Constitution, Article 6, Section 2(a); effective May 1, 1985; revoked Sept. 15, 2000.)

**91-1-136.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1986.)

**91-1-137.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1987.)

**91-1-137a.** (Authorized by and implementing Kansas Constitution, Article 6, Section 2(a); effective May 1, 1985; revoked Sept. 15, 2000.)

**91-1-138.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1987.)

**91-1-138a.** (Authorized by and implementing Kansas Constitution, Article 6, Section 2(a); effective May 1, 1985; revoked Sept. 15, 2000.)

**91-1-139.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1987.)

**91-1-140.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1986.)

**91-1-140a. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Kansas Constitution, Article 6, Sect. 2(a); effective May 1, 1984; revoked June 30, 2003.)

**91-1-141. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; amended May 1, 1987; revoked June 30, 2003.)

**91-1-142.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked May 1, 1987.)

**91-1-143.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective (temporary) Jan. 8, 1982; (permanent) May 1, 1982; revoked Sept. 15, 2000.)

**91-1-144.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective May 1,

1983; amended May 1, 1985; revoked Sept. 15, 2000.)

**91-1-145. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended May 14, 1986; amended Jan. 5, 1996; revoked June 30, 2003.)

**91-1-146a. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended May 1, 1985; amended May 1, 1987; amended Oct. 6, 2000; revoked June 30, 2003.)

**91-1-146b. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Kansas Constitution Article 6, Section 2; effective May 1, 1983; amended May 1, 1985; revoked June 30, 2003.)

**91-1-146c. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended May 1, 1987; revoked June 30, 2003.)

**91-1-146d. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended May 1, 1985; amended May 1, 1987; amended June 1, 1988; amended Jan. 5, 1996; revoked June 30, 2003.)

**91-1-146e. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing K.S.A. 1999 Supp. 72-9603; effective May 1, 1988; amended Oct. 6, 2000; revoked June 30, 2003.)

**91-1-147.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; revoked May 1, 1988.)

**91-1-148a. This regulation shall be revoked on June 30, 2003.** (Authorized by, and implementing Kansas Constitution Article 6, Section 2(a); effective May 1, 1985; amended (temporary) July 12, 1985; (permanent) May 1, 1986; revoked June 30, 2003.)

**91-1-149. This regulation shall be revoked on June 30, 2003.** (Authorized by and

implementing Article 6, Section 2(a) of the Kansas Constitution; effective March 13, 1989; revoked June 30, 2003.)

**91-1-150. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 1989; amended Sept. 2, 1991; revoked June 30, 2003.)

**91-1-153. This regulation shall be revoked on June 30, 2003.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Jan. 28, 1991; revoked June 30, 2003.)

**91-1-200. Definition of terms.** (a) “Accomplished teaching license” means a license issued to an individual who has successfully completed an advanced performance assessment designated by the state board for the purpose of identifying accomplished teaching, or who has achieved national board certification.

(b) “Accredited experience” means teaching experience gained, under contract, in a school accredited by the state board or a comparable agency in another state while the teacher holds an endorsement valid for the specific assignment. A minimum of 90 consecutive days of substitute teaching in the endorsement area of academic preparation and in the same teaching position shall constitute accredited experience. Other substitute teaching experiences shall not constitute accredited experience.

(c) “All levels” means early childhood through late adolescence and adulthood (prekindergarten through grade 12).

(d) “Alternative teacher education program” means a program to prepare persons to teach by a means other than the traditional, college-based, approved program.

(e) “Approved program” means a teacher education program approved by the state board for content and pedagogy.

(f) “Content assessment” means an assessment designated by the state board to measure subject matter knowledge for an endorsement.

(g) “Deficiency plan” means a detailed schedule of instruction from an approved program that, if completed, will qualify an individual for full endorsement in a subject. The individual who is to receive the instruction and a representative of the institution at which the instruction is to be given shall sign each deficiency plan.

(h) “Duplication of a license” means the issuance of a license to replace a license that is lost or destroyed.

(i) “Emergency substitute teaching license” means a license issued to an individual that allows access to practice as a substitute teacher as defined by K.A.R. 91-31-34(b).

(j) “Endorsement” means the legend printed on each license that identifies the subject in which an individual has specialization.

(k) “Evidence-centered assessment” means an assessment designated by the state board to measure an individual’s knowledge of subject matter and ability to implement the knowledge and skills of a teacher leader.

(l) “Exchange license” means a two-year license issued under the exchange license agreement.

(m) “Initial license” means the first license that an individual holds to begin practice while preparing for the professional license.

(n) “Institutional verification” means acknowledgment that an individual has successfully completed a program within an accredited unit.

(o) “Interim alternative license” means a license that allows temporary access to practice to an individual who has completed an alternative teacher education program and been issued a license in another state.

(p) “Licensure” means the granting of access to practice teaching, administration, or school services in Kansas public schools.

(q) “Local education agency” and “LEA” mean any governmental agency authorized or required by state law to provide education to children, including each unified school district, special education cooperative, school district interlocal, state school, and school institution.

(r) “Mentor” means a teacher or administrator who holds a professional license assigned by an LEA to provide support, modeling, and conferencing to a beginning professional.

(s) “Official transcript” means a student record that includes grades and credit hours earned and that is affixed with the official seal of the college and the signature of the registrar.

(t) “One year of teaching experience” means accredited experience that constitutes one-half time or more in one school year, while under contract.

(u) “Pedagogical assessment” means an assessment designated by the state board to measure teaching knowledge.

(v) “Performance assessment” means an assessment designated by the state board to measure an

individual's ability to implement the knowledge and skills of a teacher, administrator, or school services provider.

(w) "Prekindergarten" means a program for children three and four years old.

(x) "Professional license" means a license issued to an individual based on successful completion of a performance assessment and maintained by professional development.

(y) "Provisional school specialist endorsement license" means a license issued to an individual that allows access to practice as a school specialist while the individual is in the process of completing requirements for the school specialist license.

(z) "Provisional teaching endorsement license" means a license issued to an individual that allows access to practice in an endorsement area while the individual is in the process of completing requirements for that endorsement.

(aa) "Recent credit or recent experience" means credit or experience earned during the six-year period immediately preceding the filing of an application.

(bb) "Restricted teaching license" means a license that allows an individual limited access to practice under a special arrangement among the individual, a Kansas teacher education institution, and an LEA.

(cc) "Standard," when used to describe a license, means that the license is current, unrestricted, nonprobationary, nonprovisional, nonsubstitute, or nontemporary; is issued by the state board or a comparable agency in another state; and allows an individual to work as a teacher, administrator, or school specialist in accredited school systems in Kansas or another state.

(dd) "Standards board" means the teaching and school administration professional standards advisory board.

(ee) "State board" means state board of education.

(ff) "STEM license" means a license that allows an individual to teach only an approved subject in a hiring LEA, as specified in K.A.R. 91-1-203 (m).

(gg) "Subject" means a specific teaching area within a general instructional field.

(hh) "Substitute teaching license" means a license issued to an individual that allows access to practice as a substitute as defined in K.A.R. 91-31-34(b).

(ii) "Teacher education institution" means a college or university that has an accredited administrative unit for the purpose of preparing teachers.

(jj) "Transitional license" means a license that allows an individual to temporarily practice if the individual held a license but does not meet recent credit, recent experience, or renewal requirements to qualify for an initial or professional license.

(kk) "Valid credit" and "credit" mean a semester hour of credit earned in, or validated by, a college or university that is on the accredited list maintained by the state board.

(ll) "Visiting scholar teaching license" means a license that allows an individual who has documented exceptional talent or outstanding distinction in a particular subject area to practice on a temporary, limited basis. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003; amended July 1, 2003; amended July 18, 2008; amended Aug. 28, 2009; amended Aug. 12, 2011; amended, T-91-6-30-14, June 30, 2014; amended Oct. 24, 2014.)

**91-1-201. Type of licensure.** (a) The following types of licenses shall be issued by the state board:

- (1) Accomplished teaching license;
  - (2) initial licenses, including the following:
    - (A) Initial school leadership license;
    - (B) initial school specialist license; and
    - (C) initial teaching license;
  - (3) emergency substitute teaching license;
  - (4) exchange school specialist license;
  - (5) exchange teaching license;
  - (6) foreign exchange teaching license;
  - (7) interim alternative license;
  - (8) professional licenses, including the following:
    - (A) Professional school leadership license;
    - (B) professional school specialist license; and
    - (C) professional teaching license;
  - (9) provisional school specialist endorsement license;
  - (10) provisional teaching endorsement license;
  - (11) restricted school specialist license;
  - (12) restricted teaching license;
  - (13) STEM license;
  - (14) substitute teaching license;
  - (15) transitional license; and
  - (16) visiting scholar teaching license.
- (b)(1) Each initial license shall be valid for two years from the date of issuance.
- (2) An initial teaching license may be issued for one or more of the following levels:
- (A) Early childhood (birth through kindergarten, birth through grade 3, or prekindergarten through grade 3);

(B) early childhood through late childhood (kindergarten through grade 6);

(C) late childhood through early adolescence (grades 5 through 8);

(D) early adolescence through late adolescence and adulthood (grades 6 through 12); or

(E) early childhood through late adolescence and adulthood (prekindergarten through grade 12).

(3) Each initial school leadership license shall be issued for all levels.

(4) Each initial school specialist license shall be issued for the level that corresponds with the approved program completed by the applicant.

(c)(1) Each professional license shall be valid on the date of issuance. Each license shall expire on the license holder's fifth birthdate following issuance of the license.

(2) A professional teaching license may be issued for one or more of the following levels:

(A) Early childhood (birth through kindergarten, birth through grade 3, or prekindergarten through grade 3);

(B) early childhood through late childhood (kindergarten through grade 6);

(C) late childhood through early adolescence (grades 5 through 8);

(D) early adolescence through late adolescence and adulthood (grades 6 through 12); or

(E) early childhood through late adolescence and adulthood (prekindergarten through grade 12).

(3) Each professional school leadership license shall be issued for all levels.

(4) Each professional school specialist license shall be issued for the level that corresponds with the approved program completed by the applicant.

(d)(1) Each accomplished teaching license shall be valid for 10 years from the date of issuance.

(2) An accomplished teaching license may be issued for one or more of the following levels:

(A) Early childhood (birth through kindergarten, birth through grade 3, or prekindergarten through grade 3);

(B) early childhood through late childhood (kindergarten through grade 6);

(C) late childhood through early adolescence (grades 5 through 8);

(D) early adolescence through late adolescence and adulthood (grades 6 through 12); or

(E) early childhood through late adolescence and adulthood (prekindergarten through grade 12).

(e) Each substitute teaching license shall be valid on the date of issuance and shall be issued for all levels. Each substitute license shall expire on

the license holder's fifth birthdate following issuance of the license.

(f) The first emergency substitute teaching license issued to an individual shall be valid for the school year in which it is issued and shall be issued for all levels. Each subsequent renewal of an emergency substitute license shall be valid for two consecutive school years.

(g) Each visiting scholar teaching license shall be valid through June 30 of the school year for which it is issued and shall be issued for the level corresponding with the teaching assignment.

(h)(1) Each exchange license shall be valid for two years from the date of issuance.

(2) An exchange teaching license may be issued for one or more of the following levels:

(A) Early childhood (birth through kindergarten, birth through grade 3, or prekindergarten through grade 3);

(B) early childhood through late childhood (kindergarten through grade 6);

(C) late childhood through early adolescence (grades 5 through 8);

(D) early adolescence through late adolescence and adulthood (grades 6 through 12); or

(E) early childhood through late adolescence and adulthood (prekindergarten through grade 12).

(3) Each exchange school specialist license shall be issued for the level that corresponds with the approved program completed by the applicant.

(i) Each foreign exchange teaching license shall be valid through June 30 of the school year for which it is issued and shall be valid for the level corresponding with the teaching assignment.

(j)(1) Each restricted teaching license shall be valid for the school year in which the license is issued. Any restricted teaching license may be re-issued for two additional consecutive school years if progress reports are submitted as required in K.A.R. 91-1-203 (h)(2).

(2) A restricted teaching license may be issued for one or more of the following levels:

(A) Late childhood through early adolescence (grades 5 through 8);

(B) early adolescence through late adolescence and adulthood (grades 6 through 12); or

(C) early childhood through late adolescence and adulthood (prekindergarten through grade 12).

(k)(1) Each restricted school specialist license shall be valid for three consecutive school years from the date of issuance.

(2) Each restricted school specialist license shall be issued for all levels.

(l) (1) Each transitional license shall be valid for the school year in which the license is issued.

(2) Each transitional license shall be nonrenewable.

(3) A transitional license may be issued for one or more of the following levels:

(A) Early childhood (birth through kindergarten, birth through grade 3, or prekindergarten through grade 3);

(B) early childhood through late childhood (kindergarten through grade 6);

(C) late childhood through early adolescence (grades 5 through 8);

(D) early adolescence through late adolescence and adulthood (grades 6 through 12); or

(E) early childhood through late adolescence and adulthood (prekindergarten through grade 12).

(m)(1) Each interim alternative license shall be valid for one year from the date of issuance.

(2) The initial one-year term shall be automatically extended for one additional one-year term if the licensee demonstrates progress toward achieving an initial or professional license. Each interim alternative license shall be nonrenewable after two years.

(3) An interim alternative license may be issued for one or more of the following levels:

(A) Early childhood (birth through kindergarten, birth through grade 3, or prekindergarten through grade 3);

(B) early childhood through late childhood (kindergarten through grade 6);

(C) late childhood through early adolescence (grades 5 through 8);

(D) early adolescence through late adolescence and adulthood (grades 6 through 12); or

(E) early childhood through late adolescence and adulthood (prekindergarten through grade 12).

(n)(1) Each provisional teaching endorsement license shall be valid for two years from the date of issuance.

(2) A provisional teaching endorsement license may be issued for one or more of the following levels:

(A) Early childhood (birth through kindergarten, birth through grade 3, or prekindergarten through grade 3);

(B) early childhood through late childhood (kindergarten through grade 6);

(C) late childhood through early adolescence (grades 5 through 8);

(D) early adolescence through late adolescence and adulthood (grades 6 through 12); or

(E) early childhood through late adolescence and adulthood (prekindergarten through grade 12).

(o)(1) Each provisional school specialist license shall be valid for two years from the date of issuance.

(2) A provisional school specialist endorsement license shall be issued for all levels.

(p)(1) A nonrenewable license shall be issued to each applicant who meets all other requirements for an initial license except the assessments.

(2) Each nonrenewable license shall be valid only through June 30 of the school year for which the license is issued.

(q)(1) Each STEM license shall be valid only through June 30 of the school year for which the license is issued.

(2) Each STEM license shall be valid for grades 8 through 12. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003; amended July 1, 2003; amended Jan. 2, 2004; amended Aug. 25, 2006; amended Aug. 10, 2007; amended July 18, 2008; amended Aug. 12, 2011; amended, T-91-6-30-14, June 30, 2014; amended Oct. 24, 2014.)

**91-1-202. Endorsements.** (a) Each license issued by the state board shall include one or more endorsements.

(b) Endorsements available for teaching at the early childhood license level (birth through kindergarten, birth through grade 3, or prekindergarten through grade 3) shall be as follows:

- (1) Early childhood;
- (2) early childhood unified;
- (3) deaf or hard-of-hearing;
- (4) visually impaired; and
- (5) school psychologist.

(c) Endorsements available for teaching at the early childhood through late childhood license level (kindergarten through grade 6) shall be as follows:

- (1) Elementary education;
- (2) elementary education, unified;
- (3) English for speakers of other languages (ESOL);
- (4) gifted;
- (5) high-incidence special education; and
- (6) low-incidence special education.

(d) Endorsements available for teaching at the late childhood through early adolescence license level (grades 5 through 8) shall be as follows:

- (1) English for speakers of other languages (ESOL);

- (2) English language arts;  
 (3) gifted;  
 (4) high-incidence special education;  
 (5) history, government, and social studies;  
 (6) low-incidence special education;  
 (7) mathematics; and  
 (8) science.
- (e) Endorsements available for teaching at the early adolescence through late adolescence and adulthood license level (grades 6 through 12) shall be as follows:
- (1) Agriculture;
  - (2) biology;
  - (3) business;
  - (4) chemistry;
  - (5) communication technology;
  - (6) earth and space science;
  - (7) English for speakers of other languages (ESOL);
  - (8) English language arts;
  - (9) family and consumer science;
  - (10) gifted;
  - (11) high-incidence special education;
  - (12) history, government, and social studies;
  - (13) journalism;
  - (14) low-incidence special education;
  - (15) mathematics;
  - (16) physics;
  - (17) power, energy, and transportation technology;
  - (18) production technology;
  - (19) psychology;
  - (20) speech and theatre;
  - (21) special education generalist, high-incidence; and
  - (22) technology education.
- (f) Endorsements available for teaching at the early childhood through late adolescence and adulthood level (prekindergarten through grade 12) shall be as follows:
- (1) Art;
  - (2) deaf or hard-of-hearing;
  - (3) English for speakers of other languages (ESOL);
  - (4) foreign language;
  - (5) gifted;
  - (6) health;
  - (7) high-incidence special education;
  - (8) instrumental music;
  - (9) low-incidence special education;
  - (10) music;
  - (11) physical education;
  - (12) visually impaired; and
  - (13) vocal music.
- (g) Endorsements available for school leadership at all levels shall be as follows:
- (1) Building leadership; and
  - (2) district leadership.
- (h) Endorsements available for school specialist fields at all levels shall be as follows:
- (1) Library media specialist;
  - (2) reading specialist;
  - (3) school counselor;
  - (4) school psychologist; and
  - (5) teacher leader.
- (i) Endorsements available for the foreign exchange teaching license shall be issued in the content area and valid only for the local education agency approved by the commissioner.
- (j) Endorsements available for the restricted teaching license shall be issued in the content area and valid only for the local education agency approved by the state board.
- (k) Endorsements available for the provisional teaching endorsement license at the early childhood through late childhood license level (kindergarten through grade 6) shall be as follows:
- (1) English for speakers of other languages (ESOL);
  - (2) gifted;
  - (3) high-incidence special education; and
  - (4) low-incidence special education.
- (l) Endorsements available for the provisional teaching endorsement license at the early childhood license level (birth through kindergarten, birth through grade 3, or prekindergarten through grade 3) shall be as follows:
- (1) Early childhood; and
  - (2) early childhood unified.
- (m) Endorsements available for the provisional teaching endorsement license at the late childhood through early adolescence license level (grades 5 through 8) shall be as follows:
- (1) English for speakers of other languages (ESOL);
  - (2) English language arts;
  - (3) gifted;
  - (4) high-incidence special education;
  - (5) history, government, and social studies;
  - (6) low-incidence special education;
  - (7) mathematics; and
  - (8) science.
- (n) Endorsements available for the provisional teaching endorsement license at the early adolescence through late adolescence and adulthood license level (grades 6 through 12) shall be as follows:
- (1) Agriculture;

- (2) biology;
- (3) business;
- (4) chemistry;
- (5) communication technology;
- (6) earth and space science;
- (7) English for speakers of other languages (ESOL);
- (8) English language arts;
- (9) family and consumer science;
- (10) gifted;
- (11) high-incidence special education;
- (12) journalism;
- (13) low-incidence special education;
- (14) mathematics;
- (15) physics;
- (16) power, energy, and transportation technology;
- (17) production technology;
- (18) psychology;
- (19) speech and theatre;
- (20) technology education; and
- (21) history, government, and social studies.

(o) Endorsements available for the provisional teaching endorsement license at the early childhood through late adolescence and adulthood level (prekindergarten through grade 12) shall be as follows:

- (1) Art;
- (2) deaf or hard-of-hearing;
- (3) English for speakers of other languages (ESOL);
- (4) foreign language;
- (5) gifted;
- (6) health;
- (7) high-incidence special education;
- (8) instrumental music;
- (9) low-incidence special education;
- (10) music;
- (11) physical education;
- (12) visually impaired; and
- (13) vocal music.

(p) Endorsements available for provisional school specialist endorsement license at all levels shall be as follows:

- (1) Library media specialist;
- (2) reading specialist; and
- (3) school counselor.

(q) Each applicant for a license with a low-incidence or high-incidence special education endorsement, or a gifted, visually impaired, or deaf or hard-of-hearing endorsement, shall have successfully completed one of the following:

(1) A state-approved program to teach general education students; or

(2) a professional education component that allows students to acquire competency in the following:

(A) The learner and learning; learner development, learning differences, and learning environments;

(B) content: content knowledge and application of content;

(C) instructional practice: assessment, planning for instruction, and instructional strategies;

(D) professional responsibility: professional learning and ethical practice, leadership, and collaboration; and

(E) the ability to apply the acquired knowledge to teach general education students. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003; amended July 1, 2003; amended Aug. 25, 2006; amended Aug. 10, 2007; amended Aug. 28, 2009; amended Aug. 12, 2011; amended, T-91-6-30-14, June 30, 2014; amended Oct. 24, 2014.)

**91-1-203. Licensure requirements.** (a) Initial licenses.

(1) Each applicant for an initial teaching license shall submit to the state board the following:

(A) An official transcript verifying the granting of a bachelor's degree;

(B) verification from an accredited institution by the unit head or designee of completion of a teacher education program;

(C) verification of successful completion of a pedagogical assessment as determined by the state board;

(D) verification of successful completion of an endorsement content assessment as determined by the state board;

(E) verification of eight semester hours of recent credit;

(F) an application for an initial license; and

(G) the licensure fee.

(2) Each applicant for an initial school leadership license shall submit to the state board the following:

(A) An official transcript verifying the granting of a graduate degree;

(B) verification from an accredited institution by the unit head or designee of completion of a graduate-level school leadership program;

(C) if application is made for a district leadership endorsement, verification from an accredited institution by the unit head or designee of completion of an approved building leadership program;

(D) verification of a minimum 3.25 cumulative GPA on a 4.0 scale in graduate leadership program coursework;

(E) verification of successful completion of a school leadership assessment as determined by the state board;

(F) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(G) an application for an initial school leadership license;

(H) the licensure fee; and

(I) verification of five years of experience in a state-accredited school while holding a standard teaching or school specialist license and having achieved the professional-level license, a professional clinical license, or a full technical certificate.

(3) Each applicant for an initial school specialist license shall submit to the state board the following:

(A) An official transcript verifying the granting of a graduate degree;

(B) verification from an accredited institution by the unit head or designee of completion of a graduate-level school specialist program;

(C) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(D) verification of a minimum 3.25 cumulative GPA on a 4.0 scale in graduate coursework;

(E) if application is made for a library media specialist endorsement or reading specialist endorsement, a currently valid professional teaching license;

(F) if application is made for a school counselor endorsement, one of the following:

(i) A currently valid professional teaching license; or

(ii) verification that the applicant successfully completed additional field experiences consisting of two three-credit-hour courses or at least 70 clock-hours over at least two semesters during the approved program specified in paragraph (a)(3)(B);

(G) verification of successful completion of a school specialist assessment as determined by the state board;

(H) an application for an initial school specialist license; and

(I) the licensure fee.

(b) Professional licenses.

(1) Each applicant for an initial professional teaching license shall submit to the state board the following:

(A) Verification of successful completion of the teaching performance assessment prescribed by the state board while employed in a school accredited by the state board or by a national or regional accrediting agency recognized by the state board;

(B) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(C) an application for professional teacher license; and

(D) the licensure fee.

(2) Each applicant for an initial professional school leadership license shall submit to the state board the following:

(A) Verification of successful completion of the school leadership performance assessment prescribed by the state board while employed in a school accredited by the state board or by a national or regional accrediting agency recognized by the state board;

(B) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(C) an application for professional school leadership license; and

(D) the licensure fee.

(3) Each applicant for an initial professional school specialist license shall submit to the state board the following:

(A) (i) Verification of successful completion of the school specialist performance assessment prescribed by the state board while the applicant is employed in a school accredited by the state board or by a national or regional accrediting agency recognized by the state board and while the applicant holds an initial school specialist license; or

(ii) if the applicant was issued an initial school specialist license with endorsement for school counselor as specified in paragraph (a)(3)(F)(ii), verification of successful completion of a supervised internship year while the applicant is employed as a school counselor in a school accredited by the state board or by a national or regional accrediting agency recognized by the state board and while the applicant holds an initial school specialist license. The internship shall be for one full school year or two full semesters and shall be under the supervision of a teacher education institution in collaboration with the hiring local education agency;

(B) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(C) an application for professional school specialist license; and

(D) the licensure fee.

(4) Each applicant for an initial professional school specialist license with endorsement for teacher leader shall submit to the state board the following:

(A) An official transcript verifying the granting of a graduate degree;

(B) (i) Verification from an accredited institution by the unit head or designee of completion of a graduate-level teacher leader program and verification of successful completion of an evidence-centered assessment; or

(ii) verification by a teacher who has acquired the competencies established by the teacher leader standards of successful completion of an evidence-centered assessment;

(C) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(D) verification of at least five years of accredited experience as a teacher, as a library media specialist or reading specialist, or as a school counselor meeting the requirements of paragraph (a) (3)(F)(i);

(E) verification of a minimum 3.25 cumulative GPA on a 4.0 scale in graduate teacher leader program coursework;

(F) verification of a currently valid professional teaching license;

(G) an application for an initial professional school specialist license for teacher leader; and

(H) the licensure fee.

Paragraphs (b)(4)(B)(i) and (ii) shall remain in effect only through July 1, 2016.

(5) When required by this subsection, the performance assessment for teaching and school specialist licenses shall be completion of at least a year-long approved mentoring program based on model mentoring program guidelines and chosen by the local education agency. The performance assessment for school leadership licenses shall be completion of at least a year-long approved mentoring program chosen by the local education agency and based on guidelines developed by a research-based leadership institute.

(c) Accomplished teaching licenses. Each applicant for an initial accomplished teaching license shall submit to the state board the following:

(1) Verification of achieving national board certification issued by the national board for professional teaching standards;

(2) verification of a currently valid Kansas professional teaching license;

(3) an application for an accomplished teaching license; and

(4) the licensure fee.

(d) Substitute teaching license. Each applicant for an initial substitute teaching license shall submit to the state board the following:

(1) An official transcript from an accredited institution verifying the granting of a bachelor's degree;

(2) verification from an accredited institution of completion of an approved teacher education program;

(3) an application for substitute teaching license; and

(4) the licensure fee.

(e) Emergency substitute teaching license. Each applicant for an emergency substitute teaching license shall submit to the state board the following:

(1) An official transcript verifying the completion of at least 60 semester hours of general education coursework, professional education coursework, or a combination of these types of coursework;

(2) an application for emergency substitute teaching license; and

(3) the licensure fee.

(f) Visiting scholar teaching license.

(1) Each applicant for a visiting scholar teaching license shall submit to the state board the following:

(A) An application for a visiting scholar teaching license and the appropriate fee;

(B) written verification from an administrator of an accredited or approved local education agency that the applicant will be employed if the license is issued; and

(C) documentation of exceptional talent or outstanding distinction in one or more subjects or fields.

(2) Upon receipt of an application for a visiting scholar teaching license, the following requirements shall be met:

(A) The application and documentation submitted shall be reviewed by the commissioner of education or the commissioner's designee. As deemed necessary, other steps shall be taken by the commissioner of education or the commissioner's designee to determine the applicant's qualifications to be issued a visiting scholar teaching license.

(B) A recommendation to the state board shall be made by the commissioner of education or the commissioner's designee on whether this license should be issued to the applicant.

(3) The decision of whether a visiting scholar teaching license should be issued to any applicant shall be made by the state board.

(g) Foreign exchange teaching license.

(1) Each applicant for a foreign exchange teaching license shall submit to the state board the following:

(A) An application for a foreign exchange teaching license and the appropriate fee;

(B) an official credential evaluation by a credential evaluator approved by the state board and listed on the state board's web site;

(C) verification of employment from the local education agency, including the teaching assignment, which shall be to teach in the content area of the applicant's teacher preparation or to teach the applicant's native language; and

(D) verification of the applicant's participation in the foreign exchange teaching program.

(2) The foreign exchange teaching license may be renewed for a maximum of two additional school years if the licensee continues to participate in the foreign exchange teaching program.

(h) Restricted teaching license.

(1) Each applicant for a restricted teaching license shall submit to the state board the following:

(A) An application for a restricted teaching license and the appropriate fee;

(B) an official transcript or transcripts verifying completion of an undergraduate or graduate degree in the content area or with equivalent coursework in the area for which the restricted license is sought. Heritage language speakers shall qualify as having met content equivalency for their heritage language;

(C) verification of a minimum 2.75 grade point average on a 4.0 scale for the most recent 60 semester credit hours earned;

(D) verification that the applicant has attained a passing score on the content assessment required by the state board of education;

(E) verification that the local education agency will employ the applicant if the license is issued;

(F) verification that the local education agency will assign a licensed teacher with three or more years of experience to serve as a mentor for the applicant;

(G) verification that the applicant has completed a supervised practical training experience through collaboration of the teacher education institution and the hiring local education agency;

(H) a statement from the licensing officer of a Kansas teacher education institution attesting to the following:

(i) The applicant has on file a written plan that will qualify the applicant for full licensure in the content area for which the restricted license is sought;

(ii) the plan for program completion can be completed in not more than two years and contains a specific designation of the coursework that is to be completed each year;

(iii) the program provided to the applicant will meet the institution's approved professional education standards; and

(iv) the institution will provide the applicant with on-site support at the employing local education agency, including supervision of the applicant's teaching experience; and

(1) a statement verifying that the local education agency and the teacher education institution have collaborated regarding the approved program that the applicant will pursue and the support that the applicant will receive.

(2) The teacher education institution providing a plan of study for any person holding a restricted teaching license shall coordinate the submission of a progress report before July 1 of each year during the effective period of the restricted license. This progress report shall verify the following:

(A) The applicant's contract will be renewed.

(B) The local education agency will continue to assign an experienced mentor teacher to the applicant.

(C) The applicant has made appropriate progress toward completion of the applicant's plan to qualify for full licensure.

(D) The institution will continue to support the applicant, on-site, as necessary.

(E) The applicant has attained at least a 2.75 GPA on a 4.0 scale in those courses specified in the applicant's plan for full licensure.

(3) Each applicant who is unable to provide any verification or statement required in paragraph (h)(2) shall no longer be eligible to hold a restricted teaching license.

(i) Restricted school specialist license.

(1) Each applicant for a restricted school specialist license with endorsement for school library media or school counselor shall submit to the state board the following:

(A) An application for a restricted school specialist license and the appropriate fee;

(B) an official transcript or transcripts verifying completion of a graduate degree in the content area of counseling or library media;

(C) verification of at least three years of full-time professional counseling or librarian experience;

(D) verification of a minimum 3.25 cumulative grade point average on a 4.0 scale in graduate coursework; and

(E) documentation that the following conditions are met:

(i) The local education agency has made reasonable attempts to locate and hire a licensed person for the restricted school specialist position that the applicant is to fill;

(ii) the local education agency will employ the applicant if the license is issued;

(iii) the local education agency has an agreement with an experienced school specialist in the same content area to serve as a mentor for the applicant;

(iv) the local educational agency will provide, within the first six weeks of employment, an orientation or induction program for the applicant;

(v) the local education agency has collaborated with a Kansas teacher education institution regarding the program that the applicant will pursue to obtain full licensure; and

(vi) the local education agency will provide release time for the candidate to work with the mentor and to work on progress toward program completion; and

(F) a statement from the licensing officer of a Kansas teacher education institution attesting to the following:

(i) The applicant has on file a written plan that will qualify the applicant for full licensure in the school specialist content area for which the restricted license is sought;

(ii) the plan for program completion can be completed in not more than three years and contains a specific designation of the coursework that is to be completed each year;

(iii) the program provided to the applicant will meet the institution's approved professional education standards;

(iv) the institution will provide the applicant with on-site support; and

(v) the institution has collaborated with the employing local education agency concerning the applicant's program.

(2) Each local education agency that employs a person holding a restricted school specialist license shall submit to the commissioner of education a progress report before July 1 of each year during the effective period of the restricted school specialist license. This progress report shall include the following:

(A) Verification that the applicant has attained

passing scores on the content assessment required by the state board by the end of the first year;

(B) verification from the chief administrative officer of the employing local education agency attesting to the following:

(i) The applicant's contract will be renewed; and

(ii) the local education agency will continue to assign an experienced mentor teacher to the applicant and provide accommodations to the applicant to work with the mentor teacher and to complete the applicant's plan for full licensure;

(C) a statement from the licensing officer of the applicant's teacher education institution attesting to the following:

(i) The applicant has made appropriate progress toward completion of the applicant's plan to qualify for full licensure; and

(ii) the institution will continue to support the applicant, on-site, as necessary; and

(D) an official transcript verifying that the applicant has attained at least a 3.25 GPA on a 4.0 scale in the courses specified in the applicant's plan for full licensure.

(3) Each applicant who is unable to provide any verification or statement required in paragraph (i) (2) shall no longer be eligible to hold a restricted school specialist license and shall return any previously issued restricted school specialist license to the state board.

(j) Transitional license.

(1) Each applicant for a transitional license shall submit to the state board the following:

(A) Verification of meeting the requirements for an initial or professional license as provided in K.A.R. 91-1-203(a) or (b) or K.A.R. 91-1-204(c), except for recent credit or recent experience; or

(B) verification of having previously held an initial or professional Kansas license or certificate that has been expired for six months or longer;

(C) an application for a transitional license; and

(D) the licensure fee.

(2) Any person who holds a transitional license issued under paragraph (j)(1)(A) may upgrade that license to an initial or professional license by submitting to the state board the following:

(A) Verification of accredited experience during the term of the transitional license; or

(B) (i) Verification of having successfully completed eight hours of recent credit; or

(ii) verification of meeting the requirements in K.A.R. 91-1-205(b)(3)(C), if the person meets the requirements of K.A.R. 91-1-206 and K.A.R. 91-1-215 through 91-1-219.

(3) Any person who holds a transitional license issued under paragraph (j)(1)(B) may upgrade that license to an initial or professional license by submitting to the state board verification of meeting the requirements in K.A.R. 91-1-205(a)(2) or (b).

(k) Provisional teaching endorsement license.

(1) Each applicant shall hold a currently valid initial or professional license at any level and shall submit to the state board the following:

(A) Verification of completion of at least 50 percent of an approved teacher education program in the requested endorsement field;

(B) a deficiency plan to complete the approved program requirements from the licensing officer of a teacher education institution;

(C) verification of employment and assignment to teach in the provisional endorsement area;

(D) an application for a provisional endorsement teaching license; and

(E) the licensure fee.

(2) Each applicant for a provisional teaching endorsement license for high-incidence special education, low-incidence special education, deaf or hard of hearing, gifted special education, or visually impaired shall hold a currently valid initial or professional license and shall submit to the state board the following:

(A) Verification of completion of coursework in the areas of methodology and the characteristics of exceptional children and special education, and completion of a practicum in the specific special education field;

(B) a deficiency plan to complete the approved program requirements for the licensing officer of a teacher education institution;

(C) verification of employment and the assignment to teach in the provisional endorsement area;

(D) an application for a provisional endorsement teaching license; and

(E) the licensure fee.

(l) Provisional school specialist endorsement license. Each applicant shall hold a currently valid professional license as described in K.A.R. 91-1-201 (a)(8) and shall submit to the state board the following:

(1) Verification of completion of 50 percent of an approved school specialist program;

(2) a deficiency plan for completion of the approved school specialist program from the licensing officer at a teacher education institution;

(3) verification of employment and assignment in the school specialty endorsement area for which licensure is sought;

(4) for a provisional school counselor endorsement license, verification from the employing local education agency that a person holding a professional school counselor specialist license will be assigned to supervise the applicant during the provisional licensure period;

(5) an application for a provisional school specialist license; and

(6) the licensure fee.

(m) STEM license.

(1) Each applicant for a STEM license shall submit to the state board the following:

(A) An official transcript verifying the granting of an undergraduate or graduate degree in one of the following subjects: life science, physical science, earth and space science, mathematics, engineering, computer technology, finance, or accounting;

(B) verification of at least five years of full-time professional work experience in the subject;

(C) verification that a local education agency will employ the applicant and assign the applicant to teach only the subject specified on the license if the license is issued;

(D) verification that the hiring local education agency will provide professional learning opportunities determined as appropriate by the hiring local education agency;

(E) an application for the STEM license; and

(F) the licensure fee.

(2) Any applicant may apply for a STEM license valid for subsequent school years by submitting the following:

(A) The verification specified in paragraphs (m)(1)(C) and (D);

(B) an application for renewal; and

(C) the licensure fee. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003; amended July 1, 2003; amended Jan. 2, 2004; amended Aug. 5, 2005; amended Aug. 10, 2007; amended July 18, 2008; amended Aug. 28, 2009; amended Aug. 12, 2011; amended, T-91-6-30-14, June 30, 2014; amended Oct. 24, 2014.)

**91-1-204. Licensure of out-of-state and foreign applicants.** (a) Despite any other licensure regulation, any person who meets the requirements of this regulation may be issued a license by the state board.

(b) Any applicant for an initial Kansas teaching or school specialist license who holds a valid teaching or school specialist license with one or more full endorsements issued by a state that has

been approved by the state board for exchange licenses may be issued a two-year license, if the applicant's endorsements are based on completion of a state-approved program in that state.

(c)(1) Any person who holds a valid teaching, school leadership, or school specialist license issued by another state may apply for either an initial or a professional license.

(2) To obtain an initial teaching license, each applicant specified in paragraph (c)(1) shall submit the following:

(A) An official transcript verifying the granting of a bachelor's degree;

(B) verification from the unit head or designee of an accredited institution that the applicant has completed a state-approved teacher education program. If the applicant is seeking licensure to teach content in grades 8 through 12, this verification shall not be required if the applicant submits verification of having secured a commitment for hire from a local education agency;

(C) verification of successful completion of a pedagogical assessment prescribed by the state board or evidence of successful completion of a pedagogical assessment in the state in which the applicant holds a license;

(D) verification of successful completion of an endorsement content assessment prescribed by the state board or evidence of successful completion of an endorsement content assessment in the state in which the applicant holds a license;

(E) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(F) an application for a Kansas license; and

(G) the licensure fee.

(3) To obtain a professional teaching license, each applicant specified in paragraph (c)(1) shall submit the following:

(A) An official transcript verifying the granting of a bachelor's degree;

(B) verification from the unit head or designee of an accredited institution that the applicant has completed a state-approved teacher education program. If the applicant is seeking licensure to teach content in grades 8 through 12, this verification shall not be required if the applicant submits verification of having secured a commitment for hire from a local education agency;

(C) a copy of the applicant's currently valid out-of-state standard teaching license;

(D)(i) Evidence of successful completion of pedagogical, content, and performance assess-

ments prescribed by the state board or evidence of successful completion of the three assessments in the state in which the applicant holds the standard license;

(ii) verification of at least three years of recent accredited experience under a standard license; or

(iii) verification of at least five years of accredited experience under a standard license;

(E) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(F) an application for a Kansas license; and

(G) the licensure fee.

(4) To obtain an initial school leadership license, each out-of-state applicant shall submit the following:

(A) An official transcript verifying the granting of a graduate degree;

(B) verification from an accredited institution by the unit head or designee of completion of a graduate-level school leadership program;

(C) if application is made for a district leadership endorsement, verification from an accredited institution by the unit head or designee of completion of an approved building leadership program;

(D) verification of a minimum 3.25 cumulative GPA in graduate leadership program coursework;

(E) verification of successful completion of a school leadership assessment as determined by the state board;

(F) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(G) an application for initial school leadership license;

(H) the licensure fee; and

(I) verification of five years of experience in a state-accredited school while holding a standard teaching license or standard school specialist license and having achieved the professional-level license, a professional clinical license, a leadership license, or a full technical certificate.

(5) To obtain an initial school specialist license, each out-of-state applicant shall submit the following:

(A) An official transcript verifying the granting of a graduate degree;

(B) verification from an accredited institution by the unit head or designee of completion of a graduate-level school specialist program;

(C) verification of a minimum 3.25 cumulative GPA in graduate school specialist program coursework;

(D) if application is made for a library media specialist endorsement, school counselor endorsement, or reading specialist endorsement, a currently valid professional teaching license;

(E) verification of successful completion of a school specialist assessment as determined by the state board;

(F) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(G) an application for an initial school specialist license; and

(H) the licensure fee.

(6) To obtain a professional school leadership license, each out-of-state applicant shall submit the following:

(A) An official transcript verifying the granting of a graduate degree;

(B) verification from an accredited institution by the unit head or designee of completion of a graduate-level school leadership program;

(C) verification of a minimum 3.25 cumulative GPA in graduate leadership program coursework;

(D) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(E) verification of five years of experience in a state-accredited school while holding a standard teaching license or standard school specialist license and having achieved the professional-level license, a professional clinical license, a leadership license, or a full technical education certificate;

(F)(i) Evidence of successful completion of the school leadership assessment and completion in a state-accredited school of the school leadership performance assessment prescribed by the state board or evidence of successful completion of the two assessments in the state in which the applicant holds a standard school leadership license;

(ii) verification of at least three years of recent accredited experience in a school leadership position while holding a standard school leadership license; or

(iii) verification of at least five years of accredited school leadership experience under a standard school leadership license;

(G) an application for the professional school leadership license; and

(H) the licensure fee.

(7) To obtain a professional school specialist license, each out-of-state applicant shall submit the following:

(A) An official transcript verifying the granting of a graduate degree;

(B) verification from an accredited institution by the unit head or designee of completion of a graduate-level specialist program;

(C) verification of a minimum 3.25 cumulative GPA in graduate school specialist program coursework;

(D) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(E) if application is made for a library media specialist endorsement, school counselor endorsement, or reading specialist endorsement, a currently valid professional teaching license;

(F)(i) Evidence of successful completion of the school specialist assessment and completion in a state-accredited school of the school specialist performance assessment prescribed by the state board or evidence of successful completion of the two assessments in the state in which the applicant holds a standard school specialist license;

(ii) verification of at least three years of recent accredited experience in a school specialist position while holding a valid standard school specialist license; or

(iii) verification of at least five years of accredited school specialist experience under a standard school specialist license;

(G) an application for the professional school specialist license; and

(H) the licensure fee.

(8) Any person who holds a valid initial or professional school specialist license as a school counselor in another state where the counselor license is issued without a classroom teaching requirement may apply for an initial or professional school specialist license with endorsement for school counselor.

(A) To obtain an initial school specialist license with endorsement for school counselor, each applicant specified in paragraph (c)(8) shall submit to the state board the following:

(i) An official transcript verifying the granting of a graduate degree;

(ii) verification from an accredited institution by the unit head or designee of completion of a graduate-level school counselor program;

(iii) verification of a minimum 3.25 cumulative GPA on a 4.0 scale in graduate coursework;

(iv) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit; and

(v) evidence of successful completion of the school counselor assessment prescribed by the state board or evidence of successful completion of a school counselor content assessment in the state in which the applicant holds a license.

(B) Each applicant who is issued an initial school specialist license with endorsement for school counselor as specified in paragraph (c)(8)(A) shall upgrade to the professional school specialist license by submitting to the state board verification of successful completion of a supervised internship year while the applicant is employed as a school counselor in a school accredited by the state board or by a national or regional accrediting agency recognized by the state board and while the applicant holds an initial school specialist license. The internship shall be for one full school year or two full semesters and shall be under the supervision of a teacher education institution in collaboration with the hiring local education agency.

(C) To obtain a professional school specialist license with endorsement for school counselor, each applicant specified in paragraph (c)(8) shall submit to the state board verification of all documentation specified in paragraph (c)(8)(A) and one of the following:

(i) Verification of at least three years of recent accredited experience as a school counselor while holding a valid, standard school counselor license;

(ii) verification of successful completion of a supervised internship year while the applicant is employed as a school counselor in a school accredited by the state board or by a national or regional accrediting agency recognized by the state board and while the applicant holds a standard school counselor license. The internship shall be for one full school year or two full semesters and shall be under the supervision of a teacher education institution in collaboration with the hiring local education agency; or

(iii) verification of at least five years of accredited school counselor experience under a standard school counselor license.

(d)(1) Any person who holds a valid professional teaching license in another state and has earned national board certification issued by the national board for professional teaching standards may apply for an accomplished teaching license, which shall be valid for as long as the national board certificate is valid.

(2) To obtain an accomplished teaching license, each applicant specified in paragraph (d)(1) shall submit the following:

(A) Evidence of current national board certification;

(B) verification of a valid professional teaching license issued by another state;

(C) an application for an accomplished teaching license; and

(D) the licensure fee.

(e)(1)(A) Any person who holds a valid license in another state earned through completion of an alternative teacher-education program may apply for an interim alternative license.

(B) Any person who holds a valid license in another state earned through completion of an alternative teacher-education program and who has five or more years of accredited experience earned under a standard license, three years of which are continuous in the same local education agency, may apply for a professional teaching license by meeting the requirements of paragraph (c)(3).

(2) To obtain an interim alternative license, each applicant specified in paragraph (e)(1)(A) shall submit to the state board the following:

(A) An official transcript verifying the granting of a bachelor's degree;

(B) a copy of the applicant's currently valid out-of-state license;

(C) verification of completion of the alternative teacher-education program;

(D) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(E) an application for an interim alternative license; and

(F) the licensure fee.

(3) Each person who holds an interim alternative license shall submit to the commissioner of education, within the first six months of validity of the interim alternative license, a request for review of the application by the licensure review committee.

(A) Upgrading the interim alternative license to the standard initial license shall require verification of the following:

(i) Successful completion of all requirements set by the licensure review committee and approved by the state board; and

(ii) successful completion of a pedagogical assessment prescribed by the state board and successful completion of an endorsement content assessment prescribed by the state board.

(B) Upgrading the interim alternative license to the professional level license shall require verification of the following:

(i) A recommendation from the licensure review committee and approval by the state board with no additional requirements specified; and

(ii) verification that the person meets the requirements of K.A.R. 91-1-204(c)(3)(D).

(f) Any person who has completed an education program from a foreign institution outside of the United States may receive an initial license if, in addition to meeting the requirements for the initial license in K.A.R. 91-1-203, that person submits the following:

(1) An official credential evaluation by a credential evaluator approved by the state board; and

(2) if the person's primary language is not English, verification of passing scores on an English proficiency examination prescribed by the state board. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003; amended July 1, 2003; amended Aug. 10, 2007; amended July 18, 2008; amended Aug. 28, 2009; amended Aug. 12, 2011; amended, T-91-6-30-14, June 30, 2014; amended Oct. 24, 2014.)

**91-1-205. Licensure renewal requirements.** (a) Initial licenses.

(1) Any person, within five years of the date the person was first issued an initial license, may apply for renewal of the initial license by submitting an application for renewal of the initial license and the licensure fee.

(2) Any person who does not renew the initial license within five years of the date the initial license was issued may obtain one or more additional initial licenses only by meeting the requirements in S.B.R. 91-1-203 (a). The assessments required by S.B.R. 91-1-203 (a)(1)(C) and 91-1-203 (a)(1)(D) shall have been taken not more than one year before the date of application for the initial license, or the applicant may verify either eight semester hours of recent credit related to one or more endorsements on the initial license or one year of recent accredited experience or may meet the requirements of paragraph (b)(3)(C) or (D) of this regulation.

(3) A person who does not successfully complete the teaching performance assessment during four years of accredited experience under an initial teaching license shall not be issued an additional initial teaching license, unless the person successfully completes the following retraining requirements:

(A) A minimum of 12 semester credit hours with a minimum cumulative GPA of 2.50 on a 4.0

scale, earned through the verifying teacher education institution and addressing the deficiencies related to the teaching performance assessment criteria; and

(B) following completion of the required credit hours, an unpaid internship supervised by the verifying teacher education institution and consisting of at least 12 weeks, with attainment of a grade of "B" or higher.

(4) A person who does not successfully complete the school specialist or school leadership performance assessment during four years of accredited experience shall not be issued an additional initial school specialist or school leadership license, unless the person successfully completes the following retraining requirements:

(A) A minimum of six semester credit hours with a minimum cumulative GPA of 3.25 on a 4.0 scale, earned through the verifying teacher education institution and addressing the deficiencies related to the performance assessment criteria; and

(B) following completion of the required credit hours, an unpaid internship supervised by the verifying teacher education institution and consisting of at least 12 weeks, with attainment of a grade of "B" or higher.

(b) Professional licenses. Any person may renew a professional license by submitting the following to the state board:

(1) An application for renewal;

(2) the licensure fee; and

(3) verification that the person, within the term of the professional license being renewed, meets any of the following requirements:

(A) Has completed all components of the national board for professional teaching standards assessment for board certification;

(B) has been granted national board certification;

(C)(i) Has earned a minimum of 120 professional development points under an approved individual development plan filed with a local professional development council if the applicant holds an advanced degree; or

(ii) has earned a minimum of 160 professional development points under an approved individual development plan filed with a local professional development council, including at least 80 points for college credit, if the applicant does not hold an advanced degree;

(D) has completed a minimum of eight credit hours in an approved program or completed an approved program;

(E) if the person holds an advanced degree, submits to the state board verification of having completed three years of recent accredited experience during the term of the most recent license. Each person specified in this paragraph shall be limited to two renewals; or

(F) if the person is participating in an educational retirement system in Kansas or another state, has completed half of the professional development points specified in paragraph (b)(3)(C).

(c) Accomplished teaching licenses.

(1) Any person may renew an accomplished teaching license by submitting to the state board the following:

(A) Verification of achieving renewal of national board certification since the issuance of the most recent accomplished teaching license;

(B) an application for accomplished teaching license; and

(C) the licensure fee.

(2) If a person fails to renew the national board certificate, the person may apply for a professional license by meeting the renewal requirement for a professional license specified in paragraph (b)(3)(C) or (D).

(d) Substitute teaching license. Any person may renew a substitute teaching license by submitting to the state board the following:

(1) Verification that the person has earned, within the last five years, a minimum of 50 professional development points under an approved individual development plan filed with a local professional development council;

(2) an application for a substitute teaching license; and

(3) the licensure fee.

(e) Provisional teaching endorsement license. An individual may renew a provisional teaching endorsement license one time by submitting to the state board the following:

(1) Verification of completion of at least 50 percent of the deficiency plan;

(2) verification of continued employment and assignment to teach in the provisional endorsement area;

(3) an application for a provisional endorsement teaching license; and

(4) the licensure fee.

(f) Provisional school specialist endorsement license. Any individual may renew a provisional school specialist endorsement license by submitting to the state board the following:

(1) Verification of completion of at least 50 percent of the deficiency plan;

(2) verification of continued employment and assignment as a school specialist;

(3) an application for a provisional school specialist endorsement license; and

(4) the licensure fee.

(g) Any person who fails to renew the professional license may apply for a subsequent professional license by meeting the following requirements:

(1) Submit an application for a license and the licensure fee; and

(2) provide verification of one of the following:

(A) Having met the requirements of paragraph (b)(3); or

(B) having at least three years of recent, out-of-state accredited experience under an initial or professional license.

(3) If a person seeks a professional license based upon recent, out-of-state accredited experience, the person shall be issued the license if verification of the recent experience is provided. The license shall be valid through the remaining validity period of the out-of-state professional license or for five years from the date of issuance, whichever is less. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003; amended July 1, 2003; amended Aug. 25, 2006; amended July 18, 2008; amended Aug. 28, 2009.)

**91-1-206. Professional development plans for license renewal.**

(a) Any person filing a professional development plan with a local professional development council for licensure renewal purposes under S.B.R. 91-1-205(b) shall develop a plan that includes activities in one or more of the following areas:

(1) Content endorsement standards as adopted by the state board;

(2) professional education standards as adopted by the state board; or

(3) service to the profession.

(b) Each person who is employed by or who works or resides within any Kansas unified school district shall be eligible to file a professional development plan with that district's local professional development council for licensure renewal purposes.

(c) Each individual submitting a professional development plan shall ensure that the plan meets the following conditions:

(1) The plan results from cooperative planning with a designated supervisor.

(2) The plan is signed by the individual submitting the plan and by the individual's supervisor, if the supervisor agrees with the plan.

(3) The plan is reviewed and approved by the local professional development council.

(d) If a person is unable to attain approval of an individual development plan through a local professional development council, the person may appeal to the licensure review committee for a review of the proposed individual development plan. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003; amended July 1, 2003; amended Jan. 2, 2004.)

**91-1-207. Renewal of certificates issued before July 1, 2003.** (a) Each applicant renewing a valid certificate issued before July 1, 2003 shall renew that certificate based on the renewal requirements in effect at the time of the issuance of the certificate.

(b) Upon renewal of a certificate issued before July 1, 2003, the applicant shall be issued the appropriate license with content endorsements obtained before July 1, 2003. (Authorized by and implementing Article 6, Section 2(a) of Kansas Constitution; effective July 1, 2003; amended July 1, 2003; amended July 18, 2008.)

**91-1-208. General requirements.** (a) Application procedures. Application for each license, renewal, or duplicate license shall be made by the person seeking the license. Each application shall be submitted on a form provided by the state department of education. The form shall be filled out completely, including all names under which the applicant has been known. The application shall be submitted by mail or in person, with the correct fee and, when required, official documentation to the certification section of the state department of education.

(b) Child abuse and neglect central registry. Each application shall include a completed child abuse and neglect central registry release.

(c) Renewal period. Any license may be renewed up to six months before its expiration date.

(d) License registration. Each teacher or other licensed person employed in a public school shall file a valid license in the office of the superintendent of the district in which the person is employed. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003; amended July 7, 2017.)

**91-1-209. Additional endorsements.** (a) Any person who holds a currently valid teaching, school service, or school leadership license may add additional endorsements to that license by submitting to the state board the following:

(1) Verification from an accredited institution by a unit head or designee of completion of an approved content area program;

(2) verification of successful completion of the appropriate endorsement content assessment prescribed by the state board;

(3) an application for an added endorsement; and

(4) the application fee.

(b)(1) Any person who holds a currently valid teaching license with a science endorsement at the early adolescence through late adolescence and adulthood level may add an additional science endorsement for that level by submitting to the state board the following:

(A) Verification of successful completion of the appropriate science endorsement content assessment prescribed by the state board;

(B) an application for an added endorsement; and

(C) the application fee.

(2) This subsection shall remain in force and effect only through June 30, 2012.

(c)(1) Any person who holds a currently valid teaching license at any level may add a content area endorsement for the late childhood through early adolescence level by submitting to the state board the following:

(A) Verification from an accredited institution by a unit head or designee of completion of 15 semester credit hours in the content area for which endorsement is sought;

(B) verification of one of the following:

(i) A pedagogy course for the late childhood through early adolescence level; or

(ii) recent accredited experience of one year or more in one of the grades 5 through 8;

(C) verification of successful completion of the appropriate content assessment prescribed by the state board;

(D) an application for an added endorsement; and

(E) the application fee.

(2) Teaching endorsements for adaptive, functional, gifted, deaf or hard-of-hearing, and visually impaired shall not be available under this subsection.

(3) This subsection shall remain in force and effect only through June 30, 2012.

(d)(1) Any person who holds a currently valid teaching license with a content area endorsement at the early adolescence through late adolescence

and adulthood level may add an additional content area endorsement for that level by submitting to the state board the following:

(A) Verification from an accredited institution by a unit head or designee of completion of 50 percent or more of an approved content area program, including the content methods course;

(B) verification of successful completion of the appropriate endorsement content assessment prescribed by the state board;

(C) an application for an added endorsement; and

(D) the application fee.

(2) Any person who holds a currently valid teaching license with a content area endorsement at the late childhood through early adolescence level may add the same content area endorsement at the early adolescence through late adolescence and adulthood level by submitting to the state board verification of meeting the requirements specified in paragraph (d)(1).

(3) Teaching endorsements for adaptive, functional, gifted, deaf or hard-of-hearing, and visually impaired shall not be available under this subsection.

(4) This subsection shall remain in force and effect only through June 30, 2012.

(e) (1) Any person who holds a valid out-of-state teaching license with an additional endorsement that was earned by completion of coursework specified by the other state may add that endorsement to the person's Kansas license by submitting to the state board the following:

(A) A copy of the out-of-state license showing the endorsement;

(B) verification that the person completed the specified coursework;

(C) verification of successful completion of the appropriate endorsement content assessment prescribed by the state board or evidence of successful completion of an endorsement content assessment in the state in which the applicant holds a license;

(D) an application for an added endorsement; and

(E) the licensure fee.

(2) This subsection shall remain in force and effect only through June 30, 2012.

(f)(1) Except as prescribed in paragraph (f)(2), any person who holds a valid teaching license may add an additional teaching endorsement by submitting to the state board the following:

(A) Verification of successful completion of the endorsement content assessment prescribed by the state board;

(B) an application for an added endorsement; and

(C) the application fee.

(2) Teaching endorsements for early childhood, early childhood unified, early childhood through late childhood generalist, adaptive, functional, gifted, deaf or hard-of-hearing, or visually impaired shall not be available under paragraph (f) (1). (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003; amended Aug. 10, 2007; amended July 18, 2008; amended July 27, 2012.)

**91-1-210. License extension based upon military service.** Any holder of a current initial or professional teaching, school specialist, or leadership license who enters active military service during the period the license is valid shall be granted an extension of the expiration date equal to the time in calendar days of active military service if all of the following requirements are met:

(a) Entry into active military service is on a full-time, 24-hour-per-day basis and occurs during a time of emergency as determined by the state board of education.

(b) An application for extension is submitted within one year after discharge or separation from active military service under honorable conditions.

(c) Verification of the length of time of active military service is provided.

(d) Application is made for an extension of the license.

(e) The licensure fee is paid. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003; amended July 18, 2008.)

**91-1-211. Licensure review committee.** (a) A licensure review committee shall be established as provided in this rule and regulation to review the qualifications of applicants who desire to be licensed in the state of Kansas but who do not satisfy all the requirements for licensure.

(b) The licensure review committee shall be composed of one chief school administrator, one chairperson of a department of education of a teacher education institution, one building administrator, and four classroom teachers. Each member shall be recommended by the teaching and school administration professional standards advisory board, and shall be appointed by the state board.

(c) The licensure review committee shall review cases referred to it by the commissioner of education. The licensure review committee shall make a written recommendation to the state board to

either approve or deny each application for licensure and shall state, in writing, the reasons for the recommendation given. The recommendation of the licensure review committee shall be reviewed by the state board, and the application for licensure shall be either approved or denied. The applicant shall be notified, in writing, of the decision of the state board.

(d) This regulation shall be effective on and after July 1, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003.)

**91-1-212. Restricted licenses.** (a) An individual may apply for a restricted teaching license or a restricted district leadership license.

(b) Each restricted teaching license shall be valid for three years from the date of issuance and shall be issued for one or more of the following levels:

- (1) Early childhood (birth through grade 3);
- (2) early childhood through late childhood (kindergarten through grade 6);
- (3) late childhood through early adolescence (grades 5 through 8);
- (4) early adolescence through late adolescence and adulthood (grades 6 through 12); or
- (5) early childhood through late adolescence and adulthood (prekindergarten through grade 12).

(c) Each restricted district leadership license shall be valid for three years from the date of issuance and shall be issued for all levels.

(d) Restricted teaching license.

(1) Each applicant for a restricted teaching license shall submit to the state board the following:

(A) An application for a restricted teaching license and the appropriate fee;

(B) an official transcript or transcripts verifying completion of an undergraduate or graduate degree in the content area in which the restricted license is sought;

(C) verification of a minimum 2.50 cumulative grade point average;

(D) documentation of the following:

(i) The local education agency has exhausted reasonable attempts to locate and hire a licensed person for the position which the applicant is to fill;

(ii) the local education agency will employ the applicant if the license is issued;

(iii) the local education agency will assign a licensed teacher with three or more years of experience to serve as a mentor for the applicant; and

(iv) the local education agency has collaborated with a Kansas teacher education institution

regarding the program the applicant will pursue to obtain full licensure, and the agency will provide accommodations to the applicant, including release time, in order to work with the mentor teacher and to complete coursework needed for full licensure; and

(E) a statement from the licensing officer of a Kansas teacher education institution attesting to the following:

(i) The applicant has on file a written plan that will qualify the applicant for full licensure in the content area for which the restricted certificate is sought;

(ii) the plan for program completion can be completed in not more than three years and contains a specific designation of the coursework that is to be completed each year;

(iii) the program provided to the applicant will meet the institution's approved program standards;

(iv) the institution will provide the applicant with on-site support at the employing local education agency, including supervision of the applicant's internship; and

(v) the institution has collaborated with the employing local education agency concerning the applicant's program.

(2) Each local education agency that employs a person holding a restricted teaching license shall submit to the commissioner of education a progress report before July 1 of each year during the effective period of the restricted license. This progress report shall include the following:

(A) Verification that the applicant has attained passing scores on content assessment required by the state board of education by the end of the second year;

(B) verification from the chief administrative officer of the employing local education agency attesting to the following information:

(i) The applicant's contract will be renewed; and

(ii) the local education agency will continue to assign an experienced mentor teacher to the applicant and provide accommodations to the applicant to work with the mentor teacher and to complete the applicant's plan for full licensure;

(C) a statement from the licensing officer of the applicant's teacher education institution attesting to the following:

(i) The applicant has made appropriate progress toward completion of the applicant's plan to qualify for full certification; and

(ii) the institution will continue to provide the applicant with on-site support, as necessary; and

(D) an official transcript verifying that the applicant has attained at least a 2.50 GPA in those courses specified in the applicant's plan for full licensure.

(e) Restricted district leadership license.

(1) Each applicant for a restricted district leadership license shall submit to the state board the following:

(A) An application, with appropriate fees, for the restricted district leadership license;

(B) verification of either three years of accredited teaching experience under an appropriate valid professional license or five years of related leadership experience;

(C) an official transcript verifying that the applicant holds a graduate degree;

(D) verification of a minimum 3.25 cumulative GPA in graduate coursework;

(E) verification from the chief administrative officer or the president of the board of education of an accredited or approved local education agency attesting to the following:

(i) The local education agency has exhausted reasonable attempts to locate and hire a licensed person for the position that the applicant is to fill;

(ii) the local education agency will employ the candidate if the restricted district leadership license is issued;

(iii) the local education agency has collaborated with a Kansas teacher education institution regarding the candidate;

(iv) the local education agency has an agreement with an experienced district administrator holding a similar assignment to serve as a mentor for the candidate; and

(v) the local education agency will provide release time for the candidate to work with the administrator mentor and to work on progress toward program completion; and

(F) verification from the licensing officer at a Kansas teacher education institution attesting to the following:

(i) The institution will provide a program for the candidate that leads to the conditional license in district leadership that can be completed within a three-year time limit;

(ii) the applicant has on file a plan for program completion for the restricted district leadership license with a specific timeline detailing coursework to be completed successfully each year;

(iii) the institution will provide a program equivalent to the institution's approved program, but may choose to modify the delivery model;

(iv) the institution is collaborating with the school district providing employment; and

(v) the institution will provide the candidate with on-site support.

(2) Each local education agency that employs a person holding a restricted district leadership license shall submit to the commissioner of education a progress report before July 1 of each year during the effective period of the restricted license. This progress report shall include the following:

(A) Verification of completion of a school leadership assessment prescribed by the state board by the end of the second year;

(B) a statement from the chief administrative officer of the employing local education agency attesting to the following:

(i) The local education agency will offer an additional year of employment to the candidate; and

(ii) the local education agency will continue to assign a mentor and provide release time;

(C) verification from the licensing officer of the applicant's teacher education institution attesting to the following:

(i) Normal progress has been made by the candidate of the deficiency plan for the restricted district leadership license;

(ii) an official transcript verifies that the candidate has maintained a 3.25 GPA in program courses; and

(iii) the institution will continue to provide the candidate with on-site support.

(f) This regulation shall expire on June 30, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 13, 2002.)

**91-1-213.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 13, 2002; amended Jan. 2, 2004; revoked Aug. 5, 2005.)

**91-1-214. Criminal history records check.**

(a) Each person submitting any of the following shall also submit, at the time of the application, a complete set of legible fingerprints of the person taken by a qualified law enforcement agency or properly trained school personnel:

(1) An initial application for a Kansas certificate or license;

(2) an application for renewal of an expired Kansas certificate or license; or

(3) an application for renewal of a valid Kansas certificate or license, if the person has never sub-

mitted fingerprints as part of any previous application for a Kansas certificate or license issued by the state board.

Fingerprints submitted pursuant to this regulation shall be released by the Kansas state department of education to the Kansas bureau of investigation for the purpose of conducting criminal history records checks, utilizing the files and records of the Kansas bureau of investigation and the federal bureau of investigation. A list of those applicants who are required to submit fingerprints at the time of license or certificate renewal shall be maintained by the Kansas state department of education.

(b) Each applicant shall pay the appropriate fee for the criminal history records check, to be determined on an annual basis.

(c) In addition to any other requirements established by regulation for the issuance of any certificate or license specified in subsection (a), the submittal of fingerprints shall be a prerequisite to the issuance of any certificate or license by the state board. A person submitting an application who does not comply with this regulation shall not be issued a certificate or license. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 13, 2002; amended Oct. 31, 2014.)

**91-1-215. In-service education definitions.** (a) “Content endorsement standards” means those standards adopted by the state board that define the skills and knowledge required for the specific content endorsements prescribed in K.A.R. 91-1-202.

(b) “Educational agency” means a public school district, accredited nonpublic school, area professional development center, institution of postsecondary education authorized to award academic degrees, the Kansas state department of education, and any other organization that serves school districts.

(c) “In-service education” means professional development and staff development and shall include any planned learning opportunities provided to licensed personnel employed by a school district or other authorized educational agency for purposes of improving the performance of these personnel in already held or assigned positions.

(d) “In-service education plan” and “plan” mean a detailed program for provision of professional or staff development, or both.

(e) “Noncontractual times” means periods of

time during which an employee is not under a contractual obligation to perform services.

(f) “Professional development” means continuous learning that is based on individual needs and meets both of the following criteria:

(1) The learning prepares a person for access to practice, maintains the person’s access to practice, builds an individual’s knowledge or skills, or is requested by the employing educational agency.

(2) The learning positively impacts the individual or the individual’s students, school or school district.

(g) “Professional development council” and “PDC” mean a representative group of licensed personnel from an educational agency that advises the governing body of the educational agency in matters concerning the planning, development, implementation, and operation of the educational agency’s in-service education plan.

(h) “Professional development plan” means a written document describing the in-service education activities to be completed during a specified period of time by the individual filing the plan.

(i) “Professional development point” means one clock-hour of in-service education. One semester hour of college credit shall count as 20 professional development points.

(j) “Professional education standards” means those standards adopted by the state board that specify the knowledge, competencies, and skills necessary to perform in a particular role or position.

(k) “Service to the profession” means any activity that assists others in acquiring proficiency in instructional systems, pedagogy, or content, or that directly relates to licensure of professional educators, accreditation processes, or professional organizations.

(l) “Staff development” means continuous learning offered to groups of professionals that develops the skills of those professionals to meet common goals, or the goals of a school or school district.

(m) “State board” means the state board of education.

This regulation shall be effective on and after July 1, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003.)

**91-1-216. Procedures for promulgation of in-service education plans; approval by state board; area professional development centers’ in-service programs.** (a) An in-service

education plan to be offered by one or more educational agencies may be designed and implemented by the board of education or other governing body of an educational agency, or the governing bodies of any two or more educational agencies, with the advice of representatives of the licensed personnel who will be affected.

(b) Procedures for development of an in-service plan shall include the following:

(1) Establishment of a professional development council;

(2) an assessment of in-service needs;

(3) identification of goals and objectives;

(4) identification of activities; and

(5) evaluative criteria.

(c) Based upon information developed under subsection (b), the educational agency shall prepare a proposed in-service plan. The proposed plan shall be submitted to the state board by August 1 of the school year in which the plan is to become effective.

(d) The plan shall be approved, approved with modifications, or disapproved by the state board. The educational agency shall be notified of the decision by the state board within a semester of submission of the plan.

(e) An approved plan may be amended at any time by following the procedures specified in this regulation.

(f) Each area professional development center providing in-service education for licensure renewal shall provide the in-service education through a local school district, an accredited non-public school, an institution of postsecondary education, or an educational agency that has a state-approved in-service education plan. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003; amended Aug. 28, 2009.)

**91-1-217. In-service education professional development council.** (a) Each professional development council shall meet the following criteria:

(1) Be representative of the educational agency's licensed personnel; and

(2) include at least as many teachers as administrators, with both selected solely by the group they represent.

(b) Each council shall have the following responsibilities:

(1) To participate in annual training related to roles and responsibilities of council members, in-

cluding responsibilities under these regulations, K.A.R. 91-1-215 through K.A.R. 91-1-219;

(2) to develop operational procedures; and

(3) to develop a five-year plan that may be approved by the governing body of the educational agency and is based upon criteria established by the state board.

(c) This regulation shall be effective on and after July 1, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003.)

**91-1-218. Awarding of professional development points.** (a) In awarding professional development points, each educational agency shall designate that one professional development point is equal to one clock-hour of in-service education.

(b) If a person documents completion of an in-service activity, the person shall be awarded professional development points equal to the number of clock-hours completed.

(c) If a person who has earned points for completion of an in-service activity later verifies that the person has applied the skills or knowledge gained, the person shall be awarded two times the number of professional development points that were earned for completion of the in-service activity. Evidence of application of the knowledge gained through the in-service activity shall be presented to the professional development council and may include any of the following:

(1) Independent observation;

(2) written documentation; or

(3) other evidence that is acceptable to the PDC.

(d) If a person who has earned points for application of knowledge or skills learned through in-service activities verifies that the application of the knowledge or skills has had a positive impact on student performance or the educational program of the school or school district, the person shall be awarded three times the number of professional development points that were earned for completion of the in-service activity. Evidence of impact upon student performance or school improvement shall be presented to the professional development council and may include any of the following:

(1) Independent observation;

(2) written documentation;

(3) evidence of improved student performance; or

(4) other evidence that is acceptable to the PDC.

(e) A person shall be awarded professional development points for activities related to service to the profession upon the basis of the number

of clock-hours served. The person shall be awarded one point for each clock-hour of service. The person shall submit verification of service to the professional development council.

(f) For purposes of renewing a license, a professional development council shall not impose a limit on the number of professional development points that may be earned. However, a council may impose limits on the number of professional development points that may be earned for purposes related to employment or other local matters.

(g) This regulation shall be effective on and after July 1, 2003. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003.)

**91-1-219. Expenditures for an in-service education program.** (a) Education agencies may receive in-service education funds for the following expenditures:

- (1) Consultant fees and honorariums;
- (2) travel expenses for consultants;
- (3) cost of materials used in training;
- (4) salaries of substitute teachers for certified staff who have filed an individual development plan, but these salaries shall not exceed 25 percent of the total in-service education expenditures;
- (5) registration fees for, and travel expenses to, in-service workshops and conferences, both in state and out of state, for certified individuals who have individual development plans on file;
- (6) salaries of secretarial personnel, but these salaries shall not exceed the amount of one hour of secretarial wages for each certified employee having an approved individual development plan on file; and
- (7) salaries paid to certified staff, during non-contractual times, for participation in district-level or building-level training or other staff development activities.

(b) Education agencies shall not receive in-service education funds for the following expenditures:

- (1) Rental or facilities;
- (2) utilities;
- (3) equipment;
- (4) administrative expenses; and
- (5) salaries of teachers attending in-service workshops or conferences during contractual times, or the salaries of council members.

(c) This regulation shall be effective on and after July 1, 2003. (Authorized by and implementing K.S.A. 2000 Supp. 72-9603; effective July 1, 2003.)

**91-1-220. Career and technical education certificate.** (a) Any individual may apply for a restricted career and technical education certificate, a full career and technical education certificate, a career and technical education endorsement certificate, or a career and technical education specialized certificate.

(b)(1) Each restricted career and technical education certificate shall be valid for two years from the date of issuance and shall be valid for instruction in grades 8 through 12.

(2) Each restricted career and technical education certificate shall be valid for providing instruction in career and technical education pathways for agriculture, food, and natural resources; architecture and construction; arts, audio-video technology, and communications; business management and administration; finance; health science; hospitality and tourism; human services; information technology; law, public safety, and security; manufacturing; marketing; science, technology, engineering, and mathematics (STEM); and transportation, distribution, and logistics.

(c) Each applicant for a restricted career and technical education certificate shall submit the following to the state board:

(1) Verification that a local education agency will employ the applicant in a career and technical education pathway if the certificate is issued;

(2) verification of at least 4,000 hours of occupational work experience in the career and technical education content area in which the certificate is sought;

(3) documentation of the following:

(A) Verification of occupational competency in the career and technical education content area. Verification shall be dependent upon the content area and may include any of the following:

(i) Successful completion of any recognized competency exam;

(ii) having a valid, appropriate occupational license in programs for which a license is required;

(iii) holding the appropriate educational degree; or

(iv) having a valid, industry-recognized credential;

(B) a written plan to qualify for full certification during the four-year period immediately following issuance of the initial restricted career and technical education certificate. The plan shall be based upon completion of the requirements of a professional education program for a full career and technical education certificate;

(C) verification from the employing local education agency that the agency has assigned a certified or licensed teacher with at least three years of experience to serve as a mentor for the applicant; and

(D) verification from the employing local education agency that the applicant has completed a supervised practical training experience that addresses, at a minimum, lesson plan development, teaching methodologies, student assessment, and classroom management;

(4) an application for a restricted career and technical education certificate; and

(5) the certificate fee.

(d) Any individual may renew a restricted career and technical education certificate one time. Each applicant for renewal shall submit the following to the state board:

(1) Verification of completion of at least 50 percent of the applicant's plan of study;

(2) verification of continued employment in the career and technical education pathway;

(3) an application for a restricted career and technical education certificate; and

(4) the certificate fee.

(e) To qualify for a full career and technical education certificate, each individual holding a restricted career and technical education certificate shall meet the requirements for a full career and technical education certificate during the period of validity of the individual's restricted certification.

(f)(1) Each full career and technical education certificate shall be valid for five years from the date of issuance and shall be valid for instruction in grades 8 through 12.

(2) Each full career and technical education certificate shall be valid for instruction in career and technical education pathways for agriculture, food, and natural resources; architecture and construction; arts, audio-video technology, and communications; business management and administration; finance; health science; hospitality and tourism; human services; information technology; law, public safety, and security; manufacturing; marketing; science, technology, engineering, and mathematics (STEM); and transportation, distribution, and logistics.

(3) Each applicant for a full career and technical education certificate shall submit the following to the state board:

(A) An application for a full career and technical education certificate and the appropriate fee;

(B) documentation of successful completion of the professional education program for career

and technical education certification as specified in subsection (g);

(C) verification of successful completion of a pedagogical assessment as determined by the state board;

(D) verification of successful completion of two years of teaching experience in a career and technical education pathway; and

(E) verification of professional learning opportunities related to the content area during each year of the restricted certificate period.

(g) Each applicant for a full career and technical education certificate shall have successfully completed an approved professional education program delivered through an institution of higher education or an approved professional learning program provider. At a minimum, each approved professional education program shall provide the competencies specified in the professional education standards adopted by the state board in each of the following areas:

(1) The learner and learning: learner development, learning differences, and learning environments;

(2) content: content knowledge and application of content;

(3) instructional practice: assessment, planning for instruction, and instructional strategies; and

(4) professional responsibility: professional learning, ethical practice, leadership, and collaboration.

(h) Any person may renew a full career and technical education certificate by submitting the following to the state board:

(1) An application for renewal and the required fee; and

(2)(A) Verification that the person, within the term of the current full career and technical education certificate, has earned at least 160 professional development points under an approved individual development plan filed with a local professional development council. The individual development plan shall include professional learning opportunities related to the content area during each year of the duration of the certificate; or

(B) if the applicant holds an advanced degree, verification that the person, within the term of the current full career and technical education certificate, has earned at least 120 professional development points under an approved individual development plan filed with a local professional development council. The individual development plan shall include professional learning

opportunities related to the content area during each year of the duration of the certificate.

(i) Any person whose full career and technical education certificate has expired may apply for a transitional career and technical education certificate by submitting to the state board the following:

(1) An application for a transitional certificate; and

(2) the certification fee.

(j) Any person may upgrade a transitional career and technical education certificate to a full career and technical education certificate by submitting to the state board verification of meeting the renewal requirements in paragraph (h)(2).

(k) Any person who holds a valid teaching license or a full career and technical education certificate may add a career and technical education endorsement certification by submitting to the state board the following:

(1) An application for a career and technical education endorsement certification;

(2) verification of occupational competency in the career and technical education content area. Verification shall be dependent upon the content area and may include any of the following:

(A) Successful completion of any recognized competency exam;

(B) having a valid, appropriate occupational license in programs for which a license is required; or

(C) having a valid, industry-recognized credential; and

(3) the certification fee.

(l) A career and technical education specialized certificate may be issued to allow an individual with appropriate occupational knowledge, skills, and experience to instruct in a career and technical education pathway assignment.

(1) Each career and technical education specialized certificate shall be valid for three school years. Each certificate shall be valid only for the endorsed career and technical education area for grades 8 through 12 and only for the local education agency identified on the certificate.

(2) To obtain a career and technical education specialized certificate, each applicant shall submit to the state board the following:

(A) A written request for issuance from a local education agency that authorizes the applicant to teach each identified course;

(B)(i) Verification of an industry-recognized certificate in the technical profession and verification of at least five years of full-time work experience

in the technical profession for which the industry-recognized certificate is held; or

(ii) verification of the applicant's occupational competency in the career and technical content area. Verification shall be dependent upon the content area and may include any of the following: successful completion of any recognized competency exam; having a valid, appropriate occupational license in programs for which a license is required; holding the appropriate educational degree; having an industry-recognized credential; or having 4,000 hours of occupational work experience related to the endorsed career and technical education area;

(C) an application for a career and technical education specialized certificate; and

(D) the certification fee.

(3) The career and technical education specialized certificate issued to each individual meeting the requirements of paragraph (1)(2) shall allow the individual to instruct in a career and technical education pathway up to a .5 FTE assignment.

(4) Any person may renew a career and technical education specialized certificate by submitting the following to the state board:

(A) An application for renewal;

(B) the certification fee; and

(C) a written request for issuance by the local education agency authorizing the applicant to continue to teach each identified course. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Aug. 5, 2005; amended July 18, 2008; amended, T-91-6-30-14, June 30, 2014; amended Oct. 24, 2014.)

**91-1-221.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Aug. 5, 2005; amended July 18, 2008; revoked July 7, 2017.)

**91-1-230. Institutional accreditation and program approval definitions.** (a) "Academic year" means July 1 through the following June 30.

(b) "Annual report" means a document that an institution submits to the commissioner on a yearly basis in which the information specified by the commissioner concerning unit standards and operations, programs offered by the unit, and statistical data is presented.

(c) "Approved," when used to describe a teacher education program, means that the program meets the program standards prescribed in regulations adopted by the state board.

(d) “Approved with stipulation,” when used to describe a teacher education program, means that the program has deficiencies in meeting the program standards prescribed in regulations adopted by the state board that the institution shall correct before being approved.

(e) “Commissioner” means the state commissioner of education or the commissioner’s designee.

(f) “Evaluation review committee” means the standing committee of the teaching and school administration professional standards board, or its successor, that is responsible for making accreditation and program approval recommendations to the state board.

(g) “Focused visit” means the on-site visit to a teacher education institution that has limited accreditation or accreditation with conditions by the state board and is seeking full accreditation.

(h) “Full accreditation” means the status assigned to a teacher education institution that is determined through a focused visit to meet substantially the accreditation standards adopted by the state board.

(i) “Initial visit” means the first on-site visit to a teacher education institution that is seeking accreditation for the first time from the state board.

(j) “Institutional candidate” means the designation assigned to an institution that is seeking accreditation for the first time and that has met the accreditation preconditions specified by the state board.

(k) “Institutional candidate visit” means an on-site visit that takes place following the designation of institutional candidate status to a teacher education institution.

(l) “Institutional report” means a document that describes how a teacher education institution meets the accreditation standards adopted by the state board.

(m) “Limited accreditation” means the status assigned to a teacher education institution that is determined through an initial visit to meet substantially the accreditation standards adopted by the state board.

(n) “Not approved,” when used to describe a teacher education program, means that the program fails substantially to meet program standards adopted by the state board.

(o) “Program report” means a written document that describes coursework, assessment instruments, and performance criteria used in a program to achieve the program standards established by the state board.

(p) “Progress report” means a written document that addresses the stipulations that are noted if a new program is approved with stipulation.

(q) “Review team” means a group of persons appointed by the commissioner to review and analyze reports from teacher education institutions and prepare reports based upon the review and analysis.

(r) “State board” means the state board of education.

(s) “Student teaching” means preservice clinical practice for individuals preparing to become teachers.

(t) “Teacher education institution” and “institution” mean a college or university that offers at least a four-year course of study in higher education and maintains a unit offering teacher education programs.

(u) “Teacher education program” and “program” mean an organized set of learning activities designed to provide prospective school personnel with the knowledge, competencies, and skills to perform successfully in a specified educational position.

(v) “Upgrade report” means a written document that addresses the stipulations noted if an existing program is approved with stipulation. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Aug. 6, 2004; amended Aug. 12, 2011.)

**91-1-231. Procedures for initial accreditation of teacher education institutions.** (a) Statement of intent. Each teacher education institution that desires accreditation by the state board shall submit a written statement of its intent to seek accreditation to the commissioner at least 24 months before the institution desires to have its initial visit. Upon receipt of this statement, the initial visit shall be scheduled by the commissioner.

(b) Preconditions.

(1) At least three semesters before the initial visit, the teacher education institution shall submit to the commissioner a preconditions report addressing each of the preconditions specified by the state board.

(2) Upon receipt of a preconditions report, the report shall be referred by the commissioner to the appropriate committee of the standards board. The committee shall review the report and determine whether all of the preconditions have been met.

(3) If all of the preconditions have been met, the committee shall recommend to the commissioner that the institution be designated an institutional candidate.

(4) If the committee determines that the preconditions have not been met, the committee shall notify the institution of the committee's determination and shall advise the institution that it may submit, within 30 days of the notice, additional or revised documentation for consideration by the committee.

(5) If additional or revised documentation is submitted, the committee shall review the documentation and make a final recommendation to the commissioner.

(6) The final determination of whether the preconditions are met shall be made by the commissioner. If the preconditions are met, the institution shall be designated as an institutional candidate.

(c) Institutional candidate visit. Following designation as an institutional candidate, an institutional candidate visit shall be scheduled by the commissioner. If it is determined, based upon the institutional candidate visit, that an institution has the ability to meet the requirements of a teacher education institution, the institution may submit programs for approval and proceed with a self-study and institutional report.

(d) Limited accreditation.

(1) To attain the status of limited accreditation, an institution shall schedule an initial visit for the institution with the commissioner and submit an institutional report that shall be in the form and shall contain the information prescribed by the commissioner. The institutional report shall be submitted at least 60 days before the date of the initial visit scheduled for the institution.

(2) After the initial visit, the institution shall be either granted limited accreditation or denied accreditation following the procedure set forth in K.A.R. 91-1-232.

(3) Each institution shall retain the status of limited accreditation for three academic years, unless the status is changed by the state board.

(4) For licensing purposes, each institution that is granted limited accreditation shall be deemed to have full accreditation.

(e) Full accreditation.

(1) (A) Any institution that has been granted limited accreditation from the state board may apply for full accreditation by scheduling a focused visit of the institution with the commissioner and submitting an institutional report that shall be in

the form and shall contain the information prescribed by the commissioner.

(B) Each institution shall schedule the focused visit to be completed at least one year before the institution's limited accreditation expires.

(C) Each institution shall submit its institutional report at least 60 days before the date of the focused visit to the institution.

(D) After the focused visit, the institution shall be either granted full accreditation or denied accreditation following the procedures set forth in K.A.R. 91-1-232.

(2) Subject to subsequent action by the state board, the full accreditation of any teacher education institution shall be effective for seven academic years. However, each teacher education institution granted full accreditation by the state board shall submit an annual report to the commissioner on or before July 30 of each year.

(f) Renewal of accreditation. Any institution may request renewal of its accreditation status by following the procedures specified in K.A.R. 91-1-70a.

(g) Change of accreditation status.

(1) The accreditation status of any teacher education institution may be changed or revoked by the state board if, after providing an opportunity for a hearing, the state board finds that the institution has failed to meet substantially the accreditation standards adopted by the state board, that the institution has made substantial changes to the unit, or that other just cause exists.

(2) The duration of the accreditation status of an institution may be extended by the state board.

(3)(A) If limited or full accreditation of an institution is denied or revoked, the institution shall not admit any new students into its teacher education unit.

(B) The institution may recommend for licensure only those students who complete their programs by the end of the semester in which the accreditation denial or revocation occurs. The institution shall provide written notice to all other students in its teacher education unit at the time of accreditation denial or revocation that the institution is no longer authorized to recommend students for licensure. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Aug. 6, 2004; amended Aug. 12, 2011.)

**91-1-232. On-site visits; recommendation; appeal.** (a) On-site visits.

(1) After the scheduling of an initial visit, a continuing accreditation visit, or a focused vis-

it, an on-site review team shall be appointed by the commissioner. The team shall be appointed at least one year before the date of the visit. The chairperson of the on-site review team and the number of on-site review team members shall be designated by the commissioner. An institution may challenge the appointment of a team member only on the basis of a conflict of interest.

(2) In accordance with procedures adopted by the state board, each on-site review team shall examine and analyze the institutional report, review electronic exhibits, conduct an on-site review of the teacher education institution, and prepare reports expressing the findings and conclusions of the review team. The review team reports shall be submitted to the commissioner. The reports shall be forwarded by the commissioner to the evaluation review committee and to an appropriate representative of the teacher education institution.

(3) Any institution may prepare a written response to a review team report. Each response shall be prepared and submitted to the commissioner within a designated time frame following receipt of a review team's report. Each response shall be forwarded by the commissioner to the evaluation review committee.

(b) Recommendation and appeal.

(1) The evaluation review committee, in accordance with procedures adopted by the state board, shall prepare a written initial recommendation regarding the appropriate accreditation status to be assigned to the teacher education institution, which shall include a statement of the findings and conclusions of the evaluation review committee. The recommendation shall be submitted to an appropriate representative of the teacher education institution and to the commissioner.

(2) Within 30 days of the receipt of an initial recommendation of the evaluation review committee, the teacher education institution may submit a written request to the commissioner for a hearing before the evaluation review committee to appeal the initial recommendation. This request shall specify, in detail, the basis for the appeal, including an identification of each item disputed by the institution.

(3) If a request for a hearing is submitted according to paragraph (b)(2), the evaluation review committee shall conduct a hearing. The committee shall then prepare a written final recommendation regarding the appropriate status to be assigned to the teacher education institution, which shall include a statement of the findings

and conclusions of the evaluation review committee. The recommendation shall be submitted to an appropriate representative of the teacher education institution and to the commissioner. The final recommendation shall be submitted by the commissioner to the state board for its consideration and determination.

(4) If a request for a hearing is not submitted within the time allowed under paragraph (2) of this subsection, the initial recommendation of the evaluation review committee shall become the final recommendation of the review committee. The committee's final recommendation shall be submitted by the commissioner to the state board for its consideration and determination. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Aug. 6, 2004; amended Aug. 12, 2011.)

**91-1-234. Innovative or experimental programs.** (a) Any teacher education institution desiring to offer an innovative or experimental program to prepare personnel for positions for which no program currently exists, or to utilize a new approach or method for the preparation of education personnel in an existing program, shall submit a written application to the state board for consideration for approval of the proposed program. The application shall include the following:

(1) A written statement of the purpose and objectives of the proposed program;

(2) documentation of the need for the proposed program;

(3) a written statement of the competencies to be acquired by persons who complete the proposed program. These competencies shall include the knowledge and skills required for a beginning teacher or other school professional. This statement of competencies shall be based upon the purpose and objectives of the program;

(4) a written description of the curricula to be used in the proposed program;

(5) a written statement of the administrative structure for governance of, and responsibility for, the proposed program. This statement shall include a designation of the appropriate division, school, college, or department within the institution to act within the framework of general institutional policies on all matters relating to the program. The statement shall also include a designation of the financial and human resources that will be dedicated to the program during its initial five years of operation; and

(6) a timetable that specifies the following information:

- (A) The sequence of activities that will occur;
- (B) the anticipated schedule of evaluative checkpoints;
- (C) identification of competencies to be acquired by the students; and
- (D) provisions for program design changes, if necessary, at selected intervals in the program.

The timetable shall give the approximate dates on which periodic program reports are to be submitted to the appropriate institutional officials and the state board.

(b) Each teacher education institution offering an innovative or experimental program shall provide for continuing evaluation of the program, including performance criteria and follow-up at specified intervals. The provisions concerning evaluation of the program shall include a definition and specification of the kinds of evidence that will be gathered and reported. Each evaluation shall provide information to identify areas in the program that need improvement and to suggest new directions for program development. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Aug. 10, 2007.)

**91-1-235. Procedures for initial approval of teacher education programs.** (a) Application.

(1) Each teacher education institution that desires to have any new program approved by the state board shall submit an application for program approval to the commissioner. The application shall be submitted at least 12 months before the date of implementation.

(2) Each institution shall submit with its application a program report containing a detailed description of each proposed program, including program coursework based on standards approved by the state board, and the performance-based assessment system that will be utilized to collect performance data on candidates' knowledge and skills. Each program report shall be in the form and shall contain the information prescribed by the commissioner. The program report shall include confirmation that the candidates in the program will be required to complete the following successfully:

- (A) Coursework that constitutes a major in the subject at the institution or that is equivalent to a major;
- (B) at least 12 weeks of student teaching; and
- (C) a validated preservice candidate work sample.

(b) Review team. Upon receipt of a program report, a review team shall be appointed by the commissioner to analyze the program report. The chairperson of the review team shall be designated by the commissioner. The number of review team members shall be determined by the commissioner, based upon the scope of the program to be reviewed.

Any institution may challenge the appointment of a review team member. The institution's challenge shall be submitted in writing and received by the commissioner no later than 30 days after the notification of review team appointments is sent to the institution. Each challenge to the appointment of a review team member shall be only on the basis of a conflict of interest.

(c) Program review process.

(1) In accordance with procedures adopted by the state board, a review team shall examine and analyze the proposed program report and shall prepare a report expressing the findings and conclusions of the review team. The review team's report shall be submitted to the commissioner. The report shall be forwarded by the commissioner to an appropriate representative designated by the teacher education institution.

(2) Any institution may prepare a response to the review team's report. This response shall be prepared and submitted to the commissioner no later than 45 days of receipt of the review team's report. Receipt of the review team's report shall be presumed to occur three days after mailing. The review team's report, any response by the institution, and any other supporting documentation shall be forwarded to the evaluation review committee by the commissioner.

(d) Initial recommendation. The evaluation review committee, in accordance with procedures adopted by the state board, shall prepare a written initial recommendation regarding the appropriate status to be assigned to the proposed program, which shall include a statement of the findings and conclusions of the evaluation review committee. The recommendation shall be submitted to an appropriate representative designated by the teacher education institution and to the commissioner.

(e) Request for hearing.

(1) Within 30 days of receipt of an initial recommendation of the evaluation review committee, the teacher education institution may submit a written request by certified mail to the evaluation review committee for a hearing before the committee to appeal the initial recommendation.

Receipt of the initial recommendation of the evaluation review committee shall be presumed to occur three days after mailing. This request shall specify, in detail, the basis for the appeal, including an identification of each item disputed by the institution.

(2) If a request for a hearing is submitted, the evaluation review committee shall conduct a hearing. The committee shall then prepare a written final recommendation regarding the appropriate status to be assigned to the proposed program, which shall include a statement of the findings and conclusions of the evaluation review committee. The final recommendation shall be submitted to an appropriate representative designated by the teacher education institution and to the commissioner. The final recommendation shall be submitted by the commissioner to the state board for its consideration and determination.

(3) If a request for a hearing is not submitted by certified mail within the time allowed under paragraph (e)(1), the initial recommendation of the evaluation review committee shall become the final recommendation of the review committee. The committee's final recommendation shall be submitted by the commissioner to the state board for its consideration and determination.

(f) Approval status. Each new program shall be approved with stipulation or not approved.

(g) Annual report.

(1) If a new program is approved with stipulation, the institution shall submit a progress report to the commissioner within 60 days after completion of the second semester of operation of the program and thereafter in each of the institution's annual reports that are due on or before July 30.

(2) Each progress report shall be submitted by the commissioner to the evaluation review committee for its examination and analysis. Following review of the progress report, the evaluation review committee may remove any areas for improvement and change the status to approved until the institution's next program review.

(h) Change of approval status.

(1) At any time, the approval status of a teacher education program may be changed by the state board if, after providing an opportunity for a hearing, the state board finds that the institution either has failed to meet substantially the program standards or has materially changed the program. For just cause, the duration of the approval status of a program may be extended by the state board. The duration of the current approval status of a program

shall be extended automatically if the program is in the process of being reevaluated by the state board. This extension shall be counted as part of any subsequent approval period of a program.

(2) At the time of an institution's next on-site visit, the new program shall be reviewed pursuant to K.A.R. 91-1-236.

(3) For licensure purposes, each teacher education program that is approved with stipulation shall be considered to be approved. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Aug. 6, 2004; amended Aug. 12, 2011; amended July 7, 2017.)

**91-1-236. Procedures for renewing approval of teacher education program.** (a) Application for program renewal.

(1) Each teacher education institution that desires to have the state board renew the approval status of one or more of its teacher education programs shall submit to the commissioner an application for program renewal. The application shall be submitted at least 12 months before the expiration of the current approval period of the program or programs.

(2) Each institution shall also submit a program report, which shall be in the form and shall contain the information prescribed by the commissioner. The program report shall be submitted at least six months before the expiration of the current approval period of the program or programs. The program report shall include confirmation that the candidates in the program will be required to complete the following:

(A) Coursework that constitutes a major in the subject at the institution or that is equivalent to a major; and

(B) at least 12 weeks of student teaching.

(b) Review team. Upon receipt of a complete program report, a review team shall be appointed by the commissioner to analyze the program report. The chairperson of the review team shall be designated by the commissioner. The number of review team members shall be determined by the commissioner, based upon the scope of the program or programs to be reviewed. An institution may challenge the appointment of a review team member only on the basis of a conflict of interest.

(c) Program review process.

(1) In accordance with procedures adopted by the state board, each review team shall examine and analyze the program report and prepare a review report expressing the findings and conclu-

sions of the review team. The review team's report shall be submitted to the commissioner. The report shall be forwarded by the commissioner to an appropriate representative of the teacher education institution.

(2) Any institution may prepare a written response to the review team's report. Each response shall be prepared and submitted to the commissioner within 45 days of receipt of the review team's report. The review team's report, any response filed by the institution, and any other supporting documentation shall be forwarded by the commissioner to the evaluation review committee.

(d) Initial recommendation. The evaluation review committee, in accordance with procedures adopted by the state board, shall prepare a written initial recommendation regarding the appropriate status to be assigned to the program or programs, which shall include a statement of the findings and conclusions of the evaluation review committee. The recommendation shall be submitted to an appropriate representative of the teacher education institution and to the commissioner.

(e) Request for hearing.

(1) Within 30 days of the receipt of an initial recommendation of the evaluation review committee, the teacher education institution may submit a written request to the commissioner for a hearing before the evaluation review committee to appeal the initial recommendation of the committee. This request shall specify, in detail, the basis for the appeal, including an identification of each item disputed by the institution.

(2) If a request for a hearing is submitted, the evaluation review committee shall conduct a hearing. The committee shall then prepare a written final recommendation regarding the appropriate status to be assigned to the program or programs, which shall include a statement of the findings and conclusions of the evaluation review committee. The final recommendation shall be submitted to an appropriate representative of the teacher education institution and to the commissioner. The final recommendation shall be submitted by the commissioner to the state board for its consideration and determination of program approval status according to paragraph (f)(1).

(3) If a request for a hearing is not submitted within the time allowed under paragraph (1) of this subsection, the initial recommendation of the evaluation review committee shall become the final recommendation of the review committee. The committee's final recommendation shall be

submitted by the commissioner to the state board for its consideration and determination.

(f) Approval status.

(1) The status assigned to any teacher education program specified in this regulation shall be approved, approved with stipulation, or not approved.

(2) Subject to subsequent action by the state board, the assignment of approved status to a teacher education program shall be effective for seven academic years. However, the state board, at any time, may change the approval status of a program if, after providing an opportunity for a hearing, the state board finds that the institution either has failed to meet substantially the program standards adopted by the state board or has made a material change in a program. For just cause, the duration of the approval status of a program may be extended by the state board. The duration of the approval status of a program shall be extended automatically if the program is in the process of being reevaluated by the state board.

(3)(A) If a program is approved with stipulation, that status shall be effective for the period of time specified by the state board, which shall not exceed seven years.

(B) If any program of a teacher education institution is approved with stipulation, the institution shall include in an upgrade report to the commissioner the steps that the institution has taken and the progress that the institution has made during the previous academic year to address the deficiencies that were identified in the initial program review.

(C) The upgrade report shall be submitted by the commissioner to the evaluation review committee for its examination and analysis. After this examination and analysis, the evaluation review committee shall prepare a written recommendation regarding the status to be assigned to the teacher education program for the succeeding academic years. The recommendation shall include a statement of the findings and conclusions of the evaluation review committee. The recommendation shall be submitted to an appropriate representative of the teacher education institution and to the commissioner. If the institution does not agree with this recommendation, the institution may request a hearing according to the provisions in subsection (e).

(D) For licensure purposes, each teacher education program that is approved with stipulation shall be considered to be approved.

(4) Students shall be allowed two full, consecutive, regular semesters following the notification of final action by the state board to complete a program that is not approved. Summers and interterms shall not be counted as part of the two regular semesters. Students who finish within these two regular semesters may be recommended for licensure by the college or university. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Aug. 6, 2004; amended Aug. 12, 2011.)

## Article 2.—STANDARDS AND PROCEDURES FOR ACCREDITING HIGH SCHOOLS

**91-2-1.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; amended, E-76-12, Jan. 23, 1975; amended May 1, 1975; amended May 1, 1976; revoked May 1, 1979.)

**91-2-2.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; amended, E-74-20, April 5, 1974; amended, E-76-12, Jan. 23, 1975; amended May 1, 1975; amended May 1, 1976; amended Feb. 15, 1977; revoked May 1, 1979.)

**91-2-3.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1973; revoked May 1, 1979.)

**91-2-4.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1976; revoked May 1, 1979.)

**91-2-5.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1973; amended May 1, 1975; revoked May 1, 1979.)

**91-2-6.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970;

amended Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1976; revoked May 1, 1979.)

**91-2-7.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1976; revoked May 1, 1979.)

**91-2-8.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1973; revoked May 1, 1979.)

**91-2-9.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; revoked May 1, 1979.)

**91-2-10.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1979.)

**91-2-11.** (Authorized by K.S.A. 72-7514, K.S.A. 1975 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1973; amended, E-76-12, Jan. 23, 1975; amended May 1, 1975; revoked May 1, 1976.)

**91-2-12.** (Authorized by K.S.A. 72-115; effective Jan. 1, 1968; revoked May 1, 1979.)

**91-2-13.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; revoked May 1, 1979.)

**91-2-14.** (Authorized by K.S.A. 1970 Supp. 72-7513, 72-7514; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked Jan. 1, 1971.)

**91-2-14a.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1973; amended Jan. 1, 1974; revoked May 1, 1979.)

**91-2-14b.** (Authorized by K.S.A. 72-7514; effective Jan. 1, 1974; revoked May 1, 1979.)

**91-2-15.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1973; amended May 1, 1976; amended Feb. 15, 1977; revoked May 1, 1979.)

### Article 3.—STANDARDS AND PROCEDURES FOR ACCREDITING JUNIOR HIGH SCHOOLS

**91-3-1.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; amended, E-76-12, Jan. 23, 1975; amended May 1, 1975; amended May 1, 1976; revoked May 1, 1979.)

**91-3-2.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; amended, E-74-20, April 5, 1974; amended, E-76-12, Jan. 23, 1975; amended May 1, 1975; amended May 1, 1976; revoked May 1, 1979.)

**91-3-3.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1973; amended Jan. 1, 1974; revoked May 1, 1979.)

**91-3-4.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1976; revoked May 1, 1979.)

**91-3-5.** (Authorized by K.S.A. 72-7514; effective Jan. 1, 1968; amended Jan. 1, 1972; revoked May 1, 1979.)

**91-3-6.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; revoked May 1, 1979.)

**91-3-7.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1976; revoked May 1, 1979.)

**91-3-8.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968;

amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1973; revoked May 1, 1979.)

**91-3-9.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1973; amended May 1, 1975; revoked May 1, 1979.)

**91-3-10.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1971; revoked May 1, 1979.)

**91-3-11.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; revoked May 1, 1979.)

**91-3-12.** (Authorized by K.S.A. 1971 Supp. 72-7513, 72-7514; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1971; revoked Jan. 1, 1972.)

**91-3-12a.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1973; amended Jan. 1, 1974; revoked May 1, 1979.)

**91-3-12b.** (Authorized by K.S.A. 72-7514; effective Jan. 1, 1974; revoked May 1, 1979.)

**91-3-13.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1973; amended May 1, 1976; revoked May 1, 1979.)

### Article 4.—STANDARDS AND PROCEDURES FOR ACCREDITING ELEMENTARY SCHOOLS

**91-4-1.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; amended, E-74-20, April 5, 1974; amended, E-76-12, Jan. 23, 1975; amended May 1, 1975; amended May 1, 1976; revoked May 1, 1979.)

**91-4-2.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1972; amended Jan.

1, 1973; amended Jan. 1, 1974; amended May 1, 1976; revoked May 1, 1979.)

**91-4-3.** (Authorized by K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; revoked May 1, 1979.)

**91-4-3a.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective May 1, 1976; revoked May 1, 1979.)

**91-4-4.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1973; amended May 1, 1976; revoked May 1, 1979.)

**91-4-5.** (Authorized by K.S.A. 72-1101, 72-1103, 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1973; revoked May 1, 1979.)

**91-4-6.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; revoked May 1, 1979.)

**91-4-7.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1976; revoked May 1, 1979.)

**91-4-8.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1973; revoked May 1, 1979.)

**91-4-9.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1979.)

**91-4-10.** (Authorized by K.S.A. 72-7514; effective Jan. 1, 1968; amended Jan. 1, 1971; revoked May 1, 1979.)

**91-4-11.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1972; amended Jan. 1, 1974; revoked May 1, 1979.)

**91-4-12.** (Authorized by K.S.A. 1971 Supp. 72-7513, 72-7514; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1 1971; revoked Jan. 1, 1972.)

**91-4-12a.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1973; amended Jan. 1, 1974; revoked May 1, 1979.)

**91-4-12b.** (Authorized by K.S.A. 72-7514; effective Jan. 1, 1974; revoked May 1, 1979.)

**91-4-13.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1973; amended May 1, 1976; revoked May 1, 1979.)

## Article 5.—DRIVER AND TRAFFIC SAFETY EDUCATION COURSES

**91-5-1. Definitions.** (a) “Approved program” means an approved driver education program or approved motorcycle safety program.

(b) “Driver education program” means a course designed to teach students the components of basic automobile operation, including rules of the road and safety.

(c) “Hour” means a class period of no fewer than 50 minutes.

(d) “Motorcycle safety program” or “Driver education II” means a course designed to teach students the components of motorcycle operation, including safety.

(e) “State board” means the state board of education. (Authorized by K.S.A. 72-7514; implementing K.S.A. 8-272; effective May 1, 1980; amended, T-84-2, Feb. 10, 1983; amended May 1, 1984; amended Dec. 18, 1998.)

**91-5-1a. Program approval.** (a) To be eligible for program approval, a school shall be accredited by the state board as a public secondary school, nonpublic secondary school, or community college. Each school shall make application to the state board for approval of its driver education program or motorcycle safety program before the initiation of instruction

(b) Each application for approval of a driver education program shall include the following:

(1) A detailed description of the proposed program;

(2) a statement of the specific goals and objectives of the program;

(3) a description of the procedures to be used to evaluate the program;

(4) an assurance that each instructor will meet the requirements of the state board for teaching driver education; and

(5) any other information required by the state board.

(c) A driver education program shall not be approved unless it requires that each enrolled student demonstrates proficiency in both of the following areas:

(1) Rules of the road; and

(2) proper operation and control of a vehicle while driving in varying conditions affecting vehicle operation.

(d) Due to the time required to adequately assess skills acquisition, a driver education program shall not be approved if the program is designed to be completed in fewer than seven days.

(e) (1) Each application for approval of a motorcycle safety program shall include information indicating that the proposed program complies with the requirements of K.A.R. 91-5-14 and amendments thereto.

(2) A motorcycle safety program shall not be approved if the program is designed to be completed in fewer than three days. (Authorized by K.S.A. 72-7514; implementing K.S.A. 8-272; effective Jan. 1, 1966; amended Jan. 1, 1970; amended, E-74-3, Oct. 5, 1973; amended May 1, 1978; amended May 1, 1979; amended May 1, 1980; amended, T-86-24, July 24, 1985; amended May 1, 1986; amended Dec. 18, 1998.)

**91-5-2.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 8-272 and 72-7513; effective Jan. 1, 1966; amended Jan. 1, 1970; amended, E-74-3, Oct. 5, 1973; amended May 1, 1976; amended May 1, 1978; amended May 1, 1979; amended May 1, 1980; amended May 1, 1982; amended Aug. 31, 1992; revoked Dec. 18, 1998.)

**91-5-3. Qualifications of instructors.** (a) Each instructor of an approved driver education program shall have the following:

(1)(A) a valid teacher certificate with an endorsement in driver education; or

(B) subject to the provisions of subsection (b), a valid substitute teacher certificate; and

(2) a valid motor vehicle operator's license.

(b) Each instructor who provides driver education under a substitute teacher certificate shall have had, within the five years preceding the date of the issuance of each substitute teacher certificate, teaching experience in an approved driver

education program. (Authorized by K.S.A. 72-7514; implementing K.S.A. 8-272; effective Jan. 1, 1966; amended Jan. 1, 1967; amended Jan. 1, 1970; amended, E-74-3, Oct. 5, 1973; amended May 1, 1976; modified L. 1978, ch. 447, May 1, 1978; amended May 1, 1979; amended May 1, 1980; amended Dec. 27, 1996.)

**91-5-4. Reimbursement.** On and after September 1, 1998, annual reimbursement shall be based on the number of eligible students who have completed the requirements of an approved program during the preceding 12 months. Distribution of funds shall be made on or before November 1 of each year. (Authorized by K.S.A. 72-7514; implementing K.S.A. 8-272; effective Jan. 1, 1966; amended Jan. 1, 1970; amended, E-74-3, Oct. 5, 1973; amended Jan. 1, 1974; amended, E-76-12, Jan. 23, 1975; amended May 1, 1978; amended May 1, 1979; amended May 1, 1980; amended Dec. 18, 1998.)

**91-5-5.** (Authorized by K.S.A. 72-115; effective Jan. 1, 1966; amended, E-74-3, Oct. 5, 1973; revoked May 1, 1976.)

**91-5-6. Period of instruction.** Effective September 1, 1979: Any accredited secondary school may offer an approved course during the regular school term, the summer term, or after-school periods as long as the instruction is administered and supervised as an integral part of the school program. (Authorized by K.S.A. 72-7514; effective Jan. 1, 1966; amended, E-74-3, Oct. 5, 1973; amended May 1, 1976; amended May 1, 1978; amended May 1, 1979; amended May 1, 1980.)

**91-5-7. Eligible students.** (a) Students in any approved program shall be regularly enrolled in an accredited public, nonpublic, or special purpose school, or a community college. Each student shall be at least 14 years of age prior to beginning behind-the-wheel instruction.

(b) Persons eligible to apply for a motor vehicle operator's license, who are not regularly enrolled in an accredited school and who have not successfully completed a course in driver education, shall be eligible to apply to enter an approved program. Adult students shall be covered by all regulations applying to other students in the approved program. (Authorized by K.S.A. 72-7514; implementing K.S.A. 8-272 and 72-7513; effective Jan. 1, 1966; amended Jan. 1, 1970; amended, E-74-3, Oct. 5, 1973; amended Jan. 1, 1974; amended,

E-76-12, Jan. 23, 1975; amended May 1, 1976; modified, L. 1978, ch. 447, May 1, 1978; amended May 1, 1979; amended, E-80-14, Sept. 12, 1979; amended May 1, 1980; amended Nov. 23, 1992.)

**91-5-8.** (Authorized by K.S.A. 72-7514; effective Jan. 1, 1966; amended, E-74-3, Oct. 5, 1973; amended May 1, 1978; amended May 1, 1979; amended May 1, 1980; revoked Dec. 18, 1998.)

**91-5-9. Automobile used as a trainer.** (a) Any automobile used for driver education purposes, with the exception of those vehicles used solely for the multi-car driving range program, shall carry a special designation clearly visible from the rear, either as a printed sign or a decalcomania with the following wording in at least two-inch letters:

DRIVER EDUCATION  
or  
STUDENT DRIVER

(b) Any automobile used for driver education purposes, with the exception of those vehicles used solely for the multi-car driving range program, shall have dual controls as a safety measure. (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-5016; effective Jan. 1, 1966; amended Jan. 1, 1970; amended, E-74-3, Oct. 5, 1973; amended Jan. 1, 1974; amended, E-76-12, Jan. 23, 1975; amended May 1, 1976; amended May 1, 1978; amended, E-80-14, Sept. 12, 1979; amended May 1, 1980; amended Dec. 18, 1998.)

**91-5-10.** (Authorized by K.S.A. 72-7514; effective Jan. 1, 1966; amended Jan. 1, 1970; amended, E-74-3, Oct. 5, 1973; amended May 1, 1976; amended May 1, 1978; amended May 1, 1979; amended May 1, 1980; revoked Dec. 18, 1998.)

**91-5-11.** (Authorized by K.S.A. 72-7514; effective Jan. 1, 1966; amended Jan. 1, 1970; amended, E-74-3, Oct. 5, 1973; amended Jan. 1, 1974; amended, E-76-12, Jan. 23, 1975; amended May 1, 1976; amended May 1, 1978; amended May 1, 1979; amended May 1, 1980; revoked Dec. 18, 1998.)

**91-5-12.** (Authorized by K.S.A. 72-7514; effective Jan. 1, 1966; amended Jan. 1, 1970; amended, E-74-3, Oct. 5, 1973; amended May 1, 1976; revoked May 1, 1978; revoked May 1, 1979.)

**91-5-13. Reports.** Schools participating in state reimbursement programs for driver educa-

tion shall submit evidence of student completion of an approved program using the format provided by the state board and other information necessary for state approval of the program. Reports shall be due at the office of the state board each year on or before September 16. (Authorized by K.S.A. 72-7514 and implementing K.S.A. 8-272; effective Jan. 1, 1966; amended Jan. 1, 1970; amended, E-74-3, Oct. 5, 1973; amended May 1, 1976; amended May 1, 1978; amended May 1, 1979; amended May 1, 1980; amended Dec. 18, 1998.)

**91-5-14. Motorcycle instruction.** (a)(1) Motorcycle instruction shall be offered only to students who are 15 years of age or older and either have completed an approved course in driver education or hold a valid motor vehicle operator's license. Each course shall include a minimum of 20 hours of instruction, which shall include no fewer than eight hours of classroom instruction and an average of no fewer than six hours of behind-the-bar instruction per student. If on-street driving instruction is provided, the instruction shall not exceed one hour per day, except that one instructional period in each program may be extended to a maximum of two hours.

(2) Instructors of an approved motorcycle course shall hold a motorcycle instructor permit or a chief instructor permit.

(3) Students shall successfully complete all phases of an approved motorcycle education course to be eligible for the division of vehicles' certification of completion.

(4) No program shall have more than 12 students per instructor for off-street instruction or more than six students per instructor for on-street instruction.

(5) If on-street instruction is provided, during this instruction each student shall wear a bright orange or yellow riding vest inscribed with the words "student driver."

(6) All programs meeting the requirements for an approved course shall be eligible for reimbursement through the motorcycle safety fund.

(b) Qualifications for motorcycle instructor and chief instructor permits; duration of permits; renewals.

(1) A person shall be issued a motorcycle instructor permit if the person meets the following qualifications:

(A) Has a valid driver's license with a motorcycle endorsement;

(B) is at least 18 years of age;

(C) has no more than two moving traffic violations within two years of the date of application for a permit;

(D) has no conviction of any of the traffic violations specified in K.S.A. 8-254 and amendments thereto;

(E) has successfully completed a beginning rider's course approved by the state board; and

(F) has successfully completed a 60-hour instructor's course approved by the state board.

(2) A person shall be issued a chief instructor permit if the person meets the following requirements:

(A) Has a valid driver's license with a motorcycle endorsement;

(B) is at least 21 years of age;

(C) has no more than two moving traffic violations within two years of the date of application for a permit;

(D) has no conviction of any of the traffic violations specified in K.S.A. 8-254 and amendments thereto;

(E) has successfully completed a chief instructor's course approved by the state board; and

(F) has taught three beginning rider's courses within two years of the date of application.

(3) Each motorcycle instructor permit and each chief instructor permit shall be valid for three years, unless the person holding the permit has either of the following:

(A) Two or more moving traffic violations during the validity period of the permit; or

(B) a conviction of any of the crimes specified in paragraph (b)(1)(D) of this regulation.

(4) Each motorcycle instructor and each chief instructor may renew the permit if the instructor meets the following requirements:

(A) Has taught at least one beginning rider's course each year, if an instructor, or at least one instructor's course during the past three years, if a chief instructor;

(B) has taught at least one motorcycle riding course each year; and

(C) has no more than two moving traffic violations within the past three years and no conviction of any of the traffic violations specified in K.S.A. 8-254 and amendments thereto. (Authorized by and implementing K.S.A. 8-272; effective May 1, 1978; amended May 1, 1979; amended May 1, 1980; amended May 1, 1982; amended, T-84-2, Feb. 10, 1983; amended May 1, 1984; amended Jan. 23, 1998; amended Feb. 9, 2001.)

## Article 6.—KANSAS SCHOLARSHIP PROGRAM

**91-6-1.** (Authorized by K.S.A. 72-6804; effective Jan. 1, 1966; revoked May 1, 1976.)

**91-6-2.** (Authorized by K.S.A. 1969 Supp. 72-6804; effective Jan. 1, 1966; amended Jan. 1, 1968; revoked Jan. 1, 1970.)

**91-6-3 to 91-6-11.** (Authorized by K.S.A. 72-6804; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1970; revoked May 1, 1976.)

## Article 7.—COMMERCIAL DRIVERS' TRAINING SCHOOLS

**91-7-1. Licenses required.** Every person conducting a drivers' training school shall be licensed by the state board of education prior to engaging in that business. No license shall be issued until at least one (1) instructor has obtained an instructor's license and at least one (1) motor vehicle has been approved for drivers' training school use.

(a) Applications.

(1) Application shall be made on a form prescribed by the state board. Renewal applications shall be submitted for approval and issuance at least ten (10) days prior to the expiration date of the current license.

(2) When an application is made by an individual, it shall be signed and sworn to by the individual. In the case of a partnership, the application shall be signed and sworn to by any one (1) partner. In the case of a corporation, the application shall be signed and sworn to by the president and attested to by the secretary.

(3) Every initial application shall be accompanied by the following supplementary documents:

(A) In the case of a corporation, a certified copy of its certificate of incorporation and a copy of the corporate resolution authorizing the corporation to engage in the business of operating a drivers' training school;

(B) a sample of every contract form for instructional purposes, receipt forms, and other forms used by the school and delivered to students; and

(C) a schedule of all services to be performed by the school.

(b) License fee.

(1) The annual fee for the initial license and renewal shall be twenty-five dollars (\$25.00).

(2) The license shall be valid for the calendar year.

(c) Display of license. The original license shall be conspicuously displayed in the licensee's principal place of business.

(d) License not transferable.

(1) In the event of any change of ownership or interest in the business, including the sale of more than 25% of the capital stock of a corporation, application for a new license shall be filed with the state board.

(2) The state board may, in its discretion, permit continuance of the business by the licensee, pending processing of the application made by the person to whom the business, or interest in the business, is to be transferred.

(3) The existing license and copies, together with all instructors' certificates issued, shall be surrendered before a license shall be issued to the new owner.

(e) Lost, mutilated or destroyed licenses. In the event a license is lost, mutilated or destroyed, a duplicate shall be issued upon proof of the facts, and upon payment of five dollars (\$5.00) and, in the case of mutilation, upon surrender of the mutilated license. Proof shall be submitted in the form of an affidavit indicating:

(1) the date the license was lost, mutilated or destroyed; and

(2) the circumstances involving the loss, mutilation, or destruction of the license.

(f) Surrender of license.

(1) A license to be surrendered for cancellation or deposited for safekeeping shall be returned to the office of the state board.

(2) In all cases, the licensee shall state, in writing, the reason for the surrender or deposit. (Authorized by K.S.A. 8-278; effective Jan. 1, 1966; amended Jan. 1, 1970; amended May 1, 1979.)

**91-7-2. Location of school.** (a) Each drivers' training school shall maintain an established place of business.

(b) A drivers' training school shall not change its location without prior approval of the state board.

(c) No license shall be issued for conducting a drivers' training school where business is conducted from a house trailer, tent, temporary stand, temporary addresses, a room or rooms in a hotel or motel, or through the exclusive use of a telephone answering service.

(d) The location shall be identified by a permanent sign and the name of the school shall appear on the sign. (Authorized by K.S.A. 8-278; effective

Jan. 1, 1966; amended Jan. 1, 1970; amended May 1, 1979.)

**91-7-3. Records to be maintained.** (a) Types of records. Every school shall maintain the following records:

(1) The name, address, and contract number with respect to every person receiving lessons, lectures, tutoring, or any other services relating to instructions in the operation of motor vehicles;

(2) The date, type, and duration of all lessons, lectures, tutoring, instructions, or other services relating to instruction in the operation of motor vehicles, including the name of the instructor giving the instruction; and

(3) The original contract entered into between the drivers' training school and every person receiving lessons, lectures, tutoring, instructions, or other services relating to instruction in the operation of motor vehicles.

(4) A copy of a receipt for any moneys paid to the drivers' training school by a student. The receipt form shall contain:

(A) the licensed name of the school;

(B) the name of the student;

(C) the date of payment;

(D) the amount of payment;

(E) the signature of the student; and

(F) the signature of the person receiving the payment from the student.

(b) Loss, mutilation, or destruction of records.

(1) The loss, mutilation, or destruction of any records which a drivers' training school is required to maintain under these regulations shall be reported immediately to the state board by affidavit stating:

(A) the date the records were lost, destroyed, or mutilated;

(B) the circumstances involving the loss, destruction, or mutilation; and

(C) the name of the precinct, police officer, or police department to which the loss was reported and the date of the report.

(c) Retention of records. All records shall be maintained for a period of three (3) years and shall be subject to inspection by the state board. (Authorized by K.S.A. 8-278; effective Jan. 1, 1966; amended Jan. 1, 1970; amended May 1, 1979.)

**91-7-4. Bond required.** The bond required by K.S.A. 8-275 shall be on a form provided by the state board and shall be filed in the office of the state board. (Authorized by K.S.A. 8-278; effective

tive Jan. 1, 1966; amended Jan. 1, 1970; amended May 1, 1979.)

**91-7-5. Drivers' training school vehicles.**

(a) Identification certificates.

(1) A motor vehicle owned or controlled by a drivers' training school shall not be used for the purpose of giving instructions in driving until the licensee has obtained from the state board a school vehicle identification certificate. This certificate shall be carried in the vehicle while the vehicle is being used either for driving instructions or for driving tests.

(2) Application for a school vehicle identification certificate shall be made on a form prescribed by the state board.

(3) A school vehicle identification certificate shall not be issued until:

(A) the vehicle has been equipped with dual controls on foot brake and on clutch, if any, and has been otherwise equipped in accordance with the motor vehicle and traffic laws;

(B) the school has filed with the state board evidence of liability insurance in a company authorized to do business in this state as required by K.S.A. 8-275(d). In the event of cancellation or expiration of insurance, the vehicle shall not be used for drivers' training school purposes. The school vehicle identification certificate shall terminate automatically and shall be surrendered to the state board;

(C) the vehicle has been equipped with seat belts for both the student and instructor. Seat belts shall be used by both the student and instructor when the vehicle is being operated for instructional purposes; and

(D) the vehicle has been equipped with rear view mirrors for both the driver and the instructor.

(b) Sign displayed on vehicles.

(1) Vehicles, while being used for driving instructions, shall conspicuously display a sign, with background and letters of contrasting colors, stating "student driver."

(2) The sign shall be visible from the rear in letters not less than three (3) inches in height. Letters shall be of a reflectorized material, basically white, amber, or yellow in color. (Authorized by K.S.A. 8-278; effective Jan. 1, 1966; amended Jan. 1, 1970; amended May 1, 1979.)

**91-7-6. Conduct of drivers' training schools.** (a) Advertising. Advertising by drivers' training schools shall conform to the following:

(1) the schools shall not publish, advertise, or intimate that a license is guaranteed or assured;

(2) the schools shall not display signs, indicating that licenses or plates may be secured at the school;

(3) the letters and numerals in the name of the drivers' training school shall not be smaller than the letters and numerals in the remainder of the text; of any sign, or combination of signs used as a part of the same message relating to drivers' training school activities;

(4) the school may use on forms, contracts and advertising the phrase, "This school is licensed by the state of Kansas." Other uses of the word "state" are prohibited;

(5) the school shall not advertise the address of any location other than the licensed principal place of business; and

(6) the school shall not employ any form of advertising which is misleading.

Written notice of disapproval of misleading advertising by the state board shall be given to the licensee and the advertising in question shall be discontinued.

(b) Agreements. A student shall not be given lessons, lectures, tutoring, or any other service relating to instructions in motor vehicle operation until a written contract, in a form approved by the state board has been executed both by the school and the student.

(1) A copy of the contract shall be given to the student. The original shall be retained by the school.

(2) A school shall not use any contract unless the form of the contract has been approved by the state board.

(3) Each school shall file and maintain with the state board a list of those persons authorized or empowered to execute contracts on behalf of the school.

(c) Instruction permits. A school shall ascertain, previous to giving instructions in driving, that a student is in possession of a valid instruction permit or a valid driver's license.

(d) Requirements at driving test. An applicant appearing for a driving test with a vehicle for which a vehicle identification certificate has been issued or a vehicle not required to have a certificate, shall be accompanied by a Kansas licensed driver who has in his or her possession a valid instructor's license for the school whose name appears on the vehicle identification certificate.

(e) Employees of drivers' training schools. A drivers' training school shall not knowingly em-

ploy any person in any capacity who has been convicted of a felony, driving while intoxicated, or negligent homicide. (Authorized by K.S.A. 8-278; effective Jan. 1, 1966; amended Jan. 1, 1970; amended May 1, 1979.)

**91-7-7. Grounds for revocation, suspension, and refusal to renew license.** (a) Action by the state board of education. The state board may suspend or revoke a drivers' training school license or a drivers' training instructor's license or refuse to issue a renewal of these licenses for any of the reasons outlined in K.S.A. 8-279 after due notice of the violation in writing.

(b) Right to have hearing. Any school or instructor notified of suspension, revocation, or refusal to issue a drivers' training school license or drivers' training instructor's license may, within twenty (20) days following date of notification, request and have a hearing before a committee appointed by the state board. This committee shall make recommendations to the state board and the decision of the board shall be final. (Authorized by K.S.A. 8-278; effective Jan. 1, 1966; amended Jan. 1, 1970; amended May 1, 1979.)

**91-7-8. Licenses required for instruction.**

(a) The owner, operator, partner, or any officer of a drivers' training school, or any other person, shall not give instructions for compensation in the operation of motor vehicles, unless the person is the holder of an instructor's license issued by the state board and is the possessor of a valid Kansas driver's license.

(b) Application for instructors' licenses. The applicant for an initial or renewal license shall:

(1) be at least twenty-one (21) years of age;

(2) present to the state board evidence of six (6) semester hours of credit in driver education and three (3) semester hours in general safety from an accredited college or university, or have a valid Kansas teacher's certificate coded for drivers education; and

(3) filed with the state board, on a form prescribed by the state board, a physical examination report and a health certificate.

(c) Fee, instructor's license. The instructor's license shall be valid for the calendar year, and the annual fee for the initial license or renewal shall be five dollars (\$5.00).

(d) Carrying instructor's license. The instructor's license shall be carried by the instructor at all times while giving driving instructions, or when

accompanying an applicant for a driver's license to the office of a driver's license examiner.

(e) Lost, mutilated, or destroyed licenses. Should a license be lost, mutilated, or destroyed, a duplicate license shall be issued upon proof of the facts and payment of a fee of five dollars (\$5.00) and, in the case of a mutilated license, the surrender of the license. Proof of facts shall consist of:

(1) the date the license was lost, mutilated, or destroyed; and

(2) the circumstances involving the loss, mutilation, or destruction.

(f) Surrender of instructor's license. An instructor's license shall be surrendered to the state board immediately upon termination of an instructor's services with the drivers' training school designated on the license. (Authorized by K.S.A. 8-278; effective Jan. 1, 1966; amended Jan. 1, 1970; amended May 1, 1979.)

**91-7-9.** (Authorized by K.S.A. 8-278; effective Jan. 1, 1966; amended Jan. 1, 1967; amended Jan. 1, 1970; revoked May 1, 1979.)

**91-7-10.** (Authorized by K.S.A. 8-278; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked May 1, 1979.)

**91-7-11. Classroom accommodations.** Classroom facilities shall be subject to inspection and approval by the state board and shall have the following accommodations:

(a) seating facilities and writing surfaces for no less than ten (10) students;

(b) lighting, heating, ventilation, and sanitary facilities that comply with all local, city, county, municipal, state, and federal regulations; and

(c) print and nonprint materials relating to the proper operation of motor vehicles and traffic laws. (Authorized by K.S.A. 8-278; effective Jan. 1, 1966; amended Jan. 1, 1970; amended May 1, 1979.)

**91-7-12.** (Authorized by K.S.A. 8-278; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked May 1, 1979.)

**91-7-13. Classroom instruction.** (a) A minimum of eight (8) clock hours of classroom instruction shall be offered and taught to each student enrolled in any commercial drivers' training school.

(b) The contents of classroom instruction shall be submitted to the state board for approval.

(c) The offered classroom instruction shall be available at least once each calendar month for

students currently enrolled in the drivers' training school and shall include safe driving practices in the operation of motor vehicles. (Authorized by K.S.A. 8-278; effective Jan. 1, 1966; amended Jan. 1, 1970; amended May 1, 1979.)

**91-7-14. Behind-the-wheel driving instruction.** Each student shall be given six (6) clock hours of behind-the-wheel driving instruction in the initial drivers' training course. (Authorized by K.S.A. 8-278; effective Jan. 1, 1966; amended Jan. 1, 1970; amended May 1, 1979.)

**91-7-15. Advanced courses.** (1) Advanced courses in driving under special conditions may be offered to licensed drivers. (Authorized by K.S.A. 8-278; effective Jan. 1, 1966; amended Jan. 1, 1970.)

#### Article 8.—ACCREDITING COMMUNITY COLLEGES; CRITERIA

**91-8-1.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1967; revoked May 1, 1979.)

**91-8-2.** (Authorized by K.S.A. 72-7513, 72-7514; implementing K.S.A. 72-7513; effective Jan. 1, 1967; amended May 1, 1979; amended May 1, 1983; revoked Oct. 29, 2004.)

**91-8-3 to 91-8-7.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1967; revoked May 1, 1979.)

**91-8-15.** (Authorized by K.S.A. 72-7513, 72-7514; implementing K.S.A. 72-7513; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1983; revoked Oct. 29, 2004.)

**91-8-16.** (Authorized by K.S.A. 72-7513, 72-7514; implementing K.S.A. 72-7513; effective Jan. 1, 1966; amended Jan. 1, 1967; amended May 1, 1979; amended May 1, 1983; revoked Oct. 29, 2004.)

**91-8-17.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-7513; effective Jan. 1, 1966; amended Jan. 1, 1967; amended May 1, 1979; amended May 1, 1983; amended May 1, 1986; revoked Oct. 29, 2004.)

**91-8-18.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1966; amended Jan. 1, 1967; revoked May 1, 1979.)

**91-8-19.** (Authorized by K.S.A. 72-7513, 72-7514; implementing K.S.A. 72-7513; effective Jan. 1, 1966; amended Jan. 1, 1967; amended May 1, 1979; amended May 1, 1983; revoked Oct. 29, 2004.)

**91-8-20 to 91-8-25.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective Jan. 1, 1966; revoked May 1, 1979.)

**91-8-26.** (Authorized by K.S.A. 72-7513, 72-7514; implementing K.S.A. 72-7513; effective, E-70-2, Oct. 15, 1969; amended, E-70-11, Dec. 22, 1969; amended Jan. 1, 1971; amended May 1, 1979; amended May 1, 1983; revoked Oct. 29, 2004.)

**91-8-27.** (Authorized by K.S.A. 71-801, 72-7514; effective Jan. 1, 1974; amended, E-78-30, Nov. 9, 1977; amended May 1, 1978; revoked May 1, 1979.)

**91-8-28.** (Authorized by K.S.A. 71-801, 72-7514; effective Jan. 1, 1974; revoked May 1, 1979.)

**91-8-29.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective May 1, 1979; revoked May 1, 1983.)

**91-8-30.** (Authorized by K.S.A. 72-6508(b), 72-7513, 72-7514; implementing K.S.A. 72-7513; effective May 1, 1983; amended May 1, 1984; revoked Oct. 29, 2004.)

**91-8-31 through 91-8-33.** (Authorized by K.S.A. 72-7513, 72-7514; implementing K.S.A. 13-13a26, 13-13a28, 72-7513; effective May 1, 1983; amended May 1, 1984; revoked Oct. 29, 2004.)

#### Article 9.—WASHBURN MUNICIPAL UNIVERSITY; STATE AID

**91-9-1 to 91-9-6.** (Authorized by K.S.A. 72-6505; effective Jan. 1, 1966; revoked May 1, 1979.)

**91-9-11.** (Authorized by K.S.A. 13-13a33, 71-306; implementing K.S.A. 13-13a32, 71-305; effective May 1, 1983; revoked Oct. 29, 2004.)

#### Article 10.—GENERAL EDUCATIONAL DEVELOPMENT TESTS

**91-10-1.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-7513; effective, E-70-36,

July 31, 1970; effective Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986; revoked Sept. 2, 1991.)

**91-10-1a.** (Authorized by and implementing K.S.A. 72-4530; effective Sept. 2, 1991; revoked Oct. 18, 2002.)

**91-10-2.** (Authorized by and implementing K.S.A. 72-4530; effective, E-70-36, July 31, 1970; effective Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1979; amended March 28, 1997; revoked Oct. 18, 2002.)

#### Article 11.—N.D.E.A. GUIDANCE AND COUNSELING

**91-11-1.** (Authorized by K.S.A. 72-109, 72-115; effective Jan. 1, 1966; revoked May 1, 1979.)

#### Article 12.—SPECIAL EDUCATION

**91-12-1 and 91-12-2.** (Authorized by K.S.A. 72-5336(j), 72-5344, 72-5358, 72-5367, 72-5368b; effective Jan. 1, 1966; amended Jan. 1, 1973; revoked Feb. 15, 1977.)

**91-12-3 and 91-12-4.** (Authorized by K.S.A. 72-5336(j), 72-5358, 72-5367, 72-5368b; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

**91-12-5.** (Authorized by K.S.A. 72-5336(j), 72-5344, 72-5358, 72-5367, 72-5368b; effective Jan. 1, 1966; amended Jan. 1, 1973; revoked Feb. 15, 1977.)

**91-12-6 and 91-12-7.** (Authorized by K.S.A. 72-5336(j), 72-5358, 72-5367, 72-5368b; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

**91-12-8.** (Authorized by K.S.A. 72-5336(j), 72-5344, 72-5358, 72-5367, 72-5368b; effective Jan. 1, 1966; amended Jan. 1, 1973; revoked Feb. 15, 1977.)

**91-12-9 to 91-12-15.** (Authorized by K.S.A. 72-5336(j), 72-5358, 72-5367, 72-5368b; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

**91-12-18 and 91-12-19.** (Authorized by K.S.A. 72-5344; effective Jan. 1, 1973; revoked Feb. 15, 1977.)

**91-12-20.** (Authorized by K.S.A. 1976 Supp. 72-963; effective, E-77-48, Sep. 30, 1976; effective Feb. 15, 1977; revoked May 1, 1983.)

**91-12-21.** (Authorized by K.S.A. 1976 Supp. 72-962(g); effective, E-77-48, Sep. 30, 1976; effective Feb. 15, 1977; revoked May 1, 1983.)

**91-12-22.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended, T-88-40, Oct. 27, 1987; amended May 1, 1988; amended July 1, 1990; amended July 1, 1991; amended Sept. 2, 1991; amended June 1, 1993; amended Feb. 14, 1994; amended March 8, 1996; revoked May 19, 2000.)

**91-12-23.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended, T-87-23, Oct. 1, 1986; amended May 1, 1987; amended, T-88-40, Oct. 27, 1987; amended May 1, 1988; amended July 1, 1990; amended June 29, 1992; amended June 1, 1993; amended Feb. 14, 1994; amended March 13, 1995; revoked May 19, 2000.)

**91-12-24.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended May 1, 1986; amended, T-88-40, Oct. 27, 1987; amended May 1, 1988; revoked July 1, 1989.)

**91-12-24a.** (Authorized by and implementing K.S.A. 72-963; effective July 1, 1989; amended June 1, 1993; revoked May 19, 2000.)

**91-12-25.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended May 1, 1986; amended, T-88-8, March 4, 1987; amended May 1, 1988; amended July 1, 1990; amended Sept. 2, 1991; amended March 13, 1995; revoked May 19, 2000.)

**91-12-26.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-965, 72-967, K.S.A. 1982 72-963; effective May 1, 1983; revoked July 1, 1989.)

**91-12-27.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended June 1, 1993; revoked May 19, 2000.)

**91-12-28.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended, T-88-40, Oct. 27, 1987; amended May 1, 1988; amended July 1, 1989; amended June 1, 1993; revoked May 19, 2000.)

**91-12-29.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-965, K.S.A. 72-963; effective May 1, 1983; revoked March 13, 1995.)

**91-12-30.** (Authorized by K.S.A. 72-963; implementing K.S.A. 72-963 and K.S.A. 72-970; effective May 1, 1983; amended May 1, 1986; amended June 1, 1993; revoked May 19, 2000.)

**91-12-31.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended May 1, 1984; amended May 1, 1988; revoked May 19, 2000.)

**91-12-32.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended May 1, 1986; amended May 1, 1988; amended July 1, 1990; revoked May 19, 2000.)

**91-12-33.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended June 1, 1993; revoked May 19, 2000.)

**91-12-34.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended May 1, 1986; amended July 1, 1990; revoked March 13, 1995.)

**91-12-35.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended March 13, 1995; revoked May 19, 2000.)

**91-12-36.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-965, 72-967, K.S.A. 1982 Supp. 72-963; effective May 1, 1983; revoked May 19, 2000.)

**91-12-37.** (Authorized by K.S.A. 72-963; implementing K.S.A. 72-963 and K.S.A. 1991 Supp. 72-978; effective May 1, 1983; amended May 1, 1984; amended June 1, 1993; revoked May 19, 2000.)

**91-12-38.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended July 1, 1990; revoked May 19, 2000.)

**91-12-39.** (Authorized by K.S.A. 1984 Supp. 72-963; implementing K.S.A. 1984 Supp. 72-963, K.S.A. 72-965; effective May 1, 1983; amended May 1, 1984; amended May 1, 1986; revoked May 19, 2000.)

**91-12-40.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended May 1, 1984; amended, T-88-40, Oct. 27, 1987; amended May 1, 1988; amended July 1, 1990; amended June 1, 1993; revoked May 19, 2000.)

**91-12-41.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended

July 1, 1990; amended June 1, 1993; amended March 13, 1995; revoked May 19, 2000.)

**91-12-42.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended July 1, 1990; amended March 13, 1995; revoked May 19, 2000.)

**91-12-43.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 1982 Supp. 72-963; K.S.A. 72-965; effective May 1, 1983; revoked May 1, 1984.)

**91-12-44.** (Authorized by K.S.A. 72-963; implementing K.S.A. 72-963 and 72-972; effective May 1, 1983; amended May 1, 1986; amended July 1, 1990; amended June 1, 1993; revoked May 19, 2000.)

**91-12-45.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended Feb. 14, 1994; revoked May 19, 2000.)

**91-12-46.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended Feb. 14, 1994; revoked May 19, 2000.)

**91-12-47.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended June 1, 1993; revoked May 19, 2000.)

**91-12-48.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended, T-87-23, Oct. 1, 1986; amended May 1, 1987; amended Dec. 31, 1990; revoked May 19, 2000.)

**91-12-49.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-965, K.S.A. 1982 Supp. 72-963; effective May 1, 1983; revoked May 19, 2000.)

**91-12-50.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended, T-88-40, Oct. 27, 1987; amended May 1, 1988; revoked May 19, 2000.)

**91-12-51.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended May 1, 1985; amended May 1, 1986; amended, T-88-40, Oct. 27, 1987; amended May 1, 1988; amended July 1, 1990; amended Sept. 2, 1991; amended June 1, 1993; amended March 13, 1995; revoked May 19, 2000.)

**91-12-52.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended,

T-88-8, March 4, 1987; amended May 1, 1988; amended July 1, 1990; revoked May 19, 2000.)

**91-12-53.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended, T-88-8, March 4, 1987; amended May 1, 1988; amended July 1, 1990; amended June 1, 1993; revoked May 19, 2000.)

**91-12-54.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended, T-88-8, March 4, 1987; amended May 1, 1988; amended July 1, 1990; amended June 1, 1993; amended March 13, 1995; revoked May 19, 2000.)

**91-12-55.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended, T-88-8, March 4, 1987; amended May 1, 1988; amended July 1, 1990; amended June 1, 1993; amended March 8, 1996; revoked May 19, 2000.)

**91-12-56.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended May 1, 1984; amended July 1, 1990; amended March 13, 1995; revoked May 19, 2000.)

**91-12-57.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended May 1, 1984; amended July 1, 1990; revoked May 19, 2000.)

**91-12-58.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-23, Oct. 1, 1986; amended May 1, 1987; amended, T-88-8, March 4, 1987; amended May 1, 1988; amended July 1, 1990; revoked May 19, 2000.)

**91-12-59.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended July 1, 1990; amended June 1, 1993; revoked May 19, 2000.)

**91-12-60.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended July 1, 1990; amended March 13, 1995; revoked May 19, 2000.)

**91-12-61.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended May 1, 1985; amended May 1, 1986; amended July 1, 1990; amended June 29, 1992; amended

June 1, 1993; amended March 8, 1996; revoked May 19, 2000.)

**91-12-62.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended May 1, 1988; amended July 1, 1990; revoked May 19, 2000.)

**91-12-63.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended July 1, 1990; amended Dec. 31, 1990; revoked May 19, 2000.)

**91-12-64.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-963, K.S.A. 72-965; effective May 1, 1983; amended June 1, 1993; revoked May 19, 2000.)

**91-12-65.** (Authorized by and implementing K.S.A. 72-963; effective May 1, 1983; amended July 1, 1990; amended June 1, 1993; revoked May 19, 2000.)

**91-12-66.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-965, K.S.A. 1982 Supp. 72-963; effective May 1, 1983; revoked May 19, 2000.)

**91-12-67.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-965, K.S.A. 1982 Supp. 72-963; effective May 1, 1983; revoked May 19, 2000.)

**91-12-68.** (Authorized by K.S.A. 1983 Supp. 72-963b; implementing K.S.A. 1983 Supp. 72-963a; effective, T-85-23, Aug. 15, 1984; effective May 1, 1985; revoked May 19, 2000.)

**91-12-69.** (Authorized by K.S.A. 1983 Supp. 72-963b; implementing K.S.A. 1983 Supp. 72-973a; effective, T-85-23, Aug. 15, 1984; effective May 1, 1985; revoked May 19, 2000.)

**91-12-70.** (Authorized by K.S.A. 72-963; implementing K.S.A. 1988 Supp. 72-962 and K.S.A. 72-977; effective May 1, 1985; amended July 1, 1990; revoked Dec. 31, 1990.)

**91-12-71.** (Authorized by and implementing K.S.A. 72-963; effective, T-86-41, Dec. 11, 1985; effective May 1, 1986; amended Feb. 14, 1994; revoked May 19, 2000.)

**91-12-72.** (Authorized by and implementing K.S.A. 72-963c, as amended by 1987 H.B. 2420, sec. 3; effective, T-86-41, Dec. 11, 1985; effective May 1, 1986; amended, T-88-40, Oct. 27, 1987; amended May 1, 1988; revoked May 19, 2000.)

**91-12-73.** (Authorized by K.S.A. 72-963; implementing K.S.A. 1990 Supp. 72-962 and K.S.A. 72-966; effective July 1, 1990; amended Sept. 2, 1991; revoked May 19, 2000.)

**91-12-74.** (Authorized by and implementing K.S.A. 72-963; effective March 13, 1995; revoked May 19, 2000.)

### Article 13.—THIRTY UNIT REQUIREMENT

**91-13-1.** (Authorized by K.S.A. 72-8212; effective Jan. 1, 1966; revoked May 1, 1979.)

### Article 14.—STANDARDS AND PROCEDURES FOR ACCREDITING EARLY CHILDHOOD SCHOOLS

**91-14-1.** (Authorized by K.S.A. 72-7513, 72-7514; effective Jan. 1, 1969; amended Jan. 1, 1970; revoked Jan. 1, 1973.)

**91-14-2.** (Authorized by K.S.A. 72-7514, K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1973; revoked Feb. 15, 1977.)

**91-14-3.** (Authorized by K.S.A. 72-7514, K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1973; amended Jan. 1, 1974; amended, E-74-20, April 5, 1974; amended May 1, 1975; amended May 1, 1976; revoked Feb. 15, 1977.)

**91-14-4.** (Authorized by K.S.A. 72-7514, K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1973; amended May 1, 1976; revoked Feb. 15, 1977.)

**91-14-5 to 91-14-8.** (Authorized by K.S.A. 72-7514, K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1973; revoked Feb. 15, 1977.)

**91-14-9.** (Authorized by K.S.A. 72-7514 and K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1973; amended May 1, 1975; revoked Feb. 15, 1977.)

**91-14-10.** (Authorized by K.S.A. 72-7514, K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1973; revoked Feb. 15, 1977.)

**91-14-11.** (Authorized by K.S.A. 72-7514, K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1973; amended May 1, 1976; revoked Feb. 15, 1977.)

### Article 15.—SCHOOL CONDUCT RULES

**91-15-1. Policies or rules governing employees' and students' conduct.** (a) The board

of education of each unified school district shall adopt policies or rules that govern the conduct of the employees and students of the school district and that include procedures for enforcement of the policies or rules.

(b) Before adopting the policies or rules, each board of education shall submit the policies or rules to legal counsel for review.

(c) After the adoption of the policies or rules, the clerk of the board of education shall maintain the policies or rules in the permanent files of the school district. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective, E-70-2, Oct. 15, 1969; amended, E-70-11, Dec. 22, 1969; effective Jan. 1, 1971; amended March 18, 2005.)

### Article 16.—VOCATIONAL EDUCATION

**91-16-1. Definitions.** As used in this article: (a) "Local board" means the board of education of any school district, the board of control of any area vocational-technical school or the board of trustees of any community junior college.

(b) "Vocational education course or program" means any instructional class or set of instructional classes offered by a local board to provide "vocational education" as that term is defined in K.S.A. 1979 Supp. 72-4412 or any amendment thereto. (Authorized by K.S.A. 72-4418; effective, E-70-11, Dec. 2, 1969; effective Jan. 1, 1971; amended, E-71-17, April 5, 1971; amended Jan. 1, 1972; amended May 1, 1979; amended May 1, 1980.)

**91-16-1a. Right of appeal; filing.** Any person whose application for admission to a state approved vocational education course or program is denied, as provided by K.S.A. 72-4418 may, within thirty (30) days following his or her actual notice of the denial, appeal the adverse decision to the state board. The appeal must be in writing and on file with the commissioner of education, state department of education building, 120 East Tenth Avenue, Topeka, Kansas, at least thirty (30) days prior to the meeting of the state board at which the appeal is to be heard. The appeal may be filed in person, or by mailing, by the appellant, or by his or her counsel, and may be filed on forms provided by the state board. Along with the filing of this appeal, the appellant may file a separate instrument setting forth reasons why his or her application should be approved, and shall attach thereto any documents and instruments the appellant plans

to use to support his or her case. (Authorized by K.S.A. 72-4418; effective May 1, 1979.)

**91-16-2. Form of appeal.** The form of appeal to be used by the appellant may be substantially as follows:

25-7 STATE OF KANSAS  
KANSAS STATE BOARD OF EDUCATION  
DEPARTMENT OF EDUCATION  
Kansas State Education Building  
120 East Tenth Street, Topeka, Kansas 66612

TO: Commissioner of Education of Kansas

**Appeal From Denial of Application for Admission to a Vocational Education Course or Program**

I, \_\_\_\_\_, the undersigned, a resident of Unified School District No. \_\_\_\_\_, Kansas, with my post office address being \_\_\_\_\_, Kansas, hereby file with the State Commissioner of Education an appeal of the denial of my application for admission to the following state approved vocational education course or program: \_\_\_\_\_, being offered at \_\_\_\_\_, located in \_\_\_\_\_, Kansas. The denial of admission was given to me by \_\_\_\_\_, whose title is \_\_\_\_\_, \_\_\_\_\_, Governing Body

Date of the denial was \_\_\_\_\_, 19 \_\_\_\_\_.

K.S.A. 1969 Supp. 72-4418 provides as follows: "Any person who duly makes application for admission to a vocational education course or program, and whose application is denied for any reason, may appeal such denial to the State Board of Education in accordance with rules and regulations of the State Board. Determination of any such appeal by the State Board of Education shall be final and conclusive."

Having made such application for admission to the above-described vocational education course or program, the following reasons for denial of my application were given to me:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I appeal such denial to the State Board of Education as provided by law and the rules and regulations adopted by the State Board of Education, and attach hereto documents and instruments that support my case, including a copy of the original application for admission to a vocational education course or program, a copy of the decision denying my application, and a statement why my application should be approved.

Signed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name—to be typewritten or printed)

\_\_\_\_\_  
(Address—to be typewritten or printed)

(Authorized by K.S.A. 72-4418; effective, E-70-11, Dec. 22, 1969; effective Jan. 1, 1971; amended, E-71-17, April 5, 1971; amended Jan. 1, 1972; amended May 1, 1979.)

**91-16-3. Notice of hearing.** The commissioner of education shall give written notice of hearing of appeal to the appellant, the local board denying appellant's application for admission to a vocational education course or program, and to all other persons concerned, notifying them of the date, time, and place of hearing by the state board, or hearing officer, and of all other matters of which the parties shall be apprised, and the notice shall be in the form provided for in K.A.R. 91-16-4. The local board shall within ten (10) days after receipt of the notice of hearing file, in writing, any defenses, which it will raise to the appeal, attaching all documents and instruments in support of those defenses. The state board, or hearing officer, may admit additional instruments if relevant. Copies of all defenses shall be served personally, or by restricted mail with return receipt requested, upon the commissioner of education, the appellant and other parties of interest. The appellant, the local board, and other persons having an interest in the appeal may file any defenses, replies, or statements they may wish to raise to the appeal at least ten (10) days prior to the date set for hearing, attaching all documents or instruments in support of those defenses, and shall serve copies by restricted mail, return receipt requested, upon the commissioner of education and other interested persons. (Authorized by K.S.A. 72-4418; effective, E-70-11, Dec. 22, 1969; effective Jan. 1, 1971; amended, E-71-17, April 5, 1971; amended Jan. 1, 1972; amended May 1, 1979; amended May 1, 1980.)

**91-16-4. Form of notice of hearing.** The notice of hearing described in rule 91-16-3 may be in the following form:

25-7a STATE OF KANSAS  
KANSAS STATE BOARD OF EDUCATION  
DEPARTMENT OF EDUCATION  
Kansas State Education Building  
120 East Tenth Street, Topeka, Kansas 66612  
**Before the State Board of Education of Kansas**

\_\_\_\_\_, Appellant, }  
\_\_\_\_\_, } No. \_\_\_\_\_  
\_\_\_\_\_, Local Board }

**Notice of Hearing**

To The Above-captioned Parties and All Other Interested Persons Whom It May Concern:

You are hereby notified that the hearing of the appeal of \_\_\_\_\_,  
 (Name of Appellant)  
 on the denial of his application for admission to a vocational  
 education course or program by the \_\_\_\_\_,  
 (Name of Governing Body)  
 of \_\_\_\_\_,  
 (Name of School District or Vocational Education School)  
 \_\_\_\_\_, Kansas, shall be heard by the Kansas  
 (County or City)  
 State Board of Education on the \_\_\_\_\_ day of  
 \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_\_\_m., or as soon  
 thereafter as said state board may hear the same, in its meeting  
 room on the first floor of the State Department of Education  
 Building, 120 East Tenth Street, Topeka, Kansas 66612.

You are hereby further notified that the appellant, the official representative of the local board *denying application*, and other interested parties, may appear in person and by legal counsel and with their witnesses for the purpose of presenting their evidence, documents, *instruments and statements as provided by the regulations of the state board of education* in support of their respective cases, and showing cause why *appellant's* application should or should not be approved.

You are further notified that the decision of the state board shall be final and conclusive.

Signed and dated at Topeka, Kansas, this \_\_\_\_\_  
 day of \_\_\_\_\_, 19\_\_\_\_.

(Seal)

\_\_\_\_\_  
 Commissioner of Education of Kansas

(Authorized by K.S.A. 72-4418; effective, E-70-11, Dec. 22, 1969; effective Jan. 1, 1971; amended, E-71-17, April 5, 1971; amended Jan. 1, 1972; amended May 1, 1979.)

**91-16-5. Hearing.** The state board, or hearing officer, shall conduct the hearing of appellant's appeal according to the provisions of the notice of hearing and this regulation. Two or more appeals involving the same local board and similar sets of facts and circumstances may be consolidated for hearing purposes. Immediately prior to the commencement of the hearing the members of the state board, or hearing officer, may examine the separate instruments, defenses, replies, or statements, if any, of the appellant, the local board denying appellant's application, or other interested parties, which set forth the reasons why the application of the appellant should, or should not, be approved. Upon commencement of the hearing, the appellant shall be permitted to make an opening statement and present any witnesses, documents, or other evidence he or she might have, and in general, present his or her case. Thereafter, the representative of the local board denying appellant's application may make an opening statement and present any witnesses, or documents, or other evidence, he or she might have, and, in general, present the local board's

case. Thereafter, any other interested party or parties, upon receiving recognition by the state board, or hearing officer, may present any evidence and statements they have that are relevant to the appeal. The appellant, the representative of the local board denying appellant's application, and other parties of interest, in their turn may examine any witnesses and documents in evidence. Members of the state board, or hearing officer, may from time to time during the hearing also question any of the parties and witnesses used in the hearing, and examine any documents that may be offered. All documents, instruments, and other tangible evidence shall have been on file with the state board prior to the hearing as provided by K.A.R. 91-16-1 and K.A.R. 91-16-3. The hearing shall be of an informal and nonadversary nature with no oath-taking required. If the facts warrant, the hearing may be continued one (1) time only to a specific date and time at which the hearing of the appeal shall be completed. Each interested party shall be allowed a period of time of not to exceed one (1) hour in which to present his or her side of the case, unless the state board, or hearing officer, in the interest of justice grants lesser or additional time. (Authorized by K.S.A. 72-4418; effective, E-70-11, Dec. 22, 1969; effective Jan. 1, 1971; amended, E-71-17, April 5, 1971; amended Jan. 1, 1972; amended May 1, 1979; amended May 1, 1980.)

**91-16-6. Decision of the state board.** The hearing officer, within one (1) month after the conclusion of the hearing, shall submit his or her report to the state board. The state board shall take action at its next regular meeting following receipt of the report unless continued to its next regular meeting. Failure of six (6) or more members to approve the appeal shall constitute a denial of the appeal. If the appeal relates to out-district tuition and is sustained by the state board, the decision shall fix the amount of tuition to be paid by the local board. Determination of any appeal by the state board shall be final and conclusive. The state board's decision shall be in writing, signed, and certified by the commissioner of education, and mailed or personally delivered to all interested parties no later than five (5) days after the adjournment of the meeting in which it is made. If mailed, the decision shall be sent by certified or restricted mail with return receipt requested. If delivered, an acknowledgment of receipt shall be taken from the interested party. Upon receipt of

the decision of the state board approving the application of the appellant, the local board denying appellant's application shall immediately comply with the decision. (Authorized by K.S.A. 72-4418; effective, E-70-11, Dec. 22, 1969; effective Jan. 1, 1971; amended, E-71-17, April 5, 1971; amended Jan. 1, 1972; amended May 1, 1979; amended May 1, 1980.)

**91-16-7. Form of decision of state board.**

The decision of the state board described in rule 91-16-6 may be in the following form:

25-7b STATE OF KANSAS  
KANSAS STATE BOARD OF EDUCATION  
DEPARTMENT OF EDUCATION  
Kansas State Education Building  
120 East Tenth Street, Topeka, Kansas 66612

**Before the State Board of Education of Kansas**

\_\_\_\_\_, Appellant, }  
\_\_\_\_\_, Local Board } No. \_\_\_\_\_

**Decision of the State Board**

Now, on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
the appeal of \_\_\_\_\_,  
(Name of Appellant)  
\_\_\_\_\_  
(Address)

Kansas, comes on for hearing before the State Board of Education of Kansas. The appellant appears in person and by his legal counsel. Also appears \_\_\_\_\_, the duly authorized representative of the \_\_\_\_\_,  
(Governing Body)  
of \_\_\_\_\_, of \_\_\_\_\_,  
(District or Vocational Education School) (City)  
\_\_\_\_\_, Kansas, and by his legal counsel.  
(County)

Also appears \_\_\_\_\_  
\_\_\_\_\_

There are no other appearances.

Thereupon, the state board examines the written statements of the appellant, of the local board and of other interested parties; thereupon, it hears the statements, evidence and presentations, and examines submitted documents, of said parties.

Thereupon, after diligent inquiry and being fully advised in the premises the state board finds that the application of the appellant should be, should not be, approved (strike inapplicable portion).

It is, therefore, by the State Board of Education of Kansas ordered that the application of appellant be, and the same is hereby approved, disapproved (strike inapplicable portion).

It is by the state board further ordered that the \_\_\_\_\_ of \_\_\_\_\_,  
(Governing Body) (School District)  
\_\_\_\_\_, \_\_\_\_\_,  
(City) (County)

Kansas, be, and it is hereby directed to pay, not to pay, (strike inapplicable portion) the out-district tuition claim of appellant

in the amount of \$ \_\_\_\_\_; and that the \_\_\_\_\_, of the \_\_\_\_\_,  
(Governing Body) (Vocational Education School)  
of \_\_\_\_\_,  
(City)  
\_\_\_\_\_, Kansas, be, and it is hereby  
(County)

directed to admit, not to admit, (strike inapplicable portion) the appellant to the following course(s) or program: \_\_\_\_\_ (Strike inapplicable portion).

This order is made, entered and certified at Topeka, Kansas, on the date first above written, and is final and conclusive.  
(Seal) \_\_\_\_\_

Commissioner of Education of Kansas

(Authorized by K.S.A. 72-4418; effective, E-70-11, Dec. 22, 1969; effective Jan. 1, 1971; amended, E-71-17, April 5, 1971; amended Jan. 1, 1972; amended May 1, 1979.)

**91-16-16.** (Authorized by K.S.A. 72-4418; effective, E-71-17, April 5, 1971; effective Jan. 1, 1972; revoked May 1, 1979.)

**91-16-17. Application procedures for admission to vocational education courses and programs.**

(a) Each prospective student shall submit a written application on forms as provided in K.A.R. 91-16-19 or 91-16-20 for admission to state approved vocational education courses and programs. Boards of control or their agents shall make application forms available upon request.

(b) An application from an out-district student shall be accompanied by an affidavit of residency using the form as provided in K.A.R. 91-16-19 or 91-16-20.

(c) An application shall be submitted for approval or disapproval to the vocational education institution the applicant wishes to attend.

(d) An applicant may be disapproved or placed on a waiting list by a vocational education institution for any of the following reasons:

- (1) Insufficient facilities or staff; or
- (2) Reasonable proof, obtained through interviews, counseling, or testing, that the applicant is incapable of benefiting from the instruction, or of being employed in the occupation for which the instruction is being sought.
- (3) Failure to meet minimum age requirements.

(e) Upon acceptance into a state approved vocational education course or program, each student shall be issued an enrollment decision form, as provided by K.A.R. 91-26-21, signed by the director or other person vested with authority of the institution, indicating that space and facilities have been reserved for him or her. Within two (2) weeks after

the issuance of the decision, the vocational education institution shall notify the district of its action and that it is to be held responsible for the tuition.

(f) Within two (2) weeks after receiving the decision of the vocational education institution, it shall be the responsibility of the prospective student, or his or her parent or guardian, to present copies of his or her application and of the enrollment decision, as executed by the vocational education institution, to the clerk of the board of education, or the superintendent of schools, of the student's unified school district, if unusual or unforeseen circumstances, as determined by the state board, prevent their so doing, the student or his or her parent or guardian shall present the documents at the earliest following date.

(g) The application and decision of the vocational education institution shall be acted upon by the local board of education during the month in which they are presented and filed with applicant's school district. If the application is received too late, the application and decision shall be approved or disapproved at the next regular meeting of the board. Failure of the board to act shall be considered a denial of application for admission to state approved vocational education courses or program and of tuition payment and ground for appeal to the state board.

(h) The application shall be approved by applicant's school district unless there is a good faith doubt as to the applicant's legal place of residence being in the district, or the ability of the applicant to benefit from the instruction. In addition to the foregoing reasons, the application of a student for the payment of out-district tuition may be denied by the district if it is determined that the same or substantially the same state approved vocational education course or program applied for is offered within the district, or is otherwise available to the student under the terms of a state approved participating agreement.

(i) Upon approval of the application, the local board of education shall promptly execute the decision form as provided by K.A.R. 91-16-21, and return it to the applicant and to the vocational education institution. The decision form must be signed by the president, or by another member of the board, or superintendent of schools, whichever official may be designated by the board, and attested by the clerk.

(j) In the event the local board of education, or a vocational education institution, denies the application for admission to state approved vocational

education courses or program or for the payment of tuition, the board or institution shall specify promptly in writing to the applicant and to the vocational education institution, in the event the denial of an application is by the board of education, the ground or grounds for denying the application. The board denying the application shall also immediately notify the applicant of his right to appeal the decision within thirty (30) days after receipt of the denial, to the state board in accordance with rules and regulations of the state board, and inform the applicant that appeal forms and the rules governing appeals are available from the vocational education institution and from the office of the commissioner of education, Kansas state education building, 120 East 10th Avenue, Topeka, Kansas 66612. Failure of the local board of education, or vocational education institution to timely notify the applicant of its denial of the application or of the right to appeal the denial, shall not prejudice the applicant's right of appeal to the state board even though more than thirty (30) days have elapsed from the date of the denial. Applicant shall have thirty (30) days to perfect the appeal from the date he or she actually is informed of the decision of the local board of education or vocational education institution denying the application, or of the failure of the local board of education to take action within the time specified in K.A.R. 91-16-17(g). (Authorized by K.S.A. 72-4418; effective, E-71-17, April 5, 1971; effective Jan. 1, 1972; amended May 1, 1979.)

**91-16-18. Provisions for payment of tuition and refund policy.** (a) When the student commences his or her state approved vocational education courses or program, the vocational education institution shall submit to the board of education of the district of the student's residence, a statement for the state approved amount of tuition due for the courses or program.

(b) Remittance shall be made to the vocational education institution as follows: Statements for tuition rendered on or before January 20 shall be due and payable by January 20 unless otherwise provided by mutual agreement of the parties. Statements rendered after January 20 and on or before June 20 shall be due and payable on or before June 20 unless otherwise provided by mutual agreement of the parties.

(c) If within thirty (30) days after its commencement, a student drops a course or program in which he or she is enrolled and has been attending, only one-half ( $\frac{1}{2}$ ) of the tuition shall be due and payable

from the sending school district. In the event the full amount of tuition has been paid, one-half (1/2) of that amount shall be refunded to the sending school district within the time limits set out in subsection (b) of this regulation. (Authorized by K.S.A. 72-4418; effective, E-71-17, April 5, 1971; effective Jan. 1, 1972; amended May 1, 1979.)

**91-16-19. Form of application and affidavit of minor.** The form to be used by minor applicants may be substantially as follows to be filled out in triplicate, one (1) for the unified school district, one (1) for the vocational education institution, and one (1) for the student. The application as required by this regulation and by K.A.R. 91-16-20 shall not be construed to limit any additional information needed by the vocational education institution in their enrollment procedures.

No. 25-8 Execute in Triplicate

STATE OF KANSAS  
KANSAS STATE BOARD OF EDUCATION  
DEPARTMENT OF EDUCATION  
Kansas State Education Building  
120 East Tenth Street, Topeka, Kansas 66612

**Application of Minor Student for Admission to Vocational Education Institution and for Payment of Tuition**

Name \_\_\_\_\_  
(Last) (First) (Middle)

Post Office Address \_\_\_\_\_  
(Street or Route)

\_\_\_\_\_  
(City) (State) (Zip)

Date of Birth \_\_\_\_\_  
(Month) (Day) (Year)

Social Security Number \_\_\_\_\_

Marital status \_\_\_\_\_  
(M or S)

Unified School District No. \_\_\_\_\_  
(Of applicant's residence)

\_\_\_\_\_  
(City) (County) (State)

Name and address of parent or guardian \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street or Route) (City) (State) (Zip)

Application for approval to attend \_\_\_\_\_  
(Name of course or program)

at the \_\_\_\_\_  
(Vocational education institution)

beginning \_\_\_\_\_ and for payment of  
(Date)

tuition by Unified School District No. \_\_\_\_\_,  
\_\_\_\_\_, Kansas.

\_\_\_\_\_  
(County)

\_\_\_\_\_  
(Student's signature) (Date)

\_\_\_\_\_  
(Parent or guardian's signature) (Date)

**Affidavit of Residency of Applicant**

State of Kansas }  
\_\_\_\_\_ County } ss:

I, \_\_\_\_\_, of lawful age,  
being first duly sworn on oath say:

That I am the parent or legal guardian of \_\_\_\_\_,  
a minor, and am a legal resident of Unified School District No.  
\_\_\_\_\_, \_\_\_\_\_ County, Kansas,  
with my post office address being \_\_\_\_\_  
(Street or Route)

\_\_\_\_\_  
(City) (State) (Zip)

and that I have been a resident of said Unified School  
District \_\_\_\_\_.  
(Period of time)

Further affiant says not.

\_\_\_\_\_  
(Signature)  
Subscribed and sworn to before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(Notary Public)

My commission expires \_\_\_\_\_.

(Authorized by K.S.A. 72-4418; effective, E-71-17, April 5, 1971; effective Jan. 1, 1972; amended May 1, 1979.)

**91-16-20. Form of application and affidavit of person of age of majority.** The form to be used by applicant of legal age may be substantially as follows to be filled out in triplicate, one (1) for the unified school district, one (1) for the vocational education institution, and one (1) for the student.

No. 25-9 Execute in Triplicate

STATE OF KANSAS  
KANSAS STATE BOARD OF EDUCATION  
DEPARTMENT OF EDUCATION  
Kansas State Education Building  
120 East Tenth Street, Topeka, Kansas 66612

**Application of Student of Legal Age for Admission to Vocational Education Institution and for Payment of Tuition**

Name \_\_\_\_\_  
(Last) (First) (Middle)

Post Office Address \_\_\_\_\_  
(Street or Route)

\_\_\_\_\_  
(City) (State) (Zip)

Date of birth \_\_\_\_\_  
(Month) (Day) (Year)

Social Security Number \_\_\_\_\_

Marital status \_\_\_\_\_  
(M or S)

Unified School District No. \_\_\_\_\_  
(Of applicant's residence)

\_\_\_\_\_  
(City) (County) (State)

Application for approval to attend \_\_\_\_\_  
(Name of course or program)

at the \_\_\_\_\_ (Vocational education institution)
beginning \_\_\_\_\_ (Date)
\_\_\_\_\_ (Student's signature) \_\_\_\_\_ (Date)

Affidavit of Residency

State of Kansas }
County } ss:
I, \_\_\_\_\_, of lawful age,
being first duly sworn, on oath say:
That I am a legal resident of Unified School District No.
\_\_\_\_\_ County, Kansas with my
post office address being \_\_\_\_\_
(Street or Route)
\_\_\_\_\_ (City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip)
and that I have been a resident of said Unified School District
\_\_\_\_\_ (Period of time)

(This part of affidavit, if applicable, is to be used in addition
for out-district students)
That I moved or plan to move to \_\_\_\_\_ (City) \_\_\_\_\_ (State)
on \_\_\_\_\_ (Date) for the sole purpose of attending vocational
education courses and programs at the \_\_\_\_\_ (Name of institution)
My present post office address is \_\_\_\_\_ (Street or Route)
\_\_\_\_\_ (City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip)

(This part of affidavit, if applicable, is to be used in addition
if resident of less than six months)
That I moved to \_\_\_\_\_ (City) \_\_\_\_\_ (State)
on \_\_\_\_\_ (Date) with the express intent and purpose of
making it my permanent or indefinite place or residence.
Further affiant says not.

\_\_\_\_\_ (Signature)
Subscribed and sworn to before me this \_\_\_\_\_ day of
\_\_\_\_\_, 19\_\_\_\_.
\_\_\_\_\_ (Notary Public)

My commission expires \_\_\_\_\_.
(Authorized by K.S.A. 72-4418; effective, E-71-17, April 5, 1971; effective Jan. 1, 1972; amended May 1, 1979.)

91-16-21. Form of enrollment authori-
zation and decision of board of education for
tuition payment. The form to be used may be
substantially as follows to be filled out in triplicate,
one (1) for the unified school district, one (1) for
the vocational education institution, and one (1) for
the student. Copies of the decision of the board of
education shall be served on the applicant and the
vocational education institution by registered or

certified mail with return receipt requested. Such
receipt shall serve as proof of such service.

No. 25-10 Execute in Triplicate

STATE OF KANSAS
KANSAS STATE BOARD OF EDUCATION
DEPARTMENT OF EDUCATION

Kansas State Education Building
120 East Tenth Street, Topeka, Kansas 66612
Decision of Vocational Education Institution on
Application for Admission to State Approved
Vocational Education Courses and Program

\_\_\_\_\_ (Name of applicant) \_\_\_\_\_ (Street or Route) \_\_\_\_\_ (City)
\_\_\_\_\_ (State) \_\_\_\_\_ (Zip)
\_\_\_\_\_, having made application

and his affidavit of residency, meeting, not meeting (strike
inapplicable portion), the requirements of law and demon-
strating his capacity of benefiting therefrom, is hereby ad-
mitted to, disapproved for (strike inapplicable portion), the
following courses or program, or if disapproved, the reasons
therefor:

\_\_\_\_\_
\_\_\_\_\_
at \_\_\_\_\_ (Vocational education institution)
beginning \_\_\_\_\_ (Date), ending \_\_\_\_\_ (Date), and
space and facilities have been reserved for him.

The total amount of this state approved tuition for said
course or program is \$\_\_\_\_\_.
The undersigned certifies the above statements to be cor-
rect.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.
\_\_\_\_\_ (Director, vocational education institution)

Decision of Board of Education on Application for
Admission to State Approved Vocational Education
Courses and Program and for Tuition Payment

The application of \_\_\_\_\_ (Name of applicant)
\_\_\_\_\_ (Street or Route)
\_\_\_\_\_ (City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip)

to attend \_\_\_\_\_ (Vocational Education Institution)
for the purpose of receiving training in \_\_\_\_\_ (Courses or program)

is, is not, hereby approved (strike inapplicable portion) by the
board of education of Unified School District No. \_\_\_\_\_
of \_\_\_\_\_ County, Kansas.

Reasons for disapproval if approval of tuition is denied:
\_\_\_\_\_
\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.
Board of Education of
Unified School District No. \_\_\_\_\_
Attested by: \_\_\_\_\_ (Clerk)
County, Kansas

By: \_\_\_\_\_  
(Specify official position of person signing)

(Notice to Applicant: You are hereby notified that in the event your application for admission to state approved vocational education courses or program and for payment of tuition is denied by the local board of education or vocational education institution, you may, within thirty (30) days from date of receiving the decision of such board or institution, appeal such decision to the Kansas State Board of Education as provided by its rule 91-16-17 (k) and by K.S.A. 1970 Supp. 72-4418 (e). Appeal forms may be obtained from the vocational education institution or the Kansas Commissioner of Education, Kansas State Education Building, 120 East 10th Street, Topeka, Kansas 66612.)

(Authorized by K.S.A. 72-4418; effective, E-71-17, April 5, 1971; effective Jan. 1, 1972; amended May 1, 1979.)

**91-16-30. Kansas training information program.** (a) Each vocational education institution and participating proprietary school shall provide the following information:

(1) The number of its students completing vocational programs;

(2) those who were employed during the preceding fiscal year; and

(3) the average salary earned by those persons.

(b) Each vocational education institution and participating proprietary school shall also provide other information required by the state board of education. The information shall be reported on a form or forms prescribed and furnished by the state board of education.

(c) The information required under subsections (a) and (b) shall be provided to the state board of education not later than August 1 of each year. (Authorized by and implementing K.S.A. 1987 Supp. 72-4451, as amended by L. 1988, Ch. 279, Sec. 1; effective May 8, 1989.)

#### Article 17.—SPECIAL HIGH SCHOOLS

**91-17-1 to 91-17-9.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-1111; effective, E-70-26, May 25, 1970; effective Jan. 1, 1971; revoked May 1, 1979.)

#### Article 18.—PRIVATE SCHOOLS

**91-18-1 to 91-18-23.** (Authorized by K.S.A. 1971 Supp. 72-7514; effective, E-70-30, June 22, 1970; effective Jan. 1, 1971; revoked, E-71-38, Sept. 22, 1971; revoked Jan. 1, 1972.)

**91-18-24.** (Authorized by K.S.A. 72-4920, 72-4921, 72-4923; effective, E-71-38, Sept. 22, 1971; effective Jan. 1, 1972; amended May 1,

1979; amended May 1, 1980; revoked March 19, 2004.)

**91-18-25 and 91-18-26.** (Authorized by K.S.A. 72-4921; effective, E-71-38, Sept. 22, 1971; effective Jan. 1, 1972; revoked May 1, 1979.)

**91-18-27.** (Authorized by K.S.A. 72-4921; effective, E-71-38, Sept. 22, 1971; effective Jan. 1, 1972; amended, E-77-23, Sept. 7, 1977; amended May 1, 1978; amended May 1, 1979; revoked March 19, 2004.)

**91-18-28.** (Authorized by K.S.A. 72-4921; effective, E-71-38, Sept. 22, 1971; effective Jan. 1, 1972; revoked May 1, 1979.)

**91-18-29.** (Authorized by K.S.A. 72-4921, 72-4923, 72-4924, 72-4925, 72-4926; effective, E-71-38, Sept. 22, 1971; effective Jan. 1, 1972; amended May 1, 1978; amended May 1, 1979; amended May 1, 1980; revoked March 19, 2004.)

**91-18-30.** (Authorized by K.S.A. 72-4921; effective, E-71-38, Sept. 22, 1971; effective Jan. 1, 1972; revoked, E-78-23, Sept. 7, 1977; revoked May 1, 1978.)

**91-18-31 to 91-18-33.** (Authorized by K.S.A. 72-4921; effective, E-71-38, Sept. 22, 1971; effective Jan. 1, 1972; revoked May 1, 1979.)

**91-18-34.** (Authorized by K.S.A. 72-4921; effective, E-71-38, Sept. 22, 1971; effective Jan. 1, 1972; amended May 1, 1979; revoked March 19, 2004.)

**91-18-35.** (Authorized by K.S.A. 72-4921; effective, E-71-38, Sept. 22, 1971; effective Jan. 1, 1972; revoked, E-78-23, Sept. 7, 1977; revoked May 1, 1978.)

**91-18-36 to 91-18-39.** (Authorized by K.S.A. 72-4921; effective, E-71-38, Sept. 22, 1971; effective Jan. 1, 1972; revoked May 1, 1979.)

**91-18-40.** (Authorized by K.S.A. 1971 Supp. 72-4921; effective, E-71-38, Sept. 22, 1971; effective Jan. 1, 1972; revoked March 19, 2004.)

**91-18-41.** (Authorized by K.S.A. 1977 Supp. 72-4927; effective Jan. 1, 1974; revoked, E-78-23, Sept. 7, 1977; revoked May 1, 1978.)

#### Article 19.—STUDENT TEACHERS

**91-19-1. Definitions.** (a) “Approved educa-

tional agency” means an early childhood agency or an interlocal agency that has been granted approved status by the state board of education.

(b) “Cooperating teacher” means a certified or licensed staff member of an accredited or approved educational agency to whom a student teacher has been assigned and who is performing assigned duties in supervising and instructing the student teacher in actual teaching experiences with pupils.

(c) “Teacher education institution” means a college or university engaged in teacher preparation and accredited by the state board of education or a state-authorized agency of the state in which the institution is located.

(d) “Student teacher” means a student who has been issued a student teacher certificate by a teacher education institution to assume teaching responsibilities in an accredited or approved Kansas educational agency under the supervision of a cooperating teacher. (Authorized by and implementing K.S.A. 2007 Supp. 72-1392; effective, E-70-36, July 31, 1970; effective Jan. 1, 1971; amended May 1, 1979; amended July 1, 1989; amended July 18, 2008.)

**91-19-2. Student teacher certification.** (a) Each individual serving as a student teacher in an accredited or approved educational agency in Kansas shall hold a valid student teacher certificate.

(b) Issuance of student teacher certificates. Student teacher certificates shall be issued only to students who have fulfilled the requirements of the teacher education institution and have been recommended by the designated official responsible for teacher education at the teacher education institution. Only teacher education institutions shall issue student teacher certificates.

(c) Provision and filing of certificates. The state board of education shall provide student teacher certificate forms to teacher education institutions. Each student teacher serving in an accredited or approved educational agency shall file a valid student teacher certificate in the office of the administrator of the accredited or approved educational agency. The certificate shall be returned to the student teacher upon completion of the student teaching assignment. A copy of the student teacher certificate shall be filed with the state board of education and with the teacher education institution.

(d) Form of certificate. The form of the student teacher certificate shall be as prescribed by the state board.

(e) This rule and regulation shall take effect on and after July 1, 1989. (Authorized by and implementing K.S.A. 72-1392; effective, E-70-36, July 31, 1970; effective Jan. 1, 1971; amended May 1, 1979; amended July 1, 1989.)

**91-19-3 to 91-19-5.** (Authorized by K.S.A. 72-1392; effective, E-70-36, July 31, 1970; effective Jan. 1, 1971; revoked May 1, 1979.)

**91-19-6. Student teacher contracts, liabilities, and responsibilities.** (a) Necessity for written contracts. Each person certified for student teaching shall engage in student teaching only in educational agencies that are accredited or approved by the state board of education and have entered into a written contract with a teacher education institution. The contract shall set out all of the arrangements made between the teacher education institution and the cooperating accredited or approved educational agency.

(b) Assignment of student teachers. Only teacher education institutions shall assign student teachers to cooperating accredited or approved educational agencies for the purpose of student teaching.

(c) Student teacher responsibilities. Accredited or approved educational agency administrators and cooperating teachers to whom the student teachers are assigned, in cooperation with the designated officials of the teacher education institution and in conformity with the terms of the contract required by this regulation, shall determine when and to what extent student teachers shall assume responsibilities or enter into teaching activities in the assigned accredited or approved educational agency.

(d) Supervision of student teachers. Student teachers shall be under the supervision of cooperating teachers and administrators of the accredited or approved educational agencies to which the student teachers are assigned. Student teachers shall not be expected to assume tasks or responsibilities not generally assigned to teachers.

(e) Student teachers prohibited from serving as regular or substitute teachers. Certified student teachers shall be prohibited from serving as regular or substitute teachers in Kansas-accredited or Kansas-approved educational agencies. (Authorized by and implementing K.S.A. 2007 Supp. 72-1392; effective, E-70-36, July 31, 1970; effective Jan. 1, 1971; amended May 1, 1979; amended July 1, 1989; amended July 18, 2008.)

**91-19-7 to 91-19-14.** (Authorized by K.S.A. 72-1392; effective, E-70-36, July 31, 1970; effective Jan. 1, 1971; revoked May 1, 1979.)

**91-19-15 and 91-19-16.** (Authorized by and implementing K.S.A. 72-1392; rejected, L. 1982, Ch. 462, May 1, 1982.)

#### **Article 20.—SCREENING AND ADOPTION OF TEXTBOOKS**

**91-20-1 to 91-20-3.** (Authorized by K.S.A. 1969 Supp. 72-4152; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked Jan. 1, 1972.)

#### **Article 21.—DISORGANIZATION OF A UNIFIED SCHOOL DISTRICT BY ELECTION**

**91-21-1. Procedures to be followed by the state board in assigning territory, assets and personal property of a disorganized district.** In the event the resident electors of a unified school district vote in an election conducted by the election officer to disorganize the district, pursuant to the provisions of K.S.A. 72-7302, the state board upon being notified by the election officer that the majority of the electors voted in favor of such disorganization, shall pursue the following procedures:

(a) The state board shall designate a hearing officer to conduct one or more public hearings in the district to be disorganized to determine the adjoining district or districts to which the disorganized district should be attached.

(b) Following the hearings, the state board shall issue an order disorganizing the original unified school district and attaching it to the designated district or districts.

(c) When applicable, the order shall further provide:

(1) Possession of and title to all school buildings, furnishings, tangible and movable personal property located in the territory to be attached, except school buses, shall vest in the unified school district or districts to which it is being attached. School equipment housed in a central location, but used in schools throughout the disorganized district, shall be transferred to the unified school district that receives the greatest number of pupils.

(2) If the disorganized district is attached to more than one district, school buses shall be equitably distributed based on the proportion the number of transported pupils transferred bears to

the total number of pupils of the disorganized district transported on the final date of its operation.

(3) In the event the disorganized district is attached to more than one unified district, the funds on hand and those to be collected of the disorganized district shall be transferred to the receiving districts as follows:

(A) One-half ( $\frac{1}{2}$ ) shall be distributed in the proportion that the amount of assessed valuation of property transferred bears to the total assessed valuation of the disorganized district.

(B) One-half ( $\frac{1}{2}$ ) shall be distributed in the proportion the number of pupils transferred bears to the total enrollment of the disorganized district on the final date of its operation.

(4) If the disorganized district is attached to more than one unified district, the central office records of pupils and school personnel shall be transferred to the district receiving the pupils and school personnel. All other central office records shall be transferred to the receiving district that acquires the greatest amount of assessed valuation of the disorganized district. (Authorized by K.S.A. 72-7514; effective Jan. 1, 1971; amended May 1, 1979.)

#### **Article 22.—PROFESSIONAL PRACTICES COMMISSION**

**91-22-1.** (Authorized by K.S.A. 72-8507; effective Jan. 1, 1972; revoked May 1, 1979.)

**91-22-1a. Denial, suspension, or revocation of license; public censure; grounds; report.** (a) Any license issued by the state board may be suspended or revoked, or the license holder may be publicly censured by the state board for misconduct or other just cause, including any of the following:

(1) Conviction of any crime punishable as a felony;

(2) conviction of any crime involving a minor;

(3) conviction of any misdemeanor involving theft;

(4) conviction of any misdemeanor involving drug-related conduct;

(5) conviction of any act defined in any section of article 36 of chapter 21 of the Kansas statutes annotated;

(6) conviction of an attempt under K.S.A. 21-3301, and amendments thereto, to commit any act specified in this subsection;

(7) commission or omission of any act that in-

injures the health or welfare of a minor through physical or sexual abuse or exploitation;

(8) engaging in any sexual activity with a student;

(9) breach of an employment contract with an education agency by abandonment of the position;

(10) conduct resulting in a finding of contempt of court in a child support proceeding;

(11) entry into a criminal diversion agreement after being charged with any offense or act described in this subsection;

(12) obtaining, or attempting to obtain, a license by fraudulent means or through misrepresentation of material facts; or

(13) denial, revocation, cancellation, or suspension of a license in another state on grounds similar to any of the grounds described in this subsection.

(b) A license may be denied by the state board to any person who fails to meet the licensure requirements of the state board or for any act for which a license may be suspended or revoked pursuant to subsection (a).

(c) A certified copy of a journal entry of conviction or other court document indicating that an applicant or license holder has been adjudged guilty of, or has entered a plea of guilty or nolo contendere to, a crime shall be conclusive evidence of the commission of that crime in any proceeding instituted against the applicant or license holder to deny, suspend, or revoke a license.

(d) In any proceeding instituted against an applicant or license holder to deny, suspend, or revoke a license for conduct described in subsection (a) of this regulation, the fact that the applicant or license holder has appealed a conviction shall not operate to bar or otherwise stay the proceeding concerning denial, suspension, or revocation of the license.

(e)(1) Suspension or revocation of a license shall suspend or revoke all endorsements on the license.

(2) Suspension of a license shall be for a definite period of time. A suspended license shall be automatically reinstated at the end of the suspension period if the license did not expire during the period of suspension. If the license expired during the period of suspension, the individual may make an application for a new license at the end of the suspension period.

(3) Revocation of a license shall be permanent, except as provided in subsection (g) of this regulation.

(f) Any applicant for licensure whose license has been suspended, canceled, revoked, or surrendered in another state shall not be eligible for

licensure in Kansas until the applicant is eligible for licensure in the state in which the suspension, cancellation, revocation, or surrender occurred.

(g)(1) Except as provided in K.S.A. 72-1397 and amendments thereto, any person who has been denied a license or who has had a license revoked for conduct described in subsection (a) of this regulation may apply for a license by completing an application for a license and submitting evidence of rehabilitation to the Kansas professional practices commission. The evidence shall demonstrate that the grounds for denial or revocation have ceased to be a factor in the fitness of the person seeking licensure. Factors relevant to a determination as to rehabilitation shall include the following:

(A) The nature and seriousness of the conduct that resulted in the denial or revocation of a license;

(B) the extent to which a license may offer an opportunity to engage in conduct of a similar type that resulted in the denial or revocation;

(C) the present fitness of the person to be a member of the profession;

(D) the actions of the person after the denial or revocation;

(E) the time elapsed since the denial or revocation;

(F) the age and maturity of the person at the time of the conduct resulting in the denial or revocation;

(G) the number of incidents of improper conduct; and

(H) discharge from probation, pardon, or expungement.

(2) A person who has been denied a license or who has had a license revoked for conduct described in subsection (a) of this regulation shall not be eligible to apply for a license until at least five years have elapsed from the date of conviction of the offense or commission of the act or acts resulting in the denial or revocation or, in the case of a person who has entered into a criminal diversion agreement, until the person has satisfied the terms and conditions of the agreement.

(h) Before any license is denied, suspended, or revoked by the state board for any act described in subsection (a) of this regulation, the person shall be given notice and an opportunity for a hearing to be conducted before the professional practices commission in accordance with the provisions of the Kansas administrative procedure act.

(i) The chief administrative officer of a public or private school accredited by the state board shall promptly notify the commissioner of edu-

cation of the name, address, and license number of any license holder who is dismissed, resigns, or is otherwise separated from employment with a school for any act described in subsection (a) of this regulation. (Authorized by article 6, section 2 of the Kansas Constitution; implementing article 6, section 2 of the Kansas Constitution and K.S.A. 72-8506; effective May 19, 2000.)

**91-22-2. Commission procedure.** (a) A majority of the full membership of the commission shall constitute a quorum for the purpose of conducting business. A majority vote of the full membership of the commission shall be required for the passage of any motion or resolution.

(b) Secretary. Upon receiving a complaint, the chairperson shall be notified by the commission's secretary. The chairperson shall determine and give authorization for the secretary to initiate processing procedures. An accurate file of all votes, official acts, and proceedings of the commission shall be kept by the secretary. (Authorized by article 6, section 2 of the Kansas Constitution; implementing article 6, section 2 of the Kansas Constitution and K.S.A. 72-8507; effective Jan. 1, 1972; amended Feb. 15, 1977; amended May 1, 1979; amended May 19, 2000.)

**91-22-3.** (Authorized by K.S.A. 72-8507; effective Jan. 1, 1972; amended May 1, 1979; revoked May 19, 2000.)

**91-22-4. Cases; use of case number and title.** Each matter coming before the commission and requiring a decision by it shall be known as a "case" and shall receive a case number and title descriptive of the subject matter. Each case shall be recorded by the secretary by caption and case number. The case number and title shall be used on all instruments filed in the case and shall appear in all correspondence or communications. (Authorized by article 6, section 2 of the Kansas Constitution; implementing article 6, section 2 of the Kansas Constitution and K.S.A. 72-8507; effective Jan. 1, 1972; amended May 1, 1979; amended May 19, 2000.)

**91-22-5.** (Authorized by K.S.A. 72-8507; effective Jan. 1, 1972; amended Feb. 15, 1977; amended May 1, 1978; revoked May 1, 1979.)

**91-22-5a. Complaints.** (a) The commission, on its own motion, or a member of the teaching or school administration profession may initiate proceedings before the commission by filing a com-

plaint in writing alleging that a license holder or applicant has engaged in any conduct for which a license issued by the state board may be denied, suspended, or revoked under K.A.R. 91-22-1a and amendments thereto. The complaint shall be filed with the commission's secretary.

(b) Each person filing a complaint shall set forth in the complaint the following information:

- (1) The name and address of the complainant;
- (2) the name and last known address of the license holder or applicant charged;
- (3) the act or acts for which the license is sought to be denied, suspended, or revoked; and
- (4) the relief sought.

The complaint shall be typed, signed, and verified by the complainant or accompanied by an affidavit attesting to the veracity of the contents of the complaint. Written instruments or documents under the control of or known to a complainant that are relevant to the charges shall be attached as exhibits or, if unavailable, referenced in the complaint.

(c) A complaint that does not state a good faith or prima facie case shall be tabled by the commission. The complainant shall be notified in writing of the action. The complainant shall be permitted to withdraw or amend the complaint. If the complainant decides to file an amended complaint, that complaint shall be filed within 10 days after service of the notice of action by the commission.

(d) A complaint or amended complaint that states a good faith cause of action shall be served on the person charged in the complaint by certified mail, return receipt requested.

(e) Surrender of license. A member of the teaching or school administration profession may voluntarily surrender the member's license to the commission. The action of surrender shall be investigated by the commission. A recommendation shall be made by the commission to the state board for disposition of the license.

(f) Complainant motivated by malice. A complainant who is found by the commission to have been maliciously motivated in filing a complaint or to have acted fraudulently may be disciplined by the state board by public censure or by the suspension, cancellation, or revocation of the complainant's license. (Authorized by article 6, section 2 of the Kansas Constitution; implementing article 6, section 2 of the Kansas Constitution and K.S.A. 72-8507; effective May 1, 1979; amended May 19, 2000.)

**91-22-6.** (Authorized by K.S.A. 72-8507; effective Jan. 1, 1972; amended Feb. 15, 1977; revoked May 1, 1979.)

**91-22-7. Violation of continuing contract laws.** A complaint filed directly with the state board pursuant to K.S.A. 72-1383 or K.S.A. 72-5412, and amendments thereto, alleging that a license holder is in breach of the license holder's employment contract with a local board shall be referred to the commission for investigation, hearing, and the entry of an initial order regarding licensure. If the investigation reveals a settlement provision or liquidated damages clause in local board policy or in the contract of the employee, so that the employee could make a financial settlement to a local district governing authority or be relieved of contractual commitment by other agreed means, the case shall be dismissed by the commission. (Authorized by article 6, section 2 of the Kansas Constitution; implementing article 6, section 2 of the Kansas Constitution and K.S.A. 72-8507; effective Jan. 1, 1972; amended Feb. 15, 1977; amended May 1, 1979; amended May 19, 2000.)

**91-22-8.** (Authorized by K.S.A. 72-8507; effective Jan. 1, 1972; amended May 1, 1979; revoked May 19, 2000.)

**91-22-9. Answer; time to file; form; content; right to amend.** (a) Any person charged in a complaint shall have 20 days after receipt of the complaint in which to file an answer. If no answer is filed within the prescribed period, the person shall be deemed to have admitted the allegations contained in the complaint and to have acquiesced in the proposed action. Any answer to a complaint shall be filed with the commission's secretary by certified mail, return receipt requested, or by personal delivery.

(b) Each person filing an answer shall type, sign, and verify the contents of the answer. The caption of any answer shall repeat the caption of the complaint in response to which it is filed, except that the title shall state "answer" instead of "complaint."

(c) Each person filing an answer shall set forth each responsive allegation or defense in clear and concise language and in separately numbered paragraphs. The person filing the answer shall admit or deny each allegation contained in the complaint. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, the person shall state this

in the answer, and this shall have the effect of a denial. Each person filing an answer shall attach to the answer as exhibits or, if unavailable, shall reference in the answer any written instruments or documents under the control of, or known to, the person filing the answer that are relevant to the charges in the complaint or that the person intends to use in defending the charges.

(d) Any person filing an answer may amend the answer once as a matter of course at any time within 30 days after service of the complaint. Each amended answer shall be filed with the commission's secretary by restricted mail, return receipt requested, or by personal delivery.

(e) Upon application to, and order of, the commission's secretary, the time in which to file an answer may be extended once as a matter of course for a period not to exceed 10 additional days. (Authorized by article 6, section 2 of the Kansas Constitution; implementing article 6, section 2 of the Kansas Constitution and K.S.A. 72-8507; effective Jan. 1, 1972; amended Feb. 15, 1977; amended May 1, 1979; amended May 19, 2000.)

**91-22-10.** (Authorized by K.S.A. 72-8507; effective Jan. 1, 1972; amended Feb. 15, 1977; amended May 1, 1979; revoked May 19, 2000.)

**91-22-11.** (Authorized by K.S.A. 72-8507; effective Jan. 1, 1972; amended May 1, 1979; revoked May 19, 2000.)

**91-22-12.** (Authorized by K.S.A. 72-8507; effective Jan. 1, 1972; amended Feb. 15, 1977; amended May 1, 1979; revoked May 19, 2000.)

**91-22-13.** (Authorized by K.S.A. 72-8507; effective Jan. 1, 1972; amended May 1, 1979; revoked May 19, 2000.)

**91-22-14.** (Authorized by K.S.A. 1971 Supp. 72-8501 et seq.; effective Jan. 1, 1972; revoked May 19, 2000.)

**91-22-15.** (Authorized by K.S.A. 1971 Supp. 72-8501 et seq.; effective Jan. 1, 1972; revoked May 19, 2000.)

**91-22-16.** (Authorized by K.S.A. 72-8507; effective Jan. 1, 1972; amended Feb. 15, 1977; amended May 1, 1979; revoked May 19, 2000.)

**91-22-17.** (Authorized by K.S.A. 72-8507; effective Jan. 1, 1972; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1979; revoked May 19, 2000.)

**91-22-18.** (Authorized by K.S.A. 72-8507; effective Jan. 1, 1972; amended May 1, 1979; revoked May 19, 2000.)

**91-22-19. Service of order.** Except as otherwise provided in this article, service of an order, notice, motion, or brief shall be made upon a party in a proceeding before the commission in accordance with K.S.A. 77-531 and amendments thereto. (Authorized by article 6, section 2 of the Kansas Constitution; implementing article 6, section 2 of the Kansas Constitution and K.S.A. 72-8507; effective Jan. 1, 1972; amended May 1, 1979; amended May 19, 2000.)

**91-22-20.** (Authorized by K.S.A. 72-8507; effective Jan. 1, 1972; revoked May 1, 1979.)

**91-22-21.** (Authorized by and implementing K.S.A. 1984 Supp. 72-8507; effective Jan. 1, 1972; amended Feb. 15, 1977; amended May 1, 1979; amended May 1, 1982; amended May 1, 1985; revoked May 19, 2000.)

**91-22-22. Hearing procedure.** (a) All hearings before the commission shall be conducted in accordance with the provisions of the Kansas administrative procedure act. The chairperson to the commission, or another member designated by the chairperson, shall serve as the presiding officer.

(b) Continuance; extensions of time and adjournments.

(1) Upon showing good cause in a timely manner, any person having a substantial interest in the outcome of the proceedings shall be entitled to one continuance or extension of time. Additional continuances may be granted by the chairperson. When the commission is not in session or conducting a prehearing or hearing, the interested person shall send a written motion for a continuance or extension of time to the commission's chairperson or secretary. When sending the motion, the interested party shall allow sufficient time to postpone any hearing that has been set.

(2) While the commission is in session and conducting a prehearing or hearing, the presiding officer may entertain oral motions for continuances, extensions of time, and adjournments. Oral motions may be granted or denied by the presiding officer or the commission. (Authorized by article 6, section 2 of the Kansas Constitution; implementing article 6, section 2 of the Kansas Constitution and K.S.A. 72-8506 and 72-8507; effective

Jan. 1, 1972; amended Feb. 15, 1977; amended May 1, 1979; amended May 1, 1982; amended May 1, 1985; amended May 19, 2000.)

**91-22-23.** (Authorized by K.S.A. 72-8507; effective Jan. 1, 1972; amended May 1, 1979; revoked May 19, 2000.)

**91-22-24.** (Authorized by and implementing K.S.A. 1984 Supp. 72-8507; effective Jan. 1, 1972; amended May 1, 1979; amended May 1, 1982; amended May 1, 1985; revoked May 19, 2000.)

**91-22-25. Decision of the commission; review by state board.** (a) Following a hearing, an initial order shall be entered by the commission, in accordance with the provisions of the Kansas administrative procedure act, setting forth its decision and recommended action. The evidence may be deliberated upon by the commission and its decision may be voted upon by the commission in the presence of all parties, or it may recess into executive session to deliberate and then vote upon the matter in open session. The decision in each case shall include a recommended disposition of the case, which may be any of the following:

(1) Dismissal of the complaint;

(2) denial, suspension, or revocation of the respondent's license; or

(3) public censure of the respondent.

(b) The initial order of the commission shall be delivered by the commission's secretary to the commissioner of education, to be placed on the state board's agenda. A final order, in accordance with K.S.A. 77-527 and amendments thereto, shall be made by the state board. (Authorized by article 6, section 2 of the Kansas Constitution; implementing article 6, section 2 of the Kansas Constitution and K.S.A. 72-8507; effective Jan. 1, 1972; amended Feb. 15, 1977; amended May 1, 1979; amended May 19, 2000.)

**91-22-26.** (Authorized by K.S.A. 72-8507; effective Jan. 1, 1972; amended Feb. 15, 1977; amended May 1, 1979; revoked May 19, 2000.)

## **Article 23.—STANDARDS AND PROCEDURES FOR ACCREDITING SPECIAL HIGH SCHOOLS**

**91-23-1.** (Authorized by K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1972; amended, E-73-

27, Aug. 24, 1973; amended Jan. 1, 1974; revoked Feb. 15, 1977.)

**91-23-2.** (Authorized by K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1972; amended Jan. 1, 1973; amended, E-73-27, Aug. 24, 1973; amended Jan. 1, 1974; amended, E-76-12, Jan. 23, 1975; amended May 1, 1975; revoked Feb. 15, 1977.)

**91-23-3.** (Authorized by K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1972; amended Jan. 1, 1973; amended, E-73-27, Aug. 24, 1973; amended Jan. 1, 1974; amended, E-74-20, April 5, 1974; amended May 1, 1975; amended, E-76-12, Jan. 23, 1975; revoked Feb. 15, 1977.)

**91-23-4 and 91-23-5.** (Authorized by K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1972; amended, E-73-27, Aug. 24, 1973; amended Jan. 1, 1974; revoked Feb. 15, 1977.)

**91-23-6.** (Authorized by K.S.A. 72-7514, K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1972; amended Jan. 1, 1973; amended, E-73-27, Aug. 24, 1973; amended Jan. 1, 1974; revoked Feb. 15, 1977.)

**91-23-7.** (Authorized by K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1972; amended, E-73-27, Aug. 24, 1973; revoked Feb. 15, 1977.)

**91-23-7a.** (Authorized by K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1974; revoked Feb. 15, 1977.)

**91-23-8.** (Authorized by K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1972; amended, E-73-27, Aug. 24, 1973; amended Jan. 1, 1974; revoked Feb. 15, 1977.)

**91-23-9.** (Authorized by K.S.A. 72-7514, K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1972; amended Jan. 1, 1973; amended, E-73-27, Aug. 24, 1973; revoked Feb. 15, 1977.)

**91-23-10.** (Authorized by K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1972; amended Jan. 1, 1973; amended, E-73-27, Aug. 24, 1973; amended Jan. 1, 1974; amended, E-76-12, Jan. 23, 1975; amended May 1, 1975; revoked Feb. 15, 1977.)

**91-23-11.** (Authorized by K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1972; amended, E-73-27, Aug. 24, 1973; revoked Feb. 15, 1977.)

**91-23-12.** (Authorized by K.S.A. 1976 Supp.

72-7513; effective Jan. 1, 1972; amended Jan. 1, 1973; amended, E-73-27, Aug. 24, 1973; amended Jan. 1, 1974; revoked Feb. 15, 1977.)

#### **Article 24.—STANDARDS AND PROCEDURES FOR ACCREDITING SPECIAL ELEMENTARY SCHOOLS**

**91-24-1.** (Authorized by K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1972; amended, E-73-27, Aug. 24, 1973; amended Jan. 1, 1974; revoked Feb. 15, 1977.)

**91-24-2.** (Authorized by K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1972; amended Jan. 1, 1973; amended, E-73-27, Aug. 24, 1973; amended Jan. 1, 1974; amended, E-74-20, April 5, 1974; amended, E-76-12, Jan. 23, 1975; amended May 1, 1975; revoked Feb. 15, 1977.)

**91-24-3.** (Authorized by K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1972; amended Jan. 1, 1973; amended, E-73-27, Aug. 24, 1973; amended Jan. 1, 1974; revoked Feb. 15, 1977.)

**91-24-4 and 91-24-5.** (Authorized by K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1972; amended, E-73-27, Aug. 24, 1973; amended Jan. 1, 1974; revoked Feb. 15, 1977.)

**91-24-6.** (Authorized by K.S.A. 72-7514, K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1972; amended Jan. 1, 1973; amended, E-73-27, Aug. 24, 1973; amended Jan. 1, 1974; revoked Feb. 15, 1977.)

**91-24-7.** (Authorized by K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1972; amended, E-73-27, Aug. 24, 1973; revoked Feb. 15, 1977.)

**91-24-8.** (Authorized by K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1972; amended, E-73-27, Aug. 24, 1973; amended Jan. 1, 1974; revoked Feb. 15, 1977.)

**91-24-9.** (Authorized by K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1972; amended Jan. 1, 1973; amended, E-73-27, Aug. 24, 1973; revoked Feb. 15, 1977.)

**91-24-10.** (Authorized by K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1972; amended Jan. 1, 1973; amended, E-73-27, Aug. 24, 1973; amended Jan. 1, 1974; amended, E-76-12, Jan. 23, 1975; amended May 1, 1975; revoked Feb. 15, 1977.)

**91-24-11.** (Authorized by K.S.A. 1976 Supp.

72-7513; effective Jan. 1, 1972; amended, E-73-27, Aug. 24, 1973; revoked Feb. 15, 1977.)

**91-24-12.** (Authorized by K.S.A. 1976 Supp. 72-7513; effective Jan. 1, 1972; amended Jan. 1, 1973; amended, E-73-27, Aug. 24, 1973; amended Jan. 1, 1974; revoked Feb. 15, 1977.)

#### Article 25.—COMMUNITY COLLEGES

**91-25-1.** (Authorized by K.S.A. 71-406, K.S.A. 1978 Supp. 71-403; effective, E-71-38, Sept. 22, 1971; effective Jan. 1, 1972; revoked May 1, 1979.)

**91-25-1a.** (Authorized by K.S.A. 13-13a27, K.S.A. 71-302, as amended by L. 1987, ch. 264, sec. 3; implementing K.S.A. 13-13a26, 13-13a27, 71-403, 71-406, K.S.A. 71-302, as amended by L. 1987, ch. 264, sec. 3; effective May 1, 1979; amended May 1, 1979; amended May 1, 1980; amended May 1, 1983; amended May 1, 1984; amended, T-88-33, Sept. 17, 1987; amended May 1, 1988; revoked Oct. 29, 2004.)

**91-25-1b.** (Authorized by K.S.A. 71-406, K.S.A. 1978 Supp. 71-403; effective May 1, 1979; revoked May 1, 1983.)

**91-25-1c.** (Authorized by K.S.A. 71-406, K.S.A. 71-302, as amended by L. 1987, ch. 264, sec. 3; implementing K.S.A. 71-406, K.S.A. 71-302, as amended by L. 1987, ch. 264, sec. 3; effective May 1, 1983; amended, T-88-33, Sept. 17, 1987; amended May 1, 1988; revoked Oct. 29, 2004.)

**91-25-2.** (Authorized by K.S.A. 71-403, K.S.A. 1982 Supp. 71-301; implementing K.S.A. 71-406, K.S.A. 1982 Supp. 71-301, 71-302; effective, E-71-38, Sept. 22, 1971; effective Jan. 1, 1972; amended May 1, 1979; amended May 1, 1983; revoked Oct. 29, 2004.)

**91-25-3.** (Authorized by K.S.A. 71-403; effective, E-71-38, Sept. 22, 1971; effective Jan. 1, 1972; amended May 1, 1979; revoked May 1, 1983.)

**91-25-3a.** (Authorized by K.S.A. 71-406, K.S.A. 1982 Supp. 71-302; implementing K.S.A. 71-406, K.S.A. 1982 Supp. 71-301, 71-302; effective May 1, 1983; revoked Oct. 29, 2004.)

**91-25-4.** (Authorized by K.S.A. 1978 Supp. 71-403; effective, E-71-38, Sept. 22, 1971; effective

Jan. 1, 1972; amended May 1, 1979; revoked May 1, 1983.)

**91-25-4a.** (Authorized by K.S.A. 71-406, K.S.A. 1982 Supp. 71-302; implementing K.S.A. 71-406, K.S.A. 1982 Supp. 71-301, 71-302; effective May 1, 1983; revoked Oct. 29, 2004.)

**91-25-5 and 91-25-6.** (Authorized by K.S.A. 72-6915c; effective, E-71-38, Sept. 22, 1971; effective Jan. 1, 1972; amended Jan. 1, 1973; revoked May 1, 1979.)

**91-25-7.** (Authorized by K.S.A. 1978 Supp. 71-204; effective, E-71-38, Sept. 22, 1971; effective Jan. 1, 1972; revoked May 1, 1979.)

**91-25-8 and 91-25-9.** (Authorized by K.S.A. 72-6915c; effective, E-71-38, Sept. 22, 1971; effective Jan. 1, 1972; amended Jan. 1, 1973; revoked May 1, 1979.)

**91-25-10.** (Authorized by K.S.A. 1978 Supp. 71-403; effective, E-71-38, Sept. 22, 1971; effective Jan. 1, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; revoked May 1, 1979.)

**91-25-11 and 91-25-12.** (Authorized by K.S.A. 72-6915c; effective, E-71-38, Sept. 22, 1971; effective Jan. 1, 1972; revoked Jan. 1, 1973.)

**91-25-13 to 91-25-15.** (Authorized by K.S.A. 1978 Supp. 71-302, 71-401, 71-402, 71-403; effective Jan. 1, 1974; revoked May 1, 1979.)

**91-25-16.** (Authorized by K.S.A. 71-306; effective May 1, 1980; revoked May 1, 1983.)

**91-25-17, 91-25-18.** (Authorized by K.S.A. 13-13a33, 71-306; implementing K.S.A. 13-13a32, 71-305; effective May 1, 1983; amended May 1, 1984; revoked Oct. 29, 2004.)

**91-25-19.** (Authorized by K.S.A. 13-13a33, 71-306; implementing K.S.A. 13-13a32, 71-305; effective May 1, 1983; revoked Oct. 29, 2004.)

#### Article 26.—NONPROFIT SCHOOL FOOD SERVICE PROGRAMS

##### 91-26-1. Requirements for participation.

(a) Definitions.

(1) "Attendance center" means an approved school where meals are prepared, served, or both.

(2) "Child" means a person under twenty one (21) chronological years of age or a student of high school grade or under.

(3) "Preparation center" means a kitchen where meals are prepared.

(4) "Board" means the board of education of a school district, governing authority of any non-public school offering any of grades kindergarten through twelve (12), or governing authority of a child care institution having approval to operate school food service programs.

(b) Application. The board shall make written application annually to the state board for all schools in which it desires to operate a food service program. The board shall also submit for approval a free and reduced price meal and free milk policy. Applications shall be on a form provided by the state board which shall include, but not be limited by the following:

- (1) the estimated average daily participation;
- (2) the meal price to be charged children; and
- (3) any other pertinent data necessary for identification and approval as determined by the state board.

(c) Agreements. The board shall enter into a written agreement with the state board. The agreement shall be regularly approved by the board, signed by the president of the board, and attested by the clerk of the board. The commissioner of education shall approve and sign the agreement for the state board.

(1) The board shall comply with all stipulations in the written agreement between the board and the state board, with local food service policies of the board, with K.A.R. 91-26-1 *et seq.* and with 7 CFR parts 210, 215, 220, 230, 240, and 245 of the food and nutrition service of United States department of agriculture, when applicable, when a contract is made with a food service management company to manage school food service programs.

(2) During any fiscal year, the amount of reimbursement paid to the board under the agreement for meals served to children in each school shall be in conformance with regulations and appropriations authorized.

(d) Record keeping requirements. Boards shall keep records in accordance with the terms of the agreement entered into with the state board pursuant to subsection (c). (Authorized by K.S.A. 72-5112 *et seq.*; effective, E-74-3, Oct. 5, 1973; effective Jan. 1, 1974; amended, E-74-56, Sept. 30, 1974; amended, E-76-12, Jan. 23, 1975; amended May 1, 1976; amended May 1, 1979.)

**91-26-2.** (Authorized by K.S.A. 1978 Supp.

72-5112 to 72-5124; effective Jan. 1, 1974; revoked May 1, 1979.)

**91-26-3. Reimbursement.** (a) Rates. Boards shall claim reimbursement only for meals and milk, if applicable, served to students enrolled in participating attendance centers at the rate or rates assigned to them in their agreement or such rates as may be subsequently assigned by the state board or United States department of agriculture. Reimbursable meals shall be those which meet the nutritional standards set by the United States department of agriculture.

(b) Reports and claims; dates for filing. Reports and claims shall be made to the state board upon forms provided by the state board. The reports and claims shall be filed on or before the fifth day of each month or as otherwise specified by the state board. Claims received after the tenth of the month shall be processed for payment in the month following.

(c) Disallowance. Payment for claims which are not received during the calendar month immediately following the period being reported may be disallowed.

(d) Verification. All claims for reimbursement shall be verified by the authorized representative to the best of his or her knowledge and belief that the claim is true and correct in all respects, consistent with reports and records on file with the state board, is in accordance with the terms of the existing agreement(s) and payment has not been received. (Authorized by K.S.A. 1978 Supp. 72-5112 to 72-5124; effective Jan. 1, 1974; amended May 1, 1979.)

**91-26-4.** (Authorized by K.S.A. 1978 Supp. 72-5112 to 72-5124; effective Jan. 1, 1974; revoked May 1, 1979.)

**91-26-5. Assistance and donations.** (a) *Assistance.* Any board may request from the state board management and technical assistance to aid in the establishment and operations of child nutrition programs and may request assistance in training of personnel.

(b) *Donations.* Any board may accept donations of food, equipment, money and labor for use in direct connection with any of its food service programs. The acceptance of any donation shall not be interpreted as an obligation to do business with the donor. The acceptance of coupons or premiums for personal use is prohibited. (Authorized by K.S.A. 1978 Supp. 72-5112 to 72-5124; effective Jan. 1, 1974; amended May 1, 1979.)

**91-26-6. Food service equipment assistance.** (a) Eligible and especially needy schools defined.

(1) "Eligible schools" mean schools which draw attendance from areas in which poor economic conditions exist and have no equipment to operate an adequate food service program, as determined by the state board. The eligible school shall pay at least one-fourth (¼) of the equipment costs.

(2) "Especially needy schools" meet the criteria for eligible schools and enroll a high percentage of students as defined by the state plan for school food service, who are eligible for free and reduced price meals. Especially needy schools are eligible to receive one-hundred percent (100%) funding according to guidelines established by the state board.

(b) Authorization of funds.

(1) Funds shall be used only for the purchase of basic equipment enabling schools to prepare and cook or receive hot meals, unless the school can demonstrate to the state board that an alternative method of meal preparation is necessary for the introduction or continuation of the school's food service program.

(2) Allocation of funds shall be made on the basis of the amount of funds apportioned to the state and whether:

(A) the eligible school does not have a food service program;

(B) the eligible school has a food service program but does not have facilities to prepare and cook or receive hot meals;

(C) the eligible school has a food service program and needs replacement, additional, or replacement and additional equipment; or

(D) the eligible school can justify its need for assistance.

(3) Funds shall not be reimbursed for equipment purchased prior to the date of authorization for purchase granted by the state board.

(c) Agreements. The board shall enter into a written and signed agreement on the form provided by the state board.

(d) Transfer of equipment. Equipment no longer used in the original location shall be transferred to another attendance center under jurisdiction of the same board or with state board approval, to another acceptable board participating in a child nutrition program.

(e) Application, authorization, and reimbursement procedures.

(1) The state board shall require boards to

complete an application prior to authorization for purchase. Upon receiving authorization, the board may purchase equipment. After obtaining the authorized equipment, the board may apply for reimbursement.

(2) Application requirements shall include:

(A) the name and address of the board and of each school participating in the food service equipment program;

(B) evidence that the school draws attendance from areas in which poor economic conditions exist;

(C) evidence that the school has no equipment or has grossly inadequate equipment to operate a food service program;

(D) the style, model, quantity, and cost of each equipment item; and

(E) the source of payment.

(3) Authorization procedures shall comply with requirements of subsection (b).

(4) Reimbursement information shall include:

(A) the month and year the equipment was obtained;

(B) the serial number and net cost of each equipment item;

(C) the delivery and installation costs of each equipment item;

(D) a copy of the bill, invoice or other evidence of purchase; and

(E) verification that the equipment has been installed and is operating. (Authorized by K.S.A. 1978 Supp. 72-5112 to 72-5124; effective May 1, 1979.)

#### **Article 27.—STANDARDS AND PROCEDURES FOR ACCREDITING AREA VOCATIONAL-TECHNICAL SCHOOLS AND VOCATIONAL SCHOOLS**

**91-27-1 to 91-27-4.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective, E-76-11, Jan. 23, 1975; effective May 1, 1976; amended May 1, 1979; revoked May 1, 1984.)

**91-27-5.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective, E-76-11, Jan. 23, 1975; effective May 1, 1976; amended Feb. 15, 1977; amended May 1, 1979; revoked May 1, 1984.)

**91-27-6.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective, E-76-11, Jan. 23, 1975; effective May 1, 1976; amended May 1, 1979; revoked May 1, 1984.)

**91-27-7.** (Authorized by K.S.A. 72-7514; ef-

fective, E-76-11, Jan. 23, 1975; effective May 1, 1976; amended May 1, 1979; revoked May 1, 1984.)

**91-27-8.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective, E-76-11, Jan. 23, 1975; effective May 1, 1976; amended May 1, 1979; revoked May 1, 1984.)

**91-27-9.** (Authorized by K.S.A. 72-7514, effective, E-76-11, Jan. 23, 1975; effective May 1, 1976; amended May 1, 1979; revoked May 1, 1984.)

**91-27-10.** (Authorized by K.S.A. 72-7514, K.S.A. 1978 Supp. 72-7513; effective, E-76-11, Jan. 23, 1975; effective May 1, 1976; amended May 1, 1979; revoked May 1, 1984.)

**91-27-11.** (Authorized by K.S.A. 72-7514, 72-7513; effective Jan. 23, 1975; revoked May 1, 1979.)

#### **Article 28.—STANDARDS AND PROCEDURES FOR ACCREDITING SPECIAL PURPOSE SCHOOLS C1310**

**91-28-1 to 91-28-10.** (Authorized by K.S.A. 1978 Supp. 72-963; effective Feb. 15, 1977; amended May 1, 1979; revoked May 1, 1984.)

**91-28-11.** (Authorized by K.S.A. 72-963; effective Feb. 15, 1977; revoked May 1, 1979.)

#### **Article 29.—PROCEDURES FOR EMPLOYEES OF THE KANSAS STATE SCHOOLS FOR THE DEAF AND VISUALLY HANDICAPPED TO PARTICIPATE IN TAX SHELTERED ANNUITIES**

**91-29-1. Tax sheltered annuity program.** A program and the procedures for the purchase of voluntary tax sheltered annuities shall be established for the eligible employees of the Kansas state school for the deaf and the Kansas state school for the visually handicapped. (Authorized by K.S.A. 76-11a03; effective, E-78-6, Jan. 20, 1977; amended, E-78-11, March 24, 1977; effective May 1, 1978.)

**91-29-2. Definitions.** The terms “compensation” and “employee” shall have the same meanings as found in K.S.A. 1975 Supp. 74-4932 and the statutory references contained therein. “State board” shall mean the Kansas state board of education. (Authorized by K.S.A. 76-11a03; effective,

E-78-6, Jan. 20, 1977; amended, E-78-11, March 24, 1977; effective May 1, 1978.)

**91-29-3. Maximum reduction; contracts.** (a) The maximum amount of reduction in compensation to be contributed by each participating employee to a tax sheltered annuity shall be as limited by the provisions of the U.S. internal revenue code of 1954, as amended. Such tax sheltered annuities shall be purchased by contract by the state board for those employees who voluntarily reduce their salaries to provide the funds with which to purchase such annuities.

(b) The state board may contract with:

(1) Any company, firm, association, corporation or financial institution, hereinafter called “company,” authorized to do business in this state that issues an approved annuity contract. An approved annuity contract shall meet the provisions of the U.S. internal revenue code of 1954, as amended, and shall qualify by reason of a determination letter provided by the internal revenue service. The determination letter and a specimen annuity contract shall be filed with the state board of education and division of accounts and reports, department of administration.

(2) Any life insurance company organized and operated, without profit to any private shareholder or individual, exclusively for the purpose of aiding and strengthening educational institutions by issuing insurance and annuity contracts only to or for the benefit of such institutions and individuals engaged in the services of such institutions, whether or not such company be authorized to do business in Kansas. No premium tax or income tax shall be due or payable on such annuity contract or contracts for such retirement programs issued by a company such as described in this paragraph, except that neither the purchase nor the issuance of such retirement annuities from or by such a company shall constitute the effecting of a contract of insurance.

(c) Any company mutually entering into a contract with state board shall provide its official name and address to which remittances shall be forwarded. Any such contractual arrangement shall be only for the purpose of meeting the requirements of the company and shall not be considered as any type of endorsement of it. The Kansas commissioner of education is hereby authorized to execute such contracts on behalf of the state board. (Authorized by K.S.A. 76-11a03; effective, E-78-6, Jan. 20, 1977; amended, E-78-11, Mar. 24, 1977; effective May 1, 1978.)

**91-29-4. Approval of applications.** The chief fiscal officers or their designees of the state schools for the deaf and the visually handicapped may, on behalf of the state board, approve the applications and any other legal documents of their respective employees as may from time to time be required to carry into effect the voluntary tax sheltered annuity program. (Authorized by K.S.A. 76-11a03; effective, E-78-6, Jan. 20, 1977; amended, E-78-11, March 24, 1977; effective May 1, 1978.)

**91-29-5. Fixed or variable annuities.** Tax sheltered annuity contracts shall provide for the purchase of either fixed or variable annuities or a combination thereof. Such contracts shall comply with sections 401(g) and 403(b) of the U.S. internal revenue code of 1954, as amended. (Authorized by K.S.A. 76-11a03; effective, E-78-6, Jan. 20, 1977; amended, E-78-11, March 24, 1977; effective May 1, 1978.)

**91-29-6. Solicitation limited to two agents of each company.** Any company engaged in the solicitation of voluntary tax sheltered annuity contracts shall file in the office of the chief fiscal officer of each state school to be solicited a list of the names of not more than two (2) of its agents who will solicit business. Solicitation of business by agents other than those listed shall be prohibited. Said list shall be accompanied by a statement signed by a company officer that the agents named are trained and authorized to do business in the state of Kansas in the sale and service of tax sheltered annuities. (Authorized by K.S.A. 76-11a03; effective, E-78-6, Jan. 20, 1977; amended, E-78-11, March 24, 1977; effective May 1, 1978.)

**91-29-7. Participating employee to select company.** It shall be the responsibility of each participating employee to select the company and the type of annuity contract to be purchased on his or her behalf and to evaluate the tax sheltered status provided by such contract. The state board shall not assume such responsibilities. The soliciting companies, through their agents, shall provide for said fiscal officers a maximum reduction allowance calculation for each participating employee.

(Authorized by K.S.A. 76-11a03; effective, E-78-6, Jan. 20, 1977; amended, E-78-11, March 24, 1977; effective May 1, 1978.)

**91-29-8. Uniform contract form.** A uniform salary reduction contract form shall be used at the two state schools to effect the salary reduction and annuity purchase requests of the participating employees. (See K.A.R. 91-29-12) A contract shall be made for a period of at least one (1) year, except that the first contract (after the initiation of this program) may be for the remaining portion of the calendar year. An employee may terminate an existing contract at any time with respect to amounts not yet earned, but shall not make more than one contract with the same employer during a calendar year. (Authorized by K.S.A. 76-11a03; effective, E-78-6, Jan. 20, 1977; amended, E-78-11, March 24, 1977; effective May 1, 1978.)

**91-29-9. Beginning date of tax sheltered annuity program.** The tax sheltered annuity program for the state schools for the deaf and the visually handicapped shall be initiated on the payroll period paid on March 1, 1977. (Authorized by K.S.A. 76-11a03; effective, E-78-6, Jan. 20, 1977; amended, E-78-11, March 24, 1977; effective May 1, 1978.)

**91-29-10. Contract to be completed and signed by participant.** Any contract to reduce salary and to purchase tax sheltered annuities shall be completed and signed by each participant in this program. (Authorized by K.S.A. 76-11a03; effective, E-78-6, Jan. 20, 1977; amended, E-78-11, March 24, 1977; effective May 1, 1978.)

**91-29-11. Employee limited to one company; exception.** No participating employee shall select more than one (1) company for the purchase of tax sheltered annuities except current employees presently enrolled in TIAA/CREF who may select one additional company. (Authorized by K.S.A. 76-11a03; effective, E-78-6, Jan. 20, 1977; amended, E-78-11, March 24, 1977; effective May 1, 1978.)

91-29-12. Contract form; reduction of salary for tax sheltered annuity.

KSDE FORM 01-01-100
91-29-12

STATE OF KANSAS
STATE BOARD OF EDUCATION
Contract to Reduce Salary for Tax Sheltered
Annuity Purposes

TO: Chief Fiscal Officer \_\_\_\_\_
State School \_\_\_\_\_ Location \_\_\_\_\_

Effective with respect to amounts earned on or after the first day of the pay period beginning on \_\_\_\_\_,
(day and month)

19\_\_\_\_, which date is subsequent to the execution of this contract, and pursuant to the provisions of Section 403(b), United
State Internal Revenue Code of 1954, as amended, and as authorized by 1976 S.B. 870, the State Board of Education is hereby
authorized and directed to reduce my future compensation to purchase for me a non-forfeitable annuity or annuities as herein-
after described.

Please place an "X" in the appropriate box or boxes
(Box A is not applicable to non-TIAA/CREF Participants)

- A. Under the required 5%/5% retirement plan for employees—the State Board of Education shall:
1. Reduce my gross compensation by 5% applicable each payday.
2. Pay an identical amount to provide retirement benefits as described in Subsections (1)(a), (1)(b), (1)(c), and (4) of
K.S.A. 74-4925; and
3. Apply said sums to the payment of deposits for a retirement annuity contract selected by me in accordance with the
terms of the required 5%/5% retirement program and issued by TIAA/CREF.
B. Under the voluntary tax-sheltered annuity program—the State Board of Education shall:
1. Reduce my gross compensation by \_\_\_\_% per month for each payday.
2. Apply said sum to deposits for a non-forfeitable retirement annuity contract selected by me and issued by (only one
company can be listed)\_\_\_\_\_

It is further agreed and understood that the State Board of Education assumes no liability or responsibility either for the in-
come tax aspects of these annuity programs or for the annuity policy terms and provisions.

This agreement shall be legally binding and irrevocable as to both of the parties hereto while employment continues; provided,
however, either party may change or terminate this agreement as of the end of any payroll period, so that it will not apply to com-
pensation not yet earned, by giving at least thirty (30) days written notice of the date of said change or termination; and provided,
further, that no more than one agreement for such compensation reduction may be made within any calendar year.

This agreement shall remain in force for the duration of employment, except as changed or terminated within the allowable
provision of this agreement hereinabove stated.

In witness whereof the parties have hereunto set their hands and seals this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

ACCEPTED FOR THE STATE BOARD OF EDUCATION

by \_\_\_\_\_
(Chief Fiscal Officer) \_\_\_\_\_ (Date) \_\_\_\_\_ (Employee's Full Name—print or type)
\_\_\_\_\_
(State School) \_\_\_\_\_ (Signature of Employee) \_\_\_\_\_ (Date)

(To be completed by agency)

Table with 9 columns: Agency No., Dept., Soc. Sec. No., NAME (Last, First, Initial), Vol. TSA Eff. Date, Voluntary TSA (Co. Code, %)

(Authorized by K.S.A. 76-11a03; effective, E-78-6, Jan. 20, 1977; amended, E-78-11, March 24, 1977;
effective May 1, 1978.)

**Article 30.—ACCREDITATION**

**91-30-1.** (Authorized by K.S.A. 72-7514, K.S.A. 72-7513; effective May 1, 1979; revoked May 1, 1983.)

**91-30-2.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-7513; effective May 1, 1979; amended May 1, 1981; revoked May 1, 1983.)

**91-30-3.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-7513; effective May 1, 1979; amended May 1, 1982; revoked May 1, 1983.)

**91-30-4 and 91-30-5.** (Authorized by K.S.A. 72-7514, 72-7513; effective May 1, 1979; revoked May 1, 1983.)

**91-30-6.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-7513; effective May 1, 1979; modified, L. 1981, ch. 427, May 1, 1981; revoked May 1, 1983.)

**91-30-7.** (Authorized by K.S.A. 72-7514, K.S.A. 72-7513; effective May 1, 1979; revoked May 1, 1983.)

**91-30-8.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-7513; effective May 1, 1979; amended May 1, 1982; revoked May 1, 1983.)

**91-30-9.** (Authorized by K.S.A. 72-7514, K.S.A. 72-7513; effective May 1, 1979; revoked May 1, 1983.)

**91-30-10.** (Authorized by K.S.A. 72-7513, 72-7514; effective May 1, 1979; amended May 1, 1980; revoked May 1, 1983.)

**91-30-11.** (Authorized by K.S.A. 72-7514, K.S.A. 72-7513; effective May 1, 1979; revoked May 1, 1983.)

**91-30-12.** (Authorized by K.S.A. 72-7513, K.S.A. 72-7514; effective May 1, 1979; revoked May 1, 1981.)

**91-30-12a and 91-30-12b.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-7513; effective May 1, 1981; revoked May 1, 1983.)

**91-30-12c.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-7513; effective May 1, 1981; amended May 1, 1982; revoked May 1, 1983.)

**91-30-12d.** (Authorized by K.S.A. 71-7514; implementing K.S.A. 72-7513; effective May 1, 1981; revoked May 1, 1983.)

**91-30-12e.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-7513; effective May 1, 1981; modified, 1981 SCR No. 1613, May 1, 1981; revoked May 1, 1983.)

**91-30-12f to 91-30-12h.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-7513; effective May 1, 1982; revoked May 1, 1983.)

**91-30-13.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-7513; effective May 1, 1981; revoked May 1, 1983.)

**91-30-14.** (Authorized by K.S.A. 72-7513, 72-7514; effective May 1, 1979; amended May 1, 1980; revoked May 1, 1981.)

**91-30-14a.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-7513; effective May 1, 1981; amended May 1, 1982; revoked May 1, 1983.)

**91-30-14b.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-7513; effective May 1, 1981; revoked May 1, 1983.)

**91-30-14c.** (Authorized by K.S.A. 72-7514; implementing K.S.A. 72-7513; effective May 1, 1981; amended May 1, 1982; revoked May 1, 1983.)

**91-30-15.** (Authorized by K.S.A. 72-7514, K.S.A. 72-7513; effective May 1, 1979; revoked May 1, 1983.)

**Article 31.—ACCREDITATION**

**91-31-1. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended July 1, 1989; revoked June 30, 1997.)

**91-31-2. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended May 1, 1985; amended May 1, 1987; amended July 1, 1989; revoked June 30, 1997.)

**91-31-3. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution and K.S.A. 1988 Supp. 72-1117; effective May 1, 1983; amended Nov. 10, 1987; amended Oct. 30, 1989; revoked June 30, 1997.)

**91-31-4. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended (temporary) July 12, 1985; (permanent) May 1, 1986; amended May 1, 1987; revoked June 30, 1997.)

**91-31-4a. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Oct. 30, 1989; revoked June 30, 1997.)

**91-31-5. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended May 1, 1988; revoked June 30, 1997.)

**91-31-6. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended May 1, 1987; amended May 1, 1988; revoked June 30, 1997.)

**91-31-7. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended May 1, 1987; amended July 1, 1989; amended July 1, 1991; revoked June 30, 1997.)

**91-31-8. This regulation shall be revoked on June 30, 1997.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; revoked June 30, 1997.)

**91-31-9. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended May 1, 1988; revoked June 30, 1997.)

**91-31-10. This regulation shall be revoked on June 30, 1997.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; revoked June 30, 1997.)

**91-31-11.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended May 1, 1988; revoked Oct. 30, 1989.)

**91-31-12a. This regulation shall be revoked on June 30, 1997.** (Authorized by and

implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended July 12, 1985; amended May 1, 1987; amended July 1, 1989; revoked June 30, 1997.)

**91-31-12b. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked June 30, 1997.)

**91-31-12c. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended May 1, 1988; revoked June 30, 1997.)

**91-31-12d. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended May 1, 1988; revoked June 30, 1997.)

**91-31-12e. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended May 1, 1987; amended May 1, 1988; revoked June 30, 1997.)

**91-31-12f. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended May 1, 1988; revoked June 30, 1997.)

**91-31-12g. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended May 1, 1987; amended May 1, 1988; revoked June 30, 1997.)

**91-31-12h. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution and K.S.A. 1988 Supp. 72-1117; effective May 1, 1983; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended Oct. 30, 1989; revoked June 30, 1997.)

**91-31-13. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kan-

sas Constitution; effective May 1, 1983; amended June 12, 1985; amended May 1, 1987; amended July 1, 1989; revoked June 30, 1997.)

**91-31-14.** This regulation shall be revoked on June 30, 1997. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 1989; revoked June 30, 1997.)

**91-31-14a.** This regulation shall be revoked on June 30, 1997. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended July 12, 1985; amended May 1, 1987; amended July 1, 1989; revoked June 30, 1997.)

**91-31-14b.** This regulation shall be revoked on June 30, 1997. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended May 1, 1988; revoked June 30, 1997.)

**91-31-14c.** This regulation shall be revoked on June 30, 1997. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended May 1, 1985; amended May 1, 1987; revoked June 30, 1997.)

**91-31-15.** This regulation shall be revoked on June 30, 1997. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1983; amended May 1, 1987; revoked June 30, 1997.)

**91-31-16.** This regulation shall be revoked on and after June 30, 2005. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Dec. 27, 1996; amended Aug. 27, 1999; revoked June 30, 2005.)

**91-31-17.** This regulation shall be revoked on and after June 30, 2005. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Dec. 27, 1996; revoked June 30, 2005.)

**91-31-18.** This regulation shall be revoked on and after June 30, 2005. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Dec. 27, 1996; amended Aug. 27, 1999; revoked June 30, 2005.)

**91-31-19.** This regulation shall be revoked on and after June 30, 2005. (Authorized

by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Dec. 27, 1996; amended Sept. 24, 1999; revoked June 30, 2005.)

**91-31-20.** This regulation shall be revoked on and after June 30, 2005. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Dec. 27, 1996; revoked June 30, 2005.)

**91-31-21.** This regulation shall be revoked on and after June 30, 2005. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Dec. 27, 1996; revoked June 30, 2005.)

**91-31-22.** This regulation shall be revoked on and after June 30, 2005. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Dec. 27, 1996; revoked June 30, 2005.)

**91-31-23.** This regulation shall be revoked on and after June 30, 2005. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Dec. 27, 1996; revoked June 30, 2005.)

**91-31-24.** This regulation shall be revoked on and after June 30, 2005. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Dec. 27, 1996; amended Aug. 27, 1999; revoked June 30, 2005.)

**91-31-25.** This regulation shall be revoked on and after June 30, 2005. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Dec. 27, 1996; revoked June 30, 2005.)

**91-31-26.** This regulation shall be revoked on and after June 30, 2005. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Dec. 27, 1996; revoked June 30, 2005.)

**91-31-27.** This regulation shall be revoked on and after June 30, 2005. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Dec. 27, 1996; revoked June 30, 2005.)

**91-31-28.** This regulation shall be revoked on and after June 30, 2005. (Authorized by and implementing Article 6, Section 2(a) of the

Kansas Constitution; effective Dec. 27, 1996; revoked June 30, 2005.)

**91-31-29. This regulation shall be revoked on and after June 30, 2005.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Dec. 27, 1996; revoked June 30, 2005.)

**91-31-30. This regulation shall be revoked on and after June 30, 2005.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Dec. 27, 1996; revoked June 30, 2005.)

**91-31-31. 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) "Accreditation" means the process of documenting that an education system meets requirements established by the state board.

(b) "Accreditation cycle" means the period of time from the beginning of the needs assessment to the point at which the state board grants an accreditation rating to an education system.

(c) "Accreditation rating" means the status granted by the state board upon recommendation of the accreditation review council.

(d) "Accreditation review council" means the body of education professionals charged with providing a recommendation of accreditation rating to the state board at the end of each accreditation cycle.

(e) "Accreditation year" means the final year, or step, of an education system's accreditation cycle.

(f) "Accredited" means the status assigned to an education system that meets the following conditions established by the state board:

(1) The education system is in good standing.

(2) The education system provides conclusive evidence of improvement in student performance.

(3) The education system provides conclusive evidence of a process of continuous improvement.

(g) "Area for improvement" means the specific issue to be corrected, as determined by the accreditation review council, that an education system shall complete in order to improve the education system's accreditation rating.

(h) "Chief administrative officer" means the person hired by a governing body to lead the work of achieving the education system's mission and to oversee all aspects of the operation of the education system.

(i) "Commissioner" means commissioner of education.

(j) "Conclusive evidence" means data that is sufficient to the accreditation review council to justify its recommendation of accredited to the state board.

(k) "Conditionally accredited" means the status assigned to any of the following:

(1) A new education system seeking accreditation;

(2) an education system seeking accreditation after one or more years of not seeking accreditation; or

(3) an education system about which both of the following are true:

(A) The education system is in good standing; and

(B) the education system provides neither conclusive evidence of growth in student performance nor conclusive evidence of a process of continuous improvement.

(l) "Corrective action plan" means the set of actions developed by an education system in response to areas for improvement identified by the accreditation review council.

(m) "Credit" means formal acknowledgment by an education system's governing body for criteria-based accomplishment. In Kansas K-12 education, this term is usually expressed as a number of units of credit.

(n) "Curriculum standards" means statements adopted by the state board specifying what students should know and be able to demonstrate in specific content areas.

(o) "Education system" means a Kansas unified school district, the Kansas state school for the blind, the Kansas school for the deaf, an organized body of non-public schools, or an independent private school.

(p) "Education system leadership team" means the group of education system employees that leads the education system's work toward an accreditation rating during an accreditation cycle.

(q) "Education system site council" means the group of people from outside of the education system from whom the education system leadership team receives input related to the education system's work toward an accreditation rating during an accreditation cycle.

(r) "Final analysis" means the process of reviewing education system-level data at the end of an accreditation cycle.

(s) "Foundational structures" means programs, models, or practices prerequisite to receiving an

accreditation rating of “accredited” from the state board.

(t) “Framework” means a defined set of practices that together encompass the work that education systems do to prepare successful Kansas high school graduates.

(u) “Goal area” means one area of performance selected by an education system for specific focus during its accreditation cycle.

(v) “Governing body” means either of the following:

(1) The board of education of any public education system; or

(2) the decision-making authority of any private education system.

(w) “Independent private school” means a non-public school that, for accreditation purposes, is not affiliated with other non-public schools.

(x) “In good standing” means in compliance with, or working with the state board to achieve compliance with, all applicable federal and state statutes and regulations.

(y) “Kansas assessment program” means the evaluation that the state board conducts in order to measure student learning within the Kansas curriculum standards.

(z) “Kansas education systems accreditation” and “KESA” mean the Kansas model for the accreditation of education systems that offer any grades kindergarten through grade 12.

(aa) “Needs assessment” means a systematic process of scoring state board-approved rubrics and examining current data supporting KESA results for the purpose of determining needs or gaps between current conditions and desired conditions.

(bb) “Not accredited” means the status assigned to an education system that is described by either of the following:

(1) Is not in good standing; or

(2) fails to provide conclusive evidence of either improvement in student performance or a process of continuous improvement.

(cc) “On-site visit” means a visit at an education system by either the education system’s outside visitation team or its state technical assistance team.

(dd) “Outside visitation team” means a group of trained education professionals selected by an education system to collaborate with the education system in a coaching or mentoring role, supporting the education system for the duration of an accreditation cycle.

(ee) “Outside visitation team chair” means the member of the outside visitation team who has been specifically trained and appointed to act as the leader of the group for the duration of an accreditation cycle.

(ff) “Private education system” means either of the following:

(1) An organized body of non-public schools; or

(2) an independent private school.

(gg) “Public education system” means any of the following:

(1) A Kansas unified school district;

(2) the Kansas state school for the blind; or

(3) the Kansas school for the deaf.

(hh) “Qualified admissions” means the set of criteria allowing a high school graduate guaranteed admission into Kansas public universities.

(ii) “School” means an organizational unit that provides educational services in a logical sequence of elements that may be structured as grade levels, developmental levels, or instructional levels.

(jj) “School leadership team” means the group of employees of a school leading that school’s work toward an accreditation rating during an accreditation cycle.

(kk) “School site council” means the group of people not employed by the school with whom the school leadership team consults.

(ll) “State board” means the Kansas state board of education.

(mm) “State board-approved rubrics” means the methods used by an education system during the needs assessment to evaluate the education system’s current condition.

(nn) “State technical assistance team” means a group of persons appointed by the commissioner to assist “not accredited” public education systems in achieving an upgraded status.

(oo) “Successful Kansas high school graduate” means a high school graduate who has the academic preparation, cognitive preparation, technical skills, employability skills, and civic engagement to be successful in postsecondary education, in the attainment of an industry-recognized certification, or in the workforce, without the need for remediation.

(pp) “Unit” means the number or amount, expressed in fractions or decimals, of credit assigned to a specific achievement. A full unit is credit that is awarded for the successful demonstration of competency and knowledge of a content area. (Authorized by and implementing Article

6, Section 2(a) of the Kansas Constitution and K.S.A. 2020 Supp. 72-5170; effective July 1, 2005; amended Oct. 8, 2021.)

**91-31-32. Kansas education systems accreditation.** (a) The Kansas accreditation model shall be the Kansas education systems accreditation model.

(b) An education system's accreditation status may be changed by the state board at any time in accordance with K.A.R. 91-31-37 or K.A.R. 91-31-40, or both.

(c) Each school that held an accreditation rating from the state board on June 30, 2017 shall retain that accreditation rating subject to subsection (b) and demonstrated engagement in the Kansas education systems accreditation process, until that accreditation rating is superseded by the first accreditation rating granted under Kansas education systems accreditation.

(d) Each public education system shall participate in the Kansas education systems accreditation process.

(e) Except as authorized by K.A.R. 91-31-42, each private education system that voluntarily participates in the Kansas education systems accreditation process shall be subject to all requirements of the Kansas education systems accreditation process.

(f) Before an education system shall be considered for an accreditation rating above "not accredited," the education system shall be in good standing.

(g) Each education system seeking accreditation shall meet the following requirements:

(1) Participate in the Kansas assessment program as directed by the state board;

(2) have in place a method of data collection approved by the state board for collecting kindergarten-entry data;

(3) have in place a state board-approved individual plan of study program for each student. The program shall begin for all students by grade eight and continue through high school graduation;

(4) have in place a method of assessing all students' social-emotional growth;

(5) provide evidence that the foundational structures for each accreditation cycle are in place;

(6) offer curricula that allow students to meet the requirements of the state scholarship program;

(7) offer subjects and areas of instruction approved by the state board that provide each stu-

dent with the opportunity to achieve at least the capacities listed in K.S.A. 72-3218, and amendments thereto; and

(8) document the existence, membership, training, and meetings of school site councils, education system site councils, and education system leadership teams.

(h) Each education system shall be granted its accreditation rating following completion of the accreditation cycle. A new accreditation cycle shall begin after the state board grants the new accreditation rating, with the length of the accreditation cycle determined by the state board. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution and K.S.A. 72-3218; effective July 1, 2005; amended Jan. 10, 2014; amended Dec. 9, 2016; amended Oct. 8, 2021.)

**91-31-33. Data submission.** Each education system participating in the Kansas education systems accreditation shall provide any data requested by the state board. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2005; amended Oct. 8, 2021.)

**91-31-34. Governing body requirements.**

(a) General. Each governing body shall ensure that its education system meets the requirements of this regulation.

(b) Staff.

(1) Except as otherwise provided in this subsection, in filling positions for which a license or certificate is issued by the state board, each education system shall employ persons who hold licenses or certificates with specific endorsements for the positions held.

(2) If a teacher holding an appropriate license or certificate is not available, the education system shall use a substitute teacher holding a valid Kansas teacher or administrator license or certificate at any level or in any field or subject. An education system shall not allow any person holding a Kansas teaching license or certificate to substitute teach for more than 140 days in the same assignment.

(3) If a substitute teacher holding a valid Kansas teacher or administrator license or certificate is not available, the education system shall use a substitute teacher holding a valid Kansas substitute teaching license or certificate. An education system shall not allow a person holding a substitute teaching license or certificate to teach for more than 90 days in the same assignment.

(4) If a substitute teacher holding a valid Kansas substitute teaching license is not available, the education system shall use a person who holds a baccalaureate degree and an emergency substitute teaching license or certificate. An education system shall not allow a person who holds a baccalaureate degree and an emergency substitute teaching license or certificate to teach for more than 45 days in the same assignment.

(5)(A) If a person holding a baccalaureate degree and an emergency substitute teaching license is not available, the education system shall use a person who has been licensed or certified by the state board as an emergency substitute teacher. An education system shall not allow any person who does not hold a baccalaureate degree to teach for more than 25 days in the same assignment or more than 75 days in a semester.

(B) If a governing body documents that there is an insufficient supply of substitute teachers, the governing body may appeal to the commissioner for authority to allow individuals holding an emergency substitute teaching license or certificate to continue to teach for an additional length of time.

(6) Each education system shall report the name of each licensed or certified staff member on the personnel report or the supplemental personnel report required by the state board. Each licensed or certified personnel staff change that occurs between September 15 and the end of the school year shall be reported on a form prescribed by the state board within 30 days after the staff change.

(c) Minimum enrollment. Each education system shall have an enrollment of 10 or more students on September 20 to remain eligible for accreditation.

(d) Credit. Each education system, through the governing body, shall have a written policy specifying that the credit of any pupil transferring from an accredited school or education system shall be accepted.

(e) Records retention. Each education system shall permanently retain each student's records relating to academic performance, attendance, and activities.

(f) Interscholastic athletics.

(1) A governing body shall not allow any student below the sixth-grade level to participate in interscholastic athletics.

(2) A governing body may allow any student at the sixth-grade level or higher to participate in interscholastic athletics.

(3) If a governing body allows students at the sixth-grade level to participate in interscholastic athletics, the governing body shall comply with the guidelines for interscholastic athletics adopted by the state board.

(4) Any governing body may join the Kansas state high school activities association and participate under its rules. Each governing body that does not join that association shall comply with the guidelines for interscholastic athletics adopted by the state board.

(g) Athletic practice.

(1) Any elementary or middle school that includes any of the grades six through nine may conduct athletic practice during the school day only at times when one or more elective academic courses or a study period is offered to students.

(2) The time used for high school athletic practice that is conducted during the school day shall not count toward the statutorily required number of hours or days of instruction. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2005; amended Oct. 8, 2021.)

### **91-31-35. Graduation requirements.** (a)

Each governing body shall adopt a written policy specifying that pupils are eligible for graduation only after completion of at least the following graduation requirements as established by the state board:

(1) Four units of English language arts, which shall include reading, writing, literature, communication, and grammar. The chief administrative officer may waive up to one unit of this requirement if the chief administrative officer determines that a pupil will benefit more by taking another subject;

(2) three units of history and government, which shall include world history; United States history; United States government, including the Constitution of the United States; concepts of economics and geography; and, except as otherwise provided in K.A.R. 91-31-32, a course of instruction in Kansas history and government;

(3) three units of science, which shall include physical, biological, and earth and space science concepts and which shall include at least one unit as a laboratory course;

(4) three units of mathematics, including algebraic and geometric concepts;

(5) one unit of physical education, which shall include health and which may include safety,

first aid, or physiology. This requirement shall be waived if the school district is provided with either of the following:

(A) A statement by a licensed physician that a pupil is mentally or physically incapable of participating in a regular or modified physical education program; or

(B) a statement, signed by a lawful custodian of the pupil, indicating that the requirement is contrary to the religious teachings of the pupil;

(6) one unit of fine arts, which may include art, music, dance, theatre, forensics, and other similar studies selected by the governing body; and

(7) six units of elective courses.

(b) At least 21 units of credit shall be required for graduation.

(c) Any governing body may increase the number of units of credit required for graduation. Any additional requirements of the governing body that increase the number of units of credit required for graduation shall apply to those students who will enter the ninth grade in the school year following the effective date of the additional requirement.

(d) Unless more stringent requirements are specified by existing local policy, the graduation requirements specified in this regulation shall apply to those students who enter the ninth grade in the school year following the effective date of this regulation and to each subsequent class of students. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution, K.S.A. 72-3235, and K.S.A. 2020 Supp. 72-5170; effective July 1, 2005; amended Oct. 8, 2021.)

**91-31-36. Outside visitation teams.** (a) Each education system shall select an outside visitation team, which shall be approved by the education system's governing body. The outside visitation team's composition and number of members shall be determined by the education system leadership team according to guidelines established by the state board.

(b) Each member of an outside visitation team shall receive specific training determined by the state board. Each person serving as an outside visitation team chair shall attend additional, specific training to be determined by the state board.

(c) One meeting between the outside visitation team and the education system leadership team shall occur during each year of the accreditation cycle. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2005; amended Oct. 8, 2021.)

**91-31-37. Accreditation recommendation and appeal.** (a) Upon completion of the accreditation process during or before the education system's originally scheduled accreditation year, a recommendation from the accreditation review council regarding the accreditation rating to be assigned to the education system shall be communicated to the education system. Each recommendation shall include a statement of the reasons for the recommendation.

(b) The education system's governing body may file an appeal with the commissioner within 15 days after receipt of the recommendation. The education system's governing body may raise any issue and present any additional information that is relevant to its appeal.

(c) If the governing body files an appeal, a consultation shall be ordered by the commissioner and shall be conducted by an appeal team appointed by the commissioner.

(1) If there is agreement on the recommendation following the appeal, the appeal team shall forward the accreditation recommendation to the commissioner for submission to the state board.

(2) If there is not agreement on a recommendation following the appeal, the appeal team shall request the commissioner to appoint a hearing officer to conduct a hearing and forward an accreditation recommendation to the state board.

(d) Each recommendation for an accreditation rating shall be acted upon by the state board. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2005; amended Oct. 8, 2021.)

**91-31-38. Accreditation rating.** (a) Each education system shall be classified as one of the following:

- (1) Accredited;
- (2) conditionally accredited; or
- (3) not accredited.

(b) Each unaccredited education system that seeks accreditation shall receive an accreditation rating of "conditionally accredited" until the education system's accreditation rating is determined using the criteria prescribed in K.A.R. 91-31-32.

(c) If an education system receives an accreditation rating of "conditionally accredited," the accreditation review council shall notify the education system of specific areas for improvement and any other corrective action that shall be addressed.

(1) To change the education system's accreditation rating to "accredited," the education sys-

tem shall develop and implement a corrective action plan approved by the accreditation review council.

(2) Upon satisfaction of the requirements of the corrective action plan and any other required corrective actions, the education system's accreditation rating may be upgraded to "accredited."

(3) If the requirements of the corrective action plan and any other required corrective actions are not met by the deadline established by the accreditation review council, the education system's accreditation rating may be downgraded to "not accredited."

(d) If a public education system receives an accreditation rating of "not accredited," that education system shall be assigned a state technical assistance team to guide it in achieving an upgraded accreditation rating. The state technical assistance team shall be appointed by the commissioner and take the place of the outside visitation team. The state technical assistance team shall provide guidance to the education system in achieving appropriate corrective action. The state technical assistance team shall remain assigned to the education system until it attains an accreditation rating of at least "conditionally accredited" through action of the state board.

(e) If a public education system retains the accreditation rating of "not accredited" after state technical assistance has been in place for one year, sanctions may be applied as determined by the state board under K.A.R. 91-31-40.

(f) An accreditation rating of "not accredited" for a private education system shall remain in effect until that education system demonstrates satisfactory achievement of all corrective actions required for an upgraded accreditation rating and until the state board grants the upgraded accreditation rating. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2005; amended Oct. 8, 2021.)

**91-31-39.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2005; revoked Oct. 8, 2021.)

**91-31-40. Sanctions.** (a) Sanctions may be applied by the state board to a public education system in response to any of the following circumstances:

The public education system's accreditation rating of "not accredited"; the public education system's failure to move from "not accredited" to

"conditionally accredited" after state technical assistance has been in place for one year; or

(3) failure to remain in good standing.

(b) One or more of the following sanctions may be applied in response to any of the circumstances specified in subsection (a):

(1) A recommendation that public education system personnel or resources be reassigned or reallocated within the public education system by the governing body;

(2) a recommendation that the public education system be assigned a state technical assistance team to assist the education system until it achieves an upgraded accreditation rating;

(3) a recommendation to the legislature that it approve a reduction in state funding to the public education system by an amount that will be added to the local property tax imposed by the governing body;

(4) a recommendation that the legislature abolish or restructure the public education system; or

(5) a letter of notification and a press release announcing the public education system's accreditation rating and specifying each reason for that accreditation rating. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2005; amended Oct. 8, 2021.)

**91-31-41. Public disclosure.** Each education system participating in KESA shall at all times provide, on the home page of the education system's official web site, a link to the KSDE report card. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution, K.S.A. 2020 Supp. 72-1181, and K.S.A. 2020 Supp. 72-5170; effective July 1, 2005; amended Oct. 8, 2021.)

**91-31-42. Waiver.** (a) Any education system may request a waiver from one or more accreditation requirements imposed by the state board. Each request for a waiver shall meet the following requirements:

(1) The education system shall submit the request, in writing, to the commissioner.

(2) The chief administrative officer of the education system shall sign the request. If the request is made by a public education system, both the superintendent and the president of the governing body shall sign the request.

(3) In the request, the education system shall state each specific requirement for which the ed-

education system is requesting a waiver and shall indicate how the granting of the waiver would enhance improvement in the education system.

(b) Within 30 days after the receipt of a request for a waiver, a recommendation shall be made by the commissioner to the state board either to grant or to deny the request. The commissioner may consider information in addition to that which is provided in the request.

(c) The request and the recommendation from the commissioner shall be considered by the state board, and the final decision on whether to grant or deny the request shall be made by the state board. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution and K.S.A. 2019 Supp. 72-5170; effective July 1, 2005; amended Oct. 8, 2021.)

**91-31-43. Child abuse and neglect mandated reporter training.** Each accredited education system shall develop and implement written policies for annual child abuse and neglect mandated reporter training of all employees. The training shall address child abuse and neglect reporting requirements when any individual has reason to suspect that a student attending the accredited education system has been harmed as a result of physical, mental, or emotional abuse or neglect or sexual abuse. Each accredited education system shall maintain documentation that each employee has met the annual training requirement. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution and K.S.A. 2019 Supp. 72-5170; effective Oct. 8, 2021.)

#### Article 32.—REGULATIONS FOR ACCREDITING AREA VOCATIONAL- TECHNICAL SCHOOLS AND AREA VOCATIONAL SCHOOLS

**91-32-1 through 91-32-9.** (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1984; revoked Nov. 15, 2002.)

#### Article 33.—ACCREDITING SPECIAL PURPOSE SCHOOLS

**91-33-1. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1984; amended May 1, 1988; amended July 1, 1989; revoked June 30, 1997.)

**91-33-2. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1984; amended May 1, 1988; revoked June 30, 1997.)

**91-33-3. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution and K.S.A. 1988 Supp. 72-1117; effective May 1, 1984; amended Nov. 10, 1987; amended Oct. 30, 1989; revoked June 30, 1997.)

**91-33-4. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1984; amended May 1, 1988; revoked June 30, 1997.)

**91-33-5. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1984; amended May 1, 1988; amended July 1, 1989; revoked June 30, 1997.)

**91-33-6. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1984; amended May 1, 1988; revoked June 30, 1997.)

**91-33-7. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1984; amended May 1, 1988; revoked June 30, 1997.)

**91-33-8. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution and K.S.A. 1988 Supp. 72-1117; effective May 1, 1984; amended May 1, 1985; amended May 1, 1988; amended Oct. 30, 1989; revoked June 30, 1997.)

**91-33-9.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1984; amended May 1, 1988; revoked Oct. 30, 1989.)

#### Article 34.—REGULATIONS FOR ACCREDITING YOUTH CENTER SCHOOLS

**91-34-1. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1984; amended May 1, 1988; revoked Oct. 30, 1989.)

menting Article 6, Section 2(a) of the Kansas Constitution; effective Nov. 10, 1987; amended July 1, 1989; revoked June 30, 1997.)

**91-34-2. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Nov. 10, 1987; amended July 1, 1989; revoked June 30, 1997.)

**91-34-3. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Nov. 10, 1987; amended July 1, 1989; revoked June 30, 1997.)

**91-34-4. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2 (a) of the Kansas Constitution; effective Nov. 9, 1987; revoked June 30, 1997.)

**91-34-5. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Nov. 9, 1987; revoked June 30, 1997.)

**91-34-6.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Nov. 10, 1987; revoked Oct. 30, 1989.)

**91-34-7. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution and K.S.A. 1988 Supp. 72-1117; effective Nov. 10, 1987; amended Oct. 30, 1989; revoked June 30, 1997.)

**91-34-8. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Nov. 9, 1987; revoked June 30, 1997.)

**91-34-9. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Nov. 9, 1987; revoked June 30, 1997.)

**91-34-10. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Nov. 9, 1987; revoked June 30, 1997.)

**91-34-11. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Nov. 9, 1987; revoked June 30, 1997.)

**91-34-12. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Nov. 9, 1987; revoked June 30, 1997.)

**91-34-13. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution and K.S.A. 1988 Supp. 72-1117; effective Nov. 10, 1987; amended Oct. 30, 1989; revoked June 30, 1997.)

**91-34-14. This regulation shall be revoked on June 30, 1997.** (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Nov. 9, 1987; revoked June 30, 1997.)

#### Article 35.—EDUCATIONAL EXCELLENCE GRANT PROGRAM

**91-35-1 through 91-35-4.** (Authorized by and implementing K.S.A. 1990 Supp. 72-9903; effective Aug. 5, 1991; revoked March 18, 2005.)

#### Article 37.—PARENTS AS TEACHERS GRANTS

**91-37-1. Definitions.** (a) “Board” means the board of education of any school district.

(b) “Infant” and “toddler” means a child who has not attained the age of three years.

(c) “Parent education program grant” means an award of state money to a school district for the development and operation of a program to provide expectant parents and parents of infants or toddlers, or both, with information, advice, assistance, resource materials, guidance and learning experiences regarding such measures as parenting skills and the various styles of parenting; the processes and principles of growth and development of children; home learning activities designed for infants and toddlers; techniques emphasizing a positive approach to discipline; effective methods of communicating and interacting with children to foster the development of self-esteem; strategies for structuring behavioral limits and increasing mutual positive regard; and other elements of effective

parenting that are conducive to the structuring of a home environment in which children are encouraged to be successful and productive learners.

(d) "School district" means any public school district organized and operating under the laws of the state.

(e) "State board" means the state board of education. (Authorized by K.S.A. 1990 Supp. 72-3605; implementing K.S.A. 1990 Supp. 72-3604; effective Aug. 5, 1991.)

**91-37-2. Parent education program grant application.** (a) Any board seeking a parent education program grant shall submit an application to the state board. Each application shall include the following information:

(1) The name and number of the district or, if the application is being made by a consortium of districts, the name of the interlocal agency or school district which will receive grant funds and administer the program and a listing of participating districts;

(2) the mailing address and phone number of the district or interlocal agency administering the grant;

(3) the name and signature of the superintendent or interlocal agency director; and

(4) the name, title, address, phone number and signature of the person who will be responsible for directing the program for the district or interlocal agency.

(b) Applications shall be submitted to the state board by the date specified on the application form. (Authorized by K.S.A. 72-3605; implementing K.S.A. 72-3604; effective Aug. 5, 1991; amended May 25, 2001.)

**91-37-3. Parent education program plan.**

(a) Each board applying for a parent education program grant shall submit a parent education program plan to the state board with the application required by K.A.R. 91-37-2. The plan shall include the following information:

(1) An abstract;

(2) a general description of the program;

(3) proposed program outcomes;

(4) proposed program activities;

(5) a method for evaluation of the program; and

(6) a budget.

(b) The abstract shall provide the following information:

(1) The name and the number of the applying district or interlocal agency; and

(2) the name, address, and phone number of the contact person for the program.

(c) The general description shall include the following information:

(1) The specific needs that have been identified and an indication of how the proposed plan addresses those needs;

(2) an overview of the proposed program;

(3) specific plans for recruiting parents to the program; and

(4) the manner in which the proposed program coordinates with existing programs in the district or districts.

(d) The program outcomes shall indicate the general outcome that is expected to be accomplished by implementation of the proposed plan during the first year. Also, specific measurable outcomes, written in product-oriented terms, shall be stated for the program after three to five years of operation.

(e) Program activities shall be stated in brief, descriptive terms. Each activity that is to be conducted to implement the plan shall be described.

(f) The evaluation section shall indicate the process by which implementation will be documented and the method by which achievement of program outcomes will be assessed.

(g) The budget section shall indicate, in detail, how state and local funds are to be spent. (Authorized by K.S.A. 72-3605; implementing K.S.A. 72-3604; effective Aug. 5, 1991; amended May 25, 2001.)

**91-37-4. Parent education program reports.**

(a) Each board that is awarded a parent education program grant shall submit a statistical and financial mid-year report to the state board that shall include information from July 1 through December 1. Each such report shall include the following information:

(1) The date services began;

(2) the number of families and children participating;

(3) a description of progress made toward accomplishing intended outcomes;

(4) an indication of any problems with the program; and

(5) an itemized statement of expenditures of state and local funds.

(b) Mid-year reports shall be submitted to the state board by the date specified on the mid-year report form.

(c) Each board that is awarded a parent education program grant shall submit a statistical

and financial end-of-the-year report that shall include information from the preceding July 1 to the state board. This report shall contain the following information:

(1) The information required for the mid-year report;

(2) an evaluation of the program's effectiveness as indicated by a parent satisfaction survey;

(3) the results of the evaluation of the program; and

(4) an itemized statement of expenditures of state and local funds.

(d) End-of-the-year reports shall be submitted to the state board by the date specified on the end-of-the-year report form.

(e) Each board awarded a parent education program grant shall submit any other reports that are requested by the state board. (Authorized by K.S.A. 72-3605; implementing K.S.A. 72-3604; effective Aug. 5, 1991; amended May 25, 2001.)

### Article 38.—SCHOOL BUS TRANSPORTATION

**91-38-1. Definitions.** (a) "Activity bus" means any bus utilized by a governing body only to transport students to and from school activities as authorized by K.S.A. 72-8301 (c)(3), and amendments thereto. An activity bus may be a color other than school bus yellow.

(b) "Bus" means any motor vehicle that is designed for transporting more than 10 passengers in addition to the driver.

(c) "Driver-trainer" means any person who is assigned by a transportation supervisor to provide instruction and training to other school transportation providers, including knowledge of vehicles used to provide student transportation, safe driving practices, emergency procedures, and passenger control. The driver-trainer shall maintain current licensure to operate the largest vehicle about which the driver-trainer is to provide instruction and shall have experience as a school bus driver.

(d) "Governing body" means the local board of education or other entity having authority over a school district.

(e) "Multipurpose passenger vehicle" means a motor vehicle, as defined in K.S.A. 8-126 and amendments thereto, that is designed to transport 10 or fewer persons, in addition to the driver, and that is constructed on a truck chassis.

(f) "School bus" means school bus as defined in K.S.A. 72-8301, and amendments thereto. A

school bus may be owned by a school district, a private school, or a private company. The term shall include any van or other vehicle rated by the manufacturer, or having a door label, as a bus.

(g) "School bus driver" means any person employed by a school district or school bus contractor to drive a school bus or activity bus.

(h) "School district" means any unified school district or private school.

(i) "School passenger vehicle" means any passenger car or multipurpose passenger vehicle that is owned or leased by a school district or private individual and is used regularly to provide student transportation on behalf of a school district.

(j) "School passenger vehicle driver" means any person employed by a school district primarily to provide transportation for students in a school passenger vehicle.

(k) "School transportation provider" means either a school bus driver or a school passenger vehicle driver.

(l) "School vehicle" means any activity bus, school bus, or school passenger vehicle.

(m) "Short-term leased vehicle" means any school vehicle that is leased by a school district for a period of 30 or fewer days.

(n) "Substitute driver" means any person who is not assigned to a regular route but is employed to serve as a school transportation provider when necessary due to driver absences or emergencies.

(o) "Transportation supervisor" means a person designated by a governing body to be responsible for transportation activities within a school district. (Authorized by and implementing K.S.A. 8-2009; effective July 1, 2000; amended March 28, 2003; amended July 7, 2017.)

**91-38-2. General limitations and requirements.** (a) No governing body shall have a school bus in service after July 1, 1992, unless the school bus was manufactured after April 1, 1977 and either is no more than 25 years old or has been modified to meet current standards. Each school bus shall meet the standards specified by law and this article of the department's regulations.

(b) The owner's name shall be displayed on each side of any school bus.

(c) Activity buses shall not be utilized to provide student transportation from any student's home to school or from school to any student's home.

(d) Each school bus, activity bus, and school passenger vehicle shall be equipped with a two-way communication system.

(e)(1) Each bus shall contain the following emergency supplies:

- (A) At least one 2A-10BC fire extinguisher;
- (B) at least one readily identifiable first-aid kit in a removable, waterproof, and dustproof container;
- (C) at least one readily identifiable body fluid clean-up kit in a removable, waterproof, and dustproof container;
- (D) at least three reflectorized triangle warning devices, securely stored but in an accessible location; and
- (E) at least one emergency seat belt cutter.

(2) The first-aid kit, body fluid clean-up kit, fire extinguisher, and seat belt cutter shall be mounted in full view of, and readily accessible to, the driver.

(f) Each governing body shall ensure that occupant restraint systems are provided for, and utilized by, all occupants of school passenger vehicles. When providing transportation for infants and preschool children in school passenger vehicles, age- and size-appropriate child safety restraining systems shall be utilized, pursuant to K.S.A. 8-1344 and amendments thereto. (Authorized by K.S.A. 8-2009; implementing K.S.A. 8-2009, K.S.A. 2015 Supp. 8-2009a; effective July 1, 2000; amended March 28, 2003; amended July 7, 2017.)

**91-38-3. School transportation supervisor; duties and responsibilities.** (a) Appointment and general responsibilities.

(1) Each governing body shall designate an employee to be the transportation supervisor.

(2)(A) The transportation supervisor shall be responsible for supervision and maintenance of the school district's transportation system.

(B) The transportation supervisor shall act as liaison between the school district and any contracted bus transportation service.

(b) School transportation routes and stops.

(1) The transportation supervisor shall be responsible for establishing all regular transportation routes and stops for the loading and unloading of students along those routes. The supervisor shall keep a current map on file for each regular transportation route, with all stops noted and a current map of the school district showing each attendance center.

(2) The transportation supervisor shall not establish stops on any interstate highway, state toll road, or other limited-access highway.

(3) The transportation supervisor shall give special consideration to road conditions and safety

concerns when planning the regular transportation routes. If a safety hazard is encountered, the appropriate authorities shall be contacted about eliminating or correcting the hazard, if possible.

(4) Each driver shall report to the transportation supervisor any condition encountered by the driver on a transportation route that appears to pose a safety hazard.

(5) If visibility is less than 500 feet when approaching an established school bus stop from any direction, the transportation supervisor shall contact state, county, or township road authorities and request that warning signs be posted for the school bus stop. Whenever practicable, stops shall be established only at points where visibility is at least 500 feet for all motorists.

(c) Driver training meetings.

(1) Each transportation supervisor shall conduct at least 10 safety meetings per year for all school transportation providers employed by the school district.

(2) Attendance at each meeting shall be documented with a sign-in sheet or similar document. The record of attendance and the agenda shall be retained by the supervisor for at least two years.

(3) Safety meeting topics shall include school transportation safety concerns from drivers regarding route safety, changes in laws or regulations, and other safety issues as determined appropriate by the transportation supervisor.

(4) Safety meetings may be electronically recorded so that drivers who are unable to attend a particular meeting can view the program at another time.

(5) Each school transportation provider shall attend at least 10 safety meetings per year. Newly hired drivers shall be required to attend only those meetings held following their employment.

(d) Records retention.

(1) The transportation supervisor shall be responsible for maintenance and repair records for all school buses, activity buses, and school passenger vehicles used for student transportation, except short-term leased vehicles, that are either owned or leased and are operated by the school district. These records shall include information on scheduled maintenance, lubrication records, repair orders, and other maintenance.

(2) The maintenance record for each vehicle shall be kept as long as the school owns or leases the vehicle, and for at least two years following disposition of the vehicle.

(3) Maintenance records shall be available for

inspection by the Kansas highway patrol, other law enforcement agencies, and Kansas state department of education officials.

(e) Contracts for bus transportation services. Each school district that contracts for bus transportation services shall ensure that each contract for those services includes a provision requiring the contractor to meet the requirements of subsections (c) and (d).

(f) Students with special needs. Each school district shall, before transportation, notify the transportation supervisor of any student with special health care concerns, special needs for transportation, or an individualized education program requiring transportation. The supervisor shall ensure that all drivers, substitute drivers, and attendants are informed of these needs and receive any training that is necessary to safely transport the student or to accommodate the student's special needs. (Authorized by and implementing K.S.A. 8-2009; effective July 1, 2000; amended March 28, 2003; amended July 7, 2017.)

**91-38-4. Compliance with chassis and body construction standards.** (a) Except as otherwise provided in subsection (c), a governing body shall not allow students to be transported on any school bus acquired or leased after the effective date of this regulation until the governing body has on file a verified statement, as prescribed by the state board, from the seller or lessor of the school bus attesting that the school bus meets the following requirements:

(1) The school bus chassis and body construction standards promulgated by the United States department of transportation that apply to the particular bus; and

(2) the bus chassis and body construction standards, including standards for specially equipped school buses, if applicable, prescribed in the national school transportation specifications adopted by the national congress on school transportation.

(b) A governing body shall not alter, change, or otherwise modify any school bus used to transport students in any manner that results in nullification of the statement required in subsection (a) or that results in the failure of the school bus to comply with standards applicable to it under K.S.A. 8-2009a, and amendments thereto.

(c) If a governing body is acquiring a school bus from another governing body, the governing body acquiring the school bus shall obtain the following

statements from the governing body that is disposing of the school bus:

(1) The verified statement obtained by the governing body under subsection (a); and

(2) a verified statement from the governing body that is disposing of the school bus attesting to the fact that the governing body has not altered, changed, or otherwise modified the school bus in any manner that results in nullification of the statement required in subsection (a) or that results in the failure of the school bus to comply with the standards applicable to it under K.S.A. 8-2009a, and amendments thereto. (Authorized by K.S.A. 8-2009; implementing K.S.A. 8-2009, K.S.A. 2015 Supp. 8-2009a; effective July 1, 2000; amended July 7, 2017.)

**91-38-5. Annual inspection of school vehicles.** (a)(1) Each governing body that either owns or leases and that operates any school bus or activity bus shall have each of those buses inspected annually in accordance with this regulation.

(2) Each person or entity that contracts with any governing body to provide bus transportation services to students shall have each school bus or activity bus used to transport students inspected annually in accordance with this regulation.

(3) Except for new buses, which shall be inspected upon delivery and before being used to transport students, the inspection process shall be conducted between June 1 and September 30. No school bus or activity bus shall be used to transport students until the inspection process has been completed and the bus is in proper working order.

(b)(1) Each governing body and each bus transportation contractor shall have each school bus and each activity bus that is operated by the governing body or the contractor inspected by a mechanic who is knowledgeable about the mechanical systems of school buses. In addition, each governing body shall have each school passenger vehicle that is used to transport students inspected annually by a mechanic. The mechanic shall inspect each school vehicle to determine whether the mechanical system is in proper working order.

(2) Each mechanic shall indicate the results of the inspection on the form provided by the state department of education and shall return the form to the governing body or bus transportation contractor.

(c)(1) After the inspection prescribed in subsection (b) is completed, each school vehicle shall be

inspected by the Kansas highway patrol to determine whether the school vehicle is equipped with the appropriate safety devices and those devices are in proper working order.

(2) The results of the inspection shall be indicated by the highway patrol officer on the form provided by the state department of education. Following completion of this form, it shall be returned to the governing body or bus transportation contractor and shall become a maintenance record.

(d) Upon successful completion of the inspection process specified in subsections (b) and (c), a school vehicle inspection sticker issued by the Kansas highway patrol shall be placed on the school vehicle's windshield in a location that will not impair the driver's vision.

(e)(1) If any school vehicle fails either the mechanical or safety inspection specified in this regulation, that school vehicle shall not be used for student transportation until all defects have been corrected and the school vehicle has been approved.

(2) If repairs or other corrections are required for a school vehicle to pass the inspection and these repairs or corrections are completed within 10 days after the initial inspection, then only the defective items shall be reexamined. If the repairs or corrections are not made within 10 days following the initial inspection, the school vehicle shall be completely reinspected.

(f) At any time, spot inspections of any school vehicle used for student transportation may be conducted by the Kansas highway patrol.

(g) Each school bus, activity bus, and school passenger vehicle that is purchased at any time following the required annual inspection for school vehicles shall pass the inspections required by this regulation before being used to transport students. (Authorized by and implementing K.S.A. 8-2009; effective July 1, 2000; amended March 28, 2003; amended July 7, 2017.)

**91-38-6. School transportation driver qualifications.** (a) Driver's licensing and age requirements. Each person employed by a school district or by a school bus contractor who, at any time, will provide student transportation shall be licensed pursuant to K.S.A. 8-234b and amendments thereto, or the appropriate licensing statutes of the person's state of residence. Each person also shall meet the following requirements:

(1) Each driver of a school bus or activity bus with a gross weight of over 26,000 pounds shall

maintain a commercial class A or B driver's license, with passenger and school bus endorsements.

(2) Each driver of a school bus or activity bus that has a gross weight of 26,000 pounds or less and is designed for transporting 16 passengers or more shall maintain a commercial class A, B, or C driver's license, with passenger and school bus endorsements.

(3) Each driver of a school passenger vehicle or a school bus or activity bus that has a gross weight of 26,000 pounds or less and is designed to transport fewer than 16 passengers shall maintain an appropriate noncommercial operator's license.

(4) Each driver's license shall be valid within the driver's state of residence.

(5) Each driver of an activity bus shall be 21 years of age or older.

(b) Criminal and driving records.

(1) Each prospective school transportation provider or other school employee who may transport students shall be required to sign a statement indicating whether that individual has been convicted in any state or federal court of any crime involving a child. A person who has been convicted of such a crime shall not be employed, reemployed, or retained as an employee to provide student transportation.

(2) Each prospective driver shall be required to sign a statement indicating whether, within the past 10 years, that individual has been convicted in any state of any felony or any major traffic violations specified in subsection (c).

(3) For purposes of this regulation, a conviction shall mean entering a plea of guilty or nolo contendere, a finding of guilty by a court or jury, or forfeiture of bond.

(4) Each prospective school transportation provider shall give written authorization to the prospective employer to obtain the applicant's driving record through a local law enforcement agency or the Kansas department of revenue, division of vehicles, pursuant to K.S.A. 74-2012 and amendments thereto. The authorization also shall allow the prospective employer to obtain the applicant's driving record in states other than Kansas through a local law enforcement agency or the appropriate agency of the other state.

(c) Disqualification from employment.

(1) Except as otherwise provided in paragraph (c)(2), a governing body shall not employ or retain to transport students any person who discloses or whose driving record indicates that, within the past 10 years, the person has been convicted of any of the following major traffic violations:

- (A) Hit-and-run driving;
- (B) driving while under the influence of alcohol or drugs;
- (C) vehicular homicide;
- (D) reckless driving; or
- (E) any offense for which the driver's license was suspended or revoked pursuant to K.S.A. 8-254 and 8-255, and amendments thereto.

(2) A governing body may waive the disqualification for employment by a unanimous vote of the full membership of the governing body.

(d) Driver experience and training requirements.

(1) Each driver who operates a school vehicle to transport students shall have at least one year's experience in operating a motor vehicle.

(2)(A) Each school bus driver shall be provided with at least 12 hours of bus driver training. The first six hours of training shall be completed without student passengers, but the remaining hours may be completed with student passengers if the driver-trainer is on the bus. All driver training shall be supervised by the assigned driver-trainer.

(B) Except as otherwise provided in paragraph (d)(2)(C), each school transportation provider shall complete a first aid and cardiopulmonary resuscitation (CPR) course, approved by the state department of education, within 30 days after the first day the driver is allowed to transport students. Each driver completing any training session shall obtain a wallet card or other certificate attesting to that individual's completion of the training program and shall maintain this certification.

(C) A school transportation provider who is certified as an emergency medical service provider shall not be required to complete first aid and CPR training, if the emergency medical certification is maintained in valid status.

(e)(1) Each school transportation provider shall successfully complete a vehicle accident prevention course approved by the state department of education, within 30 days after the first day the driver transports students. The driver shall obtain a completion certificate or wallet card as evidence that the course requirements have been met.

(2) After completion of the initial accident prevention course, each driver shall be required to maintain certification by completion of an accident prevention course at least every three years.

(3) The transportation supervisor shall maintain documentation of driver training for school transportation providers for the duration of the driver's employment, and at least two years thereafter.

(f) Substitute and emergency school transportation providers.

(1) Substitute school transportation providers shall meet the requirements in this regulation, but these individuals may be allowed up to 30 days following employment to complete the first aid, CPR, and accident prevention course training requirements.

(2) Any person who holds a valid commercial driver's license with passenger and school bus endorsements and a current medical certificate may operate a school bus in an emergency situation. For purposes of this paragraph, an "emergency situation" shall mean a situation in which no qualified driver or substitute driver is available. A specific driver shall not drive as an emergency driver for more than five days during a school year.

(g) Physical examination and health requirements.

(1) The physical qualification requirements for school transportation providers in Kansas shall be those in 49 C.F.R. 391.41, as in effect on January 14, 2014, which is hereby adopted by reference. The medical examiner's report form and the medical examiner's certificate that are approved by the state department of education shall be used to document the results of each examination.

(2) The physical examination shall be certified by a doctor of medicine, doctor of osteopathy, doctor of chiropractic, physician assistant, nurse practitioner, or any medical professional on the federal motor carrier safety administration's national registry of certified medical examiners, according to the following schedule:

(A) Before beginning employment as a school transportation provider;

(B) at least every two years after the date of the initial physical examination; and

(C) at any time requested by the driver's employer, the school transportation supervisor, or the state department of education.

(3) A certified medical examiner's certificate required under this subsection shall not constitute the certification of health required by K.S.A. 72-5213, and amendments thereto.

(4) Each governing body shall keep on file a current medical examiner's certificate for each school transportation provider. If a provider leaves employment for any reason, the person's last medical examiner's certificate shall be kept for two years after the person leaves.

(h) Waiver of physical requirements.

(1)(A) Any person failing to meet the requirements of subsection (g) may be permitted to be

a school transportation provider for a particular school district, if a waiver is granted by the governing board of that school district under this subsection. Each waiver shall meet the following requirements:

(i) The person seeking the waiver, the transportation supervisor for the school district, and the contract manager, if applicable, shall submit a joint application for a waiver to the local board of education.

(ii) Each application shall be accompanied by reports from two of the following, indicating their opinions regarding the person's ability to safely operate a school bus: doctor of medicine, doctor of osteopathy, doctor of chiropractic, physician assistant, or nurse practitioner.

(iii) The application shall contain a description of the type and size of the vehicle to be driven and any special equipment required to accommodate the driver to safely operate the vehicle, the general area and type of roads to be traveled, distances and time period contemplated, and the experience of the person in driving vehicles of the type to be driven.

(B) An application for a waiver shall be granted only by unanimous approval of the governing board.

(2)(A) A waiver as described in paragraph (h) (1) shall not be granted for a period longer than two years, but may be renewed by following the procedures in paragraph (h)(1).

(B) While on duty, the driver shall keep in the driver's possession the original document granting the waiver or a legible copy of this document.

(C) Each governing body shall retain the original document granting the waiver or a legible copy of the waiver in the driver's personnel file for as long as the driver is employed and for at least two years following termination of the driver's employment.

(D) A waiver may be revoked, for cause, by the governing body. Before revocation, the governing body shall perform the following:

- (i) Suspend the driver from service;
- (ii) provide notice of the proposed revocation to the driver, including the reason or reasons for the proposed revocation; and
- (iii) allow the driver a reasonable opportunity to show cause, if any, why the revocation should not occur.

(i) Alcohol and drug testing requirements. Any governing body may develop a policy to include all drivers of any school motor vehicles in the alcohol and drug testing program required for drivers not

holding commercial driver's licenses. (Authorized by and implementing K.S.A. 8-2009; effective July 1, 2000; amended March 28, 2003; amended July 7, 2017.)

**91-38-7. Driver's duties and responsibilities.** (a) Each school transportation provider shall inspect a school vehicle before its use to ascertain that the vehicle is in a safe condition and equipped as required by law and that all required equipment is in working order. The school transportation provider shall document each inspection.

(b) If any defect is discovered, students shall not be transported in the vehicle until the defect is corrected.

(c) Documentation of the inspections of each school vehicle shall be kept on file for at least one year following the vehicle inspection.

(d) A school transportation provider shall not drive a school vehicle for more than 10 consecutive hours or for more than a total of 10 hours in any 15-hour period.

(e) Each school transportation provider shall ensure that all doors are closed before the vehicle is put into motion and remain closed while the vehicle is moving.

(f) Each school transportation provider shall ensure that openings for the service door, emergency exits, and aisles are kept clear of any obstructions.

(g) Each school transportation provider shall utilize the driver's safety belt at all times while the vehicle is in motion.

(h) If the school transportation provider leaves the driver's seat, the parking brake shall be set, the motor turned off, and the keys removed. However, drivers of specially equipped buses may leave the motor running to operate a power lift after setting the parking brake.

(i) If a school vehicle is refueled during any trip when passengers are being transported, the school transportation provider shall unload all passengers from the vehicle and turn off the vehicle's motor before beginning refueling procedures. Fuel shall not be transported in any manner, except in the vehicle's fuel tank.

(j) Following the completion of any trip, each school transportation provider shall perform a walk-through inspection of the school bus or activity bus or a visual check of the school passenger vehicle that the provider was driving, to ensure that all passengers have disembarked.

(k) A driver of a school bus or activity bus shall not tow any trailer or other vehicle with the bus, while

any passenger is on the bus. (Authorized by and implementing K.S.A. 8-2009; effective July 1, 2000; amended March 28, 2003; amended July 7, 2017.)

**91-38-8. Loading and unloading procedures.** (a) On routes.

(1) Each school bus driver shall activate the alternately flashing warning lights as required by K.S.A. 8-1556 and amendments thereto, at any time that the loading or unloading of students occurs on the traveled portion of any roadway.

(2) Each governing body shall adopt procedures for the loading and unloading of students, consistent with the requirements of this article of the department's regulations. The procedures shall include the following:

(A) Each school bus driver shall load and unload students off the roadway whenever adequate space is provided, unless parking the bus off the roadway would threaten the safety or stability of the bus or safety of the students.

(B) Each school bus driver shall direct students who cross the roadway when loading or unloading from a school bus to cross only in front of the bus. The driver shall ensure that all traffic has stopped and shall instruct students to wait for a signal from the driver before crossing the roadway.

(C) Students shall not be required to cross any divided highway, as defined in K.S.A. 8-1414 and amendments thereto, or any roadway consisting of more than one lane of traffic traveling in the same direction excluding turn lanes in order to board the bus or to reach the students' destination upon unloading from the bus.

(D) When the loading or unloading of students takes place on a roadway, the bus shall stop in the far right-hand lane of the roadway.

(E) Each driver shall ensure that all students who have unloaded from the bus have moved a safe distance away from the bus before the driver moves the bus.

(b) At school.

(1) Whenever possible, each governing body shall provide bus parking so that the loading or unloading of students is conducted in an area away from vehicular traffic and off the roadway.

(2) Before each school's dismissal time, and where adequate space is available, the bus drivers shall park the buses in single file.

(3) If the loading or unloading of students is conducted on the traveled portion of a roadway, each bus driver shall park the bus on the side of the roadway nearest to the school, with the entry

door opening away from the traveled portion of the roadway. Buses shall be parked adjacent to curbing, if present. If there is no curbing, the buses shall be parked as far to the right of the roadway as possible without threatening the stability of the bus.

(4) Each board shall ensure that there is adult supervision during loading and unloading procedures at each school building, except at buildings utilized exclusively for senior high school students.

(c) On activity trips.

(1) Whenever possible, each bus driver shall park the bus so that the loading or unloading of students takes place in an area away from other vehicular traffic.

(2) The transportation supervisor shall designate, in advance, stops for the loading and unloading of buses along each activity trip route.

(d) In school passenger vehicles. Each driver of a school passenger vehicle shall park the vehicle in a location so that students are loaded or unloaded in an area off the roadway. (Authorized by and implementing K.S.A. 8-2009; effective July 1, 2000; amended July 7, 2017.)

**91-38-9. Emergency procedures.** (a) Each governing body shall adopt procedures to be followed by school transportation providers if confronted with an emergency situation when on the road.

(b) Each governing body shall ensure that students who are regularly transported to and from school in a school bus receive instruction, at least once each semester, about practices and procedures to follow if an emergency occurs while being transported.

(c) Each governing body shall ensure that emergency evacuation drills are conducted at least once each semester. Each emergency evacuation drill shall be supervised by the transportation supervisor or the supervisor's designee.

(d) The transportation supervisor shall prepare documentation of each emergency evacuation drill, including the date of the drill, number of student participants, and the names of the supervising personnel. This documentation shall be kept on file for at least two years from the date of the drill.

(e) Before each activity trip, the driver shall provide an explanation of the location and operation of the emergency exits of the bus.

This regulation shall be effective on and after July 1, 2000. (Authorized by and implementing K.S.A. 1998 Supp. 8-2009; effective July 1, 2000.)

**91-38-10. Use of urban mass transportation buses.** (a) A governing body may contract with the operator of a mass transportation system to provide school transportation for its students. Any contract for this transportation shall include the information specified below in subsection (b).

(b) The operator shall keep and provide the following information to the governing body, upon request:

(1) Documentation of vehicle lubrication, maintenance, and repair as set forth in K.A.R. 91-38-3(d);

(2) documentation that any vehicle used to transport students contains the emergency equipment required in K.A.R. 91-38-2(e); and

(3) documentation that each driver used to provide student transportation meets the qualification set forth in K.A.R. 91-38-6.

This regulation shall be effective on and after July 1, 2000. (Authorized by and implementing K.S.A. 1998 Supp. 8-2009; effective July 1, 2000.)

#### Article 40.—SPECIAL EDUCATION

**91-40-1. Definitions.** Additional definitions of terms concerning student discipline are provided in K.A.R. 91-40-33. (a) “Adapted physical education” means physical education that is modified to accommodate the particular needs of children with disabilities.

(b) “Agency” means any board or state agency.

(c) “Assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term shall not include any medical device that is surgically implanted or the replacement of the device.

(d) “Assistive technology service” means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. This term shall include the following:

(1) Evaluating the needs of a child with a disability, including a functional evaluation of the child in the child’s customary environment;

(2) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(3) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(4) coordinating and using other therapies, interventions, or services with assistive technology devices, including those associated with existing education and rehabilitation plans and programs;

(5) providing training or technical assistance for a child with a disability or, if appropriate, that child’s family; and

(6) providing training or technical assistance for professionals including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of a child.

(e) “Audiology” means the following:

(1) Identification of children with hearing loss;

(2) determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(3) provision of habilitative activities, including language habilitation, auditory training, lip-reading, hearing evaluation, and speech conservation;

(4) creation and administration of programs for prevention of hearing loss;

(5) counseling and guidance of children, parents, and teachers regarding hearing loss; and

(6) determination of children’s needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(f) “Autism” means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three but not necessarily so, that adversely affects a child’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term shall not apply if a child’s educational performance is adversely affected primarily because the child has an emotional disturbance.

(g) “Blindness” means a visual impairment that requires dependence on tactile and auditory media for learning.

(h) “Board” means the board of education of any school district.

(i) “Business day” means Monday through Friday, except for federal and state holidays unless holidays are specifically included in the designation of business day in a specific regulation.

(j) “Child find activities” means policies and procedures to ensure that all exceptional children, including exceptional children who are enrolled in private schools and exceptional children who are homeless, regardless of the severity of any disability, are identified, located, and evaluated.

(k) “Child with a disability” means the following:

(1) A child evaluated as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, any other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities and who, by reason thereof, needs special education and related services; and

(2) for children ages three through nine, a child who is experiencing developmental delays and, by reason thereof, needs special education and related services.

(l) “Consent” means that all of the following conditions are met:

(1) A parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent’s native language or other mode of communication.

(2) A parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom.

(3) A parent understands the following:

(A) The granting of consent is voluntary on the part of the parent and may be revoked at any time.

(B) If the parent revokes consent, the revocation is not retroactive and does not negate an action that has occurred after the consent was given and before the consent was revoked.

(C) The parent may revoke consent in writing for the continued provision of a particular service or placement only if the child’s IEP team certifies in writing that the child does not need the particular service or placement for which consent is being revoked in order to receive a free appropriate public education.

(m) “Counseling services” means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(n) “Day” means a calendar day unless otherwise indicated as business day or school day.

(o) “Deaf-blindness” means the combination of hearing and visual impairments that causes such severe communication and other devel-

opmental and educational needs that the needs cannot be accommodated in special education programs solely for the hearing impaired or the visually impaired.

(p) “Deafness” means a hearing impairment that is so severe that it impairs a child’s ability to process linguistic information through hearing, with or without amplification, and adversely affects the child’s educational performance.

(q) “Developmental delay” means such a deviation from average development in one or more of the following developmental areas that special education and related services are required:

- (1) Physical;
- (2) cognitive;
- (3) adaptive behavior;
- (4) communication; or
- (5) social or emotional development.

The deviation from average development shall be documented and measured by appropriate diagnostic instruments and procedures.

(r) “Department” means the state department of education.

(s) “Early identification and assessment of disabilities” means the implementation of a formal plan for identifying a disability as early as possible in a child’s life.

(t) “Educational placement” and “placement” mean the instructional environment in which special education services are provided.

(u) “Emotional disturbance” means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

- (1) An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- (2) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- (3) inappropriate types of behavior or feelings under normal circumstances;
- (4) a general pervasive mood of unhappiness or depression; or
- (5) a tendency to develop physical symptoms or fears associated with personal or school problems.

The term shall include schizophrenia but shall not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

(v) “Evaluation” means a multisourced and multidisciplinary examination, conducted in accordance with applicable laws and regulations, to

determine whether a child is an exceptional child and the nature and extent of the special education and related services that the child needs.

(w) “Exceptional children” means children with disabilities and gifted children.

(x) “Extended school year services” means special education and related services that are provided to a child with a disability under the following conditions:

(1) Beyond the school term provided to nondisabled children;

(2) in accordance with the child’s IEP; and

(3) at no cost to the parent or parents of the child.

(y) “Federal law” means the individuals with disabilities education act, as amended, and its implementing regulations.

(z) “Free appropriate public education” and “FAPE” mean special education and related services that meet the following criteria:

(1) Are provided at public expense, under public supervision and direction, and without charge;

(2) meet the standards of the state board;

(3) include an appropriate preschool, elementary, or secondary school education; and

(4) are provided in conformity with an individualized education program.

(aa) “General education curriculum” means the curriculum offered to the nondisabled students of a school district.

(bb) “Gifted” means performing or demonstrating the potential for performing at significantly higher levels of accomplishment in one or more academic fields due to intellectual ability, when compared to others of similar age, experience, and environment.

(cc) “Hearing impairment” means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child’s educational performance but that does not constitute deafness as defined in this regulation.

(dd) “Homebound instruction” means the delivery of special education and related services in the home of a child with a disability.

(ee) “Hospital instruction” means the delivery of special education and related services to a child with a disability who is confined to a hospital for psychiatric or medical treatment.

(ff) “Independent educational evaluation” means an examination that is obtained by the parent of an exceptional child and is performed by an individual or individuals who are not employed by the agency responsible for the education of the

child but who meet state and local standards to conduct the examination.

(gg) “Individualized education program” and “IEP” mean a written statement for each exceptional child that meets the requirements of K.S.A. 72-987, and amendments thereto, and the following criteria:

(1) Describes the unique educational needs of the child and the manner in which those needs are to be met; and

(2) is developed, reviewed, and revised in accordance with applicable laws and regulations.

(hh) “Individualized education program team” and “IEP team” mean a group of individuals composed of the following:

(1) The parent or parents of a child;

(2) at least one regular education teacher of the child, if the child is, or may be, participating in the regular education environment;

(3) at least one special education teacher or, if appropriate, at least one special education provider of the child;

(4) a representative of the agency directly involved in providing educational services for the child who meets the following criteria:

(A) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of exceptional children;

(B) is knowledgeable about the general curriculum; and

(C) is knowledgeable about the availability of resources of the agency;

(5) an individual who can interpret the instructional implications of evaluation results;

(6) at the discretion of the child’s parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(7) whenever appropriate, the exceptional child.

(ii) “Individualized family service plan” and “IFSP” mean a written plan, in accordance with section 1436 of the federal law, for providing early intervention services to an infant or toddler with a disability and the infant’s or toddler’s family.

(jj) “Infants and toddlers with disabilities” means children from birth through two years of age who have been determined to be eligible for early intervention services under the federal law.

(kk) “Interpreting services” means the following:

(1) For children who are deaf or hard of hearing, oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription ser-

vices, including communication access real-time translation (CART), C-Print, and TypeWell; and

(2) special interpreting services for children who are deaf-blind.

(ll) “Least restrictive environment” and “LRE” mean the educational placement in which, to the maximum extent appropriate, children with disabilities, including children in institutions or other care facilities, are educated with children who are not disabled, with this placement meeting the requirements of K.S.A. 72-976, and amendments thereto, and the following criteria:

(1) Determined at least annually;

(2) based upon the student’s individualized education program; and

(3) provided as close as possible to the child’s home.

(mm) “Material change in service” means an increase or decrease of 25 percent or more of the duration or frequency of a special education service, related service, or supplementary aid or service specified on the IEP of an exceptional child.

(nn) “Medical services” means services provided by a licensed physician to determine a child’s medically related disability that results in the child’s need for special education and related services.

(oo) “Mental retardation” means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child’s educational performance.

(pp) “Multiple disabilities” means coexisting impairments, the combination of which causes such severe educational needs that those needs cannot be accommodated in special education programs solely for one of the impairments. The term shall not include deaf-blindness.

(qq) “Native language” means the following:

(1) If used with reference to an individual of limited English proficiency, either of the following:

(A) The language normally used by that individual, or, in the case of a child, the language normally used by the parent or parents of the child, except as provided in paragraph (1) (B) of this subsection; or

(B) in all direct contact with a child, including evaluation of the child, the language normally used by the child in the home or learning environment.

(2) For an individual with deafness or blindness or for an individual with no written language, the mode of communication is that normally used by

the individual, including sign language, braille, or oral communication.

(rr) “Occupational therapy” means the services provided by a qualified occupational therapist and shall include services for the following:

(1) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(2) improving the ability to perform tasks for independent functioning if functions are impaired or lost; and

(3) preventing, through early intervention, initial or further impairment or loss of function.

(ss) “Orientation and mobility services” means the services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to, and safe movement within, their environments at school, at home, and in the community. This term shall include teaching students the following, as appropriate:

(1) Spatial and environmental concepts and use of information received by the senses, including sound, temperature, and vibrations to establish, maintain, or regain orientation and line of travel;

(2) use of the long cane or a service animal to supplement visual travel skills or to function as a tool for safely negotiating the environment for students with no available travel vision;

(3) the understanding and use of remaining vision and distance low vision aids; and

(4) other concepts, techniques, and tools.

(tt) “Orthopedic impairment” means a severe orthopedic impairment that adversely affects a child’s educational performance and includes impairments caused by any of the following:

(1) Congenital anomaly, including clubfoot or the absence of a limb;

(2) disease, including poliomyelitis or bone tuberculosis; or

(3) other causes, including cerebral palsy, amputation, and fractures or burns that cause contractures.

(uu) “Other health impairment” means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment and that meets the following criteria:

(1) Is due to chronic or acute health problems, including asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poi-

soning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(2) adversely affects a child's educational performance.

(vv) "Parent" means any person described in K.S.A. 72-962(m) and amendments thereto.

(ww) "Parent counseling and training" means the following:

(1) Assisting parents in understanding the special needs of their child;

(2) providing parents with information about child development; and

(3) helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(xx) "Physical education" means the development of the following:

(1) Physical and motor fitness;

(2) fundamental motor skills and patterns; and

(3) skills in aquatics, dance, and individual and group games and sports, including intramural and lifetime sports. The term shall include special physical education, adapted physical education, movement education, and motor development.

(yy) "Physical therapy" means therapy services provided by a qualified physical therapist.

(zz) "Private school children" means children with disabilities who are enrolled by their parents in private elementary or secondary schools.

(aaa) "Recreation" means leisure education and recreation programs offered in schools and by community agencies. The term shall include assessment of leisure function and therapeutic recreation services.

(bbb) "Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term shall also include any vocational rehabilitation services provided to a student with a disability under any vocational rehabilitation program funded under the rehabilitation act of 1973, as amended.

(ccc) "Related services" means developmental, corrective, and supportive services that are required to assist an exceptional child to benefit from special education.

(1) Related services shall include the following:

(A) Art therapy;

(B) assistive technology devices and services;

(C) audiology;

(D) counseling services;

(E) dance movement therapy;

(F) early identification and assessment of disabilities;

(G) interpreting services;

(H) medical services for diagnostic or evaluation purposes;

(I) music therapy;

(J) occupational therapy;

(K) orientation and mobility services;

(L) parent counseling and training;

(M) physical therapy;

(N) recreation, including therapeutic recreation;

(O) rehabilitation counseling services;

(P) school health services;

(Q) school nurse services;

(R) school psychological services;

(S) school social work services;

(T) special education administration and supervision;

(U) special music education;

(V) speech and language services;

(W) transportation; and

(X) other developmental, corrective, or supportive services.

(2) Related services shall not include the provision of any medical device that is surgically implanted, including a cochlear implant, the optimization of the device's functioning, including mapping and maintenance of the device, and replacement of the device.

(ddd) "School age" means the following:

(1) For children identified as gifted, having attained the age at which the local board of education provides educational services to children without disabilities, through the school year in which the child graduates from high school; and

(2) for children with disabilities, having attained age three, through the school year in which the child graduates with a regular high school diploma or reaches age 21, whichever occurs first.

(eee) "School day" means any day, including a partial day, that all children, including children with and without disabilities, are in attendance at school for instructional purposes.

(fff) "School health services" means health services that are specified in the IEP of a child with a disability and that are provided by a school nurse or other qualified person.

(ggg) "School nurse services" means nursing services that are provided by a qualified nurse in accordance with the child's IEP.

(hhh) "School psychological services" means the provision of any of the following services:

- (1) Administering psychological and educational tests, and other assessment procedures;
- (2) interpreting assessment results;
- (3) obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
- (4) consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests;
- (5) planning and managing a program of psychological services, including psychological counseling for children and parents; and
- (6) assisting in developing positive behavioral intervention strategies.

(iii) "School social work services" means services provided by a qualified social worker and shall include the provision of any of the following services:

- (1) Preparing a social or developmental history on a child with a disability;
- (2) group and individual counseling with the child and family;
- (3) working in partnership with the parent or parents and others on those problems in a child's living situation, at home, at school, and in the community that affect the child's adjustment in school;

(4) mobilizing school and community resources to enable the child to learn as effectively as possible in the child's educational program; and

(5) assisting in developing positive behavioral intervention strategies.

(jjj) "Services plan" means a written statement for each child with a disability enrolled in a private school that describes the special education and related services that the child will receive.

(kkk) "Special education" means the following:

(1) Specially designed instruction, at no cost to the parents, to meet the unique needs of an exceptional child, including the following:

(A) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(B) instruction in physical education;

(2) paraeducator services, speech-language pathology services, and any other related service, if the service consists of specially designed instruction to meet the unique needs of a child with a disability;

(3) occupational or physical therapy and interpreter services for deaf children if, without any of

these services, a child would have to be educated in a more restrictive environment;

(4) travel training; and

(5) vocational education.

(lll) "Specially designed instruction" means adapting, as appropriate to the needs of each exceptional child, the content, methodology, or delivery of instruction for the following purposes:

(1) To address the unique needs of the child that result from the child's exceptionality; and

(2) to ensure access of any child with a disability to the general education curriculum, so that the child can meet the educational standards within the jurisdiction of the agency that apply to all children.

(mmm) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term shall not include learning problems that are primarily the result of any of the following:

(1) Visual, hearing, or motor disabilities;

(2) mental retardation;

(3) emotional disturbance; or

(4) environmental, cultural, or economic disadvantage.

(nnn) "Speech-language pathology services" means the provision of any of the following services:

(1) Identification of children with speech or language impairments;

(2) diagnosis and appraisal of specific speech or language impairments;

(3) referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(4) provision of speech and language services for the habilitation or prevention of communicative impairments; and

(5) counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(ooo) "Speech or language impairment" means a communication disorder, including stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

(ppp) "State agency" means the secretary of social and rehabilitation services, the secretary

of corrections, and the commissioner of juvenile justice.

(qqq) “State board” means the state board of education.

(rrr) “State institution” means any institution under the jurisdiction of a state agency.

(sss) “Substantial change in placement” means the movement of an exceptional child, for more than 25 percent of the child’s school day, from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment.

(ttt) “Supplementary aids and services” means aids, services, and other supports that are provided in regular education classes, other education-related settings, and extracurricular and nonacademic settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

(uuu) “Transition services” means a coordinated set of activities for a student with disabilities, designed within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to postsecondary activities, including postsecondary education, vocational education, integrated employment including supported employment, continuing and adult education, adult services, independent living, and community participation. The coordinated set of activities shall be based on the individual student’s needs, taking into account the student’s preferences and interests, and shall include the following:

- (1) Instruction;
- (2) related services;
- (3) community experiences;
- (4) the development of employment and other postsecondary adult living objectives; and
- (5) if appropriate, acquisition of daily living skills and a functional vocational evaluation.

(vvv) “Transportation” means the following:

- (1) Travel to and from school and between schools;
- (2) travel in and around school buildings; and
- (3) specialized equipment, including special or adapted buses, lifts, and ramps, if required to provide special transportation for a child with a disability.

(www) “Traumatic brain injury” means an acquired injury to the brain that is caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment,

or both, that adversely affects educational performance. The term shall apply to open or closed head injuries resulting in impairments in one or more areas, including the following:

- (1) Cognition;
- (2) language;
- (3) memory;
- (4) attention;
- (5) reasoning;
- (6) abstract thinking;
- (7) judgment;
- (8) problem solving;
- (9) sensory, perceptual, and motor abilities;
- (10) psychosocial behavior;
- (11) physical functions;
- (12) information processing; and
- (13) speech.

The term shall not include brain injuries that are congenital or degenerative or that are induced by birth trauma.

(xxx) “Travel training” means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to perform the following:

- (1) Develop an awareness of the environment in which they live; and
- (2) learn the skills necessary to move effectively and safely from place to place within various environments, including at school, home, and work, and in the community.

(yyy) “Visual impairment” means an impairment in vision that, even with correction, adversely affects a child’s educational performance. The term shall include both partial sight and blindness.

(zzz) “Vocational education” means any organized educational program that is directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree. (Authorized by and implementing K.S.A. 2008 Supp. 72-963; effective May 19, 2000; amended March 21, 2008; amended July 23, 2010.)

**91-40-2. FAPE.** (a)(1) Each agency shall provide FAPE in accordance with K.S.A. 72-966 and amendments thereto, and with this article.

(2) Each agency’s obligation to provide FAPE shall extend to exceptional children residing on Indian reservations, unless these children are provided FAPE by the secretary of the interior under federal law.

(b)(1) Each agency shall make FAPE available to each child with a disability residing in its jurisdiction beginning not later than the child's third birthday.

(2) An IEP or IFSP shall be in effect by the child's third birthday, but, if that birthday occurs during the summer when school is not in session, the child's IEP team shall determine the date when services will begin.

(3) If a child is transitioning from early intervention services provided under part C of the federal law, the agency responsible for providing FAPE to the child shall participate in transition planning conferences for the child.

(c) An agency shall not be required to provide FAPE to any child with a disability who is eligible for preschool services under the federal law but whose parent has elected to have the child receive early intervention services under the law.

(d)(1) Each agency shall make FAPE available to any child with a disability even though the child has not failed or been retained in a course or grade and is advancing from grade to grade.

(2) The determination of whether a child who is advancing from grade to grade is a child with a disability shall be made on an individual basis in accordance with child find activities and evaluation procedures required by this article.

(e) Each agency shall provide special education and related services based upon the child's unique needs and not upon the child's area of exceptionality.

(f) An agency shall not be required to provide FAPE to a student aged 18 through 21 who meets the following criteria:

(1) Is incarcerated in an adult correctional facility; and

(2) in the student's last educational placement before incarceration, was not identified as a child with a disability and did not have an IEP.

(g) (1) An agency shall not be required to provide FAPE to any exceptional child who has graduated from high school with a regular high school diploma.

(2) Each exceptional child shall be eligible for graduation from high school upon successful completion of state and local board requirements and shall receive the same graduation recognition and diploma that a nonexceptional child receives.

(3) The IEP of an exceptional child may designate goals other than high school graduation.

(4) When an exceptional child enters high school, progress toward graduation shall be mon-

itored annually and recorded on an official transcript of credits.

(5) As used in this subsection, the term "regular high school diploma" shall mean the same diploma as that awarded to nonexceptional students and shall not include any certificate of completion or any other certificate, or a general educational development credential (GED). (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966; effective May 19, 2000; amended May 4, 2001; amended March 21, 2008.)

### **91-40-3. Ancillary FAPE requirements.**

(a) Each agency shall ensure that children with disabilities have available to them the same variety of educational programs and services that are available to nondisabled children served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(b) (1) Each agency shall provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities, including the provision of supplementary aids and services as determined to be necessary by the child's IEP team.

(2) Nonacademic and extracurricular services and activities shall include the following:

(A) Counseling services;

(B) athletics;

(C) transportation;

(D) health services;

(E) recreational activities;

(F) special interest groups or clubs sponsored by the agency;

(G) referrals to agencies that provide assistance to individuals with disabilities; and

(H) employment of students, including both employment by the agency and assistance in making outside employment available.

(c) (1) Each agency shall make physical education services, specially designed if necessary, available to every child with a disability, unless the agency does not provide physical education to any children who are enrolled in the same grade.

(2) Each child with a disability shall be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless either of the following conditions is met:

(A) The child is enrolled full-time in a separate facility.

(B) The child needs specially designed physical education, as prescribed in the child's IEP.

(d) (1) Each agency shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education or related services, or the child's supplementary aids and services.

(2) Each agency, on a case-by-case basis, shall allow the use of school-purchased assistive technology devices in a child's home or in other settings if the child's IEP team determines that the child needs access to those devices at home or in other settings in order to receive FAPE.

(e) (1) Each agency shall ensure that extended school year services are available as necessary to provide FAPE to a child with a disability.

(2) An agency shall be required to provide extended school year services only if a child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child.

(3) An agency shall neither limit extended school year services to particular categories of disabilities nor unilaterally limit the type, amount, or duration of those services.

(f) (1) Each agency shall ensure that hearing aids worn in school by children with hearing impairments or deafness are functioning properly.

(2) Each agency shall ensure that the external components of surgically implanted medical devices of children with disabilities are functioning properly. However, an agency shall not be responsible for the maintenance, programming, or replacement of any surgically implanted medical device or any external component of the device.

(g) Each gifted child shall be permitted to test out of, or work at an individual rate, and receive credit for required or prerequisite courses, or both, at all grade levels, if so specified in that child's individualized education program.

(h) Any gifted child may receive credit for college study at the college or high school level, or both. If a gifted child chooses to receive college credit, however, the student shall be responsible for the college tuition costs. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966; effective May 19, 2000; amended March 21, 2008.)

**91-40-4. FAPE for exceptional children housed and maintained in certain state institutions.** (a) Subject to K.S.A. 72-1046 and

amendments thereto, each state agency shall provide FAPE to exceptional children housed and maintained at any facility operated by the agency. All educational programs shall comply with the requirements of state special education laws and regulations.

(b) State schools.

(1) The procedures for placing Kansas residents into the Kansas state school for the blind and the Kansas state school for the deaf shall meet the following requirements:

(A) Admission procedures shall be initiated by the child's home school district and by the child's parent or parents.

(B) Placement of any child in a state school shall be made only after the local school district and the child's parent or parents have considered less restrictive placement options.

(C) Placement shall be based on a child's IEP, which shall indicate a need for educational services provided at the state school.

(D) Any agency may refer a child to a state school for a portion or all of the child's evaluation. In such a case, a representative or representatives from the agency shall be included in any meeting at which the child's eligibility for services or placement is determined.

(E) If the initial evaluation and staffing are conducted by any local school district and if one of the state schools is proposed as a placement for the child, a representative or representatives from the state school shall be included in the meeting at which placement for the child is determined.

(2) Personnel from the child's home school district, as well as personnel from the state school and the child's parent or parents, shall be afforded an opportunity to participate in any IEP meeting for the child. Placement of the child in the home school district shall be considered at each annual IEP meeting.

(3) Each state school shall attempt to make arrangements so that each child enrolled in the state school has access to the educational programs in the local school districts near the location of the school, on either a part-time or full-time basis.

(4) If a state school determines that its program is not appropriate for a student and it can no longer maintain the student in its program, the state school shall give the district of residence of the student at least 15-day notice of this determination.

(c) Unless otherwise expressly authorized by state law, when a student transfers from a state school to a school district or from one school dis-

trict to another, the most recent individualized education program, as well as any additional educationally relevant information concerning the child, shall be forwarded immediately to the receiving school district.

(d) SRS institutions and facilities.

(1) In accordance with K.S.A. 72-8223 and amendments thereto, and subject to the provisions of K.S.A. 72-970 and 72-1046 and amendments thereto, provision for FAPE shall be made by the secretary of social and rehabilitation services for each exceptional child housed and maintained at any institution or facility under the jurisdiction of the secretary.

(2) The requirements in this article concerning placement and LRE may be modified in accordance with the child's need for maintenance at the state institution or facility. (Authorized by K.S.A. 1999 Supp. 72-963; implementing K.S.A. 1999 Supp. 72-966 and 72-970; effective May 19, 2000.)

**91-40-5. FAPE for detained or incarcerated children with disabilities.** (a) Local detention facilities.

(1) Subject to the provisions of K.S.A. 72-1046 and amendments thereto, each board shall provide FAPE to each child with a disability detained or incarcerated in a local juvenile or adult detention facility located within its jurisdiction.

(2) The requirements in this article concerning placement and LRE may be modified in accordance with the child's detention or incarceration.

(b) State juvenile correctional facilities.

(1) The commissioner of the juvenile justice authority shall make provision for FAPE for each child with a disability detained or incarcerated in any state juvenile correctional facility or other facility at the direction of the commissioner.

(2) The requirements in this article concerning parental rights, placement, and LRE may be modified in accordance with state and federal laws and the child's conditions of detention or incarceration.

(c) State adult correctional facilities.

(1) Except as otherwise provided in this regulation, provision for FAPE shall be made by the secretary of corrections for each child with a disability incarcerated in any state correctional institution or facility.

(2) In making provision for FAPE under paragraph (1) of this subsection, compliance with state or federal laws or regulations relating to the following shall not be required of the secretary of corrections:

(A) Participation of children with disabilities in state or local assessments; and

(B) transition planning and services with respect to any disabled child whose eligibility for special education services will end, because of the child's age, before the child is eligible to be released from the secretary's custody based on consideration of the child's sentence and eligibility for early release.

(3) Provision of FAPE to any person incarcerated in a state correctional institution or facility shall not be required by the secretary of corrections if the person meets both of the following criteria:

(A) The incarcerated person is at least 18 years of age.

(B) The incarcerated person, in the person's last educational placement before incarceration, was not identified as a child with a disability.

(4)(A) Except as otherwise provided in paragraph (4)(B) of this subsection, the IEP team of a child with a disability incarcerated in a state adult correctional institution or facility may modify the child's IEP or placement if personnel of the correctional institution or facility demonstrate a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(B) An IEP team of a child with a disability incarcerated in a state adult correctional institution or facility shall not modify the following requirements:

(i) That any decision regarding modifications to, and reviews and revisions of, any IEP shall be made by the IEP team; and

(ii) that, except as otherwise expressly provided in paragraph (c)(2), each IEP shall have the content specified in K.S.A. 72-987 and amendments thereto. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966; effective May 19, 2000; amended March 21, 2008.)

**91-40-7. Child find.** (a) Each board shall adopt and implement policies and procedures to identify, locate, and evaluate all children with exceptionalities residing in its jurisdiction, including children with exceptionalities who meet any of the following criteria:

(1) Attend private schools;

(2) are highly mobile, including migrant and homeless children; or

(3) are suspected of being children with disabilities even though they are advancing from grade to grade.

(b) Each board's policies and procedures under this regulation shall include age-appropriate

screening procedures that meet the following requirements:

(1) For children younger than five years of age, observations, instruments, measures, and techniques that disclose any potential disabilities or developmental delays that indicate a need for evaluation, including hearing and vision screening;

(2) for children from ages five through 21, observations, instruments, measures, and techniques that disclose any potential exceptionality and indicate a need for evaluation, including hearing and vision screening as required by state law; and

(3) implementation of procedures ensuring the early identification and assessment of disabilities in children.

(c) Any board may refer a child who is enrolled in public school for an evaluation if one of the following conditions is met:

(1) School personnel have data-based documentation indicating that general education interventions and strategies would be inadequate to address the areas of concern for the child.

(2) School personnel have data-based documentation indicating that before the referral or as a part of the referral, all of the following conditions were met:

(A) The child was provided with appropriate instruction in regular education settings that was delivered by qualified personnel.

(B) The child's academic achievement was repeatedly assessed at reasonable intervals that reflected formal assessment of the student's progress during instruction.

(C) The assessment results were provided to the child's parent or parents.

(D) The assessment results indicate that an evaluation is appropriate.

(3) The parent of the child requests, and gives written consent for, an evaluation of the child, and the board agrees that an evaluation of the child is appropriate.

(d) Each board, at least annually, shall provide information to the public concerning the availability of special education services for exceptional children, including child find activities conducted by the board.

(e) Each agency shall ensure that the collection and use of data under this regulation are subject to the confidentiality requirements of K.A.R. 91-40-50. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966; effective May 19, 2000; amended May 4, 2001; amended March 21, 2008.)

**91-40-8. Evaluations.** (a) Each agency shall ensure that a full and individual evaluation is conducted for each child being considered for special education and related services. Each evaluation shall include procedures to determine the following:

(1) Whether the child is an exceptional child; and

(2) what the educational needs of the child are.

(b) In implementing the requirements of subsection (a), the agency shall ensure that the following conditions are met:

(1) The evaluation is conducted in accordance with the procedures described in K.A.R. 91-40-9 and, if applicable, K.A.R. 91-40-11.

(2) The results of the evaluation are used by the child's IEP team to develop the child's IEP.

(3) The evaluation is conducted before the initial provision of special education and related services to the child.

(c) As a part of an initial evaluation, if appropriate, and as a part of any reevaluation, each agency shall ensure that members of an appropriate IEP team for the child and other qualified professionals, as appropriate, comply with the following requirements:

(1) The evaluation team shall review existing evaluation data on the child, including the following information:

(A) Evaluations and information provided by the parent or parents of the child;

(B) current classroom-based, local, and state assessments and classroom-based observations; and

(C) observations by teachers and related services providers.

(2) On the basis of that review and input from the child's parent or parents, the evaluation team shall identify what additional data, if any, is needed to determine the following matters:

(A) Whether the child has a particular category of exceptionality or, in the case of a reevaluation of a child, whether the child continues to have such an exceptionality;

(B) what the present levels of academic achievement and educational and related developmental needs of the child are;

(C) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(D) whether, in the case of a reevaluation of the child, any additions or modifications to the special education and related services currently being provided to the child are needed to enable

the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

(d) The team described in subsection (c) may conduct its review without a meeting.

(e) (1) If the team described in subsection (c) determines that additional data is required to make any of the determinations specified in paragraph (2) of subsection (c), the agency, after giving proper written notice to the parent and obtaining parental consent, shall administer those tests and evaluations that are appropriate to produce the needed data.

(2) If the team described in subsection (c) determines that no additional data is needed to make any of the determinations specified in paragraph (2) of subsection (c), the agency shall give written notice to the child's parent of the following information:

(A) The determination that no additional data is needed and the reasons for this determination; and

(B) the right of the parent to request an assessment.

(3) The agency shall not be required to conduct any additional assessments unless requested to do so by a parent.

(f) Unless an agency has obtained written parental consent to an extension of time and except as otherwise provided in subsection (g), the agency shall complete the following activities within 60 school days of the date the agency receives written parental consent for evaluation of a child:

(1) Conduct the evaluation of the child;

(2) conduct a meeting to determine whether the child is an exceptional child and, if so, to develop an IEP for the child. The agency shall give notice of this meeting to the child's parent or parents as required by K.A.R. 91-40-17(a); and

(3) implement the child's IEP in accordance with K.A.R. 91-40-16.

(g) An agency shall not be subject to the time frame prescribed in subsection (f) if either of the following conditions is met:

(1) The parent or parents of the child who is to be evaluated repeatedly fail or refuse to produce the child for the evaluation.

(2) The child enrolls in a different school before the evaluation is completed, and the parent and new school agree to a specific date by which the evaluation will be completed.

(h) In complying with subsection (f), each agency shall ensure that an IEP is developed for each exceptional child within 30 days from the date

on which the child is determined to need special education and related services. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966 and 72-986; effective May 19, 2000; amended March 21, 2008.)

**91-40-9. Evaluation procedures.** (a) If assessment instruments are used as a part of the evaluation or reevaluation of an exceptional child, the agency shall ensure that the following requirements are met:

(1) The assessment instruments or materials shall meet the following criteria:

(A) Be selected and administered so as not to be racially or culturally discriminatory; and

(B) be provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless this is clearly not feasible.

(2) Materials and procedures used to assess a child with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the child has an exceptionality and needs special education, rather than measuring the child's English language skills.

(3) A variety of assessment tools and strategies shall be used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved and progress in the general curriculum or, for a preschool child, to participate in appropriate activities that could assist in determining whether the child is an exceptional child and what the content of the child's IEP should be.

(4) Any standardized tests that are given to a child shall meet the following criteria:

(A) Have been validated for the specific purpose for which they are used; and

(B) be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessment.

(5) If an assessment is not conducted under standard conditions, a description of the extent to which the assessment varied from standard conditions shall be included in the evaluation report.

(6) Assessments and other evaluation materials shall include those that are tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(7) Assessments shall be selected and administered to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the results accurately reflect the child's aptitude or achievement level or whatever other factors the assessment purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills, unless those skills are the factors that the assessment purports to measure.

(8) A single procedure shall not be used as the sole criterion for determining whether a child is an exceptional child and for determining an appropriate educational program for the child.

(9) Each agency shall use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

(b) (1) Each child shall be assessed in all areas related to a suspected exceptionality, including, if appropriate, the following:

- (A) Health;
- (B) vision;
- (C) hearing;
- (D) social and emotional status;
- (E) general intelligence;
- (F) academic performance;
- (G) communicative status; and
- (H) motor abilities.

(2) Each evaluation shall be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(c) If a child is suspected of having a specific learning disability, the agency also shall follow the procedures prescribed in K.A.R. 91-40-11 in conducting the evaluation of the child. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-986; effective May 19, 2000; amended May 4, 2001; amended March 21, 2008.)

### **91-40-10. Eligibility determination.**

(a)(1) After completion of appropriate evaluation procedures, a team of qualified professionals and the parent of the child who has been evaluated shall prepare a written evaluation report that includes a statement regarding each of the following matters:

- (A) The determination of whether the child has an exceptionality;
- (B) the basis for making the determination;
- (C) the relevant behavior noted during the observation of the child;

(D) the relationship of that behavior to the child's academic functioning;

(E) educationally relevant medical findings, if any; and

(F) if the child was evaluated for a specific learning disability, the additional information specified in subsection (e).

(2) Each team member shall certify in writing whether the report reflects the member's conclusion. If the report does not reflect that member's conclusion, the team member shall submit a separate statement presenting the member's conclusion.

(b) Each agency shall provide, at no cost, a copy of the evaluation report to the child's parent.

(c) An evaluation team shall not determine a child to be an exceptional child if the determinant factor for that eligibility determination is the child's lack of appropriate instruction in reading or mathematics or limited English proficiency, and if the child does not otherwise qualify as a child with an exceptionality.

(d) Each evaluation team, in determining whether a child is an exceptional child and what the educational needs of the child are, shall meet the following requirements:

(1) The evaluation team shall draw upon information from a variety of sources, including the following:

- (A) Aptitude and achievement tests;
- (B) parent input;
- (C) teacher recommendations;
- (D) physical condition;
- (E) social or cultural background; and
- (F) adaptive behavior.

(2) The evaluation team shall ensure that the information obtained from all of the sources specified in paragraph (1) of this subsection is documented and considered.

(e) If the evaluation team and the parent determine the parent's child to be a child with a specific learning disability, the evaluation team and the parent shall prepare a written evaluation report that includes a statement regarding each of the following matters:

- (1) An indication of whether the child has a specific learning disability;
- (2) the basis for making the determination, including an assurance that the determination has been made in accordance with applicable laws and regulations;
- (3) the relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

(4) educationally relevant medical findings, if any;  
 (5) an indication of whether the child meets the following criteria:

(A) Does not achieve adequately for the child's age or meet state-approved grade-level standards; and

(B)(i) Does not make sufficient progress to meet age standards or state-approved grade-level standards; or

(ii) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development; and

(6) the determination of the team concerning the effect of the following factors on the child's achievement level:

(i) Visual, hearing, or motor skills disability;

(ii) mental retardation;

(iii) emotional disturbance;

(iv) cultural factors;

(v) environmental or economic disadvantage; and

(vi) limited English proficiency.

(f) If the child has participated in a process that assessed the child's response to scientific, research-based intervention, the evaluation report shall also address the following matters:

(1) The instructional strategies used and the student-centered data collected; and

(2) the documentation indicating that the child's parent or parents were notified about the following:

(A) The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

(B) strategies for increasing the child's rate of learning; and

(C) the right of a parent to request an evaluation.

(g) (1) Except as provided in paragraph (2) of this subsection, after a child has been determined to be a child with an exceptionality and has been provided special education or related services, an agency shall conduct a reevaluation of the child before terminating special education or related services to the child.

(2) An agency shall not be required to conduct a reevaluation of a child with an exceptionality before terminating special education or related services to the child if the reason for termination of services is due to either of the following:

(A) The child has graduated from high school with a regular high school diploma.

(B) The child has reached the age of 21 years.

(3) An agency shall provide prior written notice before terminating special education services for either of the reasons stated in paragraph (g)(2).

(h) An agency shall not be required to classify children with disabilities according to their categories of disabilities if each child with a disability is regarded as a child with a disability and is provided FAPE.

(i) With regard to children ages three through nine who are determined to need special education and related services, an agency shall use one or more of the categories of disabilities described in the definition of the term "child with a disability" or the term "developmental delay." (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-986; effective May 19, 2000; amended May 4, 2001; amended March 21, 2008.)

**91-40-11. Evaluation for specific learning disability; use of response to intervention process.**

(a) If a child is suspected of having a specific learning disability and believed to need special education services because of that disability, the agency shall ensure that the evaluation of the child is made by the child's parent and a group of qualified professionals, including the following individuals:

(1)(A) The child's regular education teacher or, if the child does not have a regular education teacher, a regular classroom teacher qualified to teach a child of the child's age; or

(B) for a child of less than school age, an individual who is qualified to teach a child of the child's age; and

(2) at least one person qualified to conduct individual diagnostic examinations of children, including a school psychologist, speech-language pathologist, or remedial reading teacher.

(b)(1) A group evaluating a child for a specific learning disability may determine that the child has that disability only if the following conditions are met:

(A) The child does not achieve adequately for the child's age or meet state-approved grade-level standards, if any, in one or more of the following areas, when the child is provided with learning experiences and instruction appropriate for the child's age and grade level:

(i) Oral expression;

(ii) listening comprehension;

(iii) written expression;

(iv) basic reading skill;

(v) reading fluency skills;  
 (vi) reading comprehension;  
 (vii) mathematics calculation; and  
 (viii) mathematics problem solving; and  
 (B)(i) The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in paragraph (b)(1)(A) when using a process based on the child's response to scientific, research-based intervention; or

(ii) the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade-level standards, or intellectual development that is determined by the group conducting the evaluation to be relevant to the identification of a specific learning disability, using appropriate assessments.

(2) A child shall not be determined to be a child with a specific learning disability unless the group evaluating the child determines that its findings under paragraphs (b)(1) (A) and (B) are not primarily the result of any of the following:

- (i) A visual, hearing, or motor disability;
- (ii) mental retardation;
- (iii) emotional disturbance;
- (iv) cultural factors;
- (v) environmental or economic disadvantage; or
- (vi) limited English proficiency.

(c) (1) The group evaluating the child shall ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty.

(2) In conducting the observation, the group may employ either of the following procedures:

(A) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

(B) have at least one member of the group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-986; effective May 19, 2000; amended March 21, 2008.)

**91-40-12. Right to independent educational evaluation.** (a) (1) Subject to the conditions specified in this regulation, a parent of an exceptional child shall have the right to request an independent educational evaluation at public ex-

pense if the parent disagrees with the evaluation obtained by the agency.

(2) The parent shall be eligible for only one independent educational evaluation at public expense in response to an evaluation conducted by the agency.

(b) If a parent requests an independent educational evaluation of the child, the agency, without unnecessary delay, shall take one of the following actions:

(1) Initiate a due process hearing to show that its evaluation is appropriate; or

(2) (A) Provide information to the parent about where an independent educational evaluation may be obtained and the agency criteria prescribed under subsection (g) that apply to independent educational evaluations; and

(B) take either of the following actions:

(i) Pay the full cost of the independent educational evaluation or otherwise ensure that the evaluation is provided at no cost to the parent; or

(ii) initiate a due process hearing to show that the evaluation obtained by the parent does not meet agency criteria.

(c) If the agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent shall still have the right to an independent educational evaluation, but the agency shall not be required to pay the cost of that evaluation.

(d) If a parent requests an independent educational evaluation, the agency may ask the reason for the objection to the public evaluation. However, the explanation by the parent shall not be required, and the agency shall not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

(e) If the parent obtains an independent educational evaluation at public expense or provides the agency with an evaluation obtained at private expense, the results of the evaluation shall be considered by the agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child. The results of this evaluation may be presented as evidence at a due process hearing regarding that child.

(f) If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation shall be paid by the agency.

(g) (1) Subject to the provisions of paragraph (2) of this subsection, each agency shall adopt criteria for obtaining an independent educational evalu-

ation at public expense. The criteria may include the qualifications of the examiner and the location of the evaluation, but shall not impose other conditions or timelines for obtaining the evaluation.

(2) The criteria adopted by an agency under paragraph (1) of this subsection shall be the same as the criteria that the agency uses when it conducts an evaluation, to the extent that those criteria are consistent with the parents' right to obtain an independent educational evaluation. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-986 and 72-988; effective May 19, 2000; amended March 21, 2008.)

**91-40-16. IEP requirements.** (a) Each agency shall be responsible for initiating and conducting meetings to develop, review, and revise the IEP of each exceptional child served by the agency.

(b) Except as otherwise provided in subsection (c), each agency shall ensure that the following conditions are met:

(1) An IEP is in effect before special education and related services are provided to an exceptional child.

(2) Those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

(3) An IEP is in effect for each exceptional child at the beginning of each school year.

(4) The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation.

(5) Each teacher and provider described in paragraph (4) of this subsection is informed of the following:

(A) That individual's specific responsibilities related to implementing the child's IEP; and

(B) the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

(c)(1) If an agency and a child's parent agree, an IFSP that meets the requirements of the federal law and that is developed in accordance with this article may serve as the IEP of a child with a disability who is two years old but will reach three years of age during the next school year or who is three, four, or five years of age.

(2) Before using an IFSP as an IEP, each agency shall meet the following requirements:

(A) The agency shall provide to the child's parent or parents a detailed explanation of the differences between an IFSP and an IEP.

(B) If an IFSP is chosen, the agency shall obtain written consent from the parent for use of the IFSP as the child's IEP. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-987; effective May 19, 2000; amended March 21, 2008.)

**91-40-17. IEP team meetings and participants.** (a) Each agency shall take steps to ensure that one or both of the parents of an exceptional child are present at each IEP team meeting or are afforded the opportunity to participate. These steps shall include the following:

(1) Scheduling each meeting at a mutually agreed-upon time and place and informing the parents of the information specified in subsection (b) of this regulation; and

(2) except as otherwise provided in K.A.R. 91-40-37, providing written notice, in conformance with subsection (b) of this regulation, to the parents of any IEP team meeting at least 10 days in advance of the meeting.

(b) The notice required in subsection (a) of this regulation shall meet the following requirements:

(1) The notice shall indicate the purpose, time, and location of the IEP team meeting and the titles or positions of the persons who will attend on behalf of the agency, including, if appropriate, any other agency invited to send a representative to discuss needed transition services.

(2) If the meeting is for a child who has been receiving special education services under the infant and toddler provisions of the federal law but is now transitioning to the provisions for older children, the notice shall specify that the parent may require that a representative of the infant and toddler program be invited to attend the initial IEP team meeting to assist with the smooth transition of services.

(3) The notice shall indicate the following information, if a purpose is to consider postsecondary goals and transition services for the child:

(A) The agency will invite the child to attend.

(B) One of the purposes of the meeting will be to consider the postsecondary goals and needed transition services for the student.

(4) The notice shall inform the parent that the parent has the right to invite to the IEP team meeting individuals whom the parent believes to have knowledge or special expertise about the child.

(c) If a parent of an exceptional child cannot be physically present for an IEP team meeting for the child, the agency shall attempt other measures to ensure parental participation, including individual or conference telephone calls.

(d) An agency shall take action to ensure that parents understand the discussions that occur at IEP team meetings, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(e)(1) An agency may conduct an IEP team meeting without parental participation if the agency, despite repeated attempts, has been unable to contact the parent or parents or to convince them that they should participate.

(2) If an agency conducts an IEP team meeting without parental participation, the agency shall have a record of the attempts that the agency made to contact the parents to provide them notice of the meeting and to secure their participation. The record shall include at least two of the following:

(A) Detailed records of telephone calls made or attempted, including the date, time, and person making the calls and the results of the calls;

(B) detailed records of visits made to the parent's home, including the date, time, and person making the visit and the results of the visit;

(C) copies of correspondence sent to each parent and any responses received; and

(D) detailed records of any other method attempted to contact the parents and the results of that attempt.

(f)(1) An agency shall invite a child with a disability, regardless of the child's age, to attend any IEP team meeting for the child if a purpose of the meeting is consideration of the child's postsecondary goals and transition services needs.

(2) If the child with a disability does not attend the IEP team meeting, an agency shall take other steps to ensure that the child's preferences and interests are considered.

(g) If a purpose of any IEP team meeting for a child with a disability is consideration of the postsecondary goals of the child and the transition services needed to assist the child to reach those goals, the agency, with the consent of a parent or the child if the child is at least 18 years old, shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services.

(h) A regular education teacher of an exceptional child, as a member of an IEP team, shall

participate to the extent appropriate in the development, review, and revision of the child's IEP. This participation shall include assisting in making the following determinations:

(1) The appropriate positive behavioral interventions and strategies for the child;

(2) the supplementary aids and services needed by the child; and

(3) the program modifications or supports for school personnel that will be provided to assist the child.

(i) If qualified to do so, an agency member of the IEP team may serve in the role of two or more required members of a child's IEP team.

(j) In asking individuals with knowledge or special expertise about a child to be members of the child's IEP team, the party asking the person to participate shall have the sole discretion in determining whether the invited person has knowledge or special expertise regarding the child. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-987; effective May 19, 2000; amended May 4, 2001; amended March 21, 2008.)

#### **91-40-18. IEP development and content.**

(a) In developing or reviewing the IEP of any exceptional child, each agency shall comply with the requirements of K.S.A. 72-987 and amendments thereto, and, as appropriate, shall consider the results of the child's performance on any general state or districtwide assessment programs.

(b) If, as a result of its consideration of the special factors described in K.S.A. 72-987(c) and amendments thereto, an IEP team determines that a child needs behavioral interventions and strategies, accommodations, assistive technology devices or services, or other program modifications for the child to receive FAPE, the IEP team shall include those items in the child's IEP.

(c) Each agency shall ensure that the IEP of each exceptional child includes the information required by K.S.A. 72-987(b) and amendments thereto.

(d) Each agency shall give the parent a copy of the child's IEP at no cost to the parent.

(e) At least one year before an exceptional child reaches 18 years of age, the agency providing services to the child shall ensure that the child's IEP includes a statement the student has been informed of rights provided in the federal law, if any, that will transfer to the child on reaching 18 years of age. (Authorized by K.S.A. 2000 Supp. 72-963; implementing K.S.A. 2000 Supp. 72-987; effective May 19, 2000; amended May 4, 2001.)

**91-40-19. IEP liability.** (a) Each agency, teacher, and related services provider shall provide special education and related services to an exceptional child in accordance with the child's IEP and shall make a good faith effort to assist the child to achieve the goals and objectives stated in the IEP.

(b) An agency, teacher, or related services provider that complies with subsection (a) of this regulation shall not be held liable or accountable if a child does not achieve the growth projected in the goals and objectives stated in the child's IEP.

(c) Nothing in this regulation shall limit a parent's right to ask for revisions of the child's IEP or to invoke due process procedures if the parent believes that the efforts required in subsection (a) of this regulation are not being made. (Authorized by K.S.A. 1999 Supp. 72-963; implementing K.S.A. 1999 Supp. 72-987; effective May 19, 2000.)

**91-40-21. Educational placement.** (a) Each agency shall ensure that the children with disabilities served by the agency are educated in the LRE.

(b) Each agency shall ensure that a continuum of alternative educational placements is available to meet the needs of children with disabilities. These alternative educational placements shall meet the following criteria:

(1) Include instruction in regular classes, special classes, and special schools; instruction in a child's home; and instruction in hospitals and other institutions; and

(2) make provision for supplementary services, including resource room and itinerant services, to be provided in conjunction with regular class placement.

(c)(1) In determining the educational placement of a child with a disability, including a preschool child with a disability, each agency shall ensure that the placement decision meets the following requirements:

(A) The decision shall be made by a group of persons, including the child's parent or parents and other persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options.

(B) The decision shall be made in conformity with the requirement of providing services in the LRE.

(2) In determining the educational placement of a gifted child, each agency shall ensure that the placement decision is made by a group of persons, including the child's parent or parents and other

persons who are knowledgeable about the child, the meaning of the evaluation data, and appropriate placement options for gifted children.

(d)(1) Each agency shall give notice to the parents of any meeting to discuss the educational placement of their child. The notice shall meet the requirements of K.A.R. 91-40-17.

(2) If a parent cannot participate in person at a meeting relating to the educational placement of the child, the agency shall offer to use other methods to allow the parent to participate, including conference calls and video conferencing.

(3) An agency may conduct a meeting to determine the appropriate educational placement of a child with a disability without participation of a parent if the agency, despite repeated attempts, has been unable to contact the parent or to convince the parent to participate.

(4) If an agency conducts a meeting to determine the appropriate educational placement of a child without the participation of a parent, the agency shall have a record, as prescribed in K.A.R. 91-40-17(e)(2), of the attempts that the agency made to contact the parent.

(5) An agency shall take action to ensure that parents understand, and are able to participate in, any discussions concerning the educational placement of their children, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(e) Each agency shall ensure that each exceptional child's placement meets the following criteria:

(1) Is determined at least annually;

(2) is based on the child's IEP; and

(3) for a child with a disability, is as close as possible to the child's home.

(f) Unless the IEP of a child with a disability requires some other arrangement, the agency shall ensure that the child is educated in the school that the child would attend if nondisabled.

(g) In selecting the LRE for a child with a disability, the persons making the educational placement decision shall give consideration to any potential harmful effect on the child or on the quality of services that the child needs.

(h) An agency shall not remove a child with a disability from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

(i)(1) In providing, or arranging for the provision of, nonacademic and extracurricular services and activities, including meals, recess periods, and other nonacademic services and activities, each

agency shall ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child.

(2) Each agency shall ensure that each child with a disability receives the supplementary aids and services specified in the child's IEP as being appropriate and necessary for the child to participate in nonacademic settings.

(j) If it is determined that the placement in a specialized public or private school or facility is necessary to provide FAPE to a child with a disability in accordance with the child's IEP, the agency shall provide for the placement, including nonmedical care and room and board, at no cost to the parent or parents of the child.

(k) Each agency that operates any separate facility for the education of children with disabilities shall ensure that the facility meets the following requirements:

(1) Each facility shall be comparable to those operated for nonexceptional children.

(2) Each facility shall be appropriate to the chronological ages of the students and the instructional program being provided. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-976; effective May 19, 2000; amended March 21, 2008.)

**91-40-22. Agency placement in private schools or facilities.** (a) If an agency places a child with a disability in a private school or facility as a means of providing FAPE to the child, the agency shall remain responsible for ensuring that the child is provided the special education and related services specified in the child's IEP and is afforded all the rights granted by the law.

(b)(1) Before an agency places a child with a disability in a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child.

(2) The agency shall ensure that a representative of the private school or facility attends the meeting. If a representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(c)(1) After a child with a disability enters a private school or facility, the agency responsible for providing FAPE to the child may allow any meetings to review and revise the child's IEP to be initiated and conducted by the private school or facility.

(2) If the private school or facility initiates and conducts these meetings, the agency shall ensure that a parent and an agency representative are involved in any decision about the child's IEP and shall agree to any proposed changes in the IEP before those changes are implemented. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966 and 72-976; effective May 19, 2000; amended March 21, 2008.)

**91-40-24. Educational advocates.** (a)(1) Before taking any special education action in regard to any child, an agency shall attempt to identify the parents of the child and the parents' current whereabouts.

(2) If the parental rights of the parents of an exceptional child have been severed, the secretary of social and rehabilitation services or the secretary's designee shall notify the state board or its designee of this fact and request the appointment of an educational advocate for the child.

(3) If the identity of the parent or the parent's current whereabouts cannot be determined, the agency shall take the following action:

(A) Request that proceedings be initiated, pursuant to the Kansas code for the care of children, to determine whether the child is a child in need of care; and

(B) notify the state board or its designee, within three business days, of the agency's determination and request the appointment of an educational advocate for the child.

(b) Within three business days of receiving a request for the appointment of an educational advocate, the agency making the request shall be notified by the state board or its designee of the name, address, and telephone number of the person appointed to serve as the child's educational advocate.

(c) Each person appointed as an educational advocate shall meet the following requirements:

(1) Be at least 18 years of age;

(2) have completed a training program offered or approved by the state board concerning the powers, duties, and functions of an educational advocate;

(3) not be an employee of the state board or any agency that is involved in the education or care of the child; and

(4) have no interest that conflicts with the interest of any child whom the person represents.

(d) (1) A person who is an employee of a nonpublic agency that provides only noneducational care for the child and who meets the requirements of

subsection (c) of this regulation may be appointed as an educational advocate.

(2) A person who otherwise qualifies to be an educational advocate shall not be considered an employee of an agency solely because that person is paid by the agency to serve as an educational advocate.

(e) Any person appointed as an educational advocate shall perform the following duties:

(1) Assert the child's rights in the education and decision-making process, including the identification, evaluation, and placement of the child;

(2) comply with applicable confidentiality requirements imposed by state and federal law;

(3) participate in the development of the child's individualized education program; and

(4) exercise all the rights given to parents under the special education for exceptional children act. (Authorized by K.S.A. 1999 Supp. 72-963; implementing K.S.A. 1999 Supp. 72-963c; effective May 19, 2000.)

**91-40-25. Opportunity to examine records and participate in meetings.** (a) Each agency shall allow the parents of an exceptional child an opportunity to inspect and review all education records and participate in any meeting concerning their child with respect to the following:

(1) The identification, evaluation, or education placement of the child; and

(2) the provision of FAPE to the child.

(b) Each agency shall take steps to ensure that one or both of the parents of an exceptional child are present at each meeting concerning their child or are afforded the opportunity to participate. These steps shall include the following:

(1) Scheduling the meeting at a mutually agreed-upon time and place and informing the parents of the information specified in subsection (c) of this regulation; and

(2) providing prior written notice of any meeting, in accordance with subsection (c) of this regulation, to the parents of the child.

(c) The notice required in subsection (b) of this regulation shall indicate the purpose, time, and location of the meeting and the titles or positions of the persons who will attend on behalf of the agency or at the agency's request.

(d) If neither parent of an exceptional child can be physically present for a meeting concerning the child, the agency shall attempt other measures to ensure parental participation, including individual or conference telephone calls.

(e) As used in this regulation, a meeting shall not include the following:

(1) Informal or unscheduled conversations involving agency personnel and conversations on issues including teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP; and

(2) preparatory activities that agency personnel engage in to develop a proposal or response to a parent's proposal that will be discussed at a later meeting. (Authorized by K.S.A. 1999 Supp. 72-963; implementing K.S.A. 1999 Supp. 72-988; effective May 19, 2000.)

**91-40-26. Notice requirements.** (a) In providing any notice to the parent or parents of an exceptional child in accordance with K.S.A. 72-990 and amendments thereto regarding any action proposed or refused by an agency, each agency shall ensure that the notice includes the following information:

(1) A description of other options that the agency considered and the reasons why those options were rejected; and

(2) a description of other factors that are relevant to the agency's proposal or refusal.

(b) The notice shall be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(c) If the native language or other mode of communication of a parent is not a written language, the agency shall take steps to ensure all of the following:

(1) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication.

(2) The parent understands the content of the notice.

(3) There is written evidence that the requirements of paragraphs (1) and (2) of this subsection have been met.

(d) The agency shall be required to provide a parent with a copy of the procedural safeguards available to parents only one time during each school year, except that a copy shall also be provided to the parent in the following circumstances:

(1) Upon initial referral of the child for an evaluation or upon parental request for an evaluation;

(2) upon receipt by the state department of education of the first complaint filed with it by the parent;

(3) upon receipt by an agency of the first due process complaint filed against it by the parent;

(4) upon the parent's child being subjected to disciplinary removal from the child's current placement; and

(5) at any time, upon request of the parent.

(e) The agency shall inform the parent of any free or low-cost legal or other relevant services available in the agency's area if the parent requests the information or the parent or agency initiates a due process complaint involving the parent's child. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-988; effective May 19, 2000; amended March 21, 2008.)

**91-40-27. Parental consent.** (a) Except as otherwise provided in this regulation, each agency shall obtain parental consent before taking any of the following actions:

(1) Conducting an initial evaluation or any reevaluation of an exceptional child;

(2) initially providing special education and related services to an exceptional child; or

(3) making a material change in services to, or a substantial change in the placement of, an exceptional child, unless the change is made under the provisions of K.A.R. 91-40-33 through 91-40-38 or is based upon the child's graduation from high school or exceeding the age of eligibility for special education services.

(b) When screening or other methods used by an agency indicate that a child may have a disability and need special education services, the agency shall make reasonable and prompt efforts to obtain informed consent from the child's parent to conduct an initial evaluation of the child and, if appropriate, to make the initial provision of services to the child.

(c) Unless a judicial order specifies to the contrary, each agency shall recognize the biological or adoptive parent of an exceptional child who is a minor as the educational decision maker for the child if the parent exerts the parent's rights on behalf of the child, even if one or more other persons meet the definition of parent for the particular child.

(d) An agency shall not construe parental consent for initial evaluation as consent for the initial provision of special education and related services to an exceptional child.

(e) An agency shall not be required to obtain parental consent before taking either of the following actions:

(1) Reviewing existing data as part of an evaluation, reevaluation, or functional behavioral assessment; or

(2) administering a test or other evaluation that is administered to all children, unless before administration of that test or evaluation, consent is required of the parents of all children.

(f)(1) If a parent of an exceptional child who is enrolled or is seeking to enroll in a public school does not provide consent for an initial evaluation or any reevaluation, or for a proposed material change in services or a substantial change in the placement of the parent's child, an agency may, but shall not be required to, pursue the evaluation or proposed change by initiating due process or mediation procedures.

(2) If a parent of an exceptional child who is being homeschooled or has been placed in a private school by the parent does not provide consent for an initial evaluation or a reevaluation, or fails to respond to a request to provide consent, an agency shall not pursue the evaluation or reevaluation by initiating mediation or due process procedures.

(3) An agency shall not be in violation of its obligations for identification, evaluation, or reevaluation if the agency declines to pursue an evaluation or reevaluation because a parent has failed to provide consent for the proposed action.

(4) Each agency shall document its attempts to obtain parental consent for action proposed under this regulation.

(g) An agency shall not be required to obtain parental consent for a reevaluation or a proposed change in services or placement of the child if the agency has made attempts, as described in K.A.R. 91-40-17(e)(2), to obtain consent but the parent or parents have failed to respond.

(h) An agency shall not use a parent's refusal to consent to an activity or service to deny the parent or child other activities or services offered by the agency.

(i) If, at any time after the initial provision of special education and related services, a parent revokes consent in writing for the continued provision of all special education, related services, and supplementary aids and services, the following shall apply:

(1) The agency shall not continue to provide special education, related services, and supplementary aids and services to the child but shall provide prior written notice in accordance with K.A.R. 91-40-26 before ceasing the provision of those services.

(2) The agency shall not use the procedures in K.S.A. 72-972a or K.S.A. 72-996, and amendments thereto, or K.A.R. 91-40-28, including the mediation procedures and the due process procedures, in order to obtain an agreement or a ruling that the services may be provided to the child.

(3) The agency shall not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education services, related services, and supplementary aids and services.

(4) The agency shall not be required to convene an IEP team meeting or develop an IEP under K.S.A. 72-987, and amendments thereto, or K.A.R. 91-40-16 through K.A.R. 91-40-19 for the child for further provision of special education, related services, and supplementary aids and services.

(j) If a parent revokes consent in writing for the child's receipt of all special education and related services after the child is initially provided special education and related services, the agency shall not be required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

(k) If a parent revokes consent for the continued provision of particular special education, related services, supplementary aids and services, or placements, or any combination of these, and the IEP team certifies in writing that the child does not need the service or placement for which consent is being revoked in order to receive a free appropriate public education, the following shall apply:

(1) The agency shall not continue to provide the particular special education, related services, supplementary aids and services, and placements for which consent was revoked but shall provide prior written notice in accordance with K.A.R. 91-40-26 before ceasing the provision of the particular special education, related services, supplementary aids and services, and placements.

(2) The agency shall not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the particular special education, related services, supplementary aids and services, or placements, or any combination, for which parental consent was revoked.

(l) If a parent who revoked consent for all special education, related services, and supplementary aids and services under subsection (i) subsequent-

ly requests that the person's child be reenrolled in special education, the agency shall conduct an initial evaluation of the child to determine whether the child qualifies for special education before reenrolling the child in special education. If the team evaluating the child determines that no additional data are needed to make any of the determinations specified in K.A.R. 91-40-8(c)(2), the agency shall give written notice to the child's parent in accordance with K.A.R. 91-40-8(e)(2). If the child is determined to be eligible, the agency shall develop an initial IEP. (Authorized by K.S.A. 2008 Supp. 72-963; implementing K.S.A. 2008 Supp. 72-988; effective May 19, 2000; amended May 4, 2001; amended March 21, 2008; amended July 23, 2010.)

**91-40-28. Special education mediation and due process hearings.**

(a) If a disagreement arises between a parent and an agency concerning the identification, evaluation, or educational placement of the parent's exceptional child, or the provision of FAPE to the child, the parent or the agency, or both, may request mediation or initiate a due process hearing.

(b) (1) If mediation is requested by either party, the provisions of K.S.A. 72-996 and amendments thereto shall be followed, together with the requirement in paragraph (2) of this subsection.

(2) When agreement is reached to mediate, the agency shall immediately contact the state board or its designee. A mediator shall be appointed by the state board from its list of qualified mediators, based upon a random or other impartial basis.

(c) If a disagreement as described in subsection (a) arises, the parent or the agency, or both, may initiate a special education due process hearing by filing a due process complaint notice. Each due process hearing shall be provided for by the agency directly responsible for the education of the child.

(d)(1) If a special education due process complaint notice is filed, the provisions of K.S.A. 72-972a through 72-975 and amendments thereto shall be followed, together with the requirements in this subsection.

(2) Not more than five business days after a due process complaint notice is received, the agency providing for the hearing shall furnish to the parent the following information:

(A) The agency's list of qualified due process hearing officers;

(B) written notification that the parent has the right to disqualify any or all of the hearing officers

on the agency's list and to request that the state board appoint the hearing officer; and

(C) written notification that the parent has the right, within five days after the parent receives the list, to advise the agency of any hearing officer or officers that the parent chooses to disqualify.

(3) (A) If a parent chooses to disqualify any or all of the agency's hearing officers, the parent, within five days of receiving the list, shall notify the agency of the officer or officers disqualified by the parent.

(B) An agency may appoint from its list any hearing officer who has not been disqualified by the parent.

(4) Not more than three business days after being notified that a parent has disqualified all of the hearing officers on its list, an agency shall contact the state board and request the state board to appoint a hearing officer. In making this request, the agency shall advise the state board of the following information:

(A) The name and address of the parent;

(B) the name and address of the attorney, if any, representing the parent, if known to the agency; and

(C) the names of the agency's hearing officers who were disqualified by the parent.

(5) Within three business days of receiving a request to appoint a hearing officer, the parent and agency shall be provided written notice by the state board of the hearing officer appointed by the state board.

(e) If a due process hearing is requested by a parent or an agency, the agency shall provide written notice to the state board of that action. The notice shall be provided within five business days of the date the due process hearing is requested.

(f) (1) Unless the agency and parent have agreed to waive a resolution meeting or to engage in mediation, the agency and parent shall participate in a resolution meeting as required by K.S.A. 72-973 and amendments thereto. The parent and agency shall determine which members of the IEP team will attend the meeting.

(2) If a parent who files a due process complaint fails to participate in a resolution meeting for which the agency has made reasonable efforts to give the parent notice, the timelines to complete the resolution process and begin the due process hearing shall be delayed until the parent attends a resolution meeting or the agency, at the end of the 30-day resolution period, requests the hearing officer to dismiss the due process complaint.

(3) If an agency fails to hold a resolution meeting within 15 days of receiving a due process complaint or to participate in a meeting, the parent may request the hearing officer to begin the due process hearing and commence the 45-day timeline for its completion.

(g) The 45-day timeline for completion of a due process hearing shall start on the day after one of the following events occurs:

(1) Both parties to the due process proceedings agree, in writing, to waive the resolution meeting.

(2) The parties participate in a resolution meeting or in mediation but agree, in writing, that resolution of their dispute is not possible by the end of the 30-day resolution period.

(3) Both parties agreed, in writing, to continue to engage in mediation beyond the end of the 30-day resolution period, but later one or both of the parties withdraw from the mediation process. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-963a, 72-973, and 72-996; effective May 19, 2000; amended March 21, 2008.)

**91-40-29. Qualifications of special education mediators and due process hearing officers.**

(a) To initially qualify as a special education mediator, a person shall meet the following requirements:

(1) Have passed a written examination prescribed by the state board concerning special education laws and regulations; and

(2) have completed a program sponsored or approved by the state board concerning effective mediation techniques and procedures, and the role and responsibilities of a mediator.

(b) (1) Except as otherwise provided in paragraph (2) of this subsection, to initially qualify as a special education due process hearing officer or review officer, a person shall meet the following requirements:

(A) Be a licensed attorney in good standing with the licensing agency in the state in which the person is licensed to practice law;

(B) have passed a written examination prescribed by the state board concerning special education laws and regulations;

(C) have completed a program sponsored or approved by the state board concerning due process hearing procedures and the role and responsibilities of a due process hearing officer; and

(D) have passed a written examination prescribed by the state board concerning due process proceedings.

(2) Each person who is on the list of qualified due process hearing officers maintained by the state board shall remain eligible to serve as a due process hearing officer or review officer if the person completes the continuing education programs in special education law that are conducted or approved by the state board. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-963a; effective May 19, 2000; amended March 21, 2008.)

**91-40-30. Expedited due process hearings.** (a) If an expedited due process hearing is requested under the provisions of K.S.A. 72-992 or 72-993 and amendments thereto, the agency responsible for providing the hearing shall immediately notify the state board of the request and the parent's name and address.

(b) Upon being notified of a request for an expedited due process hearing, the state board shall appoint, from its list of qualified hearing officers, a due process hearing officer and shall notify the parties of the appointment.

(c) Each of the parties to an expedited due process hearing shall have the rights afforded to them under K.S.A. 72-973 and amendments thereto, except that either party shall have the right to prohibit the presentation of any evidence at the expedited hearing that has not been disclosed by the opposite party at least two business days before the hearing.

(d) (1) Each hearing officer shall conduct the expedited due process hearing within 20 school days of the agency's receipt of the request for the expedited due process hearing and shall render a decision in the matter within 10 school days after the close of the hearing.

(2) A hearing officer in an expedited due process hearing shall not grant any extensions or otherwise fail to comply with the requirement of paragraph (1) of this subsection.

(e) Either party to an expedited due process hearing may appeal the decision in accordance with K.S.A. 72-974 and amendments thereto. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-992 and 72-993; effective May 19, 2000; amended March 21, 2008.)

**91-40-31. Educational placement during proceedings.** (a) Except as otherwise provided in K.S.A. 72-993 and amendments thereto and this regulation, during the pendency of any special education due process or judicial proceeding, the

child's educational placement shall be determined in accordance with K.S.A. 72-973 and amendments thereto.

(b) If a state review officer in an administrative appeal agrees with the parent's position as to the appropriate educational placement for the child, the child shall be educated in that placement during any further proceedings, unless the parent and agency agree to another placement or the child's placement is changed in accordance with K.S.A. 72-993 and amendments thereto.

(c) If the due process hearing involves the evaluation of or initial services for a child who is transferring from the infant and toddler program under the federal law because the child has reached three years of age, the agency shall not be required to provide the services that the child had been receiving under the infant and toddler program. However, if the child is determined to be eligible for special education and related services, the agency shall provide appropriate services to which the parent consents. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-973 and 72-993; effective May 19, 2000; amended March 21, 2008.)

**91-40-33. Change in placement for disciplinary reasons; definitions.** As used in K.A.R. 91-40-33 through 91-40-38, the following terms shall have the meanings specified in this regulation:

(a) (1) The phrase "change in placement for disciplinary reasons" means that school personnel or a special education due process hearing officer has ordered any of the following changes in placement of a child with a disability:

(A) The child is suspended or expelled from school for more than 10 consecutive school days.

(B) The child is subjected to a series of short-term suspensions constituting a pattern that meets all of the following criteria:

(i) The suspensions cumulate to more than 10 school days in a school year.

(ii) Each incident of misconduct resulting in a suspension involved substantially the same behavior.

(iii) The length of each suspension, the total amount of time the child is suspended, and the proximity of the suspensions to one another indicate a pattern.

(C) The child is placed in an interim alternative educational setting.

(2) (A) If school personnel order two or more short-term suspensions of a child with a disability

during a school year, these suspensions shall not constitute a change in placement for disciplinary reasons if the suspensions do not constitute a pattern as described in paragraph (a)(1)(B).

(B) School officials shall have the authority to make the determination of whether a series of short-term suspensions of a child with a disability constitutes a change in placement for disciplinary reasons. This determination shall be subject to review through due process proceedings.

(b) "School officials" means the following:

- (1) A regular education administrator;
- (2) the director of special education or the director's designee or designees; and
- (3) a special education teacher of the child with a disability.

(c) "Short-term suspension" means a suspension as authorized by K.S.A. 72-8902(a) and amendments thereto. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-991a; effective May 19, 2000; amended May 4, 2001; amended March 21, 2008.)

**91-40-34. Short-term suspensions and interim placements; suspension of gifted children.** (a) As authorized by K.S.A. 72-8902(a) and amendments thereto, school personnel may impose one or more short-term suspensions upon a child with a disability during a school year for violations of any school rule if these short-term suspensions do not constitute a pattern amounting to a change in placement for disciplinary reasons as specified in paragraph (a)(1)(B) of K.A.R. 91-40-33.

(b) As authorized in K.S.A. 72-991a and amendments thereto, school personnel may order a change in placement of a child with a disability to an interim alternative educational setting.

(c) Gifted children shall be subject to suspension or expulsion from school as authorized by K.S.A. 72-8902 and amendments thereto. While a gifted child is suspended or expelled from school, an agency shall not be required to provide special education or related services to the child. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-991a and 72-8902; effective May 19, 2000; amended March 21, 2008.)

**91-40-35. Services required during suspensions or interim alternative educational placements.** (a) An agency shall not be required to provide special education or related services to a child with a disability who has been suspended

from school for 10 or fewer school days during any school year, if the agency does not provide educational services to nondisabled children who are suspended from school.

(b) (1) A child with a disability shall be entitled to continue to receive special education and related services if the child is suspended from school under either of the following circumstances:

(A) For more than 10 cumulative school days in any school year, but with these suspensions not resulting in a change of placement for disciplinary reasons; or

(B) for more than 10 consecutive school days in any school year for behavior that has been determined not to be a manifestation of the child's disability.

(2) If a child with a disability is suspended from school under either of the circumstances stated in paragraph (b)(1), the agency that suspended the child shall provide, commencing on the 11<sup>th</sup> day of suspension and during any subsequent day or days of suspension, special education and related services that are needed to enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP.

(c) If a child with a disability is placed in an interim alternative educational setting in accordance with K.S.A. 72-991a and amendments thereto, the agency shall provide special education and related services to the child that meet the following requirements:

(1) The services provided shall enable the child to continue both of the following:

(A) To progress in the general curriculum, although in another setting; and

(B) to receive those services and modifications, including those described in the child's IEP, that will enable the child to meet the goals set out in the IEP.

(2) The services shall include services and modifications that address the child's misbehavior and that are designed to prevent the misbehavior from recurring. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966 and 72-991a; effective May 19, 2000; amended March 21, 2008.)

**91-40-36. Determination of services for children with disabilities suspended from school or placed in interim alternative educational settings.** (a) If a child with a disability is properly suspended from school for more than 10

cumulative school days in any school year, the special education and related services to be provided to the child during any period of suspension shall be determined by school officials of the agency responsible for the education of the child.

(b) If a child with a disability is suspended from school for more than 10 consecutive school days or is expelled from school for behavior that has been determined not to be a manifestation of the child's disability, the child's IEP team shall determine the special education and related services that will be provided to the child.

(c) If a child with a disability is placed in an interim alternative educational setting as a result of the child's possession of a weapon or illegal drug, the child's IEP team shall determine the following:

(1) The special education and related services to be provided to the child in the interim alternative educational setting; and

(2) those services and modifications that will be provided to address the misbehavior of the child and that are designed to prevent the misbehavior from recurring.

(d) (1) If a child with a disability is to be placed in an interim alternative educational setting by a due process hearing officer because the child is substantially likely to cause injury to self or others, school officials shall propose to the hearing officer the special education and related services to be provided to the child, and those services and modifications to be provided to address the behavior and prevent its recurrence.

(2) The hearing officer shall determine whether the services proposed by the school officials are appropriate. If so determined, those services shall be provided to the child. If determined to be inappropriate, the hearing officer shall order any modification in the services to be provided that the hearing officer determines necessary to provide the child with an appropriate education.

(e) An agency shall convene IEP meetings under this regulation as expeditiously as possible and shall be required to give only 24 hours' prior notice of an IEP meeting to the child's parents. (Authorized by K.S.A. 2000 Supp. 72-963; implementing K.S.A. 2000 Supp. 72-966 and 72-991; effective May 19, 2000; amended May 4, 2001.)

**91-40-37.** (Authorized by K.S.A. 2000 Supp. 72-963; implementing K.S.A. 2000 Supp. 72-991; effective May 19, 2000; amended May 4, 2001; revoked March 21, 2008.)

**91-40-38. Manifestation determination; appeal.** (a) If an agency proposes to make a change in educational placement for disciplinary reasons, the agency shall implement the provisions of K.S.A. 72-991a and amendments thereto.

(b) An agency may conduct the manifestation determination at the same IEP team meeting that is held in regard to developing or reviewing a behavioral intervention plan under K.S.A. 72-991a and amendments thereto.

(c) If, in making a manifestation determination, deficiencies are identified in the child's IEP or placement or in the provision of services to the child, the IEP team shall make any changes it deems appropriate, and the agency shall implement those changes.

(d) An agency shall convene meetings under this regulation as expeditiously as possible and shall be required to give only 24 hours' prior notice of a meeting to the child's parent or parents.

(e)(1) If a parent files a due process complaint concerning the manifestation determination, a resolution meeting between the parties shall be held within seven days of the filing of the complaint, unless the parties agree, in writing, to waive the resolution meeting or to engage in mediation.

(2) If the matter has not been resolved to the satisfaction of both parties within 15 days of the filing of the due process complaint, the due process hearing may proceed. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-991a; effective May 19, 2000; amended May 4, 2001; amended March 21, 2008.)

**91-40-39.** (Authorized by K.S.A. 1999 Supp. 72-963; implementing K.S.A. 1999 Supp. 72-994; effective May 19, 2000; revoked March 21, 2008.)

**91-40-41. Private school placement by parents to obtain FAPE.** (a) (1) If the parent of an exceptional child who previously was receiving special education and related services from an agency enrolls the child, without the consent of or referral by the agency, in a private preschool or a private elementary or secondary school because the parent believes the child was not receiving FAPE from the agency, a court or special education due process hearing officer may require the agency to reimburse the parent for the cost of that enrollment only if the court or due process hearing officer makes both of the following findings:

(A) The agency did not make FAPE available to the child in a timely manner before the private school enrollment.

(B) The private school placement made by the parent is appropriate to meet the needs of the child.

(2) A court or due process hearing officer may find that a private school placement by a parent is appropriate for a child although that placement does not meet state standards that apply to special education and related services that are required to be provided by public agencies.

(b) Subject to subsection (c), a court or due process hearing officer may deny or reduce any reimbursement for private school placement by a parent, if the court or due process hearing officer makes any of the following findings:

(1) (A) At the most recent IEP meeting that the parent attended before making the private school placement, the parent did not inform the IEP team that the parent was rejecting the services or placements proposed by the agency to provide FAPE to the child, including a statement of concerns and the intent to enroll the child in a private school at public expense; or

(B) at least 10 business days, including any holidays that occur on a business day, before removal of the child from public school, the parent did not give written notice to the public agency of the information specified in paragraph (1) (A) of this subsection.

(2) Before the parent's removal of the child from public school, the agency notified the parent, in accordance with the requirements of K.S.A. 72-988 and amendments thereto, of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parent did not make the child available for the evaluation.

(3) The actions of the parent in removing the child from public school were unreasonable.

(c) Notwithstanding the notice requirements in subsection (b), a court or due process hearing officer shall not deny or reduce reimbursement of the cost of a private school placement for failure to provide the notice, if the court or due process hearing officer makes any of the following findings:

(1) Compliance with the prior notice requirement would likely have resulted in physical harm to the child.

(2) The agency prevented the parent from providing the required prior notice.

(3) The parent had not been given notice by the agency of the prior notice requirement prescribed in subsection (b).

(d) At the discretion of a court or due process hearing officer, the court or hearing officer may allow a parent full or partial reimbursement of the cost of a private school placement even though the parent failed to provide the notice required in subsection (b), if the court or hearing officer finds either of the following:

(1) The parent is not literate and cannot write in English.

(2) Compliance with the prior notice requirement would likely have resulted in serious emotional harm to the child. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966; effective May 19, 2000; amended March 21, 2008.)

**91-40-42. Child find and count of children with disabilities enrolled in private schools; determination of children to receive services.** (a) Child find activities.

(1) Each board, in accordance with K.A.R. 91-40-7, shall locate, identify, and evaluate all children with disabilities who are enrolled in private elementary or secondary schools located in the school district, including children with disabilities who reside in another state.

(2) The activities undertaken to carry out this responsibility shall meet the following criteria:

(A) Be similar to the activities undertaken for exceptional children enrolled in the public schools;

(B) provide for the equitable participation of private school children;

(C) provide for an accurate count of children with disabilities enrolled in the private schools; and

(D) be completed in a time period comparable to the time for these activities in the public schools.

(3) Each board, in accordance with K.A.R. 91-40-42a, shall consult with representatives of private schools and parents of private school children concerning the activities described in paragraph (1) of this subsection.

(4) The cost of carrying out the child find activities required under this regulation, including individual evaluations of private school children, shall not be considered in determining if an agency has met its obligation to provide a proportionate share of its federal funds for private school children.

(b) Child count activities.

(1) Each board shall annually conduct a count of the number of children with disabilities who are

enrolled in private schools located in the school district. This count, at the discretion of each board, shall be conducted on either December 1 or the last Friday of October of each school year.

(2) Each board, in accordance with K.A.R. 91-40-42a, shall consult with representatives of private schools and parents of private school children concerning the annual count required in paragraph (1) of this subsection.

(3) Each board shall use the child count required by this subsection to calculate the amount of funds provided to the school district under the federal law that the school district must allocate for the purpose of providing special education and related services to private school children with disabilities in the next succeeding school year.

(c) Each board, based upon the results of its child find activities under subsection (a), shall consult with representatives of private schools and parents of children with disabilities enrolled in private schools and then determine which private school children will be provided special education and related services by the board. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966; effective May 19, 2000; amended March 21, 2008.)

**91-40-42a. Consultation.** (a) Each board shall engage in timely and meaningful consultation with representatives of private schools located in the school district and representatives of parents of children with disabilities enrolled in those private schools before making determinations regarding the following matters:

(1) How the consultation process among the board, private school officials, and representatives of parents of private school children shall be organized and carried out, including how the process will operate throughout the school year to ensure that children with disabilities who are identified throughout the school year can receive the special education and related services that are provided to private school children;

(2) how the child find process will be conducted, including the following:

(A) How children enrolled in private schools who are suspected of having a disability can participate equitably in the child find process; and

(B) how parents, teachers, and private school officials will be informed of the process;

(3)(A) How the determination of the proportionate share of federal funds that will be available to serve private school children will be made,

including a review of how the proportionate share of those funds must be calculated under the federal law; and

(B) how special education and related services will be apportioned if the proportionate share of federal funds are insufficient to serve all of the private school children who are designated to receive services; and

(4)(A) How, where, and by whom special education and related services will be provided to private school children, including a discussion of the means by which services will be delivered, including direct services and services through contracts; and

(B) how and when final decisions on these issues will be made by the board.

(b)(1) When a board believes that it has completed timely and meaningful consultation as required by this regulation, the board shall seek to obtain a written affirmation, signed by representatives of participating private schools, affirming that the consultation did occur.

(2) If representatives of the private schools do not provide the affirmation within 30 days of the date the affirmation is requested, the board shall forward documentation of the consultation to the state department.

(c)(1) A representative of a private school may submit a complaint to the state department alleging that the board of the school district in which the private school is located failed to engage in consultation that was meaningful and timely or did not give due consideration to the views of private school representatives. A copy of the complaint shall also be submitted to the board.

(2) Each complaint submitted by a private school representative shall include a statement of the specific requirement that the board allegedly failed to meet and the facts that support the allegation.

(3) Within 30 days of receiving a complaint, the board shall prepare a reply to the complaint and submit the reply and documentation supporting its position to the state department.

(4)(A) Within 60 days of receiving a complaint, the state department shall issue a determination on whether the complaint is justified and any corrective action that is to be taken.

(B) If the private school representative is dissatisfied with the decision of the state department, the representative may appeal the decision by submitting an appeal to the secretary of the United States department of education as specified in the federal regulations. (Authorized by K.S.A.

2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966; effective March 21, 2008.)

**91-40-43. Services to private school children.** (a) Consistent with the number and location of private school children in the school district, each board shall provide special education and related services to this group of children in accordance with K.A.R. 91-40-43 through 91-40-48.

Each board also shall provide services to gifted children who reside in the district and are enrolled in a private school.

(b) The parent of an exceptional child may request that the child be provided special education and related services in accordance with K.S.A. 72-5393 and amendments thereto.

(c) A board shall not be required to provide any special education or related services to a private school child unless one of the following conditions is met:

(1) The child is a member of a group of private school children that has been designated to receive special education and related services in accordance with the provisions of K.A.R. 91-40-43 through 91-40-48.

(2) The parent of the child requests that services be provided to the child in accordance with K.S.A. 72-5393 and amendments thereto.

(d) Except as otherwise provided in K.S.A. 72-5393 and amendments thereto, a private school child shall not be entitled to receive any special education or related service that the child would be entitled to receive if enrolled in a public school, and a private school child may receive a different amount of special education or related services than a child with a disability who is enrolled in a public school.

(e) Each board shall ensure that the special education and related services provided to private school children are provided by personnel who meet the same standards as the standards for public school personnel, except that private school teachers who provide services to private school children shall not be required to be highly qualified under the federal law. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966 and 72-5393; effective May 19, 2000; amended March 21, 2008.)

**91-40-44. Allocation and expenditure of federal funds; reports.** (a) To meet the requirement of K.A.R. 91-40-43(a), each board shall allocate, for expenditure in providing special edu-

cation and related services to private school children, the amounts specified below.

(1) For private school children aged three through 21, an amount calculated as follows:

(A) Divide the number of private school children aged three through 21 who are enrolled in private schools located in the school district by the total number of children with disabilities aged three through 21 in the school district; and

(B) multiply the quotient determined under paragraph (1) (A) times the total amount of federal funds received by the school district under section 1411(f) of the federal law; and

(2) for private school children aged three through five, an amount calculated as follows:

(A) Divide the number of private school children aged three through five who are enrolled in private elementary schools located in the school district by the total number of children with disabilities aged three through five in the school district; and

(B) multiply the quotient determined under paragraph (2) (A) times the total amount of federal funds received by the school district under section 1419(g) of the federal law.

(b) In making the calculations under subsection (a), each board shall include all private school children whether or not those children are actually receiving special education or related services from the school district.

(c) (1) Each board, to the extent necessary, shall expend the amounts calculated under subsection (a) of this regulation to provide private school children with those special education and related services that have been determined will be provided to those children under the provisions of K.A.R. 91-40-43.

(2) If a board does not expend all of the funds allocated for the provision of special education and related services to private school children during a school year, the board shall allocate the unexpended funds for the purpose of providing services to private school children during the next succeeding school year.

(d) (1) A board, in meeting the requirement of subsection (c) of this regulation, shall not be authorized to include expenditures made by the board for child find activities under K.A.R. 91-40-42.

(2) A board, in meeting the requirement of subsection (c) of this regulation, shall be authorized to include expenditures made by the board to provide transportation to private school children to receive special education and related services.

(e) Each board shall maintain records regarding the following information related to children enrolled in private schools located in the school district:

- (1) The number of children evaluated;
- (2) the number of children determined to be children with disabilities; and
- (3) the number of children provided with special education and related services. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966; effective May 19, 2000; amended March 21, 2008.)

**91-40-45. Services plan or IEP.** (a) Each board shall develop and implement a services plan for each private school child who meets both of the following criteria:

(1) The child is a member of the group of private school children that has been designated to receive special education and related services under the provisions of K.A.R. 91-40-43.

(2) The child is not receiving special education and related services by request of the child's parent under the provisions of K.S.A. 72-5393 and amendments thereto.

(b) Each board shall ensure that the services plan for each private school child meets each of the following requirements:

(1) The services plan shall describe the specific special education and related services that the board will provide to the child, based upon the services the board has determined that it will make available to private school children under the provisions of K.A.R. 91-40-43.

(2) The services plan shall be developed, reviewed, and revised, as necessary, in the same manner in which IEP's are developed, reviewed, and revised under this article, except that the board shall ensure that a representative of the child's private school is invited to attend, or to otherwise participate in, each meeting held to develop or review the child's services plan.

(3) The services plan shall meet the requirements of K.A.R. 91-40-18 with respect to the services that the child is designated to receive.

(c) Each board shall develop, review, and revise, as necessary, in accordance with this article, an IEP for the following children:

(1) Each private school child whose parent requests special education and related services under the provisions of K.S.A. 72-5393 and amendments thereto; and

(2) each identified gifted child residing in the school district and enrolled in a private school

whose parent elects to have the child receive special education and related services from the board. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966 and 72-5393; effective May 19, 2000; amended March 21, 2008.)

**91-40-46. Mediation and due process rights of private school children.** (a)(1) The parent of a private school child may request mediation or initiate a due process hearing as authorized under this article, if the parent believes that a board has failed to properly identify and evaluate the parent's child, in accordance with K.A.R. 91-40-42(a).

(2) Each due process complaint by the parent of a private school child shall be filed with the board of education of the school district in which the private school is located. The parent of the child shall provide a copy of the complaint to the state board of education.

(b) The parent of a private school exceptional child who is receiving special education and related services in accordance with an IEP may request mediation or initiate a due process hearing as authorized under this article on any matter concerning the child's education.

(c) The parent of a private school child with a disability who is receiving special education and related services under a services plan shall not be entitled to request mediation or to initiate a due process hearing on any matter concerning the child's education, but shall be entitled to take either, or both, of the following actions:

(1) Request that a meeting be conducted, in accordance with K.A.R. 91-40-45(b), to review and revise the child's services plan; or

(2) file a complaint with the state board, in accordance with K.A.R. 91-40-51. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966 and 72-5393; effective May 19, 2000; amended March 21, 2008.)

**91-40-47. Transportation for exceptional children enrolled in private schools.** (a) Except as otherwise provided in this regulation, each board, to the extent necessary for an exceptional child to benefit from, or to participate in, special education and related services provided to the child by the board, shall furnish or provide for the following transportation services for the child:

(1) Transportation from the child's private school or home to the site at which the child is provided special education and related services; and

(2) transportation from the site at which special education and related services are provided to the child to the child's private school or the child's home, as appropriate.

(b) Except as provided in K.S.A. 72-8306 and amendments thereto, a board shall not be required to furnish or provide transportation from an exceptional child's home to the child's private school.

(c) A board shall not be required to furnish or provide transportation services outside of its school district. (Authorized by K.S.A. 1999 Supp. 72-963; implementing K.S.A. 1999 Supp. 72-966 and 72-5393; effective May 19, 2000.)

**91-40-48. Use of funds and equipment.**

(a) Subject to subsection (d), an agency may use state and federal funds to make personnel available at locations other than at its facilities to the extent necessary to provide special education and related services to exceptional children enrolled in private schools, if those services are not normally provided by the private schools.

(b) Subject to subsection (d), an agency may use state and federal funds to pay for the services of an employee of a private school to provide special education and related services if both of the following conditions are met:

(1) The employee performs the services outside of the employee's regular hours of duty.

(2) The employee performs the services under public supervision and control.

(c) (1) Subject to subsection (d), an agency may use state and federal funds to provide for the special education and related services needs of exceptional children enrolled in private schools, but shall not use those funds for either of the following purposes:

(A) To enhance the existing level of instruction in the private school or to otherwise generally benefit the private school; or

(B) to generally benefit the needs of all students enrolled in the private school.

(2) Each agency shall ensure that special education and related services provided to exceptional children enrolled in private schools are provided in a secular and nonideological manner.

(d) An agency's authority to use federal funds under this regulation shall be limited to providing special education and related services to children with disabilities.

(e) An agency shall not offer or maintain classes that are organized separately on the basis of pub-

lic or private school enrollment or the religion of the students, if the classes offered to students are provided at the same site and the classes include students enrolled in a public school and students enrolled in a private school.

(f) (1) An agency shall keep title to, and exercise continuing administrative control over, all property, equipment, and supplies that are acquired by the agency to be used for the benefit of exceptional children enrolled in private schools.

(2) An agency may place equipment and supplies in a private school, to the extent allowed by law, for the period of time needed to provide special education and related services to exceptional children enrolled in the school.

(g) (1) An agency shall ensure that any equipment or supplies placed in a private school are used to provide special education and related services and can be removed from the private school without the necessity of remodeling the private school.

(2) An agency shall remove its equipment or supplies from a private school if either of the following conditions exists:

(A) The equipment or supplies are no longer needed to provide special education or related services to students enrolled in the private school.

(B) Removal is necessary to avoid unauthorized use of the equipment or supplies.

(h) An agency shall not use public funds to construct, remodel, or repair any private school facility. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966; effective May 19, 2000; amended March 21, 2008.)

**91-40-50. Parental access to student records; confidentiality.** (a) As used in this regulation, the following terms shall have the meanings specified in this subsection:

(1) "Destruction" means physically destroying the medium on which information is recorded or removing all personal identifiers from the information so that no one can be identified.

(2) "Education records" means any document or medium on which information directly related to one or more students is maintained by a participating agency in accordance with K.S.A. 72-6214 and amendments thereto.

(3) "Participating agency" means any educational agency or institution that collects, maintains, or uses personally identifiable student information to provide special education and related services to children with disabilities.

(b) The provisions in 34 C.F.R. §§300.612 through 300.624, as in effect on August 14, 2006, and published in 71 fed. reg. 46802-46804 (2006), which concern parental access to education records and confidentiality of those records, are hereby adopted by reference. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-963 and 72-988; effective May 19, 2000; amended March 21, 2008.)

**91-40-51. Filing complaints with the state department of education.** (a) Any person or organization may file a written, signed complaint alleging that an agency has violated a state or federal special education law or regulation. Also, a prevailing party in a due process hearing may file a complaint alleging that the other party has failed to implement the hearing decision. The complaint shall include the following information:

(1) A statement that the agency has violated a requirement of state or federal special education laws or regulations;

(2) the facts on which the statement is based;

(3) the signature of and contact information for the complainant; and

(4) if the complaint involves a specific child, the following information:

(A) The child's name and address of residence, or other contact information if the child is a homeless child or youth;

(B) the name of the school the child is attending;

(C) a description of the problem involving the child; and

(D) a proposed resolution to the problem, if a possible resolution is known and available to the complainant.

(b)(1) The complaint shall allege a violation that occurred not more than one year before the date the complaint is received and shall be filed with the commissioner of education.

(2) The party filing the complaint shall forward a copy of the complaint to the agency against which the allegations are made at the same time the complaint is filed with the commissioner of education.

(c) Upon receipt of a complaint, an investigation shall be initiated. At a minimum, each investigation shall include the following:

(1) A discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified, verified, and recorded;

(2) contact with the agency against which the complaint is filed to allow the agency to respond to the complaint with facts and information supporting its position, offer a proposal to resolve the complaint, or offer to engage in mediation to resolve the complaint; and

(3) a written report of findings of fact and conclusions, including reasons for the decision, and any corrective action or actions that are required, including the time period within which each action is to be taken. Unless the parent and the agency agree to engage in mediation, this report shall be sent to the parties within 30 days of the receipt of the complaint. If the parties mediate but fail to resolve the issues, the report shall be sent 30 days after the department received notice that mediation has failed.

(d) An on-site investigation may be conducted before issuing a report.

(e)(1) If a report requires corrective action by an agency, that agency, within 10 days of the date of the report, shall submit to the state director of special education one of the following:

(A) Documentation to verify acceptance of the corrective action or actions specified in the report;

(B) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report, together with justification for the request; or

(C) a written notice of appeal. Each appeal shall be made in accordance with subsection (f).

(2) If an agency files a request for an extension of time within which to complete one or more corrective actions required in a report, a review committee of at least three department of education members shall be appointed by the commissioner to review the request and the offered justification for the extension of time. A decision on the request shall be made by the committee within five business days of the date the request was received. The decision of the review committee shall be final.

(3) If a local education agency fails to respond to a report within the time allowed, the sanctions listed in paragraph (f) (2) may be invoked.

(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed

statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

- (A) The issuance of an accreditation deficiency advisement;
- (B) the withholding of state or federal funds otherwise available to the agency;
- (C) the award of monetary reimbursement to the complainant; or
- (D) any combination of the actions specified in paragraph (f)(2).

(g) (1) If a complaint is received that is also the subject of a due process hearing or that contains multiple issues of which one or more are part of the due process hearing, the complaint or the issues that are part of the due process hearing shall be set aside until conclusion of the hearing.

(2) If an issue that has previously been decided in a due process hearing involving the same parties is raised in a complaint, the due process hearing decision shall be binding on that issue and the complainant informed of this fact. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-988; effective May 19, 2000; amended March 21, 2008.)

**91-40-52. School district eligibility for funding; facilities.** (a) (1) To be eligible to receive state and federal funding, each board shall submit to the state board documentation that the board has policies, procedures, and programs in

effect to achieve compliance with the special education for exceptional children act and this article.

(2) In school districts having an enrollment of more than 5,000 students, the board's policies shall provide for the employment of a full-time administrator of special education.

(b) (1) Each board shall be eligible to receive state funding for the following related services, if provided under an exceptional child's IEP or services plan:

- (A) Art therapy;
- (B) assistive technology devices and services;
- (C) audiology;
- (D) counseling services;
- (E) dance movement therapy;
- (F) medical services for diagnostic or evaluation purposes;
- (G) music therapy;
- (H) occupational therapy;
- (I) parent counseling and training;
- (J) physical therapy;
- (K) recreation;
- (L) rehabilitation counseling services;
- (M) school health services;
- (N) school psychological services;
- (O) school social work services;
- (P) special education administration and supervision;
- (Q) special music education;
- (R) speech or language services; and
- (S) transportation.

(2) A board shall submit requests for reimbursement for any other related service to the state board for its consideration.

(c) An agency shall not use federal funds to pay the attorneys' fees or costs of any parent who is the prevailing party in any proceeding or action brought under the federal law and its implementing regulations.

(d) Each agency shall ensure that all of the following requirements concerning facilities are met:

(1) All facilities for exceptional children shall be comparable to those for non-exceptional children within the same school building.

(2) If an agency operates a facility solely for exceptional children, the facility and the services and activities provided in the facility shall be comparable to those provided to nonexceptional children.

(3) All facilities for exceptional children shall be age-appropriate environments, and each environment shall be appropriate for the instructional program being provided. (Authorized by K.S.A. 2000 Supp. 72-963; implementing K.S.A. 2000

Supp. 72-978; effective May 19, 2000; amended May 4, 2001.)

**91-40-53. Resolution of interagency agreement disputes.** (a) If a dispute arises under an interagency agreement entered into under K.S.A. 72-966 and amendments thereto, the parties to the dispute shall resolve the matter under either of the procedures specified in this regulation.

(b)(1) Parties to an interagency agreement dispute may select a mutually agreed-upon mediator, or they may make a joint request to the commissioner of education to appoint a person to serve as mediator. Upon receiving a request for the appointment of a mediator, a mediator shall be promptly appointed by the commissioner of education.

(2) The parties to any interagency agreement dispute shall divide equally the costs of the mediation process.

(c) (1) If the parties to an interagency agreement dispute do not agree to mediate the disagreement or are unable to resolve the dispute through mediation, either party may initiate an administrative hearing by filing a request for a hearing with the commissioner of education.

(2) Upon receiving a request for an administrative hearing under this regulation, an attorney in private practice shall be appointed by the commissioner of education to conduct the hearing. The hearing officer shall be selected from the list of special education due process hearing officers that is required to be maintained under K.S.A. 72-973 and amendments thereto.

(3) Upon being appointed, the hearing officer shall notify the parties of the appointment and shall commence the hearing procedures. The hearing officer shall conduct the hearing in accordance with the Kansas administrative procedure act and shall issue a final order in regard to the matter.

(4) The hearing officer, as part of the order, shall assess the costs of the hearing as determined appropriate based upon the outcome of the hearing.

(d) If a party to an interagency agreement fails to provide the transition services described in a child's IEP, the agency responsible for the child's education shall reconvene the child's IEP team to identify alternative strategies to meet the transition objectives for the student as set out in the IEP. (Authorized by K.S.A. 2000 Supp. 72-963;

implementing K.S.A. 2000 Supp. 72-966; effective May 19, 2000; amended May 4, 2001.)

**Article 41.—MENTOR TEACHER PROGRAM**

**91-41-1. Definitions.** (a) "Board" means any local board of education.

(b) "Certificated" or "licensed" means holding a valid certificate or license issued by the state board.

(c) "Continuous assistance" means ongoing, structured, and unstructured contact throughout the school year.

(d) "Kansas exemplary educators network" means the Kansas teacher of the year program, Milken family foundation national educator awards program, presidential award for excellence in math and science teaching, and the Christa McAuliffe fellowship program.

(e) "Mentor teacher" means a certificated or licensed teacher who meets the following criteria:

(1) Has completed at least three consecutive school years of employment in the same school district;

(2) has been selected by the board on the basis of having demonstrated exemplary teaching ability as indicated by criteria established by the state board in these regulations; and

(3) has participated in, and successfully completed, a training program for mentor teachers provided for by the board in accordance with guidelines prescribed by the state board.

(f) "Mentor teacher program" means a program established and maintained by a board for the purpose of providing probationary teachers with the professional support and continuous assistance of an on-site mentor teacher.

(g) "On-site" means at the location where a probationary teacher is assigned.

(h) "Probationary teacher" means a certificated or licensed teacher to whom the provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto, do not apply.

(i) "School year" means July 1 through June 30.

(j) "State board" means the state board of education.

(k) "Training" means professional development provided to mentor teachers to enable them to support and assist probationary teachers. (Authorized by and implementing K.S.A. 2000 Supp. 72-1414; effective, T-91-1-18-01, Jan. 18, 2001; effective May 4, 2001.)

**91-41-2. General requirements.** (a) Each board making application for a grant of state moneys for a mentor teacher program shall submit a completed application to the state board on or before August 1 of the school year.

(b) Each board receiving state funds for a mentor teacher program shall submit an annual evaluation report to the state board. The report shall be submitted on or before June 30. (Authorized by and implementing K.S.A. 2000 Supp. 72-1414; effective, T-91-1-18-01, Jan. 18, 2001; effective May 4, 2001.)

**91-41-3. Criteria for evaluating applications and approving mentor teacher programs.** Each board applying for approval of a mentor teacher program shall submit an application containing the following statements and descriptions: (a) A statement of the district's purpose or purposes for establishment of the mentor teacher program;

(b) a description of the year-long continuous assistance activities to be provided under the program, including a description of the structured contact time between the mentor teacher and the probationary teacher and the unstructured opportunities to be provided under the program;

(c) a description of the expectations for district administrators in supporting the program;

(d) a description of how the mentor teacher program aligns with other professional development initiatives in the district;

(e) a description of the method to be used to assign a mentor teacher to a probationary teacher giving consideration to endorsement areas, grade levels, and building assignment;

(f) a description of the process to be used for reassignment of a successor mentor if the original mentor is unable to fulfill responsibilities; and

(g) a description of how the program will establish ongoing professional development and support for each mentor teacher under the program. (Authorized by and implementing K.S.A. 2000 Supp. 72-1414; effective, T-91-1-18-01, Jan. 18, 2001; effective May 4, 2001.)

**91-41-4. Criteria for determining exemplary teaching ability for qualification as a mentor teacher.** In determining whether a teacher has demonstrated exemplary teaching ability for qualification as a mentor teacher, each board shall consider the following criteria: (a) Professional competency as indicated by the

board's most recent evaluation of the teacher under K.S.A. 72-9001 through K.S.A. 72-9006, and amendments thereto, including competency in the teacher's area of certification or licensure, effective communication skills, and efficacy of instruction; and

(b) recognition, if any, under national or state programs, including the national board teaching certification program and the Kansas exemplary educators network. (Authorized by and implementing K.S.A. 2000 Supp. 72-1414; effective, T-91-1-18-01, Jan. 18, 2001; effective May 4, 2001.)

## Article 42.—EMERGENCY SAFETY INTERVENTIONS

**91-42-1. Definitions.** As used in this article, each of the following terms shall have the meaning specified in this regulation: (a) "Administrative review" means review by the state board upon request of a parent.

(b) "Chemical restraint" means the use of medication to control a student's violent physical behavior or restrict a student's freedom of movement.

(c) "Commissioner" means commissioner of education.

(d) "Complaint" means a written document that a parent files with a local board as provided for in this article.

(e) "Department" means the state department of education.

(f) "District" means a school district organized under the laws of this state that is maintaining a public school for a school term pursuant to K.S.A. 72-1106, and amendments thereto. This term shall include the governing body of any accredited nonpublic school.

(g) "Emergency safety intervention" means the use of seclusion or physical restraint.

(h) "Hearing officer" means the state board's designee to conduct an administrative review as specified in K.A.R. 91-42-5. The hearing officer shall be an officer or employee of the department.

(i) "Incident" means each occurrence of the use of an emergency safety intervention.

(j) "Local board" means the board of education of a district or the governing body of any accredited nonpublic school.

(k) "Mechanical restraint" means any device or object used to limit a student's movement.

(l) "Parent" means any of the following:

(1) A natural parent;

- (2) an adoptive parent;
- (3) a person acting as a parent, as defined in K.S.A. 72-1046 and amendments thereto;
- (4) a legal guardian;
- (5) an education advocate for a student with an exceptionality;
- (6) a foster parent, unless the foster parent's child is a student with an exceptionality; or
- (7) a student who has reached the age of majority or is an emancipated minor.

(m) "Physical escort" means the temporary touching or holding the hand, wrist, arm, shoulder, or back of a student who is acting out for the purpose of inducing the student to walk to a safe location.

(n) "Physical restraint" means bodily force used to substantially limit a student's movement, except that consensual, solicited, or unintentional contact and contact to provide comfort, assistance or instruction shall not be deemed to be physical restraint.

(o) "School" means any learning environment, including any nonprofit institutional day or residential school or accredited nonpublic school, that receives public funding or which is subject to the regulatory authority of the state board.

(p) "Seclusion" means placement of a student in a location where all the following conditions are met:

(1) The student is placed in an enclosed area by school personnel.

(2) The student is purposefully isolated from adults and peers.

(3) The student is prevented from leaving, or the student reasonably believes that the student will be prevented from leaving, the enclosed area.

(q) "State board" means Kansas state board of education.

(r) "Time-out" means a behavioral intervention in which a student is temporarily removed from a learning activity without being secluded. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective April 19, 2013; amended, T-91-2-17-16, Feb. 17, 2016; amended June 10, 2016; amended July 7, 2017.)

**91-42-2. Standards for the use of emergency safety interventions.** (a) An emergency safety intervention shall be used only when a student presents a reasonable and immediate danger of physical harm to the student or others with the present ability to effect such physical harm. Less restrictive alternatives to emergency safety

interventions, including positive behavior interventions support, shall be deemed inappropriate or ineffective under the circumstances by the school employee witnessing the student's behavior before the use of any emergency safety interventions. The use of an emergency safety intervention shall cease as soon as the immediate danger of physical harm ceases to exist. Violent action that is destructive of property may necessitate the use of an emergency safety intervention.

(b) Use of an emergency safety intervention for purposes of discipline or punishment or for the convenience of a school employee shall not meet the standard of immediate danger of physical harm.

(c)(1) A student shall not be subjected to an emergency safety intervention if the student is known to have a medical condition that could put the student in mental or physical danger as a result of the emergency safety intervention.

(2) The existence of the medical condition must be indicated in a written statement from the student's licensed health care provider, a copy of which shall be provided to the school and placed in the student's file. The written statement shall include an explanation of the student's diagnosis, a list of any reasons why an emergency safety intervention would put the student in mental or physical danger and any suggested alternatives to the use of emergency safety interventions.

(3) Notwithstanding the provisions of this subsection, a student may be subjected to an emergency safety intervention, if not subjecting the student to an emergency safety intervention would result in significant physical harm to the student or others.

(d) When a student is placed in seclusion, a school employee shall be able to see and hear the student at all times.

(e) Each seclusion room equipped with a locking door shall be designed to ensure that the lock automatically disengages when the school employee viewing the student walks away from the seclusion room, or in cases of emergency, including fire or severe weather.

(f) Each seclusion room shall be a safe place with proportional and similar characteristics as other rooms where students frequent. Each room shall be free of any condition that could be a danger to the student and shall be well-ventilated and sufficiently lighted.

(g) The following types of restraint shall be prohibited:

- (1) Prone, or face-down, physical restraint;
- (2) supine, or face-up, physical restraint;
- (3) any restraint that obstructs the airway of a student;
- (4) any restraint that impacts a student's primary mode of communication;
- (5) chemical restraint, except as prescribed treatments for a student's medical or psychiatric condition by a person appropriately licensed to issue these treatments; and
- (6) the use of mechanical restraint, except those protective or stabilizing devices either ordered by a person appropriately licensed to issue the order for the device or required by law, any device used by a law enforcement officer in carrying out law enforcement duties, and seatbelts and any other safety equipment when used to secure students during transportation.

(h) The following shall not be deemed an emergency safety intervention, if its use does not otherwise meet the definition of an emergency safety intervention:

- (1) Physical escort; and
- (2) time-out. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective April 19, 2013; amended, T-91-2-17-16, Feb. 17, 2016; amended June 10, 2016; amended July 7, 2017.)

**91-42-3. District policy; training; local board dispute resolution.** (a) Each district shall develop and implement written policies to govern the use of emergency safety interventions over all schools. At a minimum, written district policies shall conform to the standards, definitions, and requirements of this article. The written policies shall also include the following:

- (1) (A) School personnel training shall be designed to meet the needs of personnel as appropriate to their duties and potential need for the use of emergency safety interventions;
- (B) training shall address prevention techniques, de-escalation techniques, and positive behavioral intervention strategies;
- (C) any training on the use of emergency safety interventions by the district shall be consistent with nationally recognized training programs; and
- (D) schools and programs shall maintain written or electronic documentation on training provided and lists of participants in each training; and
- (2) a local dispute resolution process, which shall include the following:
  - (A) A procedure for a parent to file a complaint

with the local board. If a parent believes that an emergency safety intervention has been used with the parent's child in violation of this article or the district's emergency safety intervention policy, the parent may file a complaint with the local board. The complaint shall be filed within 30 days of the date on which the parent was informed of the use of that emergency safety intervention;

- (B) a complaint investigation procedure;
- (C) a dispute resolution final decision. The local board's final decision shall be in writing and shall include findings of fact and any corrective action required by the district if the local board deems these actions necessary. The local board's final decision shall be mailed to the parent and the department within 30 days of the local board's receipt of the complaint; and

(D) a statement of the parent's right to request an administrative review by the state board as specified in K.A.R. 91-42-5, including information as to the deadline by which the parent must submit the request to the state board;

- (3) a system for the collection and maintenance of documentation for each use of an emergency safety intervention, which shall include the following:

- (A) The date and time of the emergency safety intervention;
- (B) the type of emergency safety intervention;
- (C) the length of time the emergency safety intervention was used;

(D) the school personnel who participated in or supervised the emergency safety intervention;

(E) whether the student had an individualized education program at the time of the incident;

(F) whether the student had a section 504 plan at the time of the incident; and

(G) whether the student had a behavior intervention plan at the time of the incident;

(4) procedures for the periodic review of the use of emergency safety intervention at each school, which shall be compiled and submitted at least biannually to the district superintendent or district designee; and

(5) a schedule for when and how parents are provided with notice of the written policies on the use of emergency safety interventions.

(b) Written policies developed pursuant to this article shall be accessible on each school's web site and shall be included in each school's code of conduct, school safety plan, or student handbook. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective, T-91-2-17-16, Feb. 17, 2016; effective June 10, 2016.)

**91-42-4. Parent notification; required meeting; filing a complaint.**

(a) When an emergency safety intervention is used with a student, the school shall notify the parent the same day the emergency safety intervention was used. The school shall attempt to contact the parent using at least two methods of contact, one of which shall be the preferred method of contact if so designated by the parent as specified in this subsection. The same-day notification requirement of this subsection shall be deemed satisfied if the school attempts at least two methods of contact. A parent may designate a preferred method of contact to receive the same-day notification required by this subsection. A parent may agree, in writing, to receive only one same-day notification from the school for multiple incidents occurring on the same day.

(b) The school shall provide written documentation of the emergency safety intervention used to the parent no later than the school day following the day on which the emergency safety intervention was used. This documentation shall include the following:

- (1) The date and time of the intervention;
- (2) the type of intervention;
- (3) the length of time the intervention was used;
- (4) the school personnel who participated in or supervised the intervention;
- (5) the events leading up to the incident;
- (6) the student behaviors that necessitated the emergency safety intervention;
- (7) the steps taken to transition the student back into the educational setting;
- (8) space or an additional form for parents to provide feedback or comments to the school regarding the incident;
- (9) a statement that invites and strongly encourages parents to schedule a meeting to discuss the incident and how to prevent future use of emergency safety interventions; and

(10) email and phone information for the parent to contact the school to schedule the emergency safety intervention meeting. Schools may group incidents together when documenting the items in paragraphs (b)(5) through (7) if the triggering issue necessitating the emergency safety interventions is the same.

(c) In addition to the documentation required by subsection (b), the school shall provide the parent the following information:

(1) After the first incident in which an emergency safety intervention is used with a student

during the school year, the school shall provide the following information in printed form to the parent or, upon the parent's written request, by email:

(A) A copy of the standards of when emergency safety interventions can be used;

(B) a flyer on the parent's rights;

(C) information on the parent's right to file a complaint through the local dispute resolution process and the complaint process of the state board of education; and

(D) information that will assist the parent in navigating the complaint process, including contact information for the parent training and information center and protection and advocacy system.

(2) After subsequent incidents in which an emergency safety intervention is used with a student during the school year, the school shall provide a full and direct web site address containing the information in paragraph (c)(1).

(d) After each incident, a parent may request a meeting with the school to discuss and debrief the incident. A parent may request the meeting verbally, in writing or by electronic means. A school shall hold a meeting requested under this subsection within 10 school days of the date on which the parent sent the request. The focus of any meeting convened under this subsection shall be to discuss proactive ways to prevent the need for emergency safety interventions and to reduce incidents in the future.

(1) For a student who has an individualized education program or a section 504 plan, the student's individualized education program team or section 504 plan team shall discuss the incident and consider the need to conduct a functional behavioral analysis, develop a behavior intervention plan, or amend either if already in existence.

(2) For a student with a section 504 plan, the student's section 504 plan team shall discuss and consider the need for an evaluation under the special education for exceptional children act, K.S.A. 72-961 et seq., and amendments thereto.

(3) For a student who has an individualized education program and is placed in a private school by a parent, a meeting called under this subsection shall include the parent and the designee of the private school, who shall consider whether the parent should request an individualized education program team meeting. If the parent requests an individualized education program team meeting, the private school shall help facilitate the meeting.

(4) For a student who does not have an individualized education program or section 504 plan, the parent and school shall discuss the incident and consider the appropriateness of a referral for an evaluation under the special education for exceptional children act, K.S.A. 72-961 et seq. and amendments thereto, the need for a functional behavioral analysis, or the need for a behavior intervention plan. Each meeting called pursuant to this subsection shall include the student's parent, a school administrator for the school where the student attends, one of the student's teachers, a school employee involved in the incident, and any other school employees designated by the school administrator as appropriate for the meeting.

(5) The parent shall determine whether the student shall be invited to any meeting called pursuant to this subsection.

(6) The time for calling a meeting pursuant to this subsection shall be extended beyond the 10-school-day limit if the parent of the student is unable to attend within that time period.

(7) Nothing in this subsection shall be construed to prohibit the development and implementation of a functional behavioral analysis or a behavior intervention plan for any student if the student could benefit from such measures.

(e) If a school is aware that a law enforcement officer or school resource officer has used seclusion, physical restraint or mechanical restraint on a student on school grounds or during a school-sponsored activity, the school shall notify the parent on the same day the school becomes aware of the use, using the parent's preferred method of contact as described in K.A.R. 91-42-4(a). A school shall not be required to provide written documentation to a parent, as set forth in subsection (b) or (c) regarding law enforcement use of an emergency safety intervention, or report to the department law enforcement use of an emergency safety intervention. For purposes of this subsection, mechanical restraint includes, but is not limited to, the use of handcuffs.

(f) If a parent believes that emergency safety interventions have been used in violation of this article or policies of the school district, then within 30 days from being informed of the use of emergency safety intervention, the parent may file a complaint through the local dispute resolution process. Any parent may request an administrative review by the state board within 30 days from the date the final decision was issued pursuant to the local dispute resolution process. (Authorized

by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective, T-91-2-17-16, Feb. 17, 2016; effective June 10, 2016; amended July 7, 2017.)

**91-42-5. Administrative review.** (a) Any parent who filed a written complaint with a local board regarding the use of emergency safety intervention may request an administrative review by the state board of the local board's final decision.

(b) Each parent seeking administrative review shall provide the following information in the request:

(1) The name of the student and the student's contact information;

(2) the name and contact information, to the extent known, for all involved parties, including teachers, aides, administrators, and district staff;

(3) a detailed statement of the basis for seeking administrative review, with all supporting facts and documentation. The documentation shall include a copy of the complaint filed with the local board and shall include the local board's final decision, if issued. The request shall be legibly written or typed and shall be signed by the parent. Relevant written instruments or documents in the possession of the parent shall be attached as exhibits or, if unavailable, referenced in the request for administrative review; and

(4) written consent to disclose any personally identifiable information from the student's education records necessary to conduct an investigation pursuant to this regulation.

(c)(1) Each request for administrative review shall be filed with the commissioner within 30 days from the date a final decision is issued pursuant to the local dispute resolution process or, if a final decision is not issued, within 60 days from the date a written complaint was filed with the local board.

(2) The hearing officer shall forward a copy of the request for administrative review to the clerk of the local board from whom the administrative review is sought.

(d) Upon receipt of each request for administrative review, the hearing officer shall consider the local board's final decision and may initiate its own investigation of the complaint. Any investigation may include the following:

(1) A discussion with the parent, during which additional information may be gathered and specific allegations identified, verified, and recorded;

(2) contact with the local board or other district

staff against which the request for administrative review is filed to allow the local board to respond to the request with facts and information supporting the local board's final decision; and

(3) an on-site investigation by department officers or employees.

(e) If the hearing officer receives information that the hearing officer determines was not previously made available to both parties during the local board dispute resolution process, the hearing officer may remand the issue back to the local board. The local board then has 30 days to issue a written amended final decision.

Upon remand, the hearing officer's case will be closed. All rights to and responsibilities of an administrative review shall begin again when the local board's amended final decision is issued or upon 30 days from when the hearing officer's remand is issued, whichever occurs first.

(f) Within 60 days of the commissioner's receipt of the request for administrative review, the hearing officer shall inform the parent, the school's head administrator, the district superintendent, the local board clerk, and the state board in writing of the results of the administrative review. This time frame may be extended for good cause upon approval of the commissioner.

(g) The results of the administrative review shall contain findings of fact, conclusions of law, and, if needed, suggested corrective action. The hearing officer shall determine whether the district is in violation of this article based solely on the information obtained by the hearing officer during the course of the investigation and the administrative review process. This determination shall include one of the following:

(1) The local board appropriately resolved the complaint pursuant to its dispute resolution process.

(2) The local board should reevaluate the complaint pursuant to its dispute resolution process with suggested findings of fact.

(3) The hearing officer's suggested corrective action is necessary to ensure that local board policies meet the requirements of law.

(h) Nothing in this regulation shall require exhaustion of remedies under this regulation before using procedures or seeking remedies that are otherwise available. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective, T-91-2-17-16, Feb. 17, 2016; effective June 10, 2016.)

**91-42-6. Exemptions.** (a) As used in this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) "Appointing authority" means a person or group of persons empowered by statute to make human resource decisions that affect the employment of officers.

(2) "Campus police officer" means a school security officer designated by the board of education of any school district pursuant to K.S.A. 72-8222, and amendments thereto.

(3) "Law enforcement officer" and "police officer" mean a full-time or part-time salaried officer or employee of the state, a county, or a city, whose duties include the prevention or detection of crime and the enforcement of criminal or traffic laws of this state or of any Kansas municipality. This term shall include "campus police officer."

(4) "Legitimate law enforcement purpose" means a goal within the lawful authority of an officer that is to be achieved through methods or conduct condoned by the officer's appointing authority.

(5) "School resource officer" means a law enforcement officer or police officer employed by a local law enforcement agency who is assigned to a district through an agreement between the local law enforcement agency and the district.

(6) "School security officer" means a person who is employed by a board of education of any school district for the purpose of aiding and supplementing state and local law enforcement agencies in which the school district is located, but is not a law enforcement officer or police officer.

(b) Campus police officers and school resource officers shall be exempt from the requirements of this article when engaged in an activity that has a legitimate law enforcement purpose.

(c) School security officers shall not be exempt from the requirements of this article. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective, T-91-2-17-16, Feb. 17, 2016; effective June 10, 2016.)

**91-42-7. Reporting.** (a) Each district shall report information from all incidents of emergency safety interventions that the department deems necessary to the department by the date and in the form specified by the department.

(b) The department shall compile reports from schools on the use of emergency safety interventions and provide the results based on aggregate data on the department web site and to the state board, the governor and the committees on edu-

cation in the senate and the house of representatives by January 20, 2016, and annually thereafter. The department's reported results shall include but shall not be limited to the following information:

(1) The number of incidents in which emergency safety interventions were used on students who have an individualized education program;

(2) the number of incidents in which emergency safety interventions were used on students who have a section 504 plan;

(3) the number of incidents in which emergency safety interventions were used on students who do not have an individualized education program or a section 504 plan;

(4) the total number of incidents in which emergency safety interventions were used on students;

(5) the total number of students with behavior intervention plans subjected to an emergency safety intervention;

(6) the number of students physically restrained;

(7) the number of students placed in seclusion;

(8) the maximum and median number of minutes a student was placed in seclusion;

(9) the maximum number of incidents in which emergency safety interventions were used on a student;

(10) the information reported under paragraphs (c)(1) through (c)(3) reported by school to the extent possible;

(11) the information reported under paragraphs (c)(1) through (c)(9) aggregated by age, ethnicity, gender and eligibility for free and reduced lunch of the students on a statewide basis; and

(12) any other information that the department deems necessary to report.

(c) Actual data values shall be used when providing statewide aggregate data for the reports. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective, T-91-2-17-16, Feb. 17, 2016; effective June 10, 2016; amended July 7, 2017.)

**Agency 92**  
**Kansas Department of Revenue**

*Articles*

- 92-1. *HEARING. (Not in active use.)*
- 92-2. **INHERITANCE TAXES.**
- 92-3. **MOTOR FUEL TAX AND TRANSPORTATION OF LIQUID FUEL.**
- 92-4. *INCOME TAX. (Not in active use.)*
- 92-5. **CIGARETTE TAX.**
- 92-6. *KANSAS RETAILERS' SALES TAX. (Not in active use.)*
- 92-7. *COMPENSATING TAX. (Not in active use.)*
- 92-8. *CEREAL MALT BEVERAGE TAX. (Not in active use.)*
- 92-9. **MINERALS AND NATURAL PRODUCTS LEASES ON NAVIGABLE STREAMBEDS.**
- 92-10. *SPECIAL FUEL TAX. (Not in active use.)*
- 92-11. **WITHHOLDING AND ESTIMATED TAX.**
- 92-12. **INCOME TAX.**
- 92-12a. *SOLAR TAX INCENTIVES. (Not in active use.)*
- 92-13. **INTERSTATE MOTOR FUEL USE TAX.**
- 92-14. **LIQUEFIED PETROLEUM FUEL TAX.**
- 92-15. **NONRESIDENT CONTRACTORS.**
- 92-16. *INTANGIBLES TAX. (Not in active use.)*
- 92-17. **TOBACCO PRODUCTS.**
- 92-18. *SPECIAL FUEL TAX. (Not in active use.)*
- 92-19. **KANSAS RETAILERS' SALES TAX.**
- 92-20. **COMPENSATING TAX.**
- 92-21. **LOCAL RETAILERS' SALES TAX.**
- 92-22. **HOMESTEAD TAX RELIEF.**
- 92-23. **CHARITABLE GAMING.**
- 92-24. **LIQUOR DRINK TAX.**
- 92-25. **TRANSIENT GUEST TAX.**
- 92-26. **AGRICULTURAL ETHYL ALCOHOL PRODUCER INCENTIVE.**
- 92-27. **QUALIFIED BIODIESEL FUEL PRODUCER INCENTIVE.**
- 92-28. **RETAIL DEALER INCENTIVE.**
- 92-50. **MANUFACTURE, DISTRIBUTION AND SALE OF MOTOR VEHICLES; REVIEW BOARD.**
- 92-51. **TITLES AND REGISTRATION.**
- 92-52. **MOTOR VEHICLE DRIVERS' LICENSES.**
- 92-53. *MOTOR VEHICLE INVENTORY TAX. (Not in active use.)*
- 92-54. *SIGHT CLEARANCE CERTIFICATION. (Not in active use.)*
- 92-55. **MOTOR VEHICLE TAXATION.**
- 92-56. **IGNITION INTERLOCK DEVICES.**
- 92-57. **TAX ON CONSUMABLE MATERIAL.**

**Article 1.— HEARING**

**92-1-1.** (Authorized by and implementing K.S.A. 75-5103; effective Jan. 1, 1966; amended May 1, 1988; revoked March 29, 2002.)

**92-1-2.** (Authorized by and implementing K.S.A. 75-5103; effective Jan. 1, 1966; amended Jan. 1, 1967; amended May 1, 1988; revoked March 29, 2002.)

**92-1-3.** (Authorized by and implementing K.S.A. 75-5103; effective Jan. 1, 1966; amended Jan. 1, 1967; amended Feb. 15, 1977; amended May 1, 1988; revoked March 29, 2002.)

**92-1-4.** (Authorized by K.S.A. 74-2437, 74-2438; effective Jan. 1, 1966; amended Jan. 1, 1967; revoked May 1, 1988.)

**92-1-5.** (Authorized by K.S.A. 74-2437, 74-2438; effective Jan. 1, 1966; amended Jan. 1, 1967; revoked May 1, 1988.)

**92-1-6.** (Authorized by K.S.A. 74-2437, 74-2438; effective Jan. 1, 1966; revoked May 1, 1988.)

**92-1-7.** (Authorized by K.S.A. 74-2437, 74-2438; effective Jan. 1, 1966; revoked May 1, 1988.)

**92-1-8.** (Authorized by K.S.A. 74-2437, 74-2438; effective Jan. 1, 1966; revoked May 1, 1988.)

**Article 2.— INHERITANCE TAXES**

**92-2-1 and 92-2-2.** (Authorized by K.S.A. 74-2437, 79-1511; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-3.** (Authorized by K.S.A. 74-2437, 79-1512, 79-1519, K.S.A. 1973 Supp. 59-1413, 79-1511; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-4.** (Authorized by K.S.A. 74-2437, 79-1511, 79-1512; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979, revoked May 1, 1980.)

**92-2-5.** (Authorized by K.S.A. 59-1405, 74-2437, 79-1511, 79-1512, 79-1517, 79-1519; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979, revoked May 1, 1980.)

**92-2-6.** (Authorized by K.S.A. 74-2437, 79-1512, 79-1517, 79-1519, K.S.A. 1973 Supp. 59-1405, 79-1511; effective Jan. 1, 1966; amended

Jan. 1, 1974; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-7.** (Authorized by K.S.A. 74-2437, 79-1501a, 79-1501d, 79-1502, 79-1511, 79-1512, 79-1517; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-8.** (Authorized by K.S.A. 74-2437, 74-2443, 79-1501; effective Jan. 1, 1966; amended Jan. 1, 1969; revoked May 1, 1978.)

**92-2-9.** (Authorized by K.S.A. 74-2437, 79-1501; effective Jan. 1, 1966; amended Jan. 1, 1969; amended May 1, 1978; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-10.** (Authorized by K.S.A. 74-2437, 79-1501; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-11.** (Authorized by K.S.A. 74-2437, 79-1502; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-12 and 92-2-13.** (Authorized by K.S.A. 74-2437, 79-1502, 79-1518, 79-1526; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-14.** (Authorized by K.S.A. 74-2437, 79-1501, 79-1502, 79-1504, 79-1506, 79-1507, 79-1508, 79-1509, 79-1515, 79-1522; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-15 and 92-2-16.** (Authorized by K.S.A. 74-2437, 79-1501, 79-1512; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-17.** (Authorized by K.S.A. 59-2250, 59-2251, 74-2437, 79-1501, 79-1512; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-18.** (Authorized by K.S.A. 74-2437, K.S.A. 1979 Supp. 79-1501, 79-1501e, 79-1512, 79-1517; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-19.** (Authorized by K.S.A. 74-2437, K.S.A. 1979 Supp. 79-1501, 79-1502, 79-1511, 79-1512, 79-15-17, 79-1519; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-20.** (Authorized by K.S.A. 74-2437, K.S.A. 1979 Supp. 79-1501, 79-1511, 79-1512; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-21.** (Authorized by K.S.A. 74-2437, K.S.A. 1979 Supp. 79-1501a, 79-1501d; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-22.** (Authorized by K.S.A. 74-2437, K.S.A. 1979 Supp. 79-1501, 79-1501a, 79-1501d; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-23.** (Authorized by K.S.A. 74-2437, K.S.A. 1979 Supp. 79-1501, 79-1501a, 79-1501d, 79-1512; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-24 and 92-2-25.** (Authorized by K.S.A. 74-2437, K.S.A. 1979 Supp. 79-1501; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-26.** (Authorized by K.S.A. 74-2437, K.S.A. 1979 Supp. 79-1501, 79-1502; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-27.** (Authorized by K.S.A. 74-2437, K.S.A. 1979 Supp. 79-1501, 79-1501a, 79-1501d, 79-1501e, 79-1512, 79-15-17; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-28.** (Authorized by K.S.A. 74-2437, K.S.A. 1979 Supp. 79-1501; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-29 and 92-2-30.** (Authorized by K.S.A. 74-2437, K.S.A. 1979 Supp. 79-1501, 79-1512; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-31.** (Authorized by K.S.A. 74-2437, K.S.A. 1979 Supp. 79-1501, 79-1502, 79-1504; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-32 to 92-2-35.** (Authorized by K.S.A. 74-2437, K.S.A. 1979 Supp. 79-1501, 79-1512; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-36.** (Authorized by K.S.A. 74-2437,

K.S.A. 1979 Supp. 79-1511, 79-1512, 79-1517; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-37.** (Authorized by K.S.A. 74-2437, K.S.A. 1979 Supp. 79-1501, 79-1502, 79-1504, 79-1511, 79-1512, 79-1517, 79-2526; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-38.** (Authorized by K.S.A. 74-2437, 79-1501, 79-1513, 79-1514; effective Jan. 1, 1966; revoked May 1, 1978.)

**92-2-39.** (Authorized by K.S.A. 74-2437, 79-1534; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-40.** (Authorized by K.S.A. 74-2437, 79-1501, 79-1534; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-41.** (Authorized by K.S.A. 74-2437, 79-1534, 79-2401; effective Jan. 1, 1966; revoked, E-80-26, Dec. 12, 1979; revoked May 1, 1980.)

**92-2-42.** (Authorized by K.S.A. 1979 Supp. 79-1583, 79-1546; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1986.)

**92-2-43.** (Authorized by K.S.A. 1979 Supp. 79-1583, 79-1543; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1986.)

**92-2-44.** (Authorized by K.S.A. 1979 Supp. 79-1583, 79-1545; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1986.)

**92-2-45.** (Authorized by K.S.A. 1979 Supp. 79-1583, 79-1547, 79-1552, 79-1556; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1986.)

**92-2-46.** (Authorized by K.S.A. 1980 Supp. 79-1537, 79-1546, 79-1583; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked, E-81-16, June 25, 1980; revoked May 1, 1981.)

**92-2-47.** (Authorized by K.S.A. 1979 Supp. 79-1583, 79-1537; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1986.)

**92-2-48.** (Authorized by K.S.A. 1980 Supp. 79-1537, 79-1583; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked, E-81-16, June 25, 1980; revoked May 1, 1981.)

**92-2-49.** (Authorized by K.S.A. 1979 Supp. 79-1583, 79-1561; effective, E-80-26, Dec. 26, 1979; effective May 1, 1980; revoked May 1, 1986.)

**92-2-50.** (Authorized by K.S.A. 59-1405, K.S.A. 1979 Supp. 79-1583, 79-1560, 79-1561; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1986.)

**92-2-51.** (Authorized by K.S.A. 1979 Supp. 79-1583, 79-1563; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1986.)

**92-2-52.** (Authorized by K.S.A. 1979 Supp. 79-1539, 79-1540, 79-1583; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1983.)

**92-2-53.** (Authorized by K.S.A. 1979 Supp. 79-1583, 79-1563; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1986.)

**92-2-54. Transfer of assets prior to payment of tax.** When it becomes necessary to transfer assets prior to payment of the inheritance tax, a consent to transfer can be obtained in those cases where the inheritance tax lien is not released automatically pursuant to K.S.A. 1979 Supp. 79-1569. A consent to transfer any property is not necessary where the sale is properly authorized by the decedent's will or by order of the district court. A request for consent to transfer shall be made by filing a completed form IH-14.

A consent to transfer assets will not be issued prior to the receipt of a return. If a complete return can not be filed at the time the transfer becomes necessary, a preliminary return shall be filed. A preliminary return shall be as complete as is possible, and shall include an explanation of the reason for the inability to file a complete return. A preliminary return must also include copies of the decedent's will and any trust instruments involved. A consent to transfer will be issued when the return describes remaining real estate or stock of a value sufficient to secure payment of the inheritance tax. When there is no real estate or stock to secure payment of the tax, a consent to transfer may be obtained by one of the three (3) following methods: (a) The executor, administrator, or deemed executor may file an affidavit describing other assets of a value sufficient to secure payment of the inheritance tax, and warranting that those assets will not be disposed of until a complete return has been filed and the tax determined and paid.

(b) The executor, administrator or deemed executor may establish an escrow account in an amount the director finds to be sufficient to secure payment of the inheritance tax. The escrow shall provide that the account shall not be released to the executor, administrator or deemed executor until the complete inheritance tax return has been filed and the tax determined and paid.

(c) The executor, administrator or deemed executor may establish a joint account with the director in an amount the director finds to be sufficient to secure payment of the inheritance tax. The joint account shall not be released to the executor, administrator or deemed executor until the complete inheritance tax return has been filed and the tax determined and paid. (Authorized by K.S.A. 1979 Supp. 79-1583, 79-1569; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980.)

**92-2-55.** (Authorized by K.S.A. 1979 Supp. 79-1546, 79-1547, 79-1552, 79-1556, 79-1561, 79-1583; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1983.)

**92-2-56. Family settlement agreements.** To be effective for purposes of estate distribution and inheritance tax liability determinations, a family settlement agreement shall be properly executed and presented to a court of competent jurisdiction for its approval, pursuant to K.S.A. 59-618a, and its amendments. The copy of the agreement filed with the Department of Revenue shall indicate that it has been so presented. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1537; effective May 1, 1986.)

**92-2-57. Distributees; prior transfers between class A distributees.** (a) Any person or entity acquiring an interest in property as a result of a decedent's death shall be a distributee of such decedent's estate.

(b) When more than one individual dies as a result of a common disaster, and it cannot be determined whether one survived the other or others, problems concerning title to property or the devolution thereof shall be resolved under the provisions of the Kansas uniform simultaneous death law, K.S.A. 58-701 to 58-707, and its amendments. The Kansas inheritance tax shall apply to the property of each decedent as so determined.

(c) When a person is taxed as a class A distributee upon receipt of property from a decedent's estate, and that person dies within five years of the date of death of the first decedent, the same prop-

erty may pass partially exempt to a person who is a class A distributee of the second decedent. The portion of the value which is exempt upon the death of the second decedent shall be that portion which was actually taxed upon the death of the first decedent. The tax contemplated in determining the extent to which property was taxed and the tax thereon paid in the estate of the first decedent shall be the inheritance tax imposed by K.S.A. 79-1537, and its amendments. The portion of the value which was not taxed upon the death of the first decedent, because of the personal deduction of the distributee or for any other reason, shall be included as a part of the taxable estate of the second decedent. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1537; effective May 1, 1986.)

**92-2-58. Debts forgiven by will.** The discharge or bequest, in a will, of any debt or demand of a testator against any person shall be construed as a specific bequest of the debt or demand. The amount thereof shall be included in the inventory of the assets of the decedent. The amount of the indebtedness shall be set over to the debtor the same as any other specific bequest, included in the debtor's distributable share, and subjected to tax. Notes or other evidences of debt which are forgiven by provision made in any will and which are otherwise barred from collection by operation of law shall be exempt from Kansas inheritance tax. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1537a; effective May 1, 1986.)

**92-2-59. Surviving spouses.** (a) Only a person decreed to have been a common law spouse by a court of competent jurisdiction shall be given the same status as a spouse by marriage for inheritance tax purposes.

(b) Any property interest passing to the surviving spouse of a decedent shall be exempt from Kansas inheritance tax, regardless of the manner in which the interest is held or passed.

(c) If the tax for an estate is determined under the provisions of K.S.A. 79-1539 or 79-1540, and its amendments, the share passing to the surviving spouse shall be chargeable with the tax in proportion to the amount of the share of the estate received by the surviving spouse. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1537b, 79-1539, 79-1540; effective May 1, 1986.)

**92-2-60. Charitable distributees.** (a) Any property interest passing from the decedent to a

charitable organization shall be exempt from Kansas inheritance tax, regardless of the manner in which the interest is held or passed.

(b) If the tax due for an estate is determined under the provisions of K.S.A. 79-1539 or 79-1540 and its amendments, the share passing to a charitable organization shall be chargeable with the tax when there are no other distributees whose distributive shares are large enough to pay the tax. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1537c, 79-1539, 79-1540; effective May 1, 1986.)

**92-2-61. Qualified terminable interest property election.** (a) A qualified terminable interest property election shall be made on form IH 80, Kansas inheritance tax return for estates filing federal estate tax returns, or form IH 90, Kansas inheritance tax return for estates not filing federal estate tax returns, and by attaching or including information sufficient to identify the particular assets or groups of assets subject to the election. A qualified terminable interest property election may be made without regard to the filing of, or making of a similar election on, a federal estate tax return. The election shall be irrevocable once it is made.

(b) Elections, including less than all qualified property, shall be allowed. If a partial election is made, a computation schedule or other information sufficient to identify the particular assets or groups of assets subject to the partial election shall be included. If identification of particular assets is not possible, the dollar amount, or percentage, of all assets subject to the election shall be indicated. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1537d; effective May 1, 1986.)

**92-2-62. Tax to residue.** When a will or other written instrument specifically provides for the payment of inheritance tax from the residue of the decedent's estate, the tax due on property which is not a part of the residue of the estate, shall be deducted from the residue before it is distributed and taxed. Tax due on the balance of the residue shall not be deducted from the residue in making distribution and calculating tax. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1538; effective May 1, 1986.)

**92-2-63. Additional tax; credit for state death taxes.** If the Kansas inheritance tax, computed in accordance with K.S.A. 79-1537, and its amendments, is less than an amount equal to the

federal credit for state death taxes, the difference between the inheritance tax and the amount of the federal credit shall be due as an additional tax. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1539; effective May 1, 1986.)

**92-2-64. Minimum tax; credit for state death taxes.** If no Kansas inheritance tax is due upon the distributive shares of an estate under K.S.A. 79-1537, and its amendments, an amount equal to the federal credit for state death taxes shall be due as a minimum tax. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1540; effective May 1, 1986.)

**92-2-65. Proration of credit for state death taxes; tax chargeable against distributee's interests.** (a) When an estate is comprised of property both within and without the Kansas jurisdiction, the amount of the credit for state death taxes shall be prorated between the jurisdictions, based upon the relationship between the value of the gross estate within the Kansas jurisdiction and the value of the federal gross estate.

(b) The tax imposed pursuant to K.S.A. 79-1539 or 79-1540, and its amendments, shall be chargeable against the interests of each distributee in proportion to the amount of the shares of the estate received by each. Even though no tax may be due on a distributable share pursuant to K.S.A. 79-1537, and its amendments, the distributee shall pay a portion of the tax. A charitable beneficiary shall be required to pay a proportionate part of the tax only when there is no other beneficiary whose distributive share is large enough to pay the tax. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1541; effective May 1, 1986.)

**92-2-66. Valuation of property included in the gross estate.** (a) The property included in a decedent's gross estate pursuant to K.S.A. 79-1547 through 79-1557, and their amendments, shall be valued as follows:

(1) Stocks and Bonds. The value of stocks and bonds shall be the fair market value per share or bond on the applicable valuation date. Treasury Reg. Sec. 20.2031-2 (1976) is hereby adopted by reference and shall be followed in determining the fair market value of stocks and bonds.

(2) Business interests. The value of any interest of a decedent in a business, whether a partnership or a proprietorship, shall be the fair market value of that interest on the applicable valuation date. Treasury Reg. Sec. 20.2031-3

(1958) is hereby adopted by reference and shall be followed in determining the fair market value of these business interests.

(3) Notes. Notes owned by the decedent shall be valued at their fair market value on the applicable valuation date. Treasury Reg. Sec. 20.2031-4 (1958) is hereby adopted by reference and shall be followed in determining the fair market value of notes.

(4) Cash. The amount of cash belonging to the decedent at the date of death, whether in the decedent's possession or deposited with a bank, shall be included in the decedent's gross estate. Treasury Reg. 20.2031-5 (1958) is hereby adopted by reference and shall be followed in determining the valuation of cash on hand or on deposit.

(5) Household items and personal effects. The value of household items and personal effects shall be the fair market value of those items on the applicable valuation date. Treasury Reg. Sec. 20.2031-6 (1958) is hereby adopted by reference and shall be followed in determining the fair market value of household items and personal effects.

(6) Life insurance and annuity contracts. The valuation of certain life insurance contracts on the life of another individual, certain annuity contracts and shares in an open-end investment company shall be determined under Treasury Reg. Sec. 20.2031-8 (1974), which is hereby adopted by reference.

(7) Interests affected by lapse of time; estates of decedents dying after December 31, 1978 and before May 1, 1986. Annuities, life estates, terms for years, remainders and reversions shall be valued in the manner and according to the tables provided in Treasury Reg. Sec. 20.2031-10 (1970), which is hereby adopted by reference.

(8) Interests affected by lapse of time; estates of decedents dying after April 30, 1986. Annuities, life estates, terms for years, remainders and reversions shall be valued in the manner and according to the tables provided in Treasury Reg. Sec. 20.2031-7 (1984), which is hereby adopted by reference.

(9) Other property. The valuation of any property not specifically described in the preceding subsections of this regulation shall be determined in accordance with the general principles set forth in Treasury Reg. Sec. 20.2031-9 (1958) and Treasury Reg. Sec. 20.2031-1 (1965), which are hereby adopted by reference.

(b) In the event the alternate valuation method is elected for federal estate tax purposes pursu-

ant to 26 U.S.C. Sec. 2032, the alternate valuation method shall also be used for Kansas inheritance tax purposes, as provided in K.S.A. 79-1543, and its amendments. If a federal estate tax return is filed and the alternate valuation method is not elected, the Kansas alternate valuation method shall not be used. If a federal estate tax return is not filed, the estate may be valued for Kansas inheritance tax purposes as of the date of death or under the alternate valuation method provided in K.S.A. 79-1543, and its amendments. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1543, 79-1546 to 79-1557; effective May 1, 1986.)

**92-2-67. Special valuation of certain farm and closely held business properties.**

(a) An election under K.S.A. 79-1545, and its amendments, shall be made on a timely filed form IH 80, Kansas inheritance tax return for estates filing federal estate tax returns, and by attaching to it a notice of election and an agreement to special valuation by persons with an interest in the property. The notice of election and agreement to special valuation shall be made in accordance with the form and informational content requirements set forth in Treasury Reg. Sec. 20.2032A-8 (1980), which is hereby adopted by reference. The special use valuation method provided by K.S.A. 79-1545, and its amendments, may be elected only when the special use valuation method is elected for federal estate tax purposes pursuant to 26 U.S.C. Sec. 2032A. The election shall be irrevocable once it is made. If a federal estate tax return is not filed, or if a federal estate tax return is filed but the special use valuation method is not elected, the Kansas special use valuation method shall not be used. The special valuation method provided by K.S.A. 79-1545, and its amendments, may not be elected if a qualified real property exclusion election has been made with respect to the estate under K.S.A. 79-1545b, and its amendments.

(b) A protective election to specially value qualified real property may be made only when a protective election to specially value qualified real property is made for federal estate tax purposes. A protective election may be made on a timely filed form IH 80, and by attaching to it a copy of the protective election to specially value qualified real property made for federal estate tax purposes.

(c) Requirements of material participation for valuation of certain farm and closely held business real property shall be determined in accordance with the general principles set forth in Treasury

Reg. Sec. 20.2032A-3 (1980), which is hereby adopted by reference.

(d) The method of valuing farm real property shall be determined in accordance with the general principles set forth in Treasury Reg. Sec. 20.2032A-4 (1980), which is hereby adopted by reference.

(e) Within 90 days of the receipt of: (1) any line adjustment by the internal revenue service, or (2) a federal closing letter, the representative of the estate shall submit to the director of taxation a true copy of the line adjustments and computation of tax as adjusted, or the closing letter. Failure to comply shall result in the accrual of interest on the amount of any underpayment of tax. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1545, as amended by L. 1985, Ch. 316, Sec. 1; effective May 1, 1986.)

**92-2-68. Exclusion of certain farm and closely held business properties from gross estate.**

(a) An election under K.S.A. 79-1545b, and its amendments, shall be made on a timely filed form IH 80, Kansas inheritance tax return for estates filing federal estate tax returns, or form IH 90, Kansas inheritance tax return for estates not filing federal estate tax returns, and by attaching to it a notice of election and an agreement to special valuation by persons with an interest in the property. The notice of election and agreement to special valuation shall be made in accordance with the general principles relating to form and informational content requirements set forth in Treasury Reg. Sec. 20.2032A-8 (1980), which is hereby adopted by reference. The qualified real property exclusion method provided by K.S.A. 79-1545b, and its amendments, may be elected without regard to the filing of, or special use valuation election made on, a federal estate tax return. The election shall be irrevocable once it is made. The qualified real property exclusion method provided by K.S.A. 79-1545b, and its amendments, shall not be elected if a special use valuation election has been made with respect to such estate under K.S.A. 79-1545, and its amendments.

(b) A protective election to exclude qualified real property may be made only when a federal estate tax return is filed and a protective election to specially value qualified real property is made for federal estate tax purposes. A protective election may be made on a timely filed form IH 80, and by attaching to it a copy of the protective election to specially value qualified real property made for federal estate tax purposes.

(c) Requirements of material participation for the exclusion of certain farm and closely held business real property shall be determined in accordance with the general principles set forth in Treasury Reg. Sec. 20.2032A-3 (1980), which is hereby adopted by reference.

(d) Within 90 days of the receipt of (1) any line adjustment by the internal revenue service, or (2) a federal closing letter, the representative of the estate shall submit to the director of taxation a true copy of the line adjustments and computation of tax as adjusted, or the closing letter. Failure to comply shall result in the accrual of interest on the amount of any underpayment of tax. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1545b, as amended by L. 1985, Ch. 316, Sec. 2; effective May 1, 1986.)

**92-2-69. Transfers in contemplation of death.** (a) Estates of decedents dying prior to January 1, 1983, shall include all property which the decedent transferred within one year prior to death, except property transferred pursuant to a bona fide sale for an adequate and full consideration in money or money's worth.

(b) Estates of decedents dying after December 31, 1982, shall include property which the decedent transferred within one year prior to death, except property transferred pursuant to a bona fide sale for an adequate and full consideration in money or money's worth, only when the donor retains control over the asset transferred, or when one or more items of property transferred to any transferee has an aggregate value of more than \$10,000. The gross estate of a decedent dying after December 31, 1982, shall not include the value of any one or more lifetime gifts aggregating less than \$10,000 of value nor the first \$10,000 of one or more gifts of more than \$10,000 of value where the decedent had made an absolute gift and had not retained any incidents of control or ownership. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1549; effective May 1, 1986.)

**92-2-70. Transfers with retained life estate.** The determination of what property is to be included in a decedent's gross estate, as a transfer with a retained life estate, and its value, shall be made in accordance with the general principles set forth in Treasury Reg. Sec. 20.2036-1 (1960), which is hereby adopted by reference. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1550; effective May 1, 1986.)

**92-2-71. Transfers taking effect at death.**

The determination of what property is to be included in a decedent's gross estate, as a transfer taking effect at death, and its value, shall be made in accordance with Treasury Reg. Sec. 20.2037-1 (1958), which is hereby adopted by reference. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1551; effective May 1, 1986.)

**92-2-72. Revocable transfers.** The determination of what is to be included in a decedent's gross estate as a revocable transfer, and its value, shall be made in accordance with Treasury Reg. Sec. 20.2038-1 (1962), which is hereby adopted by reference. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1552; effective May 1, 1986.)

**92-2-73. Annuities or other payments receivable by reason of surviving decedent.**

The determination of what is to be included in a decedent's gross estate as an annuity, and its value, shall be made in accordance with the general principles set forth in Treasury Reg. Sec. 20.2039-1 (1976), Treasury Reg. Sec. 20.2039-2 (1981), Treasury Reg. Sec. 20.2039-4 (1984), and Treasury Reg. Sec. 20.2039-5 (1981), which are hereby adopted by reference. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1553; effective May 1, 1986.)

**92-2-74. Joint tenancy.** (a) For the estates of decedents dying after December 31, 1981, any interest in property held by the decedent and the decedent's spouse as joint tenants with right of survivorship shall be included in the gross estate only to the extent of one-half of the value of the joint interest.

(b) If the joint tenants are not spouses, or if the spouses are not the only joint tenants, or if the decedent's death occurred prior to January 1, 1982, the entire value of the interest shall be included in the estate of the decedent, except the part that may be shown to have originally belonged to a joint tenant other than the decedent and never to have been received or acquired from the decedent for less than adequate and full consideration. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1554; effective May 1, 1986.)

**92-2-75. Powers of appointment.** The determination of what is to be included in a decedent's gross estate as a power of appointment, and its value, shall be made in accordance with Treasury Reg. Sec. 20.2041-1 (1961), Treasury Reg.

Sec. 20.2041-2 (1958), and Treasury Reg. Sec. 20.2041-3 (1958), which are hereby adopted by reference. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1555; effective May 1, 1986.)

**92-2-76. Life insurance proceeds.** (a) The determination of what life insurance proceeds are to be included in a decedent's gross estate shall be made in accordance with Treasury Reg. Sec. 20.2042-1 (1974), which is hereby adopted by reference.

(b) Credit life insurance shall be considered to be paid to the decedent's estate rather than a named beneficiary. The amount of the credit life insurance shall not be allowed as an adjustment to the Kansas gross estate. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1556; effective May 1, 1986.)

**92-2-77. Transfers for insufficient consideration.** The determination of what is to be included in a decedent's estate as a transfer for insufficient consideration, and its value, shall be made in accordance with the general principles set forth in Treasury Reg. Sec. 20.2043-1 (1958), which is hereby adopted by reference. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1557; effective May 1, 1986.)

**92-2-78. Proration of deductions.** (a) When the assets of an estate are both within and without the jurisdiction of Kansas, the deduction for expenses and debts shall be prorated in the ratio that Kansas assets subject to debts bear to the entire estate subject to debts. For purposes of computing this ratio, assets which are specifically bequeathed or devised shall not be considered to be subject to debts unless the value of all assets which are not specifically bequeathed or devised is insufficient to pay all claims and debts.

(b) When an estate owns property both within and without the jurisdiction of Kansas and federal estate tax is levied upon the estate, or where the state of Kansas does not include all assets subject to federal estate tax for computation of inheritance taxes, the federal estate tax shall be allowed as a deduction in computing Kansas inheritance taxes in the ratio that assets subject to tax by Kansas bear to the gross valuation includible for federal estate tax purposes. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1560; effective May 1, 1986.)

**92-2-79. Deduction of expenses and debts.** (a) The determination of the deductibility

of funeral expenses and administration expenses against the estate under K.S.A. 79-1561 shall be made in accordance with Treasury Reg. Sec. 20.2053-1 (1972), Treasury Reg. Sec. 20.2053-2 (1958) and Treasury Reg. Sec. 20.2053-3 (1979), which are hereby adopted by reference.

(b) Any claim or debt against a decedent's estate which accrued prior to the death of the decedent shall be deductible from the gross estate for inheritance tax purposes when allowed by the district court in probated estates. In the case of a non-probated estate, the director of taxation may examine and disallow any claims which are not legal and legitimate obligations of the estate. The determination of what claims and debts are allowable shall be made in accordance with the general principles set forth in Treasury Reg. Sec. 20.2053-4 through Sec. 20.2053-6 (1958), Treasury Reg. Sec. 20.2053-7 (1963) and Treasury Reg. Sec. 20.2053-8 (1958), which are hereby adopted by reference.

(c) The total amount of claims and debts allowable under subsection (b) shall be deducted from the adjusted gross estate in computing the amount of the distributable estate. Unless otherwise provided by the decedent's will, the portion of each distributee's share which is considered to be offset by claims and debts, and therefore not subject to inheritance tax, shall be dependent upon the type of conveyance by which the distributees receive their shares. For inheritance tax purposes, conveyances shall be offset by claims and debts in the order specified by K.S.A. 59-1405, and its amendments. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1561; effective May 1, 1986.)

**92-2-80. Expense deductions not allowable as deductions for income tax purposes.**

(a) Expenses which have been, or will be, deducted for inheritance tax purposes shall not be deducted for income tax purposes. To deduct an item for income tax purposes, there shall be attached to a timely filed inheritance tax return a schedule or information setting forth the nature and amount of the deduction, a statement that the amounts have not been allowed as deductions under K.S.A. 79-1559(d) and (e) or K.S.A. 79-1561, and its amendments, and a waiver of the right to have the amounts allowed at any time as deductions under K.S.A. 79-1559(d) and (e) or K.S.A. 79-1561, and its amendments. The waiver shall be irrevocable once it is made.

(b) The manner in which expenses are deducted at the federal level shall not determine the

manner of deductions for Kansas. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1562; effective May 1, 1986.)

**92-2-81. Deductions for federal estate tax.** The amount of federal estate tax which will be allowed as a deduction for inheritance tax purposes shall be limited to the extent that the tax is imposed upon assets deemed to be included in the decedent's estate as of the date of death as defined by Kansas law. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1563; effective May 1, 1986.)

**92-2-82. Filing of return; payment of tax; liens; interest; computations by director.**

(a) A complete return shall be filed within nine months after the date of the decedent's death to avoid the accrual of interest. When the filing of the return is delayed beyond nine months after the death of the decedent, and the director finds that such delay was due to the inability of the personal representative to determine that distributive shares of an estate or its proper recipients, or to litigation, interest shall commence at the time the problem resulting in the delay is resolved. A return shall be deemed to have been filed upon delivery to the inheritance tax section of the Kansas department of revenue. Returns mailed to the department shall be deemed to have been filed as of the postmark date.

(b)(1) A return shall disclose all information and be accompanied by any supplemental documents necessary for the determination of the tax liability. The following documents shall be submitted where applicable:

- (A) A certified copy of the will and codicils;
- (B) a certified family settlement agreement;
- (C) trust instruments and their amendments;
- (D) ante nuptial or post nuptial agreements;
- (E) an affidavit for proof of relationship of a stepchild or stepparent or an adopted child;
- (F) the following proof of contribution, where available:

- (i) Copies of cancelled checks from an identifiable account;
- (ii) an affidavit from a disinterested third party having knowledge of the decedent's and surviving joint tenant's financial affairs and who can trace the source of funds;
- (iii) an affidavit from the seller of real estate to the decedent if the seller knows the source of funds used to acquire the real estate;

- (iv) an affidavit from a banker knowing how funds in certain accounts were acquired; and
- (v) copies of the decedent's and surviving joint tenant's income tax returns;

(F) a schedule of the computation and method used if the election is made to use a qualified real property exclusion;

(G) a schedule of the computation and method used when necessary to explain the values listed on any schedule;

(H) an explanation of any loss incurred during the settlement of the estate arising from fires, storms, shipwrecks or other casualties, or from theft, not compensated by insurance. The property on which the loss was incurred is required to be identified;

(I) a separate schedule showing the computation of the net non-Kansas property and the net non-Kansas shares;

(J) a certified copy of any disclaimer filed;

(K) an explanation or the statutory citation creating an exemption applicable to assets of the estate;

(L) appropriate fees for waivers, copies, etc; and

(M) a copy of the return filed in the state of domicile if the decedent was a nonresident of Kansas and owned real property situated in Kansas or tangible personal property with a Kansas situs, or both.

(2) In all estates in which a federal estate tax return shall be made or required, the representative of the estate shall furnish the director of taxation, in addition to all other information required to be filed, true copies of the entire federal estate tax return showing recapitulation of assets and computation of the taxes. If only a portion of the federal estate tax return is required to be filed, and the schedules are not prepared, information necessary to identify the individual assets and expenses of the decedent's estate which are normally contained in the schedules shall be submitted to the inheritance tax section. Where an election is made to have the director compute the tax, failure to supply all information necessary for the determination of the tax liability shall result in the accrual of interest from the due date of the return.

(3) Within 90 days of the conclusion of litigation, the representative of the estate shall submit to the director of taxation true copies of any court order affecting the composition or distribution of the estate. Failure to comply shall result in the accrual of interest.

(4) If tax is paid with a return which does not disclose all information necessary for the determination of the tax liability, and subsequent receipt

of this information results in additional tax liability, interest shall accrue upon the additional liability from the due date of the return.

(c) All property of which a decedent dies seized or possessed, in any form of investment, shall be charged with a general lien for all taxes and interest thereon which are or may become due on such property. The personal representative shall have a right to proceed against the property or interests passing to a distributee or against property or interests held by the distributee in the distributee's own right, in the following cases:

(1) If the personal representative has received an approved stay of payment of the balance of the taxes from the director, the personal representative shall have a right to proceed against each individual distributee receiving a share not within the custody or control of the personal representative. To enforce this right to proceed, the personal representative shall perfect a lien.

(2) If the personal representative pays the taxes due on shares not within the personal representative's custody and control, the personal representative shall have a right to proceed against the one or more individual distributees receiving such shares. To enforce this right, a lien shall be perfected. The right to proceed against an individual distributee arises only after issuance of a receipt for taxes. All associated forms and notices shall be prepared and issued by the inheritance tax section following a review of the specific situation.

(d) When it appears the filing of a return cannot be completed within nine months of the decedent's death, the personal representative of the estate, prior to the due date of the return, may request an extension of time to file the return. A request for an extension of time to file shall be made in writing, set forth the fact situation which makes timely filing impossible or unreasonably difficult, state the grounds upon which the extension should be allowed, and specify the time of extension or the extended due date requested.

(e) At the election of the personal representative, the taxes imposed may be determined by the director. The election shall be made by filing a return disclosing all information necessary for the determination of the taxes imposed. Upon receipt of all necessary information, the director shall determine the taxes due and owing and shall notify the personal representative of the tax liability by registered or certified mail. Notwithstanding any election made pursuant to this section, the taxes shall be due and payable

at the same time and in the same manner as if the taxes had been determined by the personal representative. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1564; effective May 1, 1986.)

**92-2-83. Reporting adjustments of internal revenue service.** The representative of an estate shall notify the department of adjustments made by the internal revenue service pursuant to K.S.A. 79-1574, and its amendments, by submitting true copies of the line adjustments and of the adjusted computation of tax. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1574; effective May 1, 1986.)

**92-2-84. Overpayment of fees.** A fee which is overpaid shall not be refunded unless a written request for the refund is made by the party making the original payment. (Authorized by K.S.A. 79-1583; implementing K.S.A. 79-1580; effective May 1, 1986.)

### Article 3.— MOTOR FUEL TAX AND TRANSPORTATION OF LIQUID FUEL

**92-3-1 to 92-3-3.** (Authorized by K.S.A. 55-512, 55-514, 66-1304; effective Jan. 1, 1966; revoked, E-80-2, Jan. 18, 1979; revoked May 1, 1979.)

**92-3-4. Export fuels; exemption claims.** Any distributor claiming a tax exemption on the sale or delivery of motor fuel for export shall file a monthly distributor's report, supported by a copy of the manifest or sales ticket, signed by the shipper. The distributor shall keep a copy of the manifest or sales ticket. The person receiving the fuel shall verify on the manifest or sales ticket that the fuel has been received. (Authorized by K.S.A. 79-3419; implementing K.S.A. 79-3408, as amended by L. 1985, Ch. 328, Sec. 1; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1980; amended May 1, 1986.)

**92-3-5.** (Authorized by K.S.A. 55-508, 55-512; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-3-6. Marking of vehicles transporting liquid fuels.** Each vehicle used in transporting liquid fuel, which is subject to the law pertaining to the transportation of liquid fuel, shall be marked or lettered as follows: (a) The liquid fuel carrier's name and address shall appear in plain letters not

less than two inches in height on a sharply contrasting background on each side of the vehicle.

(b) The liquid fuel carrier's license certification number shall appear in plain letters not less than two inches in height on a sharply contrasting background on each side of the vehicle. (Authorized by and implementing K.S.A. 55-512; effective Jan. 1, 1966; amended May 1, 1979; amended, E-82-26, Dec. 16, 1981; amended May 1, 1982; amended May 1, 1986.)

**92-3-7. Vehicles; separate delivery apparatus for each compartment; exception.** Every vehicle used in transporting liquid fuel by means of the public highways of this state shall have for each compartment separate dispensing apparatus for the delivery of such liquid fuel: *Provided, however,* That this rule shall not apply to vehicles transporting the same kind of liquid fuel in all compartments thereof. (Authorized by K.S.A. 66-1304, K.S.A. 1965 Supp. 55-512; effective Jan. 1, 1966.)

**92-3-8.** (Authorized by K.S.A. 55-512, 66-1304; effective Jan. 1, 1966; revoked, E-80-2, Jan. 18, 1979; revoked May 1, 1979.)

**92-3-9.** (Authorized by K.S.A. 66-1304, 79-3416, K.S.A. 1965 Supp. 55-512; effective Jan. 1, 1966; revoked May 1, 1986.)

**92-3-9a. Delivery to one other than original consignee.** (a) Subject to the provisions of K.S.A. 79-3416, if delivery of liquid fuels or motor fuels is made to someone other than the original consignee, the manifest shall legibly state: (1) the name and address of the original consignee;

(2) the name and address of the actual consignee;

(3) the license number of the actual consignee; and

(4) the quantity of fuel (corrected to 60 degrees Fahrenheit) received by the actual consignee.

(b) The person receiving the fuel shall verify on the manifest or sales ticket that the fuel has been received. (Authorized by K.S.A. 79-3419; implementing K.S.A. 79-3416; effective May 1, 1986.)

**92-3-10. Measuring vehicle tanks; vehicles affected; capacity marker; extent filled.** All vehicles transporting motor-vehicle fuel by means of the public highways of this state used as an original container in importing motor-vehicle fuel into this state, or transportation from a refinery, place of manufacture or production, or pipe-

line terminal, shall have welded or permanently and immovably affixed in some other manner, in each compartment thereof a capacity marker or indicator. No person shall fill any compartment to a point above the level of such capacity marker or indicator. Such capacity marker or indicator shall be placed to comply with the state fire marshal's regulation covering outage. (Authorized by K.S.A. 83-125, K.S.A. 1965 Supp. 55-512; effective Jan. 1, 1966.)

**92-3-11. Vehicle tanks; marking capacity; identifying tank; certificate; basis of tax payments.** All vehicles transporting motor-vehicle fuel by means of the public highways of this state, used as an original container in transportation from a refinery, place of manufacture or production, or pipe-line terminal in this state shall be submitted for calibrating and measuring the capacity of such vehicle tank and compartments thereof. Any other vehicle transporting liquid fuel by means of the public highways of this state shall be submitted for calibrating and measuring in accordance herewith when requested by the director of revenue or his authorized representative. Upon finding the capacity of such vehicle tank and compartments thereof, the director or his authorized representative shall cut with a die on the dome of each compartment of the vehicle tank, figures indicating the total gallon capacity thereof when filled to capacity marker or indicator. Such unit shall also be assigned an identifying number which shall be cut with die on the rear of the vehicle tank near the top. There shall also be issued for such vehicle, a certificate on a form prepared by the director, indicating the identifying number of such vehicle tank unit, the number of each compartment, numbered consecutively from front to rear of vehicle tank, the capacity of each compartment and the distance of the dome top level above the capacity marker or indicator. Such certificate shall at all times be carried by the person in charge of such vehicle tank and submitted for inspection on demand of the director or his representatives. After the issuance of such certificate, all transactions and tax payments shall be made on the basis of the gallon capacity as certified: *Provided, however,* That in the case of a refinery, place of manufacture or production, or pipe-line terminal which is equipped with a meter or meters, the director of revenue may approve the use of such meter or meters as a basis of transactions and tax payments if such meter or meters are approved by him. (Au-

thorized by K.S.A. 83-125, K.S.A. 1965 Supp. 55-512; effective Jan. 1, 1966.)

**92-3-12.** (Authorized by K.S.A. 83-125, K.S.A. 1965 Supp. 55-512; effective Jan. 1, 1966; revoked May 1, 1986.)

**92-3-12a. Vehicle tanks; re-marking when damaged.** If a vehicle tank, shell or head, seal, marker rod or indicator disc is damaged or altered in any manner after it has been calibrated, the owner or lessee shall report the damage or alteration to the director. The director may re-mark calibrations to indicate accurate measurements or calibrations. Motor fuel shall not be loaded into a damaged or altered vehicle tank until after the vehicle tank or the vehicle tank's components have been re-marked by the director to indicate accurate measurement. (Authorized by and implementing K.S.A. 55-512; effective May 1, 1986.)

**92-3-13.** (Authorized by K.S.A. 83-125, K.S.A. 1965 Supp. 55-512; effective Jan. 1, 1966; revoked May 1, 1986.)

**92-3-14. Calibration unit number.** Each tank vehicle calibrated shall have the unit number appear in plain letters not less than two inches in height on a sharply contrasting background on each side of the tank portion of the vehicle and shall be identified as "unit No. \_\_\_\_\_." (a) When a change of ownership of tank vehicle occurs, the seller shall return the certification card to the director of taxation. The new owner shall present the tank vehicle to the state calibration agent for inspection and registration within 30 days of the change in ownership. A fee shall not be charged to a new owner unless recalibration of the tank vehicle is necessary.

(b) All tank vehicles shall be inspected by the state calibration agent not less than once each five years and recalibrated at least once every 10 years. (Authorized by K.S.A. 55-512; implementing L. 1985, Ch. 345, Sec. 1; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986.)

**92-3-15.** (Authorized by K.S.A. 79-3430, 79-3458; effective Jan. 1, 1966; revoked May 1, 1986.)

**92-3-16. Books and records; preservation.** (a) Persons claiming refunds of motor fuel tax because the fuel was used for nonhighway purposes shall be able to substantiate their claims by maintaining an adequate record keeping system. Refund claimants shall verify on the refund ap-

plication form that an adequate record keeping system is maintained.

(b) An adequate record keeping system shall:

(1) Account for all purchases of motor fuel from all sources, whether for exempt or taxable use;

(2) Account for all exempt use either by a standard or an actual use record;

(3) Account for any loss of exempt fuel due to pilferage, spillage, or diversion to nonexempt use; and

(4) Include a perpetual inventory which utilizes a system of metered withdrawals or a physical inventory which includes a physical taking of inventory not less than once in each month and at the close of each period for which a claim is filed. (Authorized by K.S.A. 79-3430; implementing K.S.A. 79-3420; effective May 1, 1979; amended May 1, 1982.)

**92-3-17.** (Authorized by K.S.A. 79-3403, 79-3405; effective May 1, 1979; revoked May 1, 1986.)

**92-3-17a. License applications; bond requirements.** (a) Each applicant for a distributor, importer, or manufacturer license shall post a bond equal to a three months' average tax liability. New businesses may submit a bond equal to 25% of its estimated tax liability for a 12-month period. The bond shall not be less than the minimum required by statute. The bond requirements shall be met before a license is granted. The bond may be a surety bond executed by an approved corporate surety or a cash bond. Either a cashier's check payable to the director or an escrow account with a Kansas bank shall be used for a cash bond.

(b) The director may reduce the required bond to an amount equal to two months' tax liability, but not less than the minimum required by statute, in consideration of a satisfactory reporting history consisting of the prior 12 months in which there were no delinquencies or returned checks.

(c) Motor fuel tax bonds and financial statements shall be reviewed periodically by the director. The director may require an additional bond or a current certified financial statement if:

(1) the existing bond or financial statement is not sufficient to meet the current average three months' tax liability; or

(2) the licensee is not promptly filing or paying tax; or

(3) the corporate surety is no longer an approved surety. The licensee shall supply the additional bond or certified financial statement within 60 days of receiving notification. Notice shall be

deemed received three days after depositing it in United States mail, postage prepaid. (Authorized by K.S.A. 79-3419; implementing K.S.A. 79-3403, 79-3405; effective May 1, 1986.)

**92-3-19. Principal business for handling allowance.** (a) Each distributor's principal business shall be determined on the basis of national gross sales figures. Each distributor claiming a handling allowance for motor vehicle fuel shall provide the director annual figures on total gross business from all sources and on total business from the marketing of motor vehicle fuels or petroleum products. The figures shall be given on a national basis. Each new distributor shall provide total gross sales figures for all sales and for petroleum related product sales for the first six months of its business. Documentation of sales figures shall be made available to the director during reasonable business hours.

(b) Any tax assessed because of a disallowed handling allowance shall be due and payable 60 days after assessment. Interest and penalties may be imposed on any taxes remaining unpaid after the due date. (Authorized by K.S.A. 79-3419; implementing K.S.A. 79-3408, as amended by L. 1985, Ch. 328, Sec. 1, 79-3411; effective May 1, 1986.)

**92-3-20. Refunds, books and records.**

(a) Each person claiming a refund of motor fuel tax for non-highway usage shall substantiate the claim with adequate records. An officer, partner, or owner shall verify each return as to the accuracy of the information included on the return.

(b) An adequate record includes:

(1) An account of all motor fuel purchases that lists each supplier and whether fuel was purchased for exempt or taxable use;

(2) an account of non-highway usage either by an actual record of use or a standard approved by the director;

(3) an account of loss of non-highway fuel due to pilferage, spillage or diversion to nonexempt use; and

(4) a perpetual inventory which uses a system of metered withdrawals or a physical inventory which includes at least a monthly actual inventory and an inventory taken at the close of each period for which a claim is filed.

(c) If a claimant for motor-vehicle fuel tax refund uses storage facilities which contain both fuels for highway and non-highway use, the claimant shall support the return with an accurate record of

fuel used for highway and non-highway use. The claimant shall document the usage by:

(1) Different meters attached to a single tank, if one meter is used exclusively for highway fuel and another meter is used exclusively for non-highway fuel;

(2) a single meter capable of recording the type of withdrawal; or

(3) an accurate account that records each withdrawal and its use at the time of withdrawal.

(d) Fuel used shall be presumed to be for highway use unless it is accurately documented for non-highway use.

(e) Highway use of motor fuel includes:

(1) Consumption of motor fuel by a motor vehicle while in a stationary or parked position on the public highways and streets of this state;

(2) using fuel from a motor vehicle's fuel supply tank to power a secondary motor while operating on the public highways or streets of this state. (Authorized by K.S.A. 79-3419; implementing K.S.A. 79-3458; effective May 1, 1986; amended May 1, 1987.)

**Article 4.— INCOME TAX**

**92-4-1 to 92-4-113.** (Authorized by K.S.A. 79-3236; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

**Article 5.— CIGARETTE TAX**

**92-5-1. Distinguished: wholesaler-retailer licenses.** A wholesale cigarette dealer operating a licensed retail place of business or vending machine shall use a distinctive title for the retail or vending machine operation and shall keep all records of the retail business separate from the records of the wholesale cigarette business. (Authorized by K.S.A. 1967 Supp. 79-3326; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968.)

**92-5-2. Vending machines: owner display; record.** (a) All owners and operators of cigarette vending machines are hereby required to have the name and address of the owner displayed on each vending machine in operation within the state.

(b) Each owner and operator of cigarette vending machines shall keep a record showing the business location of each vending machine being currently serviced, which shall be available to the director of revenue or his agents at any reasonable time.

(c) The vending machine permit shall be securely and visibly attached to the vending ma-

chine. Visibly attached means on the face of the machine, and that it can be seen without moving the machine. (Authorized by K.S.A. 1967 Supp. 79-3303 and 79-3326; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968.)

**92-5-3. Manufacturer's salespersons.** Manufacturer's salespersons shall not have in their possession packages of cigarettes other than sample packages, without the required Kansas tax indicia applied thereto. The salesperson's license shall at all times be posted in the vehicle used by the salesperson in the conduct of the salesperson's business. Cigarettes sold by a manufacturer's salesperson to a retail dealer shall be evidenced by an invoice stating the retail dealer's name, address and retail license number. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3304, 79-3313; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended May 1, 1985.)

**92-5-4.** (Authorized by K.S.A. 1967 Supp. 79-3311, 79-3326; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; revoked March 22, 2002.)

**92-5-5. Interstate shipment, exemptions; transporting unstamped cigarettes.** (a)(1) All claims for tax exemption on any shipment of unstamped, cartoned cigarettes consigned in interstate commerce for export from the state of Kansas shall be presented to the director of taxation on the wholesale cigarette dealer's monthly report. The report shall be on a form and in the manner prescribed by the director of taxation.

(2) All invoices or delivery tickets supporting the claims shall be preserved by the wholesale cigarette dealer for three years. Each invoice or delivery ticket shall detail the following information:

- (A) The name and address of the consignee;
- (B) the date of sale;
- (C) the quantity of cigarettes sold; and
- (D) if the invoice or delivery ticket includes other merchandise, a separate list of the cigarettes sold by brand at the top or bottom of the invoice or delivery ticket.

The invoices or delivery tickets filed for preservation shall be signed by the consignee to whom delivery was made or by the common carrier making the delivery.

(b) If sealed cartons of cigarettes have not been stamped and are not detailed on invoices or delivery tickets showing them to be consigned to

out-of-state dealers or authorized persons on a government military post, each wholesale cigarette dealer shall furnish the driver of the vehicle transporting these sealed cartons of cigarettes with a memorandum detailing the quantity of unstamped, cartoned, and not consigned cigarettes to be transported to the border of the state of Kansas or government military post.

The driver of the vehicle transporting the cartons of cigarettes that have not been stamped or consigned shall have in the driver's possession at all times the quantity of cigarettes outlined in the memorandum or receipted invoices or delivery tickets showing to whom the cigarettes were sold, delivered, or given away, so that the total number of cartons of cigarettes shown by the signed invoices and delivery tickets and the number of cartons of cigarettes on hand balance with the memorandum described. All claims for the tax exemption on any sales or deliveries made in this manner shall be procured as outlined in subsection (a) of this regulation. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3311, as amended by L. 2001, Ch. 5, §450 and K.S.A. 2000 Supp. 79-3316; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended March 22, 2002.)

**92-5-6. Wholesaler; receiving stamped cigarettes.** A wholesale cigarette dealer who receives cigarettes already stamped from another wholesale cigarette dealer shall be required to report to the director of taxation, each month, all of these receipts. All cigarettes sold or delivered by one wholesale cigarette dealer to another licensed wholesale cigarette dealer in the state of Kansas shall be stamped by the wholesale cigarette dealer making the sale or delivery. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3311, as amended by L. 2001, Ch. 5, § 450 and K.S.A. 2000 Supp. 79-3316; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended March 22, 2002.)

**92-5-7. Wholesaler; separate locations, bond.** Each wholesale cigarette dealer having more than one wholesale place of business in the state of Kansas shall be required to file an application and pay the required fee for each place of business owned or operated by that dealer. Each place of business licensed shall be covered by a surety bond furnished by the wholesale dealer as provided in K.S.A. 79-3304, and amendments thereto. If the wholesale cigarette dealer is unable

to obtain a surety bond, a cash bond or escrow account agreement may be accepted by the director. A cash bond or escrow account agreement shall be submitted in writing with a copy of the surety bond rejection letter. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3304; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended March 22, 2002.)

**92-5-8. Wholesaler; trucker, salesperson.**

(a) Each licensed wholesale cigarette dealer who employs truckers or salespeople, either salaried or working on a commission, to both sell and distribute cigarettes to licensed retail dealers shall obtain an identification card for each trucker and salesperson. Application forms for the identification cards shall be furnished upon request by the director of taxation.

(b) All sales of cigarettes made by any trucker or salesperson shall be written up on sales books furnished by the wholesale cigarette dealer, detailing the name of the wholesale dealer. Copies of all sales tickets shall be kept for a period of three years in the files of the wholesale dealer.

(c) The identification card furnished shall be kept posted at all times in the conveyance of each trucker or salesperson. The identification card shall be valid during the term of the wholesale cigarette dealer's license, or until the license is revoked, suspended or surrendered.

(d) If a trucker or salesperson is no longer employed by the wholesale cigarette dealer, the wholesale cigarette dealer shall notify the director and return the identification card furnished to the trucker or salesperson.

(e) Any individual who obtains cigarettes from a wholesale cigarette dealer for sale and distribution to retail cigarette dealers and who is not an employee of the wholesale cigarette dealer shall be required to be licensed as a wholesale cigarette dealer. (Authorized by K.S.A. 79-3326; implementing K.S.A. 2000 Supp. 79-3316; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended March 22, 2002.)

**92-5-9. Redemption of unused stamps.**

The cost of any unused cigarette stamps that any wholesale cigarette dealer presents for refund may be refunded by the director of taxation. The unused cigarette stamps shall be presented for refund within six months from the date of the purchase from the director of taxation. The stamps shall be returned to the director of tax-

ation, and a refund may be issued for the face value less 2.65 percent. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3312; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended, E-71-21, July 1, 1971; amended Jan. 1, 1972; amended March 22, 2002.)

**92-5-10. Cigarettes unfit for sale.** If cigarettes on which the Kansas tax has been paid, as evidenced by cigarette tax stamps or tax indicia, have become unfit for use or consumption, unsalable, or damaged or destroyed by fire, flood, or similar causes, the value of the tax paid less 2.65 percent may be refunded by the director of taxation, upon receipt of satisfactory proof, to the wholesaler who has paid the tax. The director of taxation shall be notified before the destruction of damaged or partially damaged cigarettes, and the merchandise shall be kept available for inspection by a representative of the director of taxation's office. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3312; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended, E-71-21, July 1, 1971; amended Jan. 1, 1972; amended March 22, 2002.)

**92-5-11.** (Authorized by K.S.A. 1967 Supp. 79-3311, 79-3326; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; revoked March 22, 2002.)

**92-5-12. Bond; cancellations.** The surety on a bond furnished by a wholesale cigarette dealer as required by the cigarette tax law shall be released and discharged from all liability to the state accruing on the bond after the expiration of 60 days from the date upon which the surety has submitted to the director of taxation a written request to be released and discharged. However, this provision shall not operate to relieve, release, or discharge the surety from any liability that has already accrued or that will accrue before the expiration of the 60-day period.

Prompt notification of the wholesale cigarette dealer who furnished the bond shall be made by the director of taxation upon receiving such a request. If the dealer fails to file with the director of taxation, on or before the expiration of the 60-day period, a new bond fully complying with the provisions of the cigarette tax law, the license or licenses of the dealer shall be revoked and canceled by the director of taxation in accordance with

K.S.A. 79-3309, and amendments thereto. The dealer shall be notified by the director of taxation. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3304, 79-3309, 79-3311, as amended by L. 2001, Ch. 5, § 450; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended March 22, 2002.)

**92-5-13. Credits.** In order to purchase stamps on credit, the wholesale dealer shall forward to the division of taxation a completed stamp purchase order form for the number of stamps that the dealer wishes to purchase as a credit transaction. The purchase order shall be charged to the wholesaler's account on the date the purchase order is approved.

Presentation of company or personal checks that have not been certified shall not be considered payment of credit purchases until the company or personal checks have been presented to and accepted by the bank for payment.

If a delinquency of payment for stamps occurs, the wholesaler's credit privileges shall be discontinued for a period of time prescribed by the director of taxation. Notice of the delinquency shall be forwarded to the surety. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3311, as amended by L. 2001, Ch. 5, § 450; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended March 22, 2002.)

**92-5-14. Vending machines; cigarette sales only.** A cigarette vending machine may be used for cigarette sales only. No candy or any other items may be sold from a cigarette vending machine. (Authorized by K.S.A. 79-3303, 79-3326; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979.)

#### Article 6.— KANSAS RETAILERS' SALES TAX

**92-6-1 to 92-6-87.** (Authorized by K.S.A. 79-3618; effective Jan. 1, 1966; revoked, E-70-33, July 1, 1970; revoked, E-71-8, Jan. 1, 1971; revoked Jan. 1, 1972.)

#### Article 7.— COMPENSATING TAX

**92-7-1 to 92-7-23.** (Authorized by K.S.A. 79-3707; effective Jan. 1, 1966; revoked, E-70-33, July 1, 1970; revoked, E-71-8, Jan. 1, 1971; revoked Jan. 1, 1972.)

#### Article 8.— CEREAL MALT BEVERAGE TAX

**92-8-1.** (Authorized by K.S.A. 1982 Supp. 79-3835; implementing K.S.A. 41-2713; effective Jan. 1, 1966; amended July 1, 1974; amended May 1, 1983; revoked May 1, 1987.)

**92-8-2.** (Authorized by K.S.A. 79-3835, 79-3837; effective Jan. 1, 1966; amended Jan. 1, 1969; revoked May 1, 1987.)

**92-8-3.** (Authorized by K.S.A. 79-3835, 79-3939; effective Jan. 1, 1966; revoked May 1, 1987.)

**92-8-4.** (Authorized by K.S.A. 17-2802, 79-3835; effective Jan. 1, 1966; revoked May 1, 1987.)

**92-8-5.** (Authorized by K.S.A. 79-3828, 79-3837; effective Jan. 1, 1966; revoked May 1, 1987.)

**92-8-6.** (Authorized by K.S.A. 79-3835, 79-3837; effective Jan. 1, 1966; revoked May 1, 1987.)

**92-8-7.** (Authorized by K.S.A. 79-3824, 79-3835; effective Jan. 1, 1966; revoked May 1, 1987.)

**92-8-8.** (Authorized by K.S.A. 1973 Supp. 79-3825, 79-3835; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked May 1, 1987.)

**92-8-9.** (Authorized by K.S.A. 79-3818, 79-3824, 79-3835; effective Jan. 1, 1966; revoked Jan. 1, 1972.)

**92-8-9a.** (Authorized by K.S.A. 41-209(2); implementing K.S.A. 41-209(2); effective May 1, 1985; revoked May 1, 1987.)

**92-8-10.** (Authorized by K.S.A. 79-3827, 79-3828, 79-3835; effective Jan. 1, 1966; revoked May 1, 1987.)

**92-8-11.** (Authorized by K.S.A. 41-211, 41-2717; implementing L. 1985, Ch. 168, Sec. 5, K.S.A. 41-401, K.S.A. 41-2712; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 1987.)

**92-8-12.** (Authorized by K.S.A. 27-102a, 79-3824, 79-3835; effective Jan. 1, 1966; amended Jan. 1, 1969; revoked May 1, 1987.)

**92-8-13.** (Authorized by K.S.A. 79-3828, 79-3835; effective Jan. 1, 1966; revoked May 1, 1987.)

**92-8-14.** (Authorized by K.S.A. 1981 Supp. 79-3835; implementing K.S.A. 1981 Supp. 41-2705, 41-2713; effective Jan. 1, 1966; amended,

E-74-37, July 1, 1974; amended May 1, 1975; amended May 1, 1982; revoked May 1, 1987.)

**92-8-15.** (Authorized by K.S.A. 79-3828, 79-3835; effective Jan. 1, 1966; revoked May 1, 1987.)

**92-8-16.** (Authorized by K.S.A. 79-3819; K.S.A. 1973 Supp. 79-3824, 79-3835; effective, E-73-21, Oct. 6, 1972; effective Jan. 1, 1974; revoked May 1, 1987.)

**92-8-17.** (Authorized by K.S.A. 1973 Supp. 79-3825, 79-3835; effective Jan. 1, 1974; revoked May 1, 1987.)

**92-8-18.** (Authorized by K.S.A. 79-3835; implementing L. 1985, Ch. 168, Sec. 5; effective May 1, 1986; revoked May 1, 1987.)

**92-8-19.** (Authorized by K.S.A. 41-2717; implementing K.S.A. 41-2705(b)(1)(D); effective May 1, 1985; revoked May 1, 1987.)

**92-8-20.** (Authorized by K.S.A. 79-3835; implementing L. 1985, Ch. 168, Sec. 5; effective May 1, 1986; revoked March 29, 2002.)

#### **Article 9.— MINERALS AND NATURAL PRODUCTS LEASES ON NAVIGABLE STREAMBEDS**

**92-9-1. Bidders; notice; form of bids.** (a) Legal notice to bidders for oil and gas lease land in navigable streambeds shall be published by the director of taxation in a paper of general circulation in the county in which the lands subject to oil and gas leases are situated once each week for a period of four consecutive weeks.

(b) The highest and best bid from a responsible bidder shall be accepted by the director of taxation, reserving the right to reject any bid and republish. Separate sealed bids accompanied by a certified check or bank draft in the amount of the bid payable to the director of taxation for each tract shall be submitted on forms supplied by the department of revenue and filed with the director of taxation, in accordance with the publication notice concerning the bids.

(c) Each bidder shall have the right to bid on all or any portion of the lands set forth in the publication notice, and the successful bidder shall reimburse the director of taxation for the publication costs. However, this regulation shall apply only to the removal of oil and gas from navigable streambeds. (Authorized by K.S.A. 70a-103; implement-

ing K.S.A. 2001 Supp. 70a-102, K.S.A. 70a-103; effective Jan. 1, 1966; amended March 29, 2002.)

**92-9-2. Cash bonus, rental.** Bids for the leasing of oil and gas rights in navigable streams will be considered on the basis of a cash bonus, annual delay rental, and the amount of royalty to be paid shall not be less than 12½% of the gross proceeds at the prevailing market rate. Leases will be executed on a standard Kansas lease form. No lease shall be for a period longer than five years and the lessee shall agree to pay an annual rent in advance on land so long as drilling is delayed. (Authorized by K.S.A. 71-102, 71-103; effective Jan. 1, 1966.)

**92-9-3. Survey; expense of.** If the lessee of oil and gas rights requests a survey to determine acreage, a survey may be authorized by the director of taxation, if the lessee agrees to pay the cost. In lieu of this survey, the United States government survey or other official survey of the tract may be used. (Authorized by K.S.A. 70a-103; implementing K.S.A. 70a-106; effective Jan. 1, 1966; amended March 29, 2002.)

**92-9-4. Wells; operation and management.** Each oil lessee and gas lessee leasing wells pursuant to K.S.A. 70a-101, and amendments thereto, shall furnish the director of taxation on demand accurate and reliable information concerning wells situated in Kansas. On demand, each lessee shall furnish certified copies of pipeline runs and gas balancing statements to the director of taxation. Title requirements and leases shall be without covenants of warranty. (Authorized by K.S.A. 70a-103; implementing K.S.A. 2001 Supp. 70a-102, K.S.A. 70a-103; effective Jan. 1, 1966; amended March 29, 2002.)

**92-9-5. Location of operations.** The lessee shall notify the director of taxation before commencing operations on any navigable streambed. (Authorized by K.S.A. 70a-103; implementing K.S.A. 2001 Supp. 70a-102, K.S.A. 70a-103; effective Jan. 1, 1966; amended March 29, 2002.)

**92-9-6.** (Authorized by K.S.A. 70a-102, 70a-103; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked July 3, 1989.)

**92-9-6a. Returns; rates and restrictions.** (a) On or before the 15th day of each month, each lessee shall file a return with the director stating the amount of material withdrawn, returned,

stored and sold, and the name of the person(s) to whom the material was sold during the preceding month. The lessee shall remit with the return 15¢ per ton for all river sand sold during the preceding month. Each lessee shall maintain this information for a period of two years.

(b) Each lessee shall not take, move or remove material from any navigable stream within:

(1) 500 feet of any bridge pier or abutment;

(2) 200 feet of any stabilized bank or structure built or authorized by the United States government.

A lessee shall not remove sand from any stream bed or channel within a distance of 1,500 feet of the nearest tipple erected and maintained and used for the purpose of taking sand from the river. The distances of 500 and 200 feet are to be construed as minimum distances with greater distances required as necessary to preserve stream bed and bank stability. (Authorized by and implementing K.S.A. 70a-102, 70a-103; effective July 3, 1989.)

**92-9-7.** (Authorized by K.S.A. 71-102, 71-103; effective Jan. 1, 1966; revoked March 29, 2002.)

**92-9-8.** (Authorized by K.S.A. 71-102, 71-103; effective Jan. 1, 1966; revoked July 27, 2001.)

#### Article 10.— SPECIAL FUEL TAX

**92-10-1 and 92-10-2.** (Authorized by K.S.A. 79-3483; effective Jan. 1, 1966; revoked, E-69-16, July 23, 1969; revoked Jan. 1, 1970.)

#### Article 11.— WITHHOLDING AND ESTIMATED TAX

**92-11-1.** (Authorized by K.S.A. 79-3236, 79-3297a; implementing K.S.A. 79-3296, 79-3297a; effective Jan. 1, 1966; amended, E-67-14, Aug. 9, 1967; amended Jan. 1, 1968; amended Jan. 1, 1972; amended, E-77-6, March 19, 1976; amended Feb. 15, 1977; amended, E-78-21, Aug. 10, 1977; amended May 1, 1978; amended May 1, 1986; revoked March 29, 2002.)

**92-11-2.** (Authorized by K.S.A. 79-3236, K.S.A. 1965 Supp. 79-3294; effective Jan. 1, 1966; revoked March 29, 2002.)

**92-11-3.** (Authorized by K.S.A. 79-3236, 79-3294; effective Jan. 1, 1966; amended, E-78-21, Aug. 10, 1977; amended May 1, 1978; revoked March 29, 2002.)

**92-11-4.** (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3297a; effective Jan. 1, 1966; amended, E-67-14, Aug. 9, 1967; amended Jan. 1, 1968; amended, E-77-6, March 19, 1976; amended Feb. 15, 1977; amended, E-78-21, Aug. 10, 1977; amended May 1, 1978; amended, E-80-26, Dec. 12, 1979; amended May 1, 1980; amended, T-83-10, June 9, 1982; amended May 1, 1983; amended, T-84-15, July 1, 1983; amended May 1, 1984; amended May 1, 1986; revoked March 29, 2002.)

**92-11-5.** (Authorized by K.S.A. 79-3236, 79-3296, 79-3297a; effective Jan. 1, 1966; amended, E-67-14, Aug. 9, 1967; amended Jan. 1, 1968; amended, E-77-6, March 19, 1976; amended Feb. 15, 1977; amended, E-78-21, Aug. 10, 1977; amended May 1, 1978; revoked March 29, 2002.)

**92-11-6.** (Authorized by K.S.A. 79-3236, 79-3296, 79-3297a; effective Jan. 1, 1966; amended, E-67-14, Aug. 9, 1967; amended Jan. 1, 1968; amended Jan. 1, 1974; amended May 1, 1976; amended Feb. 15, 1977; amended May 1, 1978; revoked March 29, 2002.)

**92-11-7.** (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3299; effective Jan. 1, 1966; amended May 1, 1976; amended May 1, 1986; revoked March 29, 2002.)

**92-11-8.** (Authorized by K.S.A. 79-3236, K.S.A. 1965 Supp. 79-3294; effective Jan. 1, 1966; revoked March 29, 2002.)

**92-11-9.** (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3298, as amended by L. 1985, Ch. 323, Sec. 1; effective Jan. 1, 1966; amended May 1, 1986; revoked March 29, 2002.)

**92-11-10.** (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3299, 79-32,100; effective Jan. 1, 1966; amended May 1, 1986; revoked March 29, 2002.)

**92-11-11.** (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3299; effective Jan. 1, 1966; amended May 1, 1986; revoked March 29, 2002.)

**92-11-12.** (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3298, as amended by L. 1985, Ch. 323, Sec. 1; effective Jan. 1, 1966; amended May 1, 1986; revoked March 29, 2002.)

**92-11-13.** (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3295, 79-3296, 79-3298;

effective Jan. 1, 1966; amended, E-67-14, Aug. 9, 1967; amended Jan. 1, 1968; amended Jan. 1, 1974; amended May 1, 1981; revoked March 29, 2002.)

**92-11-14.** (Authorized by K.S.A. 79-3236, K.S.A. 1965 Supp. 79-3294; effective Jan. 1, 1966; revoked March 29, 2002.)

**92-11-15.** (Authorized by K.S.A. 79-3236, K.S.A. 1965 Supp. 79-3294; effective Jan. 1, 1966; revoked March 29, 2002.)

**92-11-16.** (Authorized by K.S.A. 79-3236, K.S.A. 1965 Supp. 79-3294, 79-32,104(c); effective Jan. 1, 1966; revoked March 29, 2002.)

**92-11-17.** (Authorized by K.S.A. 79-3236, 79-32,101; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-11-18.** (Authorized by K.S.A. 79-3236, 79-3294; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-11-19.** (Authorized by K.S.A. 79-3236, 79-32,103; effective Jan. 1, 1966; amended Jan. 1, 1970; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-11-20. Declaration of estimated tax forms.** (a) *Individuals.* Individuals shall file the declaration of estimated tax on form 40ES. All information requested on that form shall be supplied.

(b) *Corporations.* Corporations shall file the declaration of estimated tax on form 120ES. All information requested on that form shall be supplied.

(c) *Amendments.* In the case of an individual, the amendment is contained on the back of form 40ES, which is the notice of installment due received by the taxpayer from the department of revenue. In the case of a corporation, the amended declaration is contained on the back of form 120ES, which is the notice of installment due of estimated corporate tax. (Authorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-32,101, 79-32,102; effective Jan. 1, 1966; amended, E-82-26, Dec. 16, 1981; amended May 1, 1982.)

**92-11-21. Payment of estimated tax.** (a) *General.* The following rules govern the time for payment of the estimated tax for calendar years:

Date of Filing Declaration <i>If the declaration is filed:</i>	Dates of Payment of Estimated Tax <i>Estimated tax shall be paid:</i>
On or before April 15;	In four equal installments—one at time of filing declaration, one not later than June 15, one not later than September 15, one not later than January 15, following year; except corporations who shall pay the fourth installment on December 15 of the taxable year;
After April 15 and before June 15 and not required to be filed on or before April 15;	In three equal installments—one at time of filing declaration, one not later than September 15, one not later than January 15, following year; except corporations who shall pay the third installment on December 15 of the taxable year;
After June 15 and before September 15 and not required to be filed on or before June 15;	In two equal installments—one at time of filing declaration and one not later than January 15, following year; except corporations who shall pay the second installment on December 15 of the taxable year;
After September 15 and not required to be filed on or before that date.	In full at time of filing declaration.

(b) *Fiscal year due dates.* In the case of a taxpayer on a fiscal year basis, there shall be substituted for the dates April 15, June 15, September 15 and January 15, the 15th day of the fourth month, the 15th day of the sixth month, the 15th day of the ninth month and the 15th day of the first month in succeeding fiscal year.

(c) *Early payment.* At the election of the taxpayer any installment of estimated tax may be paid prior to the date prescribed for payment. (Authorized by K.S.A. 79-3236, 79-32,103; effective Jan. 1, 1966; amended Jan. 1, 1970.)

**92-11-22. Credit.** (a) *General.* The amount of estimated tax paid by the taxpayer during the calendar or fiscal year shall be allowed as a credit on the return filed by the taxpayer under the provisions of the Kansas income tax act.

(b) *Credit or refund.* In the event that the amount of declaration of estimated tax and/or the amount of tax withheld from wages exceeds the amount of tax due under the provisions of the Kansas income tax act, the taxpayer has the following options:

(1) To request a refund of such overpayment or overwithholding or

(2) To apply the amount of such overpayment or overwithholding to the declaration of estimated tax for the succeeding calendar or fiscal year.

(c) *Adjustment of credit prohibited.* In the event that the overpayment or overwithholding is credited to the declaration of estimated tax liability for the succeeding calendar or fiscal year and the taxpayer's income tax liability for the fiscal or calendar year is adjusted to reflect additional tax due, the amount of credit to the succeeding tax year's estimate will not be adjusted. In such cases the taxpayer will be billed for any increase and will be required to pay the deficiency pursuant to the provisions of the Kansas income tax act. (Authorized by K.S.A. 79-3236, K.S.A. 1965 Supp. 79-3294; effective Jan. 1, 1966.)

**92-11-23.** (Authorized by K.S.A. 79-3236, 79-3294; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-11-24. Short taxable years.** Any estimated tax, payable in installments, which is not paid before the 15th day of the last month of a short taxable year shall be paid on the 15th day of the last month of the short taxable year. If the short taxable year is less than three and one-half (3½) months, a declaration shall not be required to be filed and estimated tax shall not be required to be paid for that year. (Authorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-32,103; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982.)

## Article 12.— INCOME TAX

**92-12-1.** (Authorized by K.S.A. 79-3236; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-2.** (Authorized by K.S.A. 79-3236, 79-32,109; effective Jan. 1, 1968; amended Jan. 1, 1970; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1982.)

**92-12-3.** (Authorized by K.S.A. 79-3236, 79-32,109; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-4.** (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-32,109; effective Jan. 1, 1968; amended May 1, 1982; amended May 10, 2002; revoked March 24, 2006.)

**92-12-4a. Resident individual.** (a) As used in this regulation, the term "Kansas resident" shall have the same meaning as that assigned to the term "resident individual" in K.S.A. 79-32,109, and amendments thereto.

(b) This subsection shall apply in determining whether a natural person is a "resident individual," as the term is defined in K.S.A. 79-32,109 and amendments thereto, on the basis that the person's domicile is within Kansas.

(1) Subject to the further conditions and requirements in this subsection, "domicile" shall mean that place in which a person's habitation is fixed, without any present intention of removal, and to which, whenever absent, that person intends to return.

(2) Each person shall have only one domicile at any particular time. Once shown to exist, a domicile shall be presumed to continue until the contrary is shown. The absence of any intention to abandon an existing domicile shall be considered to be equivalent to the intention to retain the domicile.

(A) A person who leaves that person's domicile to go into another jurisdiction for temporary purposes shall not be considered to have lost the domicile. The mere intention to acquire a new domicile, without the fact of physical removal, shall not change a person's domicile, and the fact of physical removal from a person's domicile, without the intention to remain absent, shall not change that person's domicile.

(B) If a person whose domicile is in Kansas is absent from Kansas for more than six months of the tax year, that person shall not be presumed to have lost that domicile. If a person leaves this state to accept a job assignment in another jurisdiction, that person shall not be presumed to have lost that person's domicile in this state.

(C) A person who is temporarily employed within this state shall not be deemed to have acquired a domicile in this state if, during that period, the person maintains that person's domicile outside of the state of Kansas.

(3) A person shall be considered to have established that person's domicile in Kansas on the date that the person arrives in the state for other than temporary or transitory purposes. A person shall be considered to have abandoned that person's domicile on the date that the person leaves the state without any intention to return to Kansas.

(4) Any citizen of a foreign country may acquire a domicile for Kansas tax purposes without

surrendering that person's rights as a citizen of that country.

(5) Except for a person who is covered by the provisions of the soldiers' and sailors' civil relief act of 1940, 50 U.S.C. app. §574, as amended by the servicemembers civil relief act, public law 108-189, there shall be a presumption that the place where a person's family is domiciled is that person's domicile. The domicile of a person who is married shall be the same as the person's spouse unless there is affirmative evidence to the contrary, the husband and wife are legally separated, or the marriage has been dissolved. When a person has made a home at any place with the intention of remaining there indefinitely and the person neither lives at the home in which the person's family lives nor intends to do so, then that person shall be deemed to have established a domicile separate from that person's family.

(6) If a minor child is not emancipated, the domicile of the child's parents shall be the domicile of the child. The domicile of the parent who has legal custody of the child shall be the domicile of the child.

(7) The following factors may be considered in determining whether or not a person's domicile is in this state for the tax years in question, although none of these factors shall, by itself, be a determinant of a person's domicile:

(A) The percentage of time that the person is physically present within the state of Kansas and the percentage of time that the person is physically present in each jurisdiction other than the state of Kansas;

(B) the location of the person's domicile for prior years;

(C) the location at which the person votes or is registered to vote, except that casting an illegal vote shall not establish a domicile for income tax purposes;

(D) the person's status as a student;

(E) the location of services performed by the person in the course of employment;

(F) the classification of the person's employment as temporary or permanent;

(G) the change in the person's living quarters;

(H) the person's ownership of other real property;

(I) the jurisdiction in which the person has been issued a valid driver's license;

(J) the jurisdiction from which any motor vehicle registration was issued to the person and the actual physical location of the person's vehicle or vehicles;

(K) the purchase of any resident fishing or hunting licenses by the person;

(L) the filing by the person of a Kansas tax return, report, or application as a Kansas resident or a nonresident individual;

(M) the fulfillment or failure to fulfill by the person of the tax obligations required of a Kansas resident;

(N) the address where personal mail is received by that person and not subsequently forwarded;

(O) the location of the jurisdiction from which any unemployment compensation benefits are received by the person;

(P) the location of any school that the person or the person's spouse attends and whether resident or nonresident tuition was charged, as well as the location of the school attended by any of the person's children who are in grades K-12;

(Q) the representations made to any insurance company concerning the person's residence and on which any insurance policies are issued;

(R) the location where the person, the person's spouse, or the person's minor children regularly participate in sporting events, group activities, or public performances; and

(S) any other fact relevant to the determination of that person's domicile.

(8) The following factors shall not be considered in determining whether or not a person is domiciled in Kansas:

(A) The location of any organization to which the person makes charitable contributions; and

(B) the location of any charitable organization for which the person serves as a board member, committee member, or other volunteer.

(c) This subsection shall apply in determining whether a natural person is a "resident individual," as the term is defined in K.S.A. 79-32,109 and amendments thereto, based on the presumption that a natural person who spends, in the aggregate, more than six months of the taxable year within the state of Kansas is a resident individual in the absence of proof to the contrary.

(1) In counting the number of days spent in Kansas, the person shall be treated as present in Kansas on each day that the person is physically present in Kansas at any time during that day.

(2) The length of time that a person spends in Kansas during a taxable year shall not be used to determine whether the person is a resident individual if that person is deemed not to be a resident of Kansas under the soldiers' and sailors' relief act of 1940, 50 U.S.C. app. § 574, as

amended by the servicemembers civil relief act, public law 108-189.

(3) The presumption that a person who spends, in the aggregate, more than six months of the taxable year within the state of Kansas is a resident individual in the absence of proof to the contrary shall be deemed to be rebutted if the person is temporarily employed within this state but maintains that person's domicile outside of the state of Kansas.

(d) Each natural person who is deemed not to be a resident of Kansas using criteria established under other statutes, regulations, or policies regarding residency shall nonetheless be deemed a resident individual if the person meets the conditions and requirements established by this regulation.

(e)(1) Each Kansas resident who moves at any time during the tax year to another jurisdiction without any intention to return to Kansas shall be considered a part-year Kansas resident for that tax year.

(2) Each person whose domicile is outside of Kansas, but who moves that person's domicile to Kansas at any time during the tax year, shall be deemed to be a part-year Kansas resident. (Authorized by K.S.A. 2005 Supp. 75-5155 and K.S.A. 79-3236; implementing K.S.A. 79-32,109; effective March 24, 2006.)

**92-12-5.** (Authorized by K.S.A. 79-3236, K.S.A. 1967 Supp. 79-32,109; effective Jan. 1, 1968; revoked March 24, 2006.)

**92-12-6. Resident status of certain individuals.** A person who is a resident of this state, does not terminate residency upon entering the armed services or peace corps of the United States. A member of the armed services domiciled in Kansas at the time he entered such service generally retains his status as a domiciliary of Kansas throughout his stay in the service, regardless of where he may be assigned to duty or how long.

For purposes of this act a person shall not be deemed to be a resident of Kansas, nor will he lose his status as a resident of the state in which he formerly resided, solely because of a transfer into this state under military orders. Such person may, however, become a resident of Kansas for purposes of this act by the performance of certain overt acts which would constitute a termination of his residence in such former state and the establishment of a residence in Kansas.

A resident of Kansas establishing temporary quarters in another state or foreign country remains a resident of Kansas.

A nonresident individual means an individual other than a resident individual. (Authorized by K.S.A. 79-3236, K.S.A. 1967 Supp. 79-32,109; effective Jan. 1, 1968.)

**92-12-7.** (Authorized by K.S.A. 79-3236; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-8. Corporation.** The term "corporation" as used in these regulations includes not only corporations which have been created or organized under the laws of Kansas, but also every corporation doing business within this state or deriving income from sources within this state, in a corporate or organized capacity, by virtue of creation or organization under the laws of the United States or some state, territory or district or a foreign country. The term "corporation" is not limited to the legal entity usually known as a corporation, but includes also an association, a trust classed as an association because of its nature or its activities, a joint stock company, and certain kinds of partnerships. Any association or organization which is required to report as a corporation, for federal income tax purposes under the internal revenue code of 1954 as amended during the taxable year, shall be considered to be a corporation for the purposes of the Kansas act. Conversely, any association, organization or corporation required to report in any other capacity, for federal income tax purposes under the internal revenue code as amended during the taxable year, shall report in a like capacity for purposes of the Kansas act. (Authorized by K.S.A. 79-3236, K.S.A. 1971 Supp. 79-32,110; effective Jan. 1, 1968; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972.)

**92-12-9 and 92-12-10.** (Authorized by K.S.A. 79-3236, 79-32,109; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-11. Credits for income taxes paid to other states.** (a) The credit for income tax paid to another state allowed by K.S.A. 79-32,111, and amendments thereto, shall be limited to the net amount of income taxes actually paid to another state. The net amount of income taxes actually paid to another state shall be the amount of the taxpayer's tax liability to the other state less any refundable or nonrefundable tax credits allowed by the other state. The net amount of income tax paid to another state shall not include interest or penalties paid to another state.

(b) The credit for income tax paid to another state shall be taken at the time of filing the income tax return and shall be applied against the entire tax until the credit is exhausted. A copy of the return or returns on which the taxes are assessed shall be filed with the director of taxation, at the time the credit is claimed.

(c) Credit for income tax paid to another state on income for any year shall be applied only against tax due on income for the same year. (Authorized by K.S.A. 79-3236; implementing K.S.A. 2000 Supp. 79-32,111; effective Jan. 1, 1968; amended Jan. 1, 1974; amended May 1, 1982; amended May 10, 2002.)

**92-12-12.** (Authorized by K.S.A. 79-3236, 79-32,112; effective Jan. 1, 1968; amended Jan. 1, 1972; amended May 1, 1976; revoked, E-80-2, Jan. 18, 1979; revoked May 1, 1979.)

**92-12-13.** (Authorized by K.S.A. 79-3236, 79-32,112; effective Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1976; revoked, E-80-2, Jan. 18, 1979; revoked May 1, 1979.)

**92-12-14. Persons and organizations exempt from Kansas income tax.** A person or organization claiming an exemption from Kansas income taxation under the provisions of subsection (a) of K.S.A. 1980 Supp. 79-32,113 shall submit evidence to the director of the person's or organization's exemption from federal income taxation, when so called upon by the director. (Authorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-32,113; effective Jan. 1, 1968; amended Jan. 1, 1974; amended May 1, 1982.)

**92-12-15.** (Authorized by K.S.A. 79-3236, 79-32,114; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-16. Change of accounting period.** Permission for change of a taxpayer's Kansas taxable year shall not be required from the director. In all cases a short period return shall be filed to accomplish this change. The Kansas taxable income for this short period shall be computed in the same manner as is the federal taxable income for this short period. For the purpose of the tax computation on a short period individual income tax return, only the taxable income for the short period shall be reported, but the tax exemptions and the Kansas standard deduction shall be ap-

portioned by the same ratio as the number of months in the short period bears to twelve (12) months. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-32,114; effective Jan. 1, 1968; amended May 1, 1982.)

**92-12-17 and 92-12-18.** (Authorized by K.S.A. 79-3236, 79-32,114; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-19. Limitation of tax-spreadback rule.** When an accounting method is changed in compliance with K.S.A. 79-32,114(c) or (d) (i), other than from an accrual to an installment method, any additional tax which results from the adjustments determined to be necessary solely by reason of the change shall not be greater than if these adjustments were divided equally between the year of change and the two (2) preceding taxable years during which the taxpayer used the method of accounting from which the change is made. But, if the taxpayer has only one (1) preceding taxable year, the allocation may be made equally between the year of change-over and the one (1) preceding year. For the purpose of reterminating the tax liabilities under the two-year carry-back rule all computations shall be made as though the returns for the three (3) years were being amended to include the income thus apportioned, and all income, deductions, and limitations shall be adjusted accordingly. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-32,114; effective Jan. 1, 1968; amended May 1, 1982.)

**92-12-20. Change from accrual to installment method of accounting.** If for any tax year beginning after December 31, 1967, the taxpayer is allowed or required to change from the accrual to the installment method of accounting to comply with K.S.A. 1967 Supp. 79-32,114 (c) or (d) (i), no part of the installments collected in the year of the change or thereafter may be excluded from income, even though the income reported before the year of change had already reflected the amount of the sales including such installments. Therefore, for the year of change or subsequent years, (such years being referred to as the adjustment years) in which such amounts are reflected in income the second time, the tax for such year of change or subsequent year shall be reduced by an adjustment computed as follows:

(1) Determine separately the portion of the tax for each taxable year before the year of change which is attributable to the gross profit from in-

stallment sales which was included in gross income in that year and which is also includable in gross income for any adjustment year;

(2) Determine separately the portion of the tax for each adjustment year which is attributable to the gross profit described in subdivision (1) of this regulation;

(3) Select for each adjustment year the lesser of the amounts determined under subdivisions (1) and (2) of this regulation;

(4) The tax imposed in any adjustment year shall be reduced by the amount as determined in subdivision (3) of this regulation or the sum of all such amounts if more than one prior taxable year is involved.

The portion of the tax for any taxable year attributable to the gross profit described in subdivision (1) of this regulation shall be that proportion of the tax determined for such year, without regard to the adjustments under this regulation, which the gross profit included in gross income in the prior year and includable in gross income for the adjustment year bears to the gross income of such prior year. (Authorized by K.S.A. 79-3236, K.S.A. 1967 Supp. 79-32,114; effective Jan. 1, 1968.)

**92-12-21.** (Authorized by K.S.A. 79-3236, 79-32,115; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-22.** (Authorized by K.S.A. 79-3236, 79-32,117; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-23.** (Authorized by K.S.A. 79-3236, 79-32,117; effective Jan. 1, 1968; amended May 1, 1976; revoked May 1, 1982.)

**92-12-24.** (Authorized by K.S.A. 79-3236, 79-32,117; effective Jan. 1, 1968; amended, E-71-8, Jan 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1982.)

**92-12-25 and 92-12-26.** (Authorized by K.S.A. 79-3236, 79-32,117; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-27. Kansas deduction of an individual.** A taxpayer entitled to elect to either itemize deductions or to take the Kansas standard deduction shall be bound by an election unless an amended return is filed. In the absence of an election, the taxpayer shall be deemed to have elected to take the Kansas standard deduction. (Authorized by

K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-32,118, 79-32,119, 79-32,120; effective Jan. 1, 1968; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; amended May 1, 1982.)

**92-12-28.** (Authorized by K.S.A. 79-3236, 79-32,120; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-29.** (Authorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-32,120; effective Jan. 1, 1968; amended May 1, 1982; revoked May 10, 2002.)

**92-12-30.** (Authorized by K.S.A. 79-3236, 79-32,121; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-31.** (Authorized by K.S.A. 79-3236, 79-32,123; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-32.** (Authorized by K.S.A. 79-3236, 79-32,124; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-33.** (Authorized by K.S.A. 79-3236, 79-32,123; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-34.** (Authorized by K.S.A. 79-3236, 79-32,126; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-35.** (Authorized by K.S.A. 79-3236, 79-32,127; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-36.** (Authorized by K.S.A. 79-3236, 79-32,128; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-37.** (Authorized by K.S.A. 79-3236, 79-32,129; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-38.** (Authorized by K.S.A. 79-3236, 79-32,130; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-39.** (Authorized by K.S.A. 79-3236, 79-32,131; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-40.** (Authorized by K.S.A. 79-3236, 79-32,132; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-41.** (Authorized by K.S.A. 79-3236, 79-32,133; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-42.** (Authorized by K.S.A. 79-3236, 79-32,134; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-43.** (Authorized by K.S.A. 79-3236, 79-32,135; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-44.** (Authorized by K.S.A. 79-3236, 79-32,136; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-45 and 92-12-46.** (Authorized by K.S.A. 79-3236, 79-32,137; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-47. Distribution withholding.** The fiduciary of a resident estate or trust shall within 30 days of the close of the taxable year of the estate or trust furnish or mail to the last known address of each nonresident beneficiary from which deductions have been made in accordance with K.S.A. 79-32,137, and amendments thereto, a report in duplicate on a form furnished by the director showing the amount of the deduction during the taxable year of the resident estate or trust. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-32,137; effective Jan. 1, 1968; amended May 10, 2002.)

**92-12-48.** (Authorized by K.S.A. 79-3236, 79-32,138; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1972; amended Jan. 1, 1974; revoked May 1, 1982.)

**92-12-49.** (Authorized by K.S.A. 79-3236, 79-32,139; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-50.** (Authorized by K.S.A. 79-3236, 79-32,140; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-51.** (Authorized by K.S.A. 79-3236, 79-32,141; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-52. Consolidated returns.** Corporations which are members of an affiliated group which do not derive their entire income from sources within Kansas and have filed a federal consolidated return for federal income tax purposes, may file a consolidated return for purposes

of determining their Kansas income tax liability. The director may permit or require this group of affiliated corporations to file consolidated returns provided they are permitted to file a federal consolidated return and when in the director's opinion this consolidated return is necessary to clearly reflect the Kansas taxable income of the affiliated group. Once a consolidated return is filed for a taxable year, consolidated returns shall be filed for all future years unless the group is not permitted to file a consolidated federal return. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-32,142; effective Jan. 1, 1968; amended May 1, 1982; amended May 1, 1987.)

**92-12-53. Methods of determining income allocable to Kansas business.** Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or the rendering of purely personal services by an individual, shall allocate and apportion net income as provided in the "uniform division of income for tax purposes act" (K.S.A. 79-3271 *et seq.*) Non-business income shall be allocated according to the provisions of K.S.A. 79-3274 through 79-3278 and all business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3). The three (3) factors are determined by the provisions of K.S.A. 79-3279 through 79-3287, and amendments thereto. This shall be the general rule to be followed in computing Kansas taxable income of taxpayers. The law also provides that if the allocation and apportionment provisions of this act do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the secretary of revenue may require, in respect to all, or any part of the taxpayer's business activities, if reasonable, any of the methods set forth in K.S.A. 1980 Supp. 79-3288. These methods are the exceptions to the prescribed method and shall be allowed or used only in rare and exceptional cases and the burden of proving the exception which would warrant the use of any of the alternate methods rests upon the party who would invoke the exception. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3289, K.S.A. 1981 Supp. 79-3272, 79-3288; effective Jan. 1, 1968; amended May 1, 1975; amended May 1, 1982.)

**92-12-54.** (Authorized by K.S.A. 79-3236, 79-32,143; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-55. Returns; who shall file.** (a) Copies of the prescribed return forms shall, so far as possible, be furnished to taxpayers. A taxpayer shall not be excused from making a return solely because a return form was not furnished. Each taxpayer shall carefully prepare the return so as to fully and clearly set forth the data called for. Imperfect or incorrect returns shall not be accepted as meeting the requirements of the act. The joint return of a husband and wife shall be signed by both spouses.

(b) Every corporation not expressly exempt from tax shall make a return of income regardless of the amount of its net income. In the case of ordinary corporations, the returns shall be made on form 120. A corporation having an existence during any portion of a taxable year shall be required to make a return. A corporation which has received a charter, but has never perfected its organization, which has transacted no business and had no income from any source, may, upon presentation of the facts to the director, be relieved from the necessity of making a return as long as it remains in an unorganized condition. In the absence of a proper showing to the director the corporation will be required to make a return. When called upon by the director, an exempt corporation shall render proof of its exemption.

(c) A receiver who stands in the stead of an individual or corporation shall render a return of income and pay the tax for the receiver's trust, but a receiver of only part of the property of an individual or corporation need not. If the receiver acts for an individual, the return shall be made on the same form the individual would be required to file. When acting for a corporation, a receiver is not treated as a fiduciary, and in this case the return shall be made as if by the corporation itself. A receiver in charge of the business of a partnership shall render a return on the same form the partnership would be required to file. A receiver of the rents and profits appointed to hold and operate a mortgaged parcel of real estate, but not in control of all the property or business of the mortgagor, and a receiver in partition proceedings, shall not be required to render returns of income. In general, statutory receivers and common receivers of all the property or business of an individual or corporation shall make returns.

(d) A fiduciary acting as a guardian of a minor or an incompetent subject to Kansas income tax shall make a return for the person and pay the tax, unless in the case of a minor, the minor makes the return or causes it to be made. For the purpose of determining the liability of a fiduciary to render a return under the provisions of the preceding sentence where the minor or incompetent is married and was living with husband or wife at the close of the taxable year, it shall be the aggregate gross income of both husband and wife which is controlling.

(e) Every partnership shall make a return for each taxable year stating specifically the items of its gross income and the deductions allowed by the act. (Authorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-3220; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1982.)

**92-12-56.** (Authorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-3220; effective Jan. 1, 1968; amended May 1, 1982; revoked May 10, 2002.)

**92-12-57. Records and income tax forms.** Every person subject to the tax, except persons whose gross income consists solely of salary, wages, or similar compensation for personal services rendered, shall, for the purpose of enabling the director to determine the correct amount of income subject to tax, keep permanent books of account or records, including inventories, that are sufficient to establish the amount of the gross income and the deductions, credits, and other matters required to be shown in any return. These books or records shall be kept available at all times for inspection by agents or representatives of the director, and shall be retained so long as the contents may become material in the administration of this act. Income tax forms shall be prescribed by the director and shall be signed and filed in accordance with these regulations and the instructions on or issued with the form. (Authorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-3223; effective Jan. 1, 1968; amended May 1, 1982.)

**92-12-58. Payment of tax; receipt; insufficient fund checks.** (a) Upon request, a receipt shall be furnished by the director for each tax payment. In the case of payments made by check or money order, the cancelled check or the money order receipt shall be considered a sufficient receipt. For payments in cash, a receipt shall be furnished by the director if the taxpayer requests one.

(b) If payment is made by check and the check is returned for lack of funds or for any other reason, the taxpayer's account shall be treated as though a payment had not been made. If the check is not made good or the tax is not paid before the due date of the return, the return shall be considered as delinquent and penalties shall be added in accordance with K.S.A. 79-3228, and amendments thereto.

(c) All fees associated with the return of a check shall be the responsibility of the taxpayer. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3225; effective Jan. 1, 1968; amended May 1, 1982; amended May 10, 2002.)

**92-12-59.** (Authorized by K.S.A. 79-3226, 79-3236; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-60.** (Authorized by K.S.A. 79-3226, 79-3236; effective Jan. 1, 1968; revoked, L. 1980, ch. 344, May 1, 1980.)

**92-12-61.** (Authorized by K.S.A. 79-3236; effective Jan. 1, 1968; amended Feb. 15, 1977; revoked May 1, 1982.)

**92-12-62.** (Authorized by K.S.A. 79-3228, 79-3236; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-63.** (Authorized by K.S.A. 79-3229, 79-3236; effective Jan. 1, 1968; revoked May 1, 1982.)

**92-12-64. Claims for refund by taxpayers.** Claims by the taxpayer for the refunding of taxes, interest, penalties, and additions to tax erroneously or illegally collected shall set forth in detail and under oath the grounds upon which a refund is claimed and the facts which are sufficient to apprise the director of the exact basis of these grounds. Refund or credits shall not be allowed after the expiration of the statutory period of limitation applicable to the filing of the claim, except upon one or more grounds set forth in a claim filed before the expiration of this period. A claim which does not comply with this regulation shall not be considered for any purpose as a claim for refund. If a return is filed by an individual and a refund claim is then filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or similar evidence shall be annexed to the claim to show the authority of the executor, administrator, or other fiduciary, by whom the claim is filed. If an exec-

utor, administrator, guardian, trustee, receiver, or other fiduciary files a return and then a refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the return was filed by the fiduciary and that the latter is still acting. In these cases, if a refund or interest is to be paid, letters testamentary, letters of administration, or other evidence may be required, but shall be submitted only upon receipt of a specific request. If claim is filed by a fiduciary other than the one by whom the return was filed, the necessary documentary evidence shall accompany the claim. (Authorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-3230; effective Jan. 1, 1968; amended May 1, 1982.)

**92-12-65. Powers of the director of taxation.** The director or his or her delegate shall be permitted to examine any books, papers, records, or memoranda of a taxpayer for the purpose of determining the correctness of information contained in, or the existence of additional information that should be contained in, the taxpayer's returns. The director or his or her delegate may examine all the taxpayer's books, papers, records, or memoranda to determine which of these items are relevant to a determination of the taxpayer's tax liability. The determination of relevance shall not be made by the keeper of the books, papers, records, or memoranda. Books, papers, records, or memoranda which may be examined shall include, but not be limited to, the following: general ledgers and subordinate ledgers; general journals, and subordinate journals; computer printouts of any accounting or financial data; audit workpapers of company, internal auditor and independent auditor; annual reports with all supporting workpapers, schedules, and exhibits; SEC 10-K with all supporting workpapers, schedules, and exhibits; cancelled checks; sales invoices; vendors invoices; time cards; deposit slips; bank statements; cash register tapes; inventory sheets; board of directors minutes and reports; audit committee minutes and reports; executive committee minutes and reports; internal company financial reports, statements and memoranda, with schedules and attachments; trial balances; employee lists; list of accounts receivable; capital asset ledgers and subordinate ledgers; depreciation ledgers and schedules; route schedules; bills of lading; shipping and receiving reports; weight tickets; work orders; job

tickets; production reports; rents paid schedules; procedure manuals, operations manuals, employee manuals; table of organization; appraisal reports; property tax reports and receipts; federal income tax returns, and all schedules and attachments (pro forma and consolidated); all state tax returns, and all schedules and attachments; federal and state revenue agent adjustments reports; sales tax returns and all supporting workpapers; ad valorem tax returns and all supporting workpapers; intangible tax returns and all supporting workpapers; local occupation licenses; corporate charter; permits to do business as a foreign corporation; motor vehicle license returns to all appropriate states; special fuel licenses; cigarette licenses; liquor licenses; franchise agreements with supporting details; stock certificates ledger; security agreements; insurance policies; blueprints of plant facilities; patent agreements; royalty agreements; aging of accounts receivable; payroll journals and ledgers, W-2 forms; unemployment compensation ledgers; sales journals and subordinate details; accounts receivable ledger; bad debts workpapers; accounts payable ledger; computer cards; computer program guides; all lease agreements; lease-purchase agreements; apportionment workpapers—property, payroll, and sales workpapers by state and total company; management and personnel directory; director, officer and employee directory; list of articles and publications concerning company, its predecessors and subsidiary and affiliated corporations, which describes their development, operations and activities; travel vouchers and authorization; and internal memorandums. The director shall have the authority to issue interrogatories, subpoenas, and requests for production relating to disclosure of any of the information or items listed here. This authority may be exercised any time before or after an assessment has been made. (Authorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-3233; effective Jan. 1, 1968; amended May 1, 1979; amended May 1, 1982.)

**92-12-66.** (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3233a, 79-3233b; effective Jan. 1, 1968; amended May 1, 1975; amended May 1, 1982; revoked July 27, 2001.)

**92-12-66a. Abatement of final tax liabilities.** (a) General. The authority of the secretary to abate all or part of a final tax liability shall be exercised only in cases in which there is serious

doubt as to either the collectability of the tax due or the accuracy of the final tax liability and the abatement is in the best interest of the state. This authority shall be exercised to effect the collection of taxes with the least possible loss or cost to the state and with fairness to the taxpayer. The determination of whether to abate all or part of a final tax liability shall be wholly discretionary.

(b) Definitions.

(1) "Assets" means the taxpayer's real and personal property, tangible and intangible.

(2) "Collectability" means the ability of the department of revenue to collect, and the ability of the taxpayer to pay, the tax liability.

(3) "Concealment of assets" means a placement of assets beyond the reach of the department of revenue, or a failure to disclose information relating to assets, that deceives the department with respect to the existence of the assets, whether accomplished by act, misrepresentation, silence, or suppression of the truth.

(4) "Final tax liability" means a tax liability that was established by the department to which the taxpayer has no further direct appeal rights.

(5) "Order denying abatement" means an order issued by the secretary that rejects a petition for abatement and refuses to abate any part of a final tax liability.

(6) "Order of abatement" means an order issued by the secretary that abates all or part of a final tax liability and states the reasons that this action was taken.

(7) "Parties" means either the person who requests an abatement of a final tax liability or the person's authorized representative, and either the secretary of revenue or the secretary's designee.

(8) "Secretary" means the secretary of the department of revenue or the designee of the secretary.

(9) "Serious doubt as to collectability" means the doubt that exists when a reasonable person, viewing the controlling circumstances objectively, would conclude that the likelihood of recovering the tax liability is less than probable.

(10) "Serious doubt as to liability" means the doubt that exists when a reasonable person, viewing the controlling circumstances objectively, would conclude that it is probable that the final tax liability previously established by the department is greater than the actual tax liability imposed by the Kansas tax imposition statutes.

(11) "Tax" means the particular tax owed by the taxpayer and shall include any related interest and penalty.

(c) Factors affecting abatement.

(1) No final tax liability shall be abated on the ground of serious doubt as to liability if the taxpayer's liability for the tax has been established on the merits by a court judgment or decision of the court of tax appeals. No final tax liability shall be abated on the ground of serious doubt as to liability if the taxpayer has filed tax returns, absent a showing of the reporting errors on the returns.

(2) No tax liability shall be abated by the secretary if the taxpayer has acted with intent to defraud or to delay collection of tax. Frivolous petitions and petitions submitted only to delay collection of a tax shall be immediately rejected.

(d) Procedures.

(1) Each petition for abatement shall be captioned "petition for abatement of a final tax liability" and shall be submitted to the secretary. The petition shall be signed by the petitioner and the taxpayer, if available, under the penalties of perjury and shall include the following:

(A) The reasons why all or part of the final tax liability should be abated;

(B) the facts that support the abatement; and

(C) a waiver of the taxpayer's right of confidentiality under the confidentiality provisions of chapter 79 of the Kansas statutes annotated and amendments thereto, conditioned upon the secretary's abatement of all or part of the final tax liability.

(2) If a petition alleges serious doubt as to collectability, the taxpayer shall submit a statement of financial condition that lists assets and liabilities, accompanied by an affidavit signed by the preparer under the penalties of perjury, attesting that the financial statement is true and accurate to the best of the preparer's knowledge.

(3) After a petition has been submitted, the taxpayer shall provide any additional verified documentation that is requested by the secretary. The petitioner or taxpayer may be required by the secretary to appear before the secretary and testify under oath concerning a requested abatement.

(4) A petition for abatement may be withdrawn by the taxpayer at any time before its acceptance. When a petition is denied, the taxpayer shall be notified in writing by the secretary within 30 days of the decision to deny.

(5) An order of abatement that abates all or part of a final tax liability may be issued by the secretary. The order may direct any remaining liability to be paid within 30 days. Each order of abatement shall set forth the reasons that the petition

for abatement was granted and all relevant information, including the following:

(A) The names of all parties;

(B) the amount and type of tax, interest, and penalties that were abated;

(C) the amount of tax, penalty, and interest that remain to be paid on the date of the order; and

(D) the amount that has been paid, if any.

(6) The submission of a petition for abatement shall not prevent the collection of any tax.

(e) Effect of an order of abatement. Each order of abatement shall relate to the entire liability of the taxpayer with respect to which the order is made and shall conclusively settle the amount of liability. Once an order of abatement is issued, matters covered by the order shall not be reopened by court action or otherwise, except for one of the following reasons:

(1) Falsification of statements or concealment of assets by the taxpayer;

(2) mutual mistake of a material fact sufficient to cause a contract to be reformed or set aside; or

(3) serious doubt as to collectability arising after an abatement order is issued that is based on serious doubt as to liability.

(f) Effect of waiver of confidentiality. The issuance of an order of abatement for \$5,000 or more shall make all reports of the abatement proceeding available for public inspection upon written request, in accordance with K.S.A. 79-3233b, and amendments thereto, and the taxpayer's express waiver of the right to confidentiality under the confidentiality provisions of chapter 79 of the Kansas statutes annotated, and amendments thereto.

(g) Annual report. On or before the last day of September of each year, a summary of each petition of abatement that was granted during the preceding state fiscal year that reduced a final tax liability by \$5,000 or more shall be prepared for filing with the secretary of state, the division of post audit of the legislature, and the attorney general. Each summary shall include the following:

(1) The name of the taxpayer;

(2) a summary of the issues and the reasons for the abatement; and

(3) the amount of final tax liability, including penalties and interest, that was abated. (Authorized by K.S.A. 79-3236; implementing K.S.A. 2010 Supp. 79-3233, 79-3233a, and 79-3233b, as amended by 2011 SB 212, sec. 1; effective July 27, 2001; amended Oct. 28, 2011.)

**92-12-67. Extension of time for filing returns.** A six-month extension of time to file shall be granted by the director of taxation if at least 90% of the current year's tax liability is paid or 100% of the prior year's tax liability is paid. An extension of time to file shall not constitute an extension of time to pay. If the amount of tax due is not paid by the original due date, interest and penalty shall be assessed unless both of the following conditions are met:

(a) At least 90% of the tax liability is paid on or before the original due date.

(b) The balance of the tax and interest is paid with the return when it is filed. The appropriate Kansas payment voucher shall be submitted when paying the tax balance due for an extension of time to file. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3221; effective Jan. 1, 1968; amended Jan. 1, 1970; amended May 1, 1982; amended May 10, 2002.)

**92-12-68.** (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3222; effective Jan. 1, 1968; amended Jan. 1, 1974; amended May 1, 1982; revoked May 10, 2002.)

**92-12-69.** (Authorized by K.S.A. 79-3236, K.S.A. 1979 Supp. 79-3220; effective Jan. 1, 1968; amended Jan. 1, 1970; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; revoked, L. 1980, ch. 344, May 1, 1980.)

**92-12-70.** (Authorized by K.S.A. 79-32,117a, 79-32,117b; effective Jan. 1, 1974; revoked May 1, 1982.)

**92-12-71. Business and nonbusiness income defined.** In essence, all income which arises from the conduct of trade or business operations of a taxpayer is business income. For administrative purposes, the income of the taxpayer is business income unless clearly classifiable as nonbusiness income.

The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, nonoperating income, etc., is of no aid in determining whether income is business or nonbusiness income. Income of any type or class, and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income

is "business income" or "nonbusiness income" is the identification of the transactions and activity which are the elements of a particular trade or business. In general all transactions and activities of the taxpayer which are dependent upon or contribute to the operations of the taxpayer's economic enterprise as a whole, constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of, and will constitute integral parts of, a trade or business. (Authorized by K.S.A. 79-3236, 79-3271, 79-4301; effective May 1, 1979.)

**92-12-72. Two or more businesses of a single taxpayer.** A taxpayer may have more than one (1) "trade or business." In such cases, it is necessary to determine the business income attributable to each separate trade or business. The income of each business is then apportioned by an apportionment formula which takes into consideration the instate and outstate factors which relate to the trade or business the income of which is being apportioned.

The determination of whether the activities of the taxpayer constitute a single trade or business or more than one (1) trade or business will turn on the facts in each case. In general, the activities of the taxpayer will be considered a single business if there is evidence to indicate that the segments under consideration are integrated with, dependent upon, or contribute to each other and the operations of the taxpayer as a whole. The following factors are considered to be good indicia of a single trade or business, and the presence of any of these factors creates a strong presumption that the activities of the taxpayer constitute a single trade or business: (a) A taxpayer is generally engaged in a single trade or business when all of its activities are in the same general line.

(b) A taxpayer is almost always engaged in a single trade or business when its various divisions or segments are engaged in different steps in a large, vertically structured enterprise.

(c) A taxpayer which might otherwise be considered as engaged in more than one (1) trade or business is properly considered as engaged in one (1) trade or business when there is a strong central management, coupled with the existence of centralized departments for such functions as financing, advertising, research, or purchasing. Thus, some conglomerates may properly be considered as engaged in only one (1) trade or business when the central executive officers are normally in-

volved in the operations of the various divisions and there are centralized offices which perform for the divisions the normal matters which a truly independent business would perform for itself, such as accounting, personnel, insurance, legal, purchasing, advertising, or financing. (Authorized by K.S.A. 79-3236, 79-3271, 79-4301; effective May 1, 1979.)

**92-12-73. Business and nonbusiness income: application of definitions.** The following are rules for determining whether particular income is business or nonbusiness income. (a) Rental income from real and tangible property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or incidental thereto and therefore is includable in the property factor.

(b) Gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if such property was utilized for the production of nonbusiness income or otherwise was removed from the property factor before its sale, exchange or other disposition, the gain or loss will constitute nonbusiness income.

(c) Interest income is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations, or where the purpose for acquiring and holding the intangible is related to or incidental to such trade or business operations.

(d) Dividends are business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is related to or incidental to such trade or business operations.

(e) Patent and copyright royalties are business income where the patent or copyright with respect to which the royalties were received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the patent or copyright is related to or incidental to such trade or business operations. (Authorized by K.S.A. 79-3236, 79-3271, 79-4301; effective May 1, 1979.)

**92-12-74. Proration of deductions.** In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from a particular trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction may be applicable to the business incomes of more than one (1) trade or business and to several items of nonbusiness income. In such cases the deduction shall be prorated among such trades or businesses and such items of nonbusiness income in a manner which fairly distributes the deduction among the classes of income to which it is applicable.

In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under the multistate tax compact or the uniform division of income for tax purposes act are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of the variance. (Authorized by K.S.A. 79-3236, 79-3289, 79-32,141; effective May 1, 1979.)

**92-12-75. Definitions.** (a) Apportionment means the division of business income between states by the use of a formula containing apportionment factors.

(b) Allocation means the assignment of nonbusiness income to a particular state.

(c) Business activity means the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer. (Authorized by K.S.A. 79-3236, 79-3271, 79-3272, 79-4301; effective May 1, 1979.)

**92-12-76. Apportionment.** If the business activity in respect to any trade or business of a taxpayer occurs both within and without this state, and if by reason of such business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from such trade or business which is derived from sources within this state shall be determined by apportionment in accordance with K.S.A. 79-3279. (Authorized by K.S.A. 79-3236, 79-3272, 79-3279, 79-4301; effective May 1, 1979.)

**92-12-77. Combined income method of reporting.** If a particular trade or business is car-

ried on by a taxpayer and one (1) or more affiliated corporations, nothing in K.S.A. 79-3271 *et seq.*, and 79-4301, article IV or in these regulations shall preclude the use of a combined income method of reporting whereby the entire business income of such trade or business is apportioned in accordance with K.S.A. 79-3279 to 79-3287 and 79-4301, article IV.9. to IV.17. (Authorized by K.S.A. 79-3236, 79-3288, 79-32,141; effective May 1, 1979.)

**92-12-78. Allocation.** Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with K.S.A. 79-3275 through 79-3278. (Authorized by K.S.A. 79-3236, 79-3272, 79-4301; effective May 1, 1979.)

**92-12-79. Consistency and uniformity in reporting.** In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under the multistate tax compact or the uniform division of income for tax purposes act are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose in its return to this state the nature and extent of the variance. (Authorized by K.S.A. 79-3236, 79-3289, 79-4301; effective May 1, 1979.)

**92-12-80. Taxable in another state; in general.** The taxpayer is subject to the allocation and apportionment if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if such taxpayer, by reason of such business activity (*i.e.*, the transactions and activity occurring in the regular course of a particular trade or business), is taxable in another state pursuant to K.S.A. 79-3273 and 79-4301, article IV.3.

A taxpayer is not taxable in another state with respect to a particular trade or business merely because the taxpayer conducts activities in such other state pertaining to the production of non-business income or business activities relating to a separate trade or business. (Authorized by K.S.A. 79-3236, 79-3273, 79-4301; effective May 1, 1979.)

**92-12-81. Taxable in another state; when a corporation is "subject to" a tax under K.S.A. 79-3273(1) and 79-4301, article IV.3.(1).** A taxpayer is "subject to" one (1) of the taxes, specified in K.S.A. 79-3273(1) and 79-4301, article IV.3.(1) if it carries on business activities in such state and such state imposes such a tax thereon. Any taxpayer which asserts that it is subject to one (1) of the taxes specified in K.S.A. 79-3273(1) or 79-4301, article IV.3.(1) in another state shall furnish to the director of taxation upon his request evidence to support such assertion. The director of taxation may request that such evidence include proof that the taxpayer has filed the requisite tax return in such other state and has paid any taxes imposed under the law of such other state; the taxpayer's failure to produce such proof may be taken into account in determining whether the taxpayer in fact is subject to one (1) of the taxes specified in K.S.A. 79-3273 and K.S.A. 79-4301, article IV.3.(1) in such other state.

If the taxpayer voluntarily files and pays one (1) or more of such taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization or for the privilege of doing business in that state, but (a) does not actually engage in business activity in that state, or

(b) does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within such state, the taxpayer is not "subject to" one of the taxes specified within the meaning of K.S.A. 79-3273 and K.S.A. 79-4301, article IV.3.(1).

The concept of taxability in another state is based upon the premise that every state in which the taxpayer is engaged in business activity may impose an income tax even though every state does not do so. In states which do not, other types of taxes may be imposed as a substitute for an income tax. Therefore, only those taxes enumerated in K.S.A. 79-3273 and 79-4301, article IV.3.(1) which may be considered as basically revenue raising rather than regulatory measures shall be considered in determining whether the taxpayer is "subject to" one of the taxes specified in K.S.A. 79-3273 and 79-4301, article IV.3.(1) in another state. (Authorized by K.S.A. 79-3236, 79-3273, 79-4301; effective May 1, 1979.)

**92-12-82. Taxable in another state; when a state has jurisdiction to subject a taxpayer to a net income tax.** The second test, that of K.S.A. 79-3273(2) and 79-4301, article IV.3.(2),

applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of such business activity under the constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U.S.C.A. Sections 381-385. In the case of any "state" as defined in K.S.A. 79-3271(h) and K.S.A. 79-4301, article IV.1.(h), other than a state of the United States or political subdivision of such state, the determination of whether such "state" has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that "state." If jurisdiction is otherwise present, such "state" is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States. (Authorized by K.S.A. 79-3236, 79-3273, 79-4301; effective May 1, 1979.)

**92-12-83. Apportionment formula.** All business income of each trade or business of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in K.S.A. 79-3279 and 79-4301, article IV.9. The elements of the apportionment formula are the property factor, the payroll factor and the sales factor of the trade or business of the taxpayer. (Authorized by K.S.A. 79-3236, 79-3279, 79-4301; effective May 1, 1979.)

**92-12-84. Property factor; in general.** The property factor of the apportionment formula for each trade or business of the taxpayer shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of such trade or business. The term "real and tangible personal property" includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency. Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of taxpayer's trade or business. The method of determining that portion of the value to be included in the factor will depend upon the facts of each

case. The property factor shall include the average value of property includable in the factor. (Authorized by K.S.A. 79-3236, 79-3280, 79-4301; effective May 1, 1979.)

**92-12-85. Property factor; property used for the production of business income.** Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. Property or equipment under construction during the tax period, (except inventoriable goods in process) shall be excluded from the factor until such property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its conversion to the production of nonbusiness income, its sale, or the lapse of an extended period of time (normally, five years) during which the property is held for sale. (Authorized by K.S.A. 79-3236, 79-3280, 79-4301; effective May 1, 1979.)

**92-12-86. Property factor; consistency in reporting.** In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under the multistate tax compact or the uniform division of income for tax purposes act are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance. (Authorized by K.S.A. 79-3236, 79-3289, 79-4301; effective May 1, 1979.)

**92-12-87. Property factor; numerator.** The numerator of the property factor shall in-

clude the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed. (Authorized by K.S.A. 79-3236, 79-3280, 79-4301; effective May 1, 1979.)

**92-12-88. Property factor; valuation of owned property.** Property owned by the taxpayer shall be valued at its original cost. As a general rule "original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.

If original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer.

Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes.

Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation for federal income tax purposes. (Authorized by K.S.A. 79-3236, 79-3281, 79-4301; effective May 1, 1979.)

**92-12-89. Property factor; valuation of rented property.** Property rented by the taxpayer is valued at eight (8) times its net annual rental rate.

The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for such property, less the aggregate annual subrental rates paid by subtenants of the taxpayer.

Subrents are not deducted when the subrents constitute business income because the property which produces the subrents is used in the regular course of a trade or business of the taxpayer when it is producing such income. Accordingly there is no reduction in its value.

"Annual rental rate" means the amount paid as rental for property for a 12-month period (*i.e.*, the amount of the annual rent). Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of twelve (12) or more months and the current tax period covers a period of less than twelve (12) months, the rent paid for the short tax period shall be annualized. If the rental term is for less than twelve (12) months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis.

"Annual rent" means the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes: (a) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(b) Any amount payable as additional rental or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

"Annual rent" does not include incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.

Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the

factor. (Authorized by K.S.A. 79-3236, 79-3281, 79-4301; effective May 1, 1979.)

**92-12-90. Property factor; averaging property values.** As a general rule the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and ending of the tax period. However, the director of taxation may require or allow averaging by monthly values if such method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of such property as set forth in K.A.R. 92-12-89. (Authorized by K.S.A. 79-3236, 79-3282, 79-4301; effective May 1, 1979.)

**92-12-91. Payroll factor; in general.** (a) The payroll factor of the apportionment formula for each trade or business of the taxpayer shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

(b) The total amount "paid" to employees shall be determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report such compensation under such method for unemployment compensation purposes.

(c) The compensation of any employee on account of activities which are connected with the production of nonbusiness income shall be excluded from the factor.

(d) The term "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee shall be excluded. Only amounts paid di-

rectly to employees shall be included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services when the amounts constitute income to the recipient under the federal internal revenue code. In the case of employees not subject to the federal internal revenue code such as those employed in foreign countries, the determination of whether the benefits or services would constitute income to the employees shall be made as though the employees were subject to the federal internal revenue code. The term "employee" means any officer of a corporation, or any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if the person is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the federal insurance contributions act; except that, since certain individuals are included within the term "employees" in the federal insurance contributions act who would not be employees under the usual common-law rules, it may be established that a person who is included as an employee for purposes of the federal insurance contributions act is not an employee for purposes of this regulation.

(e) In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(f) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under the multistate tax compact or the uniform division of income for tax purposes act are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3283, 79-3289, 79-4301; effective May 1, 1979; amended May 1, 1986.)

**92-12-92. Payroll factor; denominator.** The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by Public Law 86-272, is included in the denominator of the payroll factor. (Authorized

by K.S.A. 79-3236, 79-3283, 79-4301; effective May 1, 1979.)

**92-12-93. Payroll factor; numerator.** The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in K.S.A. 79-3284 and 79-4301, article IV.14. to be applied in determining whether compensation is paid in this state are derived from the model unemployment compensation act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report such compensation under such method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded pursuant to this regulation, K.A.R. 92-12-91, 92-12-92 and 92-12-94. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes. (Authorized by K.S.A. 79-3236, 79-3283, 79-4301; effective May 1, 1979.)

**92-12-94. Payroll factor; compensation paid in this state.** Compensation is paid in this state if any of the following tests, applied consecutively, are met: (a) The employee's service is performed entirely within in the state.

(b) The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.

(c) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state: (1) If the employee's base of operations is in this state; or

(2) If there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

(3) If the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer, or communications from his customers or other persons, or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. (Authorized by K.S.A. 79-3236, 79-3284, 79-4301; effective May 1, 1979.)

**92-12-95. Sales factor; in general.** For the purposes of the sales factor of the apportionment formula for each trade or business of the taxpayer, the term "sales" means all gross receipts derived by the taxpayer from transactions and activity in the regular course of such trade or business. The following are rules for determining "sales"; (a) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.

(b) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, "sales" includes the entire reimbursed cost, plus the fee.

(c) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commissions, and similar items.

(d) In the case of a taxpayer engaged in renting real or tangible property, "sales" includes the

gross receipts from the rental, lease, or licensing the use of the property.

(e) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.

(f) If a taxpayer derives receipts from the sale of equipment used in its business, such receipts constitute "sales."

In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business.

In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under the multistate tax compact or the uniform division of income for tax purposes act are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance. (Authorized by K.S.A. 79-3236, 79-3285, 79-3288, 79-3289, 79-4301; effective May 1, 1979.)

**92-12-96. Sales factor; denominator.** The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under K.A.R. 92-12-103. (Authorized by K.S.A. 79-3236, 79-3285, 79-4301; effective May 1, 1979.)

**92-12-97. Sales factor; numerator.** The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to such gross receipts, shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness. (Authorized by K.S.A. 79-3236, 79-3285, 79-4301; effective May 1, 1979.)

**92-12-98. Sales factor; sales of tangible personal property in this state.** Gross receipts from sales of tangible personal property (except

sales to the United States government) are in this state: (a) If the property is delivered or shipped to a purchaser within this state regardless of the free on board point or other conditions of sale; or

(b) If the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

When property being shipped by a seller from the state of origin to a consignee in another state is diverted while enroute to a purchaser in this state, the sales are in this state.

If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply: (a) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in such state.

(b) If the taxpayer is not taxable in the state from which the property is shipped, then the sale is in this state. (Authorized by K.S.A. 79-3236, 79-3286, 79-4301; effective May 1, 1979.)

**92-12-99. Sales factor; sales of tangible personal property to United States government in this state.** Gross receipts from sales of tangible personal property to the United States government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For the purposes of this regulation, only sales for which the United States government makes direct payment to the seller pursuant to the terms of a contract

constitute sales to the United States government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States government, do not constitute sales to the United States government. (Authorized by K.S.A. 79-3236, 79-3286, 79-4301; effective May 1, 1979.)

**92-12-100. Sales factor; sales other than sales of tangible personal property in this state.** (a) Gross receipts from transactions other than sales of tangible personal property (including transactions with the United States government) are attributed to this state if the income producing activity which gave rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state, if, with respect to a particular item of income, the income producing activity is performed within and without this state but the greater proportion of the income producing activity is performed in this state, based on costs of performance.

The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Such activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, income producing activity includes but is not limited to the following:

(1) The rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service.

(2) The sale, rental, leasing, licensing or other use of real property.

(3) The rental, leasing, licensing or other use of tangible personal property.

(4) The sale, licensing or other use of intangible personal property.

The mere holding of intangible personal property is not, of itself, an income producing activity.

The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(b) The following are special rules for determining when receipts from the income producing activities described below are in this state:

(1) Gross receipts from the sale, lease, rental or licensing of real property are in this state if the real property is located in this state.

(2) Gross receipts from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing or other use of tangible personal property in this state is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state; consequently, if property is within and without this state during the rental, lease or licensing period, gross receipts attributable to this state shall be measured by the ratio which the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during such period.

(3) Gross receipts for the performance of personal services are attributable to this state to the extent such services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of such services shall be attributable to this state only if a greater proportion of the services was performed in the state, based on costs of performance. Usually, where services are performed partly within and partly without this state, the services performed in each state will constitute a separate income producing activity; in such case the gross receipts for the performance of services attributable to this state shall be measured by the ratio which the time spent in performing such services in this state bears to the total time spent in performing such services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation which gives rise to such gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example, time expended in negotiating the contract, is excluded from the computations. (Authorized by K.S.A. 79-3236, 79-3287, 79-4301; effective May 1, 1979.)

**92-12-101. Special rules; in general.** K.S.A. 79-3288 and 79-4301, article IV.18. permit a departure from the allocation and apportionment provisions of K.S.A. 79-3271 *et seq.*, and 79-4301, article IV in limited and specific cases. This regulation may be invoked in specific cases where unusual fact situations (which ordinarily will be

unique and nonrecurring) produce incongruous results under the apportionment and allocation provisions contained in K.S.A. 79-3271 *et seq.*, and 79-4301, article IV.

In the absence of unusual fact situations, the director of taxation may, in his discretion, establish appropriate procedures to determine the apportionment factors for any industry when it is found that the apportionment and allocation provisions of K.S.A. 79-3271 *et seq.*, and 79-4301, article IV do not adequately represent the extent of the taxpayer's business activity in this state, but such procedures shall be applied uniformly within any such industry. (Authorized by K.S.A. 79-3236, 79-3288, 79-4301; effective May 1, 1979.)

**92-12-102. Special rules; property factor.** The following special rules are established in respect to the property factor of the apportionment formula: (a) If the subrents taken into account in determining the net annual rental rate under K.A.R. 92-12-89 produce a negative or clearly inaccurate value for any item of property, another method which will properly reflect the value of rented property may be required by the director of taxation or requested by the taxpayer.

In no case however shall such value be less than an amount which bears the same ratio to the annual rental rate paid by the taxpayer for such property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property.

(b) If property owned by others is used by the taxpayer at no charge, or rented by the taxpayer for a nominal rate, the net annual rental rate for such property shall be determined on the basis of a reasonable market rental rate for such property. (Authorized by K.S.A. 79-3236, 79-3288, 79-4301; effective May 1, 1979.)

**92-12-103. Special rules; sales factor.** The following special rules are established in respect to the sales factor of the apportionment formula: (a) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, such gross receipts shall be excluded from the sales factor.

(b) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless such exclusion would materially affect the amount of income apportioned to this state.

(c) Where the income producing activity in respect to business income from intangible personal property can be readily identified, such income is included in the denominator of the sales factor and, if the income producing activity occurs in this state, in the numerator of the sales factor as well.

Where business income from intangible property cannot be readily attributed to any particular income producing activity of the taxpayer, such income cannot be assigned to the numerator of the sales factor for any states and shall be excluded from the denominator of the sales factor. (Authorized by K.S.A. 79-3236, 79-3288, 79-4301; effective May 1, 1979.)

**92-12-104.** (Authorized by K.S.A. 79-3236, 79-3291; effective May 1, 1979; revoked May 1, 1982.)

**92-12-105. Contribution to income; debtor setoff.** (a) As used in K.S.A. 75-6202, and amendments thereto, "contribution to income" shall mean that portion of the income of a spouse filing a joint return that is subject to withholding, or that can be otherwise determined, from information filed with the return, to have been received by that spouse individually. Income that cannot be determined, from information filed with the Kansas income tax return, to have been received by either spouse individually shall be considered attributable to each spouse at the ratio of the income that has been determined to have been received individually by each spouse to the total income of both spouses. If the amount reported as Kansas adjusted gross income does not include income subject to Kansas tax received by either spouse individually, this amount shall be considered to have been contributed equally by each spouse.

(b) The amount of the refund shall be adjusted to properly reflect the debtor's contribution to income if the debtor proves either of the following:

(1) Any of the income attributed to the debtor was received by the debtor's spouse individually and should not have been attributed to the debtor for the purpose of determining contribution to income.

(2) Any of the income attributed wholly or partly to the debtor's spouse should have been attributed to the debtor.

(c) Income shall not be attributed to either spouse individually unless the debtor proves either of the following:

(1) Only one spouse had an ownership interest in the source of the income at the time it was received.

(2) In the case of earned income not subject to Kansas withholding tax, the income was earned solely by one spouse.

If the debtor proves that the proportionate ownership interest in an income source is not the same as the ratio determined under subsection (a), the amount of refund shall be adjusted accordingly.

(d) Questions regarding the proper computation of contribution to income as specified in this regulation may be raised at the hearing provided for in K.S.A. 75-6207, and amendments thereto. (Authorized by K.S.A. 75-6203; implementing K.S.A. 2000 Supp. 75-6202; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; amended May 10, 2002.)

**92-12-106. Composite returns for non-resident partners and shareholders.** (a) Any partnership or S corporation required to file a return under the Kansas income tax act may file a composite income tax return for all nonresident partners or nonresident shareholders that derive income from the partnership or S corporation. Nonresident partners and nonresident shareholders included in a composite return shall not file a separate income tax return.

(b) Any nonresident partner or nonresident shareholder may be included in a composite return unless the partner or shareholder has income from a Kansas source other than the partnership or S corporation.

(c) Each composite return shall list the name, address, social security number, and the percentage of ownership of each nonresident partner or nonresident shareholder.

(d) Each composite return shall be filed and any tax due paid by the partnership or S corporation on or before the 15th day of the fourth month following the close of the taxable year of the partnership or S corporation.

(e) Each return shall be filed in the manner specified by the director of taxation.

(f) Trusts shall not be included in a composite return. Each trust shall file a separate income tax return on a form provided by the director. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3220; effective May 1, 1988; amended May 10, 2002.)

**92-12-109. Report of income adjusted by internal revenue service.** The revenue agent's

report detailing adjustments made by the internal revenue service and the amended return reporting these adjustments to the director shall be sent separate from any other document except those required by this regulation. If federal taxable income, in the case of a corporation, or federal adjusted gross income, in the case of an individual, on the Kansas income tax return as originally filed is not the same as reported on the revenue agent's report, a reconciliation and explanation as to the difference shall also be submitted. (Authorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-3230; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982.)

**92-12-110. Combined income method of reporting; surtax exemption.** Each corporation filing a Kansas income tax return using the combined income method of reporting with more than one entity of the combined group doing business in Kansas, may report the total Kansas combined income and pay the tax due by filing one Kansas income tax return. When a corporation uses this method for a taxable year, the corporation shall continue to use this method for all future years or as long as the Kansas combined return is utilized. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3220; effective May 1, 1987.)

**92-12-111. Special rules; airlines.** (a) Apportionment of business income. When an airline has income from sources both within and without the state of Kansas, the amount of business income from sources within the state of Kansas shall be determined pursuant to this regulation.

(b) The following definitions are applicable to the terms used in the apportionment factor descriptions:

(1) "Value of owned real and tangible personal property" shall mean its original cost.

(2) "Cost of aircraft by type" means the average original cost or value of aircraft by type which are ready for flight.

(3) "Original cost" means the initial federal tax basis of the property plus the value of capital improvements to such property, except, for this purpose, it shall be presumed that safe harbor leases are not true leases and do not affect the original initial federal tax basis of the property.

(4) "Average value" of property means the amount determined by averaging the values at the beginning and end of the income year. However, the department of revenue may require the aver-

aging of monthly values during the income year if averaging is necessary to reflect properly the average value of the airline's property.

(5) The "value of rented real and tangible personal property" means the product of eight times the net annual rental rate.

(6) "Net annual rental rate" means the annual rental rate paid by the taxpayer.

(7) "Property used during the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

(8) "Aircraft ready for flight" means aircraft owned or acquired through rental or lease, except for an interchange, which are in the possession of the taxpayer and are available for service on the taxpayer routes.

(9) "Revenue service" means the use of aircraft ready for flight for the production of revenue.

(10) "Transportation revenue" means revenue earned by transporting passengers, freight and mail as well as revenue earned from such things as liquor sales and pet crate rentals.

(11) "Departures" means all takeoffs, whether they are regularly scheduled or charter flights, that occur during revenue service.

(c) Property factor.

(1) Owned aircraft shall be valued at its original cost and rented aircraft shall be valued at eight times the net annual rental rate. The use of the taxpayer's owned or rented aircraft in an interchange program with another air carrier will not constitute a rental of the aircraft by the airline to the other participating airline. The aircraft used in an interchange program shall be accounted for in the property factor of the owner. Parts and other expendables, including parts for use in contract overhaul work, shall be valued at cost.

(2) The denominator of the property factor shall be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible property owned or rented and used in the state of Kansas during the income year. To determine the numerator of the property factor, all property except aircraft ready for flight shall be included in the numerator of the property factor. Aircraft ready for flight shall be included in the numerator of the property factor in the ratio calculated as follows: Departures of aircraft from locations in the state of Kansas weighted as to the cost and value of aircraft by type compared to total departures similarly weighted.

(d) Payroll factor.

(1) The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year. The numerator of the payroll factor is the total amount paid in the state of Kansas during the income year by the taxpayer for compensation.

(2) Compensation paid to non-flight employees shall be included in the numerator as provided in K.A.R. 92-12-93 and 92-12-94. Compensation to flight personnel, including the air crew aboard an aircraft which assist in the operations of the aircraft or the welfare of the passengers while in the air, shall be included in the ratio that departures of aircraft from locations in the state of Kansas, weighted as to the cost and value of aircraft by type compared to total departures similarly weighted, multiplied by the total flight personnel compensation.

(e) Sales factor.

(1) The transportation revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer and miscellaneous sales of merchandise are included in the denominator of the revenue factor. Passive income items, including but not limited to items such as interest, rental income, dividends, and proceeds, shall not be included in the denominator. Proceeds and net gains or losses from sales of an aircraft shall not be included in the denominator.

(2) The numerator of the revenue factor is the total revenue of the taxpayer in the state of Kansas during the income year. The total revenue of the taxpayer in Kansas during the income year is the result of the following calculation: The ratio of departures of aircraft in Kansas weighted as to the cost and value of aircraft by type, as compared to total departures similarly weighted multiplied by the total transportation revenue. The product of this calculation is to be added to any non-flight revenues directly attributable to the state of Kansas.

(f) The taxpayer shall maintain the records necessary to arrive at departures by type of aircraft as used in these regulations. These records are subject to review by the department of revenue. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3288; effective May 1, 1987.)

**92-12-112. Sales factor numerator; assignment of sales of a corporation which is a member of a unitary group of corporations.**

(a) The Kansas destination sales of tangible prop-

erty of a corporation shall be assigned to the Kansas sales factor numerator if the Kansas activity of any unitary group member exceeds the solicitation of orders.

(b) Sales made by a corporation from a Kansas location into a state where the activity of any unitary group member exceeds the solicitation of orders shall be excluded from the Kansas sales factor numerator.

(c) The accounting method in this regulation shall be utilized prospectively for the taxable years beginning after December 31, 1990. (Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3285, 79-3286; effective June 1, 1992.)

**92-12-113. Credit for property tax paid on commercial and industrial machinery and equipment; tax receipts.**

(a) If the amount of the business machinery and equipment credit claimed by a taxpayer on credit schedule K-64 is more than \$500, the taxpayer shall submit a copy of each property tax receipt issued by a county treasurer, showing timely payment of the personal property tax on the commercial and industrial machinery and equipment for which the tax credit is sought. Each taxpayer claiming the business machinery and equipment credit for property taxes paid on railroad machinery and equipment shall submit the documentation provided to that taxpayer by the division of property valuation of the Kansas department of revenue specifying the value of the railroad machinery and equipment on which this credit is calculated and a copy of each supporting tax receipt issued by a county treasurer.

(b) The property tax receipts and documentation specified in subsection (a) shall not be required to be submitted with the taxpayer's credit schedule K-64 if the amount of the credit claimed by the taxpayer is \$500 or less.

(c) Each taxpayer claiming the business machinery and equipment credit shall retain, as part of the taxpayer's records, each property tax receipt and any other document substantiating the claim. (Authorized by K.S.A. 79-3236; implementing K.S.A. 2004 Supp. 79-32,206; effective April 22, 2005.)

**92-12-114. Determining transportation income within a unitary group.**

If a unitary group of corporations consists of one or more corporations engaged in railroad or interstate motor carrier operations, including the interstate transport of persons or property for hire by rail or motor carrier, and one or more corporations

not engaged in railroad or interstate motor carrier operations, the following method shall be used to determine the apportionable income of the group members engaged in railroad or interstate motor carrier operations.

(a) A three-factor formula consisting of property, payroll, and sales shall be used to divide the apportionable business income of the unitary group between each corporation engaged in railroad or interstate motor carrier operations and all other members of the unitary group. The apportionment factor numerators shall consist of the property, payroll, and sales of each corporation engaged in railroad or interstate motor carrier operations. The apportionment factor denominators shall consist of the property, payroll, and sales of the entire unitary group. For purposes of this subsection, the property, payroll, and sales factors shall be as defined in the uniform division of income for tax purposes act, K.S.A. 79-3271 et seq., and amendments thereto, and the regulations promulgated under this act.

(b) The apportionable business income of each corporation engaged in railroad or interstate motor carrier operations shall be determined by multiplying the apportionable business income of the unitary group by the fraction computed according to subsection (a).

(c) The apportionable business income of each corporation engaged in railroad or interstate motor carrier operations as determined according to subsection (b) shall then be apportioned to this state by using the single-factor mileage formula set forth in K.S.A. 79-3279(a), and amendments thereto.

(d) The apportionable business income of each corporation in the unitary group that is not engaged in railroad or interstate motor carrier operations shall be determined by subtracting the amount determined in subsection (b) from the apportionable business income of the unitary group.

(e) The apportionable business income of each corporation in the unitary group that is not engaged in railroad or interstate motor carrier operations, as determined in subsection (d), shall be apportioned to this state by using the applicable apportionment formula specified in K.S.A. 79-3279(b), and amendments thereto. (Authorized by K.S.A. 2007 Supp. 75-5155; implementing K.S.A. 79-32,141; effective June 20, 2008.)

**92-12-120. Definition of qualified taxpayer.** A "qualified taxpayer," as defined in K.S.A. 79-32,211(b)(4) and amendments thereto, shall

not be considered to be a “community service organization,” as defined in K.S.A. 79-32,195(d) and amendments thereto. (Authorized by K.S.A. 2004 Supp. 75-5155; implementing K.S.A. 2004 Supp. 79-32,211; effective March 24, 2006.)

**92-12-121. Incurred qualified expenditures.** Before a qualified taxpayer may qualify for a credit allowed under K.S.A. 79-32,211, and amendments thereto, both of the following conditions shall have been met: (a) The qualified taxpayer has incurred “qualified expenditures,” as defined in K.S.A. 79-32,211(b) and amendments thereto, for the restoration and preservation of a qualified historic structure; and

(b) either the qualified expenditures have been paid in full or the qualified taxpayer has entered into a legal document that outlines the scope of the restoration and preservation work and identifies the date by which the qualified expenditures are to be paid in full by the qualified taxpayer. (Authorized by K.S.A. 2005 Supp. 75-5155; implementing K.S.A. 2005 Supp. 79-32,211; effective March 24, 2006.)

**92-12-130. Amount of tax credit.** For each employer that has established a “small employer health benefit plan” or made any contributions to the “health savings account” of an “eligible employee,” as these terms are defined in K.S.A. 40-2239 and amendments thereto, after December 31, 2004, the amount of tax credit allowed shall be the following: (a) For the first 12 months of the employer’s participation, the lesser of the following:

(1) \$70 per month for each eligible employee; or  
(2) the actual amount paid by the employer per month for each eligible employee;

(b) for the second 12 months of the employer’s participation, the lesser of the following:

(1) \$50 per month for each eligible employee; or  
(2) the actual amount paid by the employer per month for each eligible employee; and

(c) for the third 12 months of the employer’s participation, the lesser of the following:

(1) \$35 per month for each eligible employee; or  
(2) the actual amount paid by the employer for each month per eligible employee. (Authorized by and implementing K.S.A. 40-2246, as amended by L. 2005, ch. 118, §4; effective March 24, 2006.)

**92-12-140. Definitions.** (a) “Contribution” shall include the donation of cash, stocks and bonds, personal property, or real estate.

(1) Stocks and bonds shall be valued at the stock market price on the date of the transfer.

(2) Personal property shall be valued at the lesser of its fair market value or cost to the donor. The value may be inclusive of costs incurred in making the contribution but shall not include sales tax. If the donor received the personal property as a gift or inheritance and the item is considered a rare and valuable antique or work of art, an independent appraisal may be necessary in determining fair market value.

(3) Contributions of real estate shall be allowable for credit if title to the real estate is in fee simple absolute and is clear of any encumbrances. The amount of credit allowable for contributions of real estate shall be based upon the lesser of two current independent appraisals conducted by state licensed appraisers.

(4) Contributions of stocks and bonds shall be converted into cash and deposited within 14 days of receipt of the donation into the capital outlay fund of a community college, the deferred maintenance fund or a technology and equipment fund of a technical college, or the deferred maintenance support fund of a postsecondary educational institution.

(5) Contributions of personal property shall be converted into cash and deposited within six months of the donation into the capital outlay fund of a community college, the deferred maintenance fund or a technology and equipment fund of a technical college, or the deferred maintenance support fund of a postsecondary educational institution.

(6) Contributions of real property shall be converted into cash and deposited within 18 months of the donation into the capital outlay fund of a community college, the deferred maintenance fund or a technology and equipment fund of a technical college, or the deferred maintenance support fund of a postsecondary educational institution.

(b) “Contributor” shall mean an individual, business entity, or not-for-profit entity that makes a contribution to an educational institution or the educational institution’s endowment association or foundation.

(c) “Educational institution” shall mean any of the following:

(1) A community college as defined in K.S.A. 79-32,261(d)(1) and amendments thereto;

(2) a technical college as defined in K.S.A. 79-32,261(d)(4) and amendments thereto;

(3) a state educational institution as defined in K.S.A. 76-711 and amendments thereto; or

(4) Washburn university of Topeka.

(d) "Endowment association" and "foundation" shall mean either of the following:

(1) An entity designated as the investing agent for a state educational institution pursuant to K.S.A. 76-156a and amendments thereto; or

(2) an entity dedicated to securing financial support for Washburn university of Topeka, any community college as defined in K.S.A. 79-32,261(d) (1) and amendments thereto, or any technical college as defined in K.S.A. 79-32,261(d)(4) and amendments thereto.

(e) "Secretary" shall mean the secretary of revenue or the secretary's designee. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,261; effective June 20, 2008.)

**92-12-141. Tax credit agreement.** (a) The chief executive officer of each educational institution for which an allocation of tax credits has been authorized pursuant to K.S.A. 79-32,261, and amendments thereto, shall enter into an annual tax credit agreement with the secretary for the educational institution's allocation of tax credits. The tax credit agreement shall provide the following information:

(1) The name of the educational institution and, if applicable, the name of the educational institution's endowment association or foundation;

(2) the amount of tax credits to be allocated to the institution in the calendar year;

(3) the time period during which donations may be accepted by the educational institution to qualify for tax credits; and

(4) any other relevant information that the secretary requires.

(b) A new tax credit agreement shall be entered into by the secretary with each educational institution for which an allocation of tax credits has been authorized pursuant to K.S.A. 79-32,261, and amendments thereto, at least two months before the beginning of each calendar year for which the tax credits are available. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,261; effective June 20, 2008.)

**92-12-142. Tax credit application.** (a) Each contributor making a contribution to an educational institution, or to an endowment association or foundation on behalf of the educational institution, shall complete a tax credit application with the educational institution, endowment association, or foundation on a form furnished by the secretary.

The application may be filed by electronic means in a manner approved by the secretary. Each application shall include the following information:

(1) The name, address, and either the employer identification number or the social security number of the contributor;

(2) if the contributor is an S-corporation, a partnership, or a limited liability company, the following information:

(A) The name of each shareholder, partner, or member;

(B) the employer identification number or social security number of each shareholder, partner, or member; and

(C) each shareholder's, partner's, or member's proportionate share of the income or loss of the corporation, partnership, or limited liability company;

(3) the name of the educational institution or the endowment association or foundation to which the contribution is being made and the fund in which the contribution will be deposited;

(4) the amount and form of the contribution;

(5) the date of the contribution; and

(6) any other relevant information that the secretary requires.

(b) The chief executive officer of the educational institution, endowment association, or foundation shall submit the completed tax credit application and supporting documentation to the secretary for review. The educational institution, endowment association, or foundation shall receive written notification from the secretary when the application is approved or denied. The chief executive officer of the educational institution, endowment association, or foundation shall provide a copy of this approval or denial to the contributor that has made the contribution. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,261; effective June 20, 2008.)

**92-12-143. Quarterly reports.** The chief executive officer of each educational institution shall submit or cause to be submitted a quarterly report indicating the amount of contributions qualifying for tax credits. This report shall be submitted to the secretary on a form furnished by the secretary. Any quarterly report may be filed by electronic means in a manner approved by the secretary. A quarterly report shall be submitted on or before the tenth day following the end of each calendar quarter even if no qualifying contributions are received in that quarter.

Each quarterly report shall include the following information:

(a) The name and either the employer identification number or the social security number of each contributor in that quarter;

(b) the amount and form of each contribution received in that quarter;

(c) the total amount of qualified tax credits based on the contributions received in that quarter;

(d) the total amount of credits that remain from the educational institution's annual allocation; and

(e) any other relevant information that the secretary requires. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,261; effective June 20, 2008.)

**92-12-144. Reallocation of credits.** (a) If a community college or technical college does not receive contributions sufficient to generate qualifying tax credits for the full amount of the annual allocation in the tax credit agreement, those remaining tax credits shall not be reallocated to another community college or technical college. All tax credits remaining in the allocation for which contributions have not been received by the college shall be considered void at the end of the applicable calendar year.

(b)(1) At the end of the third calendar quarter, the tax credits of a state educational institution and Washburn university of Topeka may be reclaimed by the secretary if the secretary determines that there are no anticipated contributors for the institution's remaining tax credits. The chief executive officer of the state educational institution or Washburn university of Topeka shall send a written notice to the secretary with the quarterly report due for the third calendar quarter, indicating the amount of unclaimed tax credits and an anticipated contribution schedule. The anticipated contribution schedule shall indicate the following information:

(A) The name of each anticipated contributor;

(B) the amount of each anticipated contribution; and

(C) the anticipated date on which each contribution is to be made.

(2) Within 30 calendar days after the deadline for response of the state educational institution or Washburn university of Topeka, the tax credits still remaining within an allocation may be reclaimed from the institution by the secretary. These credits may be reallocated to Washburn university of Topeka or another state educational

institution by the secretary of revenue and the board of regents.

(c) Each state educational institution or Washburn university of Topeka that receives reallocated tax credits shall be required to receive qualifying contributions for the reallocated tax credits within that same calendar year. All reallocated tax credits for which qualifying contributions were not received by the institution shall be considered void at the end of the applicable calendar year. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,261; effective June 20, 2008.)

**92-12-145. Transfer of tax credits.** (a) Any tax credits earned by a not-for-profit contributor not subject to Kansas income, privilege, or premiums tax may be transferred to any taxpayer that is subject to Kansas income, privilege, or premiums tax. These tax credits shall be transferred only one time. The transferee shall claim the tax credit against the transferee's tax liability in the tax year of the transfer.

(b) The transferor and transferee shall execute a written transfer agreement to transfer the tax credit. The agreement shall include the following information:

(1) The name and either the employer identification number or the social security number of the transferor;

(2) the name and either the employer identification number or the social security number of the transferee;

(3) the date of the transfer;

(4) the date the contribution was made by the transferor;

(5) the amount of tax credit transferred;

(6) the amount that will be received by the transferor for the tax credit transferred; and

(7) any other relevant information that the secretary requires.

(c) Each transfer agreement shall be reviewed by the secretary. If the transfer agreement is approved, a certificate of transfer shall be issued to the transferor and transferee indicating approval of the transfer. If the transfer agreement is denied, written notification of the denial shall be issued to the transferor and transferee. (Authorized by K.S.A. 79-32,113 and K.S.A. 2008 Supp. 79-32,261; implementing K.S.A. 2008 Supp. 79-32,261; effective June 20, 2008; amended May 22, 2009.)

**92-12-146. Definitions.** (a) "Contribution," as defined in K.S.A. 2016 Supp. 72-99a02 and

amendments thereto, shall include any donation of cash, stocks and bonds, personal property, or real property.

(1) Stocks and bonds shall be valued at the stock market price on the date of the transfer.

(2) Personal property shall be valued at the lesser of its fair market value or the cost to the donor. The value may include costs incurred in making the donation but shall not include sales tax. If the donor received the personal property as a gift or inheritance and the item is considered a rare and valuable antique or work of art, an independent appraisal may be necessary in determining the fair market value.

(3) The donation of real property shall be allowable for tax credit if title to the real property is in fee simple absolute and is clear of any encumbrances. The amount of tax credit allowable for donations of real property shall be based upon the lesser of two current, independent appraisals conducted by state-licensed appraisers.

(b) "Contributor" shall mean any of the following entities making a contribution:

(1) A taxpayer filing an income tax return pursuant to the Kansas income tax act, and amendments thereto;

(2) a taxpayer filing a privilege tax return pursuant to K.S.A. 79-1105c et seq., and amendments thereto; or

(3) a taxpayer filing an insurance premium tax return pursuant to K.S.A. 40-252, and amendments thereto. (Authorized by and implementing K.S.A. 2016 Supp. 72-99a07, as amended by L. 2017, ch. 95, sec. 97; effective Dec. 5, 2014; amended Jan. 5, 2018.)

**92-12-147. Tax credit agreement.** (a) Each scholarship-granting organization for which an allocation of tax credits has been authorized pursuant to L. 2014, ch. 93, sec. 61, and amendments thereto, shall enter into an annual tax credit agreement with the secretary for the scholarship-granting organization's allocation of tax credits.

(b) Each scholarship-granting organization for which an allocation of tax credits has been authorized pursuant to L. 2014, ch. 93, sec. 61, and amendments thereto, shall enter into a new tax credit agreement with the secretary at least one month before the beginning of each calendar year for which the tax credits are available. (Authorized by and implementing L. 2014, ch. 93, sec. 61; effective Dec. 5, 2014.)

**92-12-148. Tax credit application.** (a) Each contributor making a contribution to a scholarship-granting organization shall complete a tax credit application with the scholarship-granting organization on a form furnished by the secretary. Each application shall include the following information:

(1) The name, address, and either the social security number or the employer identification number of the contributor;

(2) the name of the scholarship-granting organization to which the contribution is being made;

(3) the amount and type of the contribution;

(4) the date of the contribution; and

(5) any other supporting documentation that the secretary requires to review the tax credit application.

(b) Each scholarship-granting organization shall submit the completed tax credit application and supporting documentation to the secretary for review. The application, including the supporting documentation, may be filed by electronic means in a manner approved by the secretary. The scholarship-granting organization shall receive written notification from the secretary when the application is approved or denied. The scholarship-granting organization shall provide a copy of this approval or denial to the contributor that has made the contribution. (Authorized by K.S.A. 2016 Supp. 72-99a07, as amended by L. 2017, ch. 95, sec. 97; implementing K.S.A. 2016 Supp. 72-99a07, as amended by L. 2017, ch. 95, sec. 97, and K.S.A. 2016 Supp. 79-32,265; effective Dec. 5, 2014; amended Jan. 5, 2018.)

**92-12-149. Quarterly reports.** Each scholarship-granting organization shall submit a quarterly report indicating the amount of contributions qualifying for tax credits. This report shall be submitted to the secretary on a form furnished by the secretary. Any quarterly report may be filed by electronic means in a manner approved by the secretary. A quarterly report shall be submitted on or before the tenth day following the end of each calendar quarter even if no qualifying contributions are received in that quarter. Each quarterly report shall include the following information:

(a) The name and either the social security number or the employer identification number of each contributor in that quarter;

(b) the amount and type of each contribution received in that quarter;

(c) the total amount of qualified tax credits based on the contributions received in that quarter;

(d) the total amount of tax credits that remain from the scholarship-granting organization's annual allocation; and

(e) any documentation that the secretary requires to support the quarterly report. (Authorized by K.S.A. 2016 Supp. 72-99a07, as amended by L. 2017, ch. 95, sec. 97; implementing K.S.A. 2016 Supp. 72-99a07, as amended by L. 2017, ch. 95, sec. 97, and K.S.A. 2016 Supp. 79-32,265; effective Dec. 5, 2014; amended Jan. 5, 2018.)

#### Article 12a.— SOLAR TAX INCENTIVES

**92-12a-1, 92-12a-2.** (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 79-32,168 and K.S.A. 1980 Supp. 79-1118, 79-32,166, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

**92-12a-3.** (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 79-32,168 and K.S.A. 1980 Supp. 79-1118, 79-32,166, 79-32,167; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

**92-12a-4.** (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 79-32,168 and K.S.A. 1980 Supp. 79-1118, 79-32,166, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

**92-12a-5.** (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-32,166, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

**92-12a-6.** (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-32,166, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; modified, L. 1983 ch. 368, May 1, 1983; revoked March 29, 2002.)

**92-12a-7.** (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-32,166, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

**92-12a-8.** (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-32,166, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; modified, L. 1983 ch. 368, May 1, 1983; revoked March 29, 2002.)

**92-12a-9, 92-12a-10.** (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-32,166, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

**92-12a-11.** (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 79-32,168 and K.S.A. 1980 Supp. 79-1118, 79-32,166, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

**92-12a-12.** (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-1118, 79-32,166, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

**92-12a-13.** (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 79-32,168 and K.S.A. 1980 Supp. 79-1118, 79-32,166, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

**92-12a-14.** (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 79-32,168 and K.S.A. 1980 Supp. 79-1118, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

**92-12a-15.** (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-1118, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

**92-12a-16.** (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 79-32,168 and K.S.A. 1980 Supp. 79-1118, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

**92-12a-17.** (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-1118, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

**92-12a-18.** (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 79-32,168 and K.S.A. 1980 Supp. 79-1118, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

**92-12a-19.** (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-1118, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

**92-12a-20.** (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-1118, 79-32,166, 79-32,167; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

**92-12a-21, 92-12a-22.** (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-1118, 79-32,166, 79-32,167, 79-32,169; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

**92-12a-23.** (Authorized by K.S.A. 1980 Supp. 79-32,170; implementing K.S.A. 1980 Supp. 79-32,166, 79-32,167; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981; revoked March 29, 2002.)

### Article 13.— INTERSTATE MOTOR FUEL USE TAX

**92-13-1. Application: contents.** All applications for an interstate motor fuel user license shall be on forms furnished by the director and shall contain information as follows:

- (a) The name and address of the applicant.
- (b) The principal office or place of business of the applicant.
- (c) If a corporation, the names and addresses of the principal officers.
- (d) The financial condition of the applicant.
- (e) A description of applicant's operations.
- (f) Such other information as the director shall require. (Authorized by K.S.A. 1971 Supp. 79-34,115, 79-34,123; effective Jan. 1, 1966; amended Jan. 1, 1972.)

**92-13-2. Interstate motor fuel user license.** Upon investigation by the director, if the statements contained in the application shall be found to be true, and if the director shall be satisfied that the application is made in good faith, he shall issue to said applicant an interstate motor fuel user license specifying the terms and conditions thereof: *Provided, however,* That no license issued by the director shall be subject to assignment or transfer, nor shall such be construed to be either a franchise or irrevocable: *Provided further,* That all importer for use licenses in force

January 1, 1972, and all interstate motor fuel user licenses issued by the director on or after January 1, 1972, shall be in force as interstate motor fuel user licenses so long as the holder has in force a bond as required by law or rules and regulations, or until such license is suspended, surrendered, or revoked for cause by the director. (Authorized by K.S.A. 1971 Supp. 79-34-115, 79-34-123; effective Jan. 1, 1966; amended Jan. 1, 1972.)

**92-13-3. Enforcement.** The director may at any time, upon showing of failure to comply with the provisions of the motor fuels tax laws of the state of Kansas or rules and regulations promulgated thereunder, or of the motor carrier inspection bureau relating to motor carriers, suspend or completely revoke any license or registration upon giving the grantee thereof five (5) days notice and opportunity to be heard. (Authorized by K.S.A. 79-3403, 79-3430, 79-3473; effective Jan. 1, 1966; amended, E-80-2, Jan. 18, 1979; amended May 1, 1979.)

**92-13-4. Identification cards.** It shall be the duty of all interstate motor fuel users and drivers of motor vehicles registered under an interstate motor fuel user license to carry at all times on every vehicle used an identification fuel card issued by the director identifying the licensee.

Each such identification fuel card shall carry the number of the interstate motor fuel user license under which it was issued.

Identification fuel cards shall be held available for inspection by duly authorized representatives of the director of revenue, the state department of revenue, the motor carrier inspection bureau, the state highway patrol, and law enforcement officers. (Authorized by K.S.A. 79-34,115, 79-34,123; effective Jan. 1, 1966; amended Jan. 1, 1972; amended, E-80-2, Jan. 18, 1979; amended May 1, 1979.)

**92-13-5. Revocation or abandonment of license, authorization or permit.** (1) Whenever operations are abandoned under any interstate motor fuel user license, or upon revocation thereof by the director, the license and all identification fuel cards issued thereunder shall be immediately forwarded to the director.

(2) Whenever the director orders operations suspended under any license, permit or authorization the interstate motor fuel user shall immediately remove all identification fuel cards, permits or authorizations from all vehicles for which they

were issued. Such identification fuel cards, permits and authorizations shall be preserved by the interstate motor fuel user who shall, at the request of the director, immediately forward the same to the director. (Authorized by K.S.A. 1971 Supp. 79-34,121, 79-34,123; effective Jan. 1, 1966; amended Jan. 1, 1972.)

**92-13-6. Credits and refunds on fuel purchased within Kansas.** All applications for refund shall be made on forms prescribed by the director and shall contain satisfactory and sufficient information to establish the right to such refund. (Authorized by K.S.A. 1971 Supp. 79-34,123, 79-34,112; effective Jan. 1, 1966; amended Jan. 1, 1972.)

**92-13-7. Sales invoices and records.** Every interstate motor fuel user registered under this act shall be required to retain for three years sales invoices and other records reflecting purchases of fuels both within and without the state of Kansas unless destruction is authorized by the director in writing. The sales invoices of the vendor shall be machine printed or stamped and shall show the following: Name and station address of seller; name and address of purchaser; date of sale; number of gallons purchased; type of product; state tax rate charged; the company unit number or motor vehicle unit license number of the power unit. The invoices shall be prepared over double faced carbon except in the case of credit card purchases. (Authorized by K.S.A. 1971 Supp. 79-34-113, 79-34,123; effective Jan. 1, 1966; amended Jan. 1, 1972.)

**92-13-8. Exempt operations.** Every person hauling campers, trailers or personal automobiles for nonbusiness purposes shall be exempt from the provisions of this act. (Authorized by K.S.A. 1971 Supp. 79-34,123; effective Jan. 1, 1966; amended Jan. 1, 1972.)

**92-13-9. Motor fuel permits and emergency authorization.** (a) Both 24-hour and 72-hour motor fuel permits shall be issued on forms prescribed by the director. Any interstate motor fuel user may request not more than three motor fuel permits for each commercial motor vehicle identification number (VIN) at the same time. Each interstate motor fuel user requesting a motor fuel permit shall submit the requested information and the applicable fee payment to a designee of the secretary of revenue at a motor carrier inspection station or at any other location where a designee of the secretary is located. Each request-

ed motor fuel permit shall be issued or denied by the secretary's designee.

(b) Any interstate motor fuel user may operate a commercial motor vehicle in the state without a motor fuel permit by authorization of the director if the secretary of revenue determines that an emergency has arisen. The highway patrol, motor carrier inspectors, and other appropriate personnel shall be notified by the director of the emergency situation and the time frame for the emergency authorization. (Authorized by and implementing K.S.A. 2005 Supp. 79-34,118, as amended by L. 2006, Ch. 119, § 1, K.S.A. 79-34,119, and K.S.A. 79-34,123; effective Jan. 1, 1966; amended Jan. 1, 1972; amended, E-80-2, Jan. 18, 1979; amended May 1, 1979; amended Nov. 17, 2006.)

**92-13-10. Bond requirements.** The director of taxation may require any person making application for an interstate motor fuel users license in the state of Kansas to file a bond with the director when:

- (1) the licensee has failed to file timely a quarterly report;
- (2) the correct amount of tax has not been remitted with the report;
- (3) an audit indicates, that in the discretion of the director, a bond is required to protect the interest of the state; or
- (4) the licensee is based in a state not a member of the international fuel tax agreement. (Authorized by K.S.A. 79-34,123, implementing K.S.A. 79-34,116; effective Jan. 1, 1966; amended Jan. 1, 1972; amended May 1, 1988.)

**92-13-11. Presumption, evidence.** In the absence of records or other information showing the number of miles actually traveled per gallon of fuel, it shall be presumed that one gallon of motor vehicle fuel was consumed for every three miles traveled; that one gallon of special fuel was consumed for every 3.5 miles traveled and that one gallon of liquefied petroleum fuel was consumed for every 2.5 miles traveled. (Authorized by K.S.A. 79-34,123; implementing K.S.A. 79-34,109, 79-34,124; effective Jan. 1, 1972; amended May 1, 1987.)

**92-13-12. Record requirements; presumption.** (a) Each interstate motor fuel user shall maintain detailed records for each trip for a minimum of three years. The records shall be summarized monthly and include miles traveled and fuel purchased over the road for each vehicle. These records shall also disclose:

- (1) trip origin and destination;
- (2) route of travel;
- (3) sales invoices, including:
  - (A) name and station address of seller;
  - (B) name and address of purchaser;
  - (C) date of sale;
  - (D) number of gallons purchased;
  - (E) type of product; and
  - (F) company unit number or motor vehicle unit license number; and
- (4) number of gallons purchased for over the road purposes.

Each interstate motor fuel user shall preserve these records, together with all fuel purchase invoices, in a manner to insure their security and availability for inspection by agents or representatives of the director.

(b) If an interstate motor fuel user fails to comply with any record keeping requirement, the director, or the director's authorized agent, shall make a jeopardy assessment based on any available information. An assessment made pursuant to this regulation shall be presumed to be correct. The burden shall be on the interstate motor fuel user to establish, by a preponderance of evidence, that an assessment is inaccurate. (Authorized by 79-34,123; implementing K.S.A. 79-34,113, effective May 1, 1987.)

#### Article 14.— LIQUEFIED PETROLEUM FUEL TAX

**92-14-1.** (Authorized by K.S.A. 79-3492, 79-34,102; effective Jan. 1, 1966; revoked, E-73-20, July 1, 1973; revoked Jan. 1, 1974.)

**92-14-2.** (Authorized by K.S.A. 79-3495, 79-34,102; effective Jan. 1, 1966; revoked, E-73-20, July 1, 1973; revoked Jan. 1, 1974.)

**92-14-3.** (Authorized by K.S.A. 79-3493, 79-34,102; effective Jan. 1, 1966; revoked, E-73-20, July 1, 1973; revoked Jan. 1, 1974.)

**92-14-4. LP gas withdrawn from a motor vehicle's cargo tank and used to propel the vehicle on public highways.** If LP gas from the cargo tank of a motor vehicle is used to propel the vehicle on public highways, the LP-gas user shall maintain an accurate record of the amount of LP gas consumed for highway use, unless taxes have been paid in advance or the vehicle is operating on a mileage basis as provided for by the liquefied petroleum motor fuel tax law, K.S.A. 79-3490 et

seq. and amendments thereto. The records that show consumption shall be maintained for three years. If the director finds that the records do not accurately reflect the amount of fuel consumed for highway use, the tax owed shall be computed by the director based on the best evidence available, and the LP-gas dealer or user shall be required by the director to report and pay the tax on a mileage basis in the future. (Authorized by K.S.A. 79-34,102; implementing K.S.A. 2000 Supp. 79-3491a, as amended by L. 2001, Ch. 5, § 456, K.S.A. 79-3492, 79-3497, 79-3499; effective, E-73-20, July 1, 1973; effective Jan. 1, 1974; amended March 29, 2002.)

**92-14-5. Records.** (a) Each LP-gas dealer shall maintain records showing the receipts from all LP-gas fuel sales and the tax collected thereon for three years. The records shall identify each sale made to an LP-gas permit user and shall include the user's permit number. The records shall document all purchases made by the LP-gas dealer, including those for the dealer's use and for resale.

(b) Each LP-gas user shall maintain records of LP-gas purchases for three years. The records shall include all purchase invoices issued to the purchaser.

(c) Each LP-gas dealer and wholesaler shall, at the time of sale and delivery, issue an invoice to the buyer that contains the following information:

- (1) The date of the sale;
- (2) the names and addresses of the seller and buyer;
- (3) the place of delivery;
- (4) the number of gallons of LP gas sold; and
- (5) if the sale is at retail, the amount of tax collected or the buyer's special LP-gas user permit number. (Authorized by K.S.A. 79-34,102; implementing K.S.A. 2000 Supp. 79-3491a, as amended by L. 2001, Ch. 5, § 456, K.S.A. 79-3492, 79-3499; effective, E-73-20, July 1, 1973; effective Jan. 1, 1974; amended March 29, 2002.)

#### **92-14-6. Sales of LP gas to special LP-gas permit users; use of special LP-gas permit user decals.**

(a) Each operator of any motor vehicle that bears a Kansas special permit LP-gas user decal shall either self-report tax on the use of LP gas on a mileage basis or pay the tax in advance, pursuant to K.S.A. 79-3492a through K.S.A. 79-3492c and amendments thereto. Each LP-gas dealer who delivers gas into the tank of any vehicle that bears a permit decal shall record the user's

permit number and name on the sales invoice if tax is not collected on the sale.

(b) Except as provided in subsection (c), if a motor vehicle that is authorized to operate under a special LP-gas user permit is destroyed, sold, traded, or otherwise disposed of before the end of a calendar year or if for any other reason the permit holder removes the decal from the vehicle, the permit holder shall immediately notify the director of taxation in writing of the nature of the vehicle transfer or the destruction of the decal. Failure to remove a permit decal from a vehicle that has been disposed of and to notify the director shall be grounds for cancellation of the authorization to operate on a mileage basis.

(c) If a permit holder sells a vehicle that is registered for LP-gas purposes to another permit holder or to a person who is applying for a permit, the purchaser may request the transfer of the permit, decal, and all other related rights and obligations to the purchaser. This transfer may be authorized by the director.

(d) If taxes have been paid in advance on a motor vehicle that is destroyed, sold, traded, otherwise disposed of, or converted from LP-gas use before the first of December in any year, the permit holder may apply for a refund of the taxes.

(e) Special LP-gas permit user decals shall be issued on a calendar-year basis. The decals shall be placed inside on the lower driver's side of the windshield. (Authorized by K.S.A. 79-34,102; implementing K.S.A. 2013 Supp. 79-3491a, K.S.A. 79-3492a, K.S.A. 2013 Supp. 79-3492b, K.S.A. 79-3492c, 79-3492d; effective, E-73-20, July 1, 1973; effective Jan. 1, 1974; amended March 29, 2002; amended Oct. 17, 2014.)

**92-14-7. Special LP-gas permits.** In determining if the taxes paid in advance by a special LP-gas permit user are wholly inadequate as provided by K.S.A. 79-3492c and amendments thereto, the taxes paid in advance by other permit holders on similar motor vehicles may be taken into consideration by the director of taxation. (Authorized by K.S.A. 79-34,102; implementing K.S.A. 79-3492c; effective, E-73-20, July 1, 1973; effective Jan. 1, 1974; amended March 29, 2002.)

**92-14-8. License applications; bond requirements.** (a) Each individual, partnership, and corporation that applies for a liquefied petroleum gas license shall post a bond equal to its three months' average tax liability. New business-

es shall estimate their tax liability for one year and submit a bond in an amount equal to 25 percent of the estimated annual liability, or \$1,000, whichever is greater. A license shall not be granted until the bond requirements are met.

(b) Bond requirements shall be satisfied by surety bonds executed by an approved corporate surety, escrow agreements entered into using department forms, or cash bonds posted with the department.

(c) The bond requirement may be reduced by the director to \$1,000 if a certified financial statement indicating a net worth in excess of one year's average tax liability is submitted. The required bond may be reduced by the director to an amount equal to two months' tax liability, but not less than \$1,000, in consideration of a satisfactory reporting history for the prior 12 months in which there were no returned checks or other delinquencies.

(d) Motor fuel tax bonds and financial statements may be reviewed periodically by the department. An additional bond or a current certified financial statement may be required by the director if the existing bond or net worth shown on the financial statement is less than the current average three months' tax liability. (Authorized by K.S.A. 79-34,102; implementing K.S.A. 79-3496; effective May 1, 1979; amended March 29, 2002.)

**92-14-9.** (Authorized by K.S.A. 79-34,102; implementing K.S.A. 79-3490, 79-3492; effective May 1, 1982; amended May 1, 1983; amended March 29, 2002; revoked Oct. 17, 2014.)

## Article 15.— NONRESIDENT CONTRACTORS

**92-15-1.** (Authorized by K.S.A. 79-1008, 79-1014; effective Jan. 1, 1968; revoked May 1, 1983.)

**92-15-2.** (Authorized by K.S.A. 1968 Supp. 79-1009, 79-1014; effective Jan. 1, 1968; amended Jan. 1, 1969; revoked May 1, 1983.)

**92-15-3. Change of name, address, or ownership.** Each nonresident contractor shall perform each contract under the same name used to register the contract for purposes of K.S.A. 79-1008 et seq. and amendments thereto, unless the contractor secures and provides the department with a rider to the bond that shows the change of the business name. A rider shall not be used and shall not be accepted by the department if a

business changes from operating as one kind of legal entity to another, including from a sole proprietorship to a corporation. Each nonresident contractor shall immediately report any change of name, address, or ownership to the secretary of revenue. (Authorized by K.S.A. 79-1014; implementing K.S.A. 79-1010; effective Jan. 1, 1968; amended March 29, 2002.)

**92-15-4. Registration not assignable.** The registration of a contract shall not be assigned or transferred to a different legal entity and shall be used only by the person, partnership, corporation, or other legal entity that the registration identifies as the person or entity that is performing the contract. Each assignment or transfer of the contract to a different legal entity, including to a successor entity that operates under the same business name, shall terminate registration of the contract and shall require the new entity to apply for a new registration and secure a new bond. (Authorized by K.S.A. 79-1014; implementing K.S.A. 79-1010; effective Jan. 1, 1968; amended March 29, 2002.)

**92-15-5.** (Authorized by K.S.A. 1968 Supp. 79-1010, 79-1014; effective Jan. 1, 1968; amended Jan. 1, 1969; revoked May 1, 1983.)

**92-15-6. Bond; time in effect.** Each nonresident contractor's bond required under K.S.A. 79-1010, and amendments thereto, shall be the equivalent of an annual bond that covers only those contracts begun during the calendar year in which the bond is filed. This bond shall remain in effect until all contracts registered during the calendar year in which the bond was filed are fully performed and all taxes due under it are paid. (Authorized by K.S.A. 79-1014, 79-1010; effective Jan. 1, 1968; amended July 27, 2001.)

**92-15-7.** (Authorized by K.S.A. 1968 Supp. 79-1010, 79-1014; effective Jan. 1, 1968; amended Jan. 1, 1969; revoked May 1, 1983.)

**92-15-8. Bond; release.** The bond required under K.S.A. 79-1008 *et seq.*, and amendments thereto, shall be released only after the contract or contracts secured by the bond are fully performed and the secretary of revenue has received the following written releases: (a) A certification from the secretary of human resources that all contributions and interest due from the nonresident contractor under the employment security law have been paid; and

(b) a certification from the county treasurer of

each county where the nonresident contractor performed the contract or contracts under the bond, that all taxes accruing because of the performance of the contract or contracts have been paid, or that no taxes are due. (Authorized by K.S.A. 79-1014; implementing K.S.A. 79-1010; effective Jan. 1, 1968; amended March 29, 2002.)

**92-15-9 to 92-15-12.** (Authorized by K.S.A. 79-1010 *et seq.*; effective Jan. 1, 1968; revoked May 1, 1983.)

## Article 16.— INTANGIBLES TAX

**92-16-1.** (Authorized by K.S.A. 1975 Supp. 79-3109a, 79-3111, 79-3112, 79-3113b; effective Jan. 1 1968; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1975; amended May 1, 1976; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

**92-16-2.** (Authorized by K.S.A. 1975 Supp. 79-3111, 79-3113b, 79-3120a; effective Jan. 1, 1968; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1976; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

**92-16-3.** (Authorized by K.S.A. 1973 Supp. 79-3111, 79-3113a, 79-3113b; effective Jan. 1, 1968; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

**92-16-4.** (Authorized by K.S.A. 79-3111, 79-3113b; effective Jan. 1, 1968; amended Jan. 1, 1972; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

**92-16-5.** (Authorized by K.S.A. 1975 Supp. 79-3108, 79-3109, 79-3109a, 79-3112, 79-3113b; effective Jan. 1, 1968; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; amended May 1, 1976; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

**92-16-6.** (Authorized by K.S.A. 79-3101, K.S.A. 1975 Supp. 79-3102, 79-3108, 79-3111, 79-3113b, 79-3120a; effective Jan. 1, 1968; amended Jan. 1, 1969; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; amended May 1, 1975; modified, L. 1976, ch. 420, May 1, 1976; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

**92-16-7.** (Authorized by K.S.A. 79-3108, 79-3113b; effective Jan. 1, 1968; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

**92-16-8.** (Authorized by K.S.A. 79-3113b, K.S.A. 1971 Supp. 79-3108; effective Jan. 1, 1968; amended Jan. 1, 1972; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

**92-16-9.** (Authorized by K.S.A. 79-3113b, K.S.A. 1971 Supp. 79-3109; effective Jan. 1, 1968; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

**92-16-10 and 92-16-11.** (Authorized by K.S.A. 79-3113b; effective Jan. 1, 1968; revoked, E-71-8, Jan. 1, 1971; revoked Jan. 1, 1972.)

**92-16-12 and 92-16-13.** (Authorized by K.S.A. 79-3113b, K.S.A. 1971 Supp. 79-3109a; effective Jan. 1, 1968; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

**92-16-14.** (Authorized by K.S.A. 79-3113b; effective Jan. 1, 1968; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

**92-16-15.** (Authorized by K.S.A. 79-3113b, 79-304; effective Jan. 1, 1968; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

**92-16-16.** (Authorized by K.S.A. 79-3113b and 79-3115; effective Jan. 1, 1968; revoked, E-71-8, Jan. 1, 1971; revoked Jan. 1, 1972.)

**92-16-17.** (Authorized by K.S.A. 79-3113b, 79-3115; effective Jan. 1, 1968; revoked Jan. 1, 1972.)

**92-16-18.** (Authorized by K.S.A. 79-3113b, 79-3115; effective Jan. 1, 1968; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

**92-16-19.** (Authorized by K.S.A. 79-3114, K.S.A. 1974 Supp. 79-3111, 79-3113b; effective Jan. 1, 1968; amended May 1, 1975; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

**92-16-20 and 92-16-21.** (Authorized by K.S.A. 79-3113b, K.S.A. 1971 Supp. 79-3109a; effective Jan. 1, 1972; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

#### Article 17.— TOBACCO PRODUCTS

**92-17-1. Terms; distributor, retailer.** (a) (1) Each person engaged in the business of selling tobacco products in this state who brings or causes

to be brought into this state from without the state any tobacco products for sale shall be deemed a distributor unless that person is a retailer who has purchased tobacco products on a tax-paid basis from a licensed distributor.

(2) Each person who has one or more retail outlets and who brings or causes to be brought into this state from without the state tobacco products for sale by one of the retail outlets shall be deemed a distributor; however, the retail outlet from which the tobacco products are sold to the ultimate consumer shall be a retailer.

(b) Each person within the state, including a retailer, who purchases tobacco products upon which the tax has been unpaid from sources out of the state and brings those products into the state for resale shall be required to purchase a distributor's license and shall be responsible for the tax due on the products. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3373; effective, E-74-37, July 2, 1974; effective May 1, 1975; amended March 22, 2002.)

**92-17-2. Imposition of tax.** (a) The tax imposed by the cigarette and tobacco products law shall be paid by the distributor who first performs any of the following:

(1) Brings or causes to be brought into this state from outside the state tobacco products for sale;

(2) makes, manufactures, or fabricates tobacco products in this state for sale in this state; or

(3) ships or transports tobacco products to retailers in this state to be sold by those retailers.

(b) Liability for the tax shall accrue at the time tobacco products are first brought into the state from outside the state for sale within the state. Each person causing tobacco products to be brought into this state upon which the tax has been unpaid shall be responsible for the payment of the tax on those products.

(c) A transfer from one distributor to another shall not relieve the distributor who first brought or caused the tobacco products to be brought into this state from the tax liability. Therefore, a tax credit shall not be taken on tobacco tax returns for any transfers made within this state. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3371; effective, E-74-37, July 2, 1974; effective May 1, 1975; amended March 22, 2002.)

**92-17-3. Applications; forms.** Each person required by the cigarette and tobacco products act to be licensed as a distributor shall make

application for a license on a form furnished by the director.

All questions on the application shall be answered completely. Answers shall be printed legibly in ink or typed. The application shall be signed and acknowledged by the applicant or an officer of the applicant.

Each license shall be granted with the understanding that the license is a grant from the state to one particular individual, partnership, or corporation and is not transferable from one owner to another. If any member of a partnership dies, sells, or transfers the member's interest in the partnership, the license shall become null and void. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3373, 79-3375; effective, E-74-37, July 2, 1974; effective May 1, 1975; amended March 22, 2002.)

**92-17-4. Distributor's bond.** Each application for a "tobacco products" distributor's license shall be accompanied by a corporate surety bond submitted on forms prescribed by the director and issued by a surety licensed to do business in the state of Kansas. The bond shall list each place of business at which the distributor proposes to engage in business under the cigarette and tobacco products act. The minimum amount of the required bond shall be \$1,000.00 for each place of business and shall be conditioned upon compliance with the provisions of K.S.A. 79-3301 *et seq.* and amendments thereto, and the payment of all taxes, penalties, and accrued interest due the state of Kansas. The bond shall be kept in effect during the entire period of the license. Whenever it is the opinion of the director that the bond is inadequate in amount to fully protect the state, an additional bond shall be required by the director in an amount that the director deems sufficient. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3374; effective, E-74-37, July 2, 1974; effective May 1, 1975; amended March 22, 2002.)

**92-17-5. Bond; cancellations.** The surety on a bond furnished by a tobacco products distributor as required by the cigarette and tobacco products act shall be released and discharged from any liability to the state accruing on that bond after the expiration of 60 days from the date upon which the surety has submitted to the director a written request to be released and discharged, but this requirement shall not operate to relieve, release, or discharge the surety from any liability

that has already accrued or that will accrue before the expiration of the 60-day period.

The tobacco products distributor who furnished the bond shall be promptly notified by the director upon receipt of the request. If the distributor, on or before the expiration of the 60-day period, fails to file with the director a new bond fully complying with the provisions of the tobacco products law, the license or licenses of the distributor shall be revoked and canceled by the director. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3374, 79-3375; effective, E-74-37, July 2, 1974; effective May 1, 1975; amended March 22, 2002.)

**92-17-6. Refund or credit of tax-exempt tobacco products.** A Kansas tobacco products distributor may present a claim for refund of or claim for credit for the tobacco products tax paid on tobacco products sold to the United States government or an instrumentality of it that is exempt from the Kansas tobacco products tax on a form approved by the director.

Each Kansas tobacco products distributor shall present evidence acceptable to the director certifying that the sale of tobacco products for which a claim for refund or claim for credit is filed was made by the Kansas distributor to the United States government or an instrumentality of it that is exempt from the Kansas tobacco products tax.

Each distributor selling tobacco products to the United States government or an instrumentality of it that is exempt from the Kansas tobacco products tax shall submit a report to the division of taxation for refund or credit of tobacco products sold in the preceding calendar month. The report shall provide the sales slips in serial number order signed by the receiving officer. The sales slips shall designate the club, armed forces exchange, or other instrumentality of the United States government buying exempt tobacco products. (Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3379; effective, E-74-37, July 2, 1974; effective May 1, 1975; amended March 22, 2002.)

## Article 18.— SPECIAL FUEL TAX

**92-18-1.** (Authorized by K.S.A. 79-3475, 79-3483; effective, E-69-16, July 23, 1969; effective Jan. 1, 1970; revoked Aug. 23, 2002.)

**92-18-2 and 92-18-3.** (Authorized by K.S.A. 79-3480, 79-3483; effective, E-69-16, July 23, 1969; effective Jan. 1, 1970; revoked Aug. 23, 2002.)

**92-18-4.** (Authorized by K.S.A. 1978 Supp. 79-3478; effective May 1, 1979; revoked Aug. 23, 2002.)

**92-18-5.** (Authorized by K.S.A. 79-3483, K.S.A. 1982 Supp. 79-3479a; implementing K.S.A. 1982 Supp. 79-3479b; effective, T-83-48, Dec. 22, 1982; effective May 1, 1983; revoked Aug. 23, 2002.)

**92-18-6.** (Authorized by K.S.A. 79-3483, K.S.A. 1982 Supp. 79-3479a; implementing K.S.A. 1982 Supp. 79-3479a, 79-3479b; effective, T-83-48, Dec. 22, 1982; effective May 1, 1983; revoked Aug. 23, 2002.)

**92-18-7.** (Authorized by K.S.A. 79-3483; implementing K.S.A. 79-3481, 79-3483; effective May 1, 1987; revoked Aug. 23, 2002.)

#### **Article 19.— KANSAS RETAILERS' SALES TAX**

**92-19-1.** (Authorized by K.S.A. 79-3618, 79-3619; implementing K.S.A. 79-3619, K.S.A. 1982 Supp. 79-3603; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1983; revoked May 1, 1987.)

**92-19-1a.** (Authorized by K.S.A. 79-3618, 79-3619; implementing K.S.A. 79-3619, K.S.A. 79-3603, as amended by L. 1986, Ch. 386, Sec. 1; effective May 1, 1987; revoked June 26, 1998.)

**92-19-1b. Collection schedules for state and local sales tax.** (a) Except as provided in K.S.A. 12-189a, and amendments thereto, Kansas retailers shall charge and collect sales tax on each taxable retail sale at a combined tax rate equal to the sum of the state tax rate established by K.S.A. 79-3603, and amendments thereto, plus any applicable local tax rate established under K.S.A. 12-187, and amendments thereto.

(b) Tax collection schedules for each of the combined sales tax rates shall be published by the department and given to retailers upon request.

(c) The state and local sales tax to be charged to a consumer shall be computed by multiplying the selling price by the applicable combined tax rate in effect. Each retailer using machine or computer billings shall use a straight percentage basis for calculating the tax on its billings. If the calculation of the sales tax to be charged results in a fraction of a cent, the tax liability shall be rounded up or down to the nearest whole cent. If the fraction is

an even one-half cent, the liability shall be rounded to the next highest whole cent. No tax shall be charged to a consumer when the calculation of the tax to be charged totals less than one-half cent.

(d) The sales tax payable to the department by a retailer shall be the product of the applicable combined state and local tax rate multiplied by the retailer's taxable gross receipts, regardless of the amount that is collected from consumers by use of the authorized method for computing taxes. (Authorized by K.S.A. 1997 Supp. 12-189, K.S.A. 79-3618 and 79-3619; implementing K.S.A. 1997 Supp. 12-187 and 12-189, K.S.A. 12-189a, 79-3603, and 79-3619; effective June 26, 1998.)

**92-19-2.** (Authorized by K.S.A. 79-3608, 79-3618, K.S.A. 1971 Supp. 79-3602; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; revoked Aug. 23, 2002.)

**92-19-2a. Registration certificates.** (a)(1) Every person who is required to collect retailers' sales tax under the act shall secure a sales tax registration certificate from the department of revenue before engaging in business or opening a new place of business in this state. As used in this regulation, "sales tax registration certificate," "registration certificate," and "certificate" shall mean the document that evidences the registration with the department and is required by K.S.A. 79-3608, and amendments thereto.

(2) Each retailer, before making retail sales of tangible personal property or performing taxable services in this state, shall secure a sales tax registration certificate. A certificate shall not be issued for any purpose other than to make retail sales of tangible personal property or to perform taxable services. A certificate shall be valid until the retailer ceases doing business or the certificate is canceled by the department. Certificates shall be issued and amended without charge.

(3) Failure to secure a certificate shall subject a retailer who engages in a taxable retail business to criminal or civil sanctions, or both. The failure to secure a certificate shall not relieve a retailer from either the obligation to properly collect, remit, and account for sales tax or the obligation to maintain complete records of all transactions in the manner required by law.

(4) Each retailer shall file a separate application and secure a separate certificate for each place of business. Any retailer that operates at more than one location under the same ownership may re-

quest permission to file that retailer's tax returns on a combined or consolidated basis.

(5)(A) Each retailer maintaining a public place of business in Kansas shall display the registration certificate in a conspicuous location so that the certificate can be readily seen and read by the public. If a retailer maintains more than one place of business, a certificate shall be displayed at each location.

(B) Each retailer who operates at a special event or at any other temporary location, including from a truck, wagon, portable stand, or other merchandising device, shall prominently display the certificate so that it can be readily seen and read by the public. Transient retailers who do not operate from such a merchandising device shall have their certificates in their possession and shall display them upon request.

(6) A certificate shall be valid only for use by the individual, partnership, corporation, or association in whose name it is issued and for the transaction of business at the place designated on the certificate. A certificate shall not be assigned or transferred. If there is a change in ownership or a change in the name or location of a business, the certificate shall no longer be valid. A new certificate shall be obtained, and the old certificate shall be returned to the department for cancellation whenever there is a change in ownership, business location, or name of a business.

(7) Each wholesaler, distributor, and manufacturer that makes retail sales, including sales to employees, shall secure a registration certificate and report these sales to the department. To simplify reporting, the wholesaler, distributor, or manufacturer may set up a retail division to report the retail sales. Transfers of inventory to the retail division for resale shall be exempt sales for resale, and the sales tax returns shall reflect only the sales made by the retail division to final consumers.

(b)(1) Each trustee, receiver, executor, administrator, and other fiduciary who by virtue of the appointment continues to operate, manage, control, or liquidate a retail business shall report and remit sales tax on the gross receipts received by the business and from liquidation of the business's inventory items. These reporting duties shall apply to each court-appointed fiduciary, whether appointed by a state or federal court.

(2) A certificate of a retail business that is being managed by a fiduciary that was valid at the time the fiduciary relationship was created shall continue to be valid to allow the fiduciary to con-

duct the business for a reasonable time before the transfer of ownership or to close out the business when probating an estate or liquidating the assets of the business.

(3) Each trustee, receiver, executor, administrator, and other fiduciary who engages in liquidating the inventory of a business that does not have an existing registration certificate under which to report sales tax shall secure a certificate and shall report tax on taxable receipts from sales of inventory items and taxable services.

(c) Only a business that is actively engaged in making retail sales or performing taxable services that are subject to Kansas sales tax may hold a registration certificate. A registration certificate may be cancelled by the director if during any prior consecutive 12-month period the certificate holder does not file a return or, if any returns are filed, does not report any taxable transactions. When a certificate is to be cancelled, the certificate holder shall be notified in writing of the director's intention to cancel the certificate and the date when the cancellation is final. The certificate shall be cancelled on the date set forth in the notice, unless the certificate holder objects in writing within 60 days from the date that the notice of intention to cancel is mailed. If a certificate holder objects to cancellation, a hearing shall be scheduled pursuant to the Kansas administrative procedures act to determine whether the certificate holder is actively engaged in a retail business.

(d)(1) Issuance of a sales tax registration certificate may be refused by the department, if the department ascertains any of the following:

(A) The department has issued an unsatisfied tax warrant against a partner, business owner, corporate officer, or majority stockholder of the business that is applying for the certificate.

(B) There is a pending department administrative action or legal proceeding against a partner, business owner, corporate officer, or majority stockholder of the business that is applying for the certificate which claims that the partner, business owner, corporate officer, or majority stockholder is a responsible person who is liable for payment of taxes pursuant to K.S.A. 79-2971, K.S.A. 79-32,106, or K.S.A. 79-3643, and amendments thereto.

(C) The applicant is an agent or representative of a principal that is required to be registered and is responsible for filing sales tax returns, pursuant to K.S.A. 79-3604, and amendments thereto.

(2) If the department ascertains that a certificate was issued at a time when the certificate

could have been denied under paragraph (d) (1)(A), (B), or (C), the certificate may be cancelled by the department. When such a certificate is cancelled, the certificate holder shall be notified in writing of the director's intention to cancel the certificate and the date when the cancellation is final. The certificate shall be cancelled on the date specified in the notice, unless the certificate holder objects in writing within 60 days from the date that the notice of intention to cancel is mailed. If a certificate holder objects to cancellation, a hearing shall be scheduled by the secretary or designee pursuant to the Kansas administrative procedures act to determine whether there were adequate grounds under paragraph (d)(1)(A), (B), or (C) to refuse to issue the certificate. (Authorized by K.S.A. 2001 Supp. 79-3618; implementing K.S.A. 79-3607, 79-3608, K.S.A. 2001 Supp. 79-3615, and K.S.A. 79-3630; effective Aug. 23, 2002.)

**92-19-3.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3602, 79-3607, 79-3609; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; amended June 26, 1998; revoked April 1, 2011.)

**92-19-3a. Credit sales, conditional sales, and other sales and service transactions that allow deferred payment.** (a) For purposes of this regulation, K.A.R. 92-19-3b, K.A.R. 92-19-3c, and K.A.R. 92-19-55b, the following definitions shall apply:

(1) "Conditional sale" means a sales transaction made pursuant to a written agreement that is treated as a sale of goods for federal income tax purposes in which the buyer gains immediate possession or control of the goods but the seller or a financial institution retains title to or a security interest in the goods to ensure its future receipt of full payment before clear title is transferred to the buyer in possession or control of the goods. Conditional sale contracts include "financing leases."

(2) "Credit charge" means interest, finance, and carrying charges from credit extended on the sale of goods or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the buyer.

(3) "Credit sale" means a sale of goods or services under an agreement that provides for the deferred payment of the purchase price. Credit sales shall include sales made under the following:

(A) An installment contract that transfers title and possession of the goods to the buyer at the time of purchase, but allows payment to be made in periodic installments; and

(B) a revolving credit contract that extends a line of credit to a buyer that allows purchases to be charged against the account and provides for periodic billing that requires payment of part of, and allows for payment of all of, the credit balance owed by the buyer.

(4) "Creditor" means an entity or person to whom money is owed.

(5) "Financial institution" means a bank, savings and loan, credit union, or other finance company licensed under the provisions of the Kansas uniform consumer credit code as specified in K.S.A. 79-3602, and amendments thereto, for isolated or occasional sales.

(6) "Financing lease" means a conditional-sale contract that is denominated a lease, but that is intended to finance a lessee's purchase of goods or its continued possession of goods under a sale-leaseback agreement. A lessor shall be presumed to have entered into a financing lease if the lessor accounts for the lease transaction as a financing agreement for federal income tax purposes. The term "capital lease" shall be considered synonymous with "financing lease."

(7) "Goods" has the same meaning as "tangible personal property," which is specified in K.S.A. 79-3602, and amendments thereto.

(8) "Invoice" means a paper or electronic bill of sale or similar dated document containing an itemized list of goods or services sold to the buyer that specifies the selling price of the goods or services and complies with the requirements of K.S.A. 79-3648 and amendments thereto, when an itemized charge is taxable.

(9) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order shall be deemed accepted for layaway by the seller when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.

(10) "Operating lease" has the meaning specified in K.A.R. 92-19-55b.

(11) "Purchase price" has the meaning of "sales or selling price" specified in K.S.A. 79-3602, and amendments thereto.

(12) "Rain check" means that the seller allows

a customer to purchase an item at a certain price at a later time because the particular item was out of stock.

(13) "Repossessed goods" means goods sold on credit that a retailer or other creditor reclaims as allowed by law after a buyer or debtor defaults on installment payments.

(14) "Returned goods" means goods that a buyer returns to a retailer upon the parties' cancellation of the original sales contract when the retailer either credits or refunds the full selling price of the goods and associated sales tax to the buyer. Returned goods shall not include goods accepted in trade or barter, goods repossessed or recaptured by legal process, and goods secured pursuant to the consumer's abandonment of the sales contract or other voluntary surrender.

(15) "Sales tax" or "tax" means Kansas retailers' sales tax, Kansas retailers' compensating use tax, and any local retailers' sales or use tax that is levied in addition to the state tax.

(16) "Services" has the meaning specified in K.S.A. 79-3602, and amendments thereto.

(b) Nothing in this regulation, K.A.R. 92-19-3b, K.A.R. 92-19-3c, or K.A.R. 92-19-55b shall be construed as modifying any of the following:

(1) Any requirement of any Kansas certificate-of-title statute or supporting regulation;

(2) any provision of the retailers' sales tax act that allows a retailer to discount the selling price of goods or services based on a trade-in, coupon, or other price reduction that is allowed by a retailer and taken by a buyer on a sale; or

(3) any requirement imposed on creditors or consumers by the Kansas uniform consumer credit code, K.S.A. 16a-1-101 et seq., and amendments thereto.

(c)(1) When a retailer makes credit sales, the retailer may report and pay tax to the department on the total cash and other payments the retailer receives during each reporting period or, if the retailer's books and records are regularly kept on the accrual basis, on the total receipts accrued in its books and records during each reporting period. A retailer that has filed six or more sales tax returns using the same method of accounting that it uses for its federal income tax reporting shall be presumed to have knowingly elected to use that method of accounting for sales tax purposes and to have benefited from its election. Regardless of the reasons for electing to use one method of accounting, a retailer shall continue to use that method of accounting to report its credit and oth-

er retail sales unless the director of taxation authorizes the retailer in writing to change its method of accounting for all future sales tax returns or the internal revenue service directs or authorizes the retailer to change its method of accounting for federal income tax purposes.

(2) A retailer shall not be disqualified from reporting sales on a cash-receipts basis because it makes credit sales or has accounts receivable. However, when a retailer that reports credit sales on a cash-receipts basis sells, factors, assigns, or otherwise transfers an installment contract, account receivable, or similar instrument, sales tax shall become due on the total amount of the remaining payments and shall be reported on the return for the period in which the retailer is paid or credited for the contract or receivable.

(3) For the purposes of administering and enforcing the requirements of the Kansas retailers' sales tax act for retailers that report tax based on the total receipts accrued during a reporting period, the date contained on the invoice given to the buyer shall be presumed to be the date the retailer recognizes the receipts in its books and records as earned.

(4) If a retailer finds that it is a hardship to report and remit sales tax in accordance with the requirements in this subsection, the retailer may apply in writing to the director of taxation for permission to start reporting its sales using a different accounting method. The retailer shall fully explain the reasons for the request, and the director may identify reasonable requirements that the retailer shall meet as a condition to allowing the retailer to change the method of accounting it uses to report sales tax.

(d)(1) Each retailer that accounts for its credit sales on the accrual basis shall bill the buyer the full amount of tax that is due on the purchase price of the goods or services sold on credit and shall source and report the sale as if it were a cash sale. The purchase price shall not be reduced by any expense that the retailer attributes to the sale or service and recovers from the buyer even when the retailer bills the expense as a separate line-item charge or on a separate invoice.

(2) When a credit sale is made, any credit charge that is paid by a buyer in addition to the purchase price of goods or services shall be deemed not to be part of the purchase price and shall not be subject to sales tax if both of the following conditions are met:

(A) The invoice, bill of sale, or similar document given to the buyer separately states the credit

charge and the selling price of the goods or services that were sold on credit.

(B) The extension of credit was contracted for by the parties, provided for by standard industry custom or practice, or otherwise granted by the retailer, including by issuing an invoice that unilaterally informs the buyer that interest at a stated rate will be added each month to any outstanding credit balance.

(3) A retailer's charges for the extension of credit that meet the requirements of paragraph (d)(2) shall not be included in the retailer's report of gross receipts.

(4) A retailer that makes credit sales shall maintain records that separately show the selling price of the goods or services, the corresponding amount of sales tax charged, the customer's credit balance, and any interest, financing, or carrying charge that has been added to that balance.

(5) A retailer shall not collect sales tax on charges to customers for insufficient funds checks or closed-account checks. The receipts from these charges shall not be included in the retailer's report of gross receipts.

(6) This subsection shall not apply to the types of charges related to credit-card use that are specified in subsection (e).

(e)(1) If a retailer increases the selling price of goods or services for a buyer who uses a credit card to compensate for interchange fees or other charges that the credit-card company will later deduct from the payment it forwards to the retailer's account, these increases shall be considered to be part of the selling price of the goods or services and shall be subject to tax.

(2) Interchange fees and other charges that a credit-card company deducts from a participating retailer's account shall be deemed charges for the financial services that the credit-card company has rendered for the retailer and shall not be deducted from the retailer's report of gross receipts or otherwise used to reduce the amount of sales tax being reported.

(f)(1) A progress payment shall mean a payment made to a contractor as work progresses on a construction project that may be conditioned on the percentage of work completed, the stage of work completed, the costs incurred by the contractor, a payment schedule, or some other basis. Each contractor who issues a bill or statement for a progress payment for a period in which the contractor performed taxable labor services shall report sales tax on the taxable services as part of its gross receipts.

(2) If a contractor reports sales tax on the cash basis, it shall report the taxable labor services it performed during the period covered by a progress payment on the return it files for the sales-tax reporting period in which it receives the progress payment. If a contractor reports sales tax on the accrual basis, it shall report the taxable services it performed during the period covered by a progress-billing statement on the return it files for the sales-tax reporting period in which it recognizes the charges on its progress-billing statement in its books and records as earned.

(g)(1) Unless otherwise provided by statute, each retailer that makes a layaway sale shall report sales tax on the total selling price of the goods sold on layaway when the final payment is made and the goods are delivered to the buyer. The tax rate that is applied to a layaway sale shall be the rate that is in effect at the time of delivery. An exemption may be claimed on a layaway sale only if the exemption is in effect at the time of delivery. If an unpaid balance remains when the goods are delivered, the transaction shall be reported as a credit sale that is consummated when the goods are delivered to the buyer.

(2) Sales tax shall be applied to a purchase made under a rain check in the same way that the tax is applied to a purchase made under a layaway sale.

(h)(1) Each retailer shall collect and remit tax in accordance with this subsection on any taxable sales of goods the retailer makes under a financing lease agreement or other conditional sale, unless the lease or sale satisfies one of the requirements listed in paragraphs (i)(2)(A) through (C).

(2) When an accrual-basis retailer sells goods at retail and the sale is financed under a financing lease, the retailer shall collect and remit sales tax at the time of sale on the full selling price of the goods. Sales tax shall be collected and remitted in this manner even if the retailer transfers title to the goods to a financial institution and possession of the goods to the third-party lessee or if the retailer retains title to the goods and transfers possession to the lessee. Lease payments that a third-party lessee makes to a financial institution or retailer to discharge its loan-repayment obligations under a financing lease or other conditional sale shall not be subject to tax.

(3) A financial institution shall not claim a resale exemption for the purchase of goods that the financial institution is financing under a financing lease agreement.

(4) The transfer of title to the lessee upon

completion of the lease payments required under a financing lease agreement shall not be subject to tax.

(i)(1) A contract shall be treated as a financing lease regardless of whether the underlying transaction is characterized as a lease or rental under generally accepted accounting principles, the internal revenue code, the uniform commercial code, K.S.A. 84-1-101 et seq. and amendments thereto, or any other provision of federal, state, or local law, if the contract requires the lessee to possess or control the goods under a security agreement or deferred payment plan that requires the transfer of possession or control of the goods to the lessee under either of the following:

(A) A security agreement or deferred payment plan that requires the transfer of title to the lessee upon completion of the required payments; or

(B) an agreement that requires the transfer of title upon completion of the required installment payments plus the additional payment of an option price, and the option price does not exceed the greater of \$100 or 1% of the total required payments.

(2) Unless paragraph (i)(1) requires a contract to be treated as a financing lease, a contract shall be treated as an operating lease and not as a financing lease if the contract meets one of the following requirements:

(A) Contains a provision that allows the lessor to claim federal income tax depreciation benefits for the leased goods;

(B) allows the lessee to terminate the agreement at any time by returning the goods and making all lease payments due to the date of return; or

(C) qualifies as a Kansas consumer lease-purchase agreement under K.S.A. 50-680 et seq., and amendments thereto.

(j)(1) A late payment charge or penalty billed to a customer shall be exempt under this regulation only if the late payment charge or penalty is imposed for nonpayment of a credit balance that is owed under the parties' agreement for the extension of credit, a financing lease, or other conditional sale agreement.

(2) A late payment charge or penalty that is billed to a customer by a regulated utility, cable provider, telecommunications company, or other entity that operates under the authority granted by law or contract by a municipal, county, state, or federal governmental unit is not a credit charge imposed for the extension of credit and shall be subject to sales tax.

(3) A late payment charge or penalty imposed under an operating lease or rental agreement shall be subject to tax in accordance with subsection (d) of K.A.R. 92-19-55b. (Authorized by K.S.A. 2010 Supp. 75-5155 and K.S.A. 2010 Supp. 79-3618; implementing K.S.A. 2010 Supp. 75-5155, K.S.A. 2010 Supp. 79-3602, K.S.A. 2010 Supp. 79-3603, K.S.A. 2010 Supp. 79-3609, and K.S.A. 2010 Supp. 79-3618; effective April 1, 2011.)

**92-19-3b. Allowances for bad debts.** (a) General.

(1) For purposes of this regulation, "bad debt" shall mean any debt owed to or account receivable held by a retailer that can be claimed as a "wholly or partially worthless debt" deduction under 26 U.S.C. Section 166 that arose from the sale of goods or services upon which the retailer reported retailers' sales or use tax in a prior reporting period; and

(2)(A) A retailer shall be eligible to claim a bad debt allowance if the retailer meets the following conditions:

(i) Was the original seller of the taxable goods or services;

(ii) charged and remitted the retailers' sales or use tax on a sale that can be claimed as a worthless debt deduction under 26 U.S.C. Section 166; and

(iii) has written off the bad debt as worthless or uncollectible in its books and records.

(B) A certified service provider shall be eligible to claim a bad debt allowance on behalf of a retailer that meets the conditions in paragraph (a) (2)(A) if the provider meets the requirements in subsection (g).

(3) A claim for a bad debt allowance shall be considered to be filed with the department according to one of the following:

(A) On the due date of the return for the reporting period in which the bad debt is written off as uncollectible in the retailer's books and records, when a deduction for the bad debt is taken on that return; or

(B) on the date that the retailer files a refund claim with the department, if part or all of a bad debt allowance is being claimed as a refund because the bad debt allowance was not taken as a deduction on the appropriate return or the deduction that was taken exceeded the amount of taxable gross receipts being reported on that return. The filing date for a refund claim provided by K.S.A. 79-3609, and amendments thereto, shall be the later of either the postmark date on the re-

fund request or the postmark date on the required supporting documentation.

(4) Each claim by a retailer for a deduction, credit, or refund based on a bad debt allowance shall be made in accordance with this regulation. K.A.R. 92-19-3c shall control the treatment of goods that are repossessed by a retailer after the retailer has taken a bad debt allowance on the underlying credit sale of goods defaulted on by the retailers' customer.

(5) After a retailer sells, factors, assigns, or otherwise transfers an account receivable, installment contract, or other similar debt instrument for a discount of any kind that authorizes a third party to collect customer payments, the retailer shall not be eligible to claim a bad debt allowance, credit, or refund for bad debts that arise under an instrument that was sold or transferred at a discount. A third party that purchases or otherwise obtains a debt instrument from the retailer, and any person that subsequently purchases or otherwise obtains the debt instrument, shall not be eligible to claim a bad debt allowance, credit, or refund for an underlying credit sale of goods or services defaulted on by the retailer's customer.

(b) Determining the amount of a bad debt allowance.

(1) The bad debt allowance that may be claimed for sales tax purposes shall be the difference between the federal worthless debt deduction calculated for the sale or account pursuant to 26 U.S.C. Section 166(b) and the applicable adjustments and exclusions to the federal worthless debt deduction specified in K.S.A. 79-3674 and amendments thereto.

(2) No anticipatory or statistical sampling method of estimating the amount of a sales-tax bad debt allowance shall be allowed except as specified in K.S.A. 79-3674(h) and amendments thereto.

(3) If a retailer maintains a reserve account for bad debts, only charges against the bad debt reserve that have been written off the retailer's books and records may be claimed as a bad debt allowance.

(4) The amount of sales tax that is deducted, credited, or refunded under a bad debt allowance shall not exceed the difference between the tax that the retailer remitted to the department on a retail transaction and the tax that the retailer collected on the retail transaction.

(5) The amount of a bad debt allowance shall not include any finance charges, collection ex-

penses, or repossession expenses that the retailer assigned to the consumer's account.

(6) Whenever the sales tax rate that was in effect at the time and place of the original sale is changed pursuant to a statutory rate change or the enactment or repeal of a local tax, the amount of the bad debt allowance shall be adjusted to account for the rate change before the bad debt allowance is claimed.

(7) In the absence of adequate records showing the contrary, it shall be presumed that the interest rate for financing charges that the retailer billed to a customer's delinquent account is the maximum rate of interest that the retailer charged on the same type of delinquent account during the same period that gave rise to the bad debt.

(8) No interest shall be paid by the department on any sales-tax bad debt deduction taken on a retailer's tax return. Interest on a refund claim filed to recover part or all of a bad debt allowance shall be computed as provided in subsection (e).

(c) How to claim a bad debt allowance.

(1)(A) A retailer that is required to file federal income tax returns shall claim a bad debt allowance as a deduction from the taxable gross receipts being reported on the return the retailer files for the reporting period in which the bad debt is charged off its books and records as uncollectible.

(B) A retailer that is not required to file federal income tax returns, including a church or other nonprofit entity, shall claim a bad debt allowance as a deduction from taxable gross receipts during the reporting period in which the bad debt is charged off its books and records, if the allowance would otherwise qualify for a worthless debt deduction under 26 U.S.C. Section 166 if the retailer were required to file federal income tax returns.

(2) If a retailer fails to timely claim a bad debt deduction on the return identified in paragraph (c) (1) or if a bad debt allowance exceeds the taxable gross receipts being reported on that return, the retailer shall file a refund request pursuant to K.S.A. 79-3609, and amendments thereto, to recover the bad debt allowance or the balance of the allowance. The retailer shall not claim a bad debt allowance as a deduction so that a negative balance is reported on a return, as a deduction on an amended return filed for an earlier reporting period, or as a deduction on a return filed for a later period.

(3) A refund request that is filed to recover a bad debt allowance shall not include any other type of refund claim. The supporting documentation shall clearly state that the refund request is based on a

claim for a bad debt allowance and shall identify the sales tax reporting period in which the worthless debt deduction could have first been claimed for federal income tax purposes.

(4) A refund claim based on a bad debt allowance shall be denied if the due date of the return for the reporting period in which the retailer first became eligible to write off the worthless debt for federal income tax purposes is outside the limitation period specified in K.S.A. 79-3609, and amendments thereto, for filing refund claims.

(d) Substantiating documentation.

(1) The burden of establishing the right to and the validity of a sales-tax bad debt allowance shall be on the retailer. In order to verify each sales-tax bad debt allowance being claimed, the retailer shall retain records that show the following:

(A) The date when the retailer first became eligible to write off the worthless debt in the books and records that it maintains for federal income tax purposes;

(B) the amount of the worthless debt that was written off for federal income tax purposes and the amount of the worthless debt that is being claimed for Kansas sales tax purposes;

(C) any computations or adjustments made by the retailer to its federal worthless debt deduction to arrive at the bad debt allowance being claimed for Kansas sales tax purposes;

(D) any portion of the debt or worthless account that represents customer charges that were not taxed; and

(E) the amount of interest, finance charges, service charges, collection, and repossession costs that the retailer assigned to the debt or worthless account.

(2) The information specified in paragraphs (d)(1)(A) through (d)(1)(E) may be requested by the department at any time to substantiate a retailer's bad debt allowance claim.

(3) Any retailer that qualifies to claim a sales-tax bad debt allowance and whose volume and character of uncollectible or worthless accounts warrant an alternative method of substantiating the allowance may apply in writing to the director of taxation and ask to be allowed to maintain records other than those specified in this subsection. The retailer shall explain the reasons for the request, and the director may identify reasonable requirements that the retailer must meet as a condition to allowing the retailer to maintain records other than those specified in this subsection.

(e) A bad debt allowance submitted as a refund

request. If a retailer claims a bad debt allowance by filing a refund request in accordance with paragraphs (c)(2) through (c)(4), the request shall be treated as the retailer's application for a refund. If a refund request based on a bad debt allowance is approved, either a credit memorandum or a refund payment may be issued by the department to the retailer for the approved amount. The amount credited or refunded shall not include interest, unless a credit memorandum or refund payment is not issued within the time provided for refunds by K.S.A. 79-3609, and amendments thereto. If a credit memo or refund payment is issued after the time provided for refunds, interest shall be computed from the later of either the filing date of the refund request or the filing date of the supporting documentation required by K.S.A. 79-3693, and amendments thereto.

(f) Recovery of allowances previously taken. If a retailer collects payment for goods or services or repossesses goods that were the basis of a bad debt allowance, the retailer shall apply the payment first proportionally to the selling price of the goods or services and the corresponding sales tax that remains unpaid and then to any other charges that are owed on the customer's account, including interest, service charges, and collection costs billed to the customer. The retailer shall report the payment amount that is apportioned to the selling price of the taxable goods or services as part of its taxable gross receipts for the period in which the payment is received.

(g) Certified service providers.

(1) If a retailer's filing responsibilities have been assumed by a certified service provider, the certified service provider may claim, on the retailer's behalf, any bad debt allowance that the retailer could claim under this regulation. The certified service provider shall provide a credit or issue a refund to the retailer for the full amount of any bad debt allowance that the provider recovers. No person other than the retailer who reported the taxable transaction and reported tax to the department, or a retailer's certified service provider, shall be entitled to claim a bad debt allowance that is based on a worthless debt or uncollectible account.

(2) If the books and records of the retailer or certified service provider claiming a sales-tax bad debt allowance support an allocation of the sales-tax bad debts among the member states on a particular customer's uncollectible account, the allocation shall be allowed pursuant to K.S.A. 79-3674, and amendments thereto. (Authorized by

K.S.A. 2010 Supp. 75-5155 and 79-3618; implementing K.S.A. 2010 Supp. 79-3609, 79-3674, and 79-3693; effective April 1, 2011.)

**92-19-3c. Repossessed goods.** (a) Each retailer that repossesses goods that were the basis of a bad debt allowance under K.A.R. 92-19-3b, and each financial institution that repossesses goods, shall account for the repossessed goods in accordance with this regulation.

(b) The recovery of goods being repossessed and the transfer of title to the goods from the debtor to the retailer or financial institution are not retail sales and shall not be taxed.

(c) When repossessed goods are resold by a retailer at retail, the receipts from the sale shall be reported as part of the retailer's gross receipts. When repossessed goods are resold by a retailer as a sale for resale, a retailer that previously claimed a bad debt allowance on the goods shall account for the receipts as an allowance recovery in accordance with K.A.R. 92-19-3b(f).

(d) When goods are repossessed by a financial institution, the resale of the goods by the financial institution and the transfer of title to the buyer shall be treated as nontaxable isolated or occasional sales.

(e) When a debtor satisfies the underlying debt after goods are repossessed, the return of goods and the transfer of title to the goods to the debtor are not retail sales and shall not be taxed. A retailer that previously claimed a bad debt allowance on the goods shall report the taxable gross receipts that are included in the payment from the debtor in accordance with K.A.R. 92-19-3b(f).

(f) When a retailer or financial institution uses repossessed goods other than for retention, demonstration, or display while holding the goods for resale in the regular course of business, the retailer or financial institution shall accrue sales tax on its use of the repossessed goods as the rental of the goods. (Authorized by K.S.A. 2009 Supp. 75-5155 and 79-3618; implementing K.S.A. 2009 Supp. 79-3602, K.S.A. 2009 Supp. 79-3603 as amended by L. 2010, Ch. 160, sec. 1, K.S.A. 2009 Supp. 79-3607 as amended by L. 2010, ch. 123, sec. 11, K.S.A. 2009 Supp. 79-3609 as amended by L. 2010, ch. 123, sec. 12, K.S.A. 2009 Supp. 79-3615, 79-3618 and 79-3674; effective April 1, 2011.)

**92-19-4.** (Authorized by K.S.A. 79-3609, 79-3618; effective, E-70-33, July 1, 1970; effective,

E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; revoked May 1, 1987.)

**92-19-4a.** (Authorized by K.S.A. 79-3618, 79-3707; implementing K.S.A. 79-3609, K.S.A. 79-3706; effective May 1, 1987; revoked July 27, 2001.)

**92-19-4b. Recordkeeping requirements.** (a) Purpose. Each taxpayer shall maintain the books, records, and other information required to be maintained by the Kansas retailers' sales tax act in accordance with this regulation.

(b) Definitions. For purposes of this regulation, these terms shall be defined as follows:

(1) "Database management system" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(2) "Director" means the director of taxation of the department of revenue or the director's designee.

(3) "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

(4) "Hard copy" means any documents, records, reports, or other data printed on paper.

(5) "Machine-sensible record" means a collection of related information in an electronic format. This term shall not include hard-copy records that are created or recorded on paper or stored in or by an imaging system, including microfilm, microfiche, and storage-only imaging systems.

(6) "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. This term shall not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

(7) "Taxpayer" means any person who is obligated to account to the director of taxation for taxes collected or accrued under the Kansas retailers' sales tax act.

(c) Recordkeeping requirements: general.

(1) Each taxpayer shall maintain all records that are necessary to determine the correct tax liability under Kansas sales and compensating tax acts. All required records shall be made available on request by the director as provided for in K.S.A. 79-3609, and amendments thereto. These records shall include the following:

- (A) Invoices;
- (B) bills of lading;
- (C) sales records;
- (D) copies of bills of sale;
- (E) exemption certificates;
- (F) a true and complete inventory taken at least once a year; and

(G) all other pertinent documents that establish gross receipts from sales, as well as any deductions allowed by law or claimed on returns.

(2) If a taxpayer retains records that are required to be retained under this regulation in both machine-sensible and hard-copy formats, that individual shall make the records available to the director in machine-sensible format upon request of the director.

(3) Nothing in this regulation shall be construed to prohibit any taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions of them, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records using electronic or other storage media in accordance with this regulation. However, this subsection shall not relieve the taxpayer of the obligation to comply with paragraph (c)(2).

(d) Recordkeeping requirements: machine-sensible records.

(1) General requirements.

(A) Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the director upon request. Any taxpayer may discard duplicated records and redundant information if the taxpayer's responsibilities under this regulation are met.

(B) At the time of an examination, the retained records shall be capable of being retrieved and converted to a standard record format.

(C) Taxpayers shall not be required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business shall not be required to construct the record in an electronic format for tax purposes.

(2) Electronic data interchange requirements.

(A) If a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, shall be equivalent to that contained in an acceptable paper record.

The retained records shall contain the following information:

- (i) The vendor name;
- (ii) the invoice date;
- (iii) a product description;
- (iv) the quantity purchased;
- (v) the price;
- (vi) the amount of tax;
- (vii) an indication of tax status;
- (viii) the shipping detail; and
- (ix) any other information required by the secretary.

Codes may be used to identify some or all of the data elements, if the taxpayer provides a method that allows the director to interpret the coded information.

(B) The taxpayer may capture the information necessary to satisfy the requirements of paragraph (d)(2)(A) at any level within the accounting system and shall not be required to retain the original EDI transaction records if the audit trail, authenticity, and integrity of the retained records can be established.

(3) Electronic data processing systems requirements. The requirements for an electronic data processing accounting system shall be similar to those for a manual accounting system, in that an adequately designed accounting system shall incorporate methods and records that will satisfy the requirements of this regulation.

(4) Business process information.

(A) Upon the request of the director, the taxpayer shall provide a description of the business process that created the retained records. This description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.

(B) Each taxpayer shall be capable of demonstrating the following:

- (i) The functions being performed as they relate to the flow of data through the system;
- (ii) the internal controls used to ensure accurate and reliable processing; and
- (iii) the internal controls used to prevent the unauthorized addition, alteration, or deletion of retained records.

(C) The following documentation shall be required for machine-sensible records retained as specified in this regulation:

- (i) Record formats or layouts;
- (ii) field definitions, including the meaning of all codes used to represent information;

(iii) file descriptions, including the data set name; and

(iv) detailed charts of accounts and account descriptions.

(e) Records maintenance requirements.

(1) The taxpayer shall adequately catalog and preserve electronic and other retained machine-sensible records.

(2) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

(f) Access to machine-sensible records.

(1) The manner in which the director is provided access to machine-sensible records as required in paragraph (c)(2) may be satisfied through a variety of means, each of which shall take into account the taxpayer's facts and circumstances through consultation with the taxpayer.

(2) The access shall be provided in one or more of the following manners:

(A) The taxpayer may arrange to provide the director with the hardware, software, and personnel resources to access the machine-sensible records.

(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

(C) The taxpayer may convert the machine-sensible records to a standard record format specified by the director, including copies of files, on a magnetic medium that is approved by the director.

(D) Other means of providing access to the machine-sensible records may be agreed upon by the taxpayer and director.

(g) Taxpayer responsibility and discretionary authority.

(1) In conjunction with meeting the requirements of subsection (d), a taxpayer may create files solely for the use of the director, including a file that contains the transaction-level detail from the data base management system and that meets the requirements of subsection (d). The taxpayer shall document the process that created any separate file to show the relationship between that file and the original records.

(2) Any taxpayer may contract with a third party to provide custodial or management services of the records. A third-party contract shall not relieve the taxpayer of the taxpayer's responsibilities under this regulation.

(h) Alternative storage media.

(1) For purposes of storage and retention, taxpayers may convert hard-copy documents received

or produced in the normal course of business and required to be retained under this regulation to microfilm, microfiche, or other storage-only imaging systems and may discard the original hard-copy documents, if the conditions of this subsection are met. Documents that may be stored on these media shall include the following:

(A) General books of account;

(B) journals;

(C) voucher registers;

(D) general and subsidiary ledgers; and

(E) supporting records of details, including sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Microfilm, microfiche, and other storage-only imaging systems shall meet the following requirements:

(A) The taxpayer shall maintain, and make available on request, documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system. The documentation shall contain, at a minimum, a description sufficient to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) The taxpayer shall establish procedures for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subsection (j).

(C) Upon request by the director, the taxpayer shall provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

(D) When displayed on equipment or reproduced on paper, the documents shall exhibit a high degree of legibility and readability. For this purpose, "legibility" means the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. "Readability" means the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data stored on microfilm, microfiche, and other storage-only imaging systems shall be maintained and arranged in a manner that permits the location of any particular record.

(F) There shall be no substantial evidence that the microfilm, microfiche, or other storage-only imaging system lacks authenticity or integrity.

(i) Effect on hard-copy recordkeeping requirements.

(1) Except as otherwise provided in this regulation, the provisions of this regulation shall not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained using a recordkeeping medium as specified in subsection (h).

(2) If hard-copy records are not produced or received in the ordinary course of transacting business, including when electronic data interchange technology is used, hard-copy records shall not be required to be produced simply for the purpose of maintaining hard-copy records.

(3) The taxpayer shall retain hard-copy records generated at the time of a transaction using a credit or debit card, unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. These details shall include those listed in paragraph (d)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes shall not be required to be retained.

(5) Nothing in this regulation shall prevent the director from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

(j) Record retention: time period. All records required to be retained under this regulation shall be preserved pursuant to K.S.A. 79-3609 and amendments thereto, unless the director has advised the taxpayer in writing that the records are no longer required. (Authorized by K.S.A. 2000 Supp. 79-3618 and K.S.A. 79-3707; implementing K.S.A. 2000 Supp. 79-3609, K.S.A. 79-3702, and K.S.A. 2000 Supp. 79-3706; effective July 27, 2001.)

**92-19-5.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3607, 79-3615; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; revoked Dec. 13, 2002.)

**92-19-5a. Extension of time for filing a return.** (a) Each request for an extension of time in which to file a return shall be submitted in writing and shall contain the taxpayer's business name and account number. The request shall be received by the department on or before the due

date of the return. If granted, the extension shall extend the time for filing a return but shall not extend the time for payment of the tax that is due.

The taxpayer shall estimate the tax due for the filing period and remit that estimated tax with the extension request. If an extension request is received on or before the return's original due date, any tax that remains unpaid after the original due date shall accrue interest, but not penalty, from the original due date.

(b)(1) Each request for an extension of time to file a return that is received after the original filing due date shall be treated as a request for a waiver of penalty. Each late request for extension or a request for penalty waiver shall be submitted in writing and shall contain the taxpayer's business name, account number, and the applicant's signature. The request shall state the reasons for the request and provide a definite date when the return will be filed and the tax due will be paid. An extension and waiver shall be granted upon proper showing of good cause as specified in subsection (c).

(2) If granted, the extension shall extend the time for filing a return but shall not extend the time for payment of the tax that is due. A taxpayer seeking an extension or penalty waiver after the normal due date shall estimate the tax due for the period or periods in question and remit the estimated amount. If an extension is granted, any tax that remains unpaid after the original due date shall accrue interest, but not penalty, from the original due date.

(c)(1) "Good cause" may include any of the following:

(A) The death or a disabling injury or illness of the taxpayer, a member of the taxpayer's immediate family, or a person upon whom the taxpayer has routinely relied for the preparation of returns;

(B) the prolonged, unavoidable absence of the taxpayer or a person upon whom the taxpayer routinely relied to prepare the returns and the taxpayer's preclusion from making alternative arrangements for the timely filing or payment, due to circumstances beyond the taxpayer's control;

(C) the destruction by fire or other means of the taxpayer's place of business or records;

(D) the embezzlement or fraud of an employee or agent; or

(E) the breakdown or malfunction of a computer that is essential to the preparation of the taxpayer's returns.

(2) Good cause shall be presumed to exist if the department's records indicate that, except for

the delinquency in question, the taxpayer's sales tax account is current and paid in full and the taxpayer has not filed a delinquent return or made a delinquent payment during the 36 months that immediately precede the delinquency.

(d) A taxpayer may request a permanent extension of time to file returns. This extension shall be for not more than 60 days for each future filing period. As a condition for obtaining a permanent extension of time, the taxpayer shall file a cash or surety bond or shall open an escrow account in accordance with K.A.R. 92-19-35a(d). This security requirement shall continue in effect until the permanent extension is terminated by the taxpayer or the director. A taxpayer who is granted a permanent extension of time to file returns shall remit the tax or the estimated tax that is due on or before the original due date. If a payment of tax is received on or before the original due date, any tax that remains unpaid after the original due date shall accrue interest, but not penalty, from the original due date. (Authorized by K.S.A. 2001 Supp. 79-3618, 79-3619; implementing K.S.A. 2001 Supp. 79-3602, 79-3603, as amended by L. 2002, ch. 185, sec. 6, K.S.A. 79-3607, K.S.A. 2001 Supp. 79-3615, 79-3619; effective Dec. 13, 2002.)

**92-19-6.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3612, 79-3609; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; revoked Aug. 23, 2002.)

**92-19-6a. Retailer's duties when a retail business moves, ceases operation, or changes its name, ownership, or form of ownership.**

(a) If a retailer ceases to do business or if a change of ownership occurs through the sale of a business or through a change in the legal form of business ownership, the retailer shall notify the department of the date of the last day of business operation or the date of the change of ownership. The retailer shall return its certificate for cancellation, remit all taxes, and file its final return during the month that follows the sale or the change of ownership of the business. The retailer shall preserve its business records for three years from the end of the calendar year or fiscal year, whichever is later, in which the retailer files its final return.

(b) When there is a sale or other change of ownership of a business, the entity acquiring ownership shall secure a certificate in its name before beginning business as the new owner.

(c) Each retailer shall promptly notify the department of any change in location, mailing address, business name, or trade name. Upon receipt of this notification, the retailer shall be issued an amended certificate by the department, or the old certificate shall be canceled and the retailer shall be issued a new certificate by the department.

(d)(1) For purposes of sales tax registration, a change in ownership of a business shall be deemed to occur when a business is sold or when a business changes its legal form of ownership from a sole proprietorship, partnership, corporation, or other legal form to another form of ownership. A change in ownership of a general partnership shall include the withdrawal, substitution, or addition of one or more general partners if the general partnership continues as a business organization and the change in the number of partners is equal to or greater than 50 percent.

(2) For purposes of sales tax registration, a change in ownership shall be deemed not to occur when there is a sale of all or part of the common stock in a corporation. A change in ownership of a limited partnership shall be deemed not to occur if the limited partnership continues as a business organization and either of the following occurs:

(A) A withdrawal, substitution, or addition of one or more limited partners in a partnership; or

(B) a withdrawal, substitution, or addition of one or more general partners if the number of general partners being changed is less than 50 percent.

(3) When control of a corporation is transferred to a different corporation or owner, or when new corporate officers are added or replaced, the corporation shall notify the department of the changes although no new sales tax certificate shall be required. When the change in the number of general partners is less than 50 percent, the partnership shall notify the department of the changes although no new sales tax certificate shall be required.

(4) Partners and officers who leave a business may, in their individual capacity, notify the department of the change to avoid possible claims of personal liability being made against them for reporting periods that occur after they have left the business. (Authorized by K.S.A. 2001 Supp. 79-3618; implementing K.S.A. 79-3608; effective Aug. 23, 2002.)

**92-19-7. Leased departments.** Where a person engaged in the business of selling tangible personal property or taxable services has leased

certain parts of the premises wherein that business is conducted by other persons for use in selling tangible personal property or services, each such lessee shall make a separate return to the state, provided that the lessee keeps separate books of account and makes his own collections on account of the sales. If the lessor keeps the books for the lessee, the lessor must render a consolidated return, including therein the gross receipts from the operations of the business conducted by the lessee. (Authorized by K.S.A. 79-3608, 79-3618, K.S.A. 1971 Supp. 79-3602, 79-3603; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

**92-19-8.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, 79-3608, K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; revoked June 26, 1998.)

**92-19-9.** (Authorized by K.S.A. 79-3608, 79-3618, K.S.A. 1971 Supp. 79-3602, 79-3603; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; revoked May 1, 1988.)

**92-19-10.** (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3602, 79-3603 as amended by L. 1987, Ch. 182, Sec. 108, K.S.A. 1986 Supp. 79-3607; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; revoked April 1, 2011.)

**92-19-11. Property purchased for resale, but used by purchaser.** If a wholesaler or retailer takes tangible personal property from a stock of goods to use for personal consumption or for gifts, he shall enter on his books the amount of the cost of all tangible personal property so removed from stock for his personal consumption or as gifts, and, as the ultimate consumer, shall pay the tax thereon. (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-3602, 79-3603; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

**92-19-12. Newspapers, magazines, periodicals, trade journals, publications and other printed matter.** (a) Newspapers, magazines, periodicals, trade journals, publications and other printed matter are tangible personal property and the receipts from the retail sale of these items are taxable.

(b) When subscriptions for newspapers, magazines, periodicals, trade journals, publications and other printed matter are taken within the state of Kansas, sent to a printer or publishing house outside Kansas and the publication is thereafter mailed to the subscriber within Kansas, the receipts from the subscriptions are taxable.

(c) When newspapers, trade publications, advertising pamphlets, circulars and other publications, are distributed free of charge, the person printing or publishing the publication for sale to the distributor is deemed to be the seller thereof and must collect the tax.

(d) Each person who prints or produces and distributes publications, free of charge, is regarded as the final user or consumer of all materials used to print or produce the publication. For tax purposes, the printer or publisher shall pay sales tax on all purchases of materials used to print or produce the publication.

If a person prints or publishes tangible personal property for sale to consumers, and also prints or publishes publications which are distributed free of charge, a person may purchase all materials used in the printing and publishing process exempt from sales tax. When a person prints or publishes the publication for distribution free of charge, that person shall include the cost of all exempt materials purchased for use in printing or producing that publication on the sales tax return and impose sales tax on that amount. (Authorized by K.S.A. 79-3618, K.S.A. 1986 Supp. 79-3602, 79-3603 as amended by L. 1987, Ch. 182, Sec. 108, 79-3606, as amended by L. 1987, Ch. 64, Sec. 1; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988.)

**92-19-13.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 1985 Supp. 79-3602, 79-3603 as amended by L. 1986, Ch. 386, Sec. 1, K.S.A. 1985 Supp. 79-3606 as amended by L. 1986, Ch. 384, Sec. 1; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987; revoked June 26, 1998.)

**92-19-13a. Florists.** (a) For purposes of this regulation, "florist" means someone who is engaged in the business of selling flowers, potted plants, nursery stock, bouquets, wreaths, and other similar items at retail. Each florist shall collect sales tax on its sales of tangible personal property and on its charges for creating and fabricating

flower and ornamental plant arrangements. A florist's delivery charges, whether or not separately stated, shall be included in the selling price that is subject to sales tax.

(b) In accordance with K.S.A. 79-3619, and amendments thereto, each retailer shall comply with the following special rules when sales are made through a floral telegraphic delivery association or a similar florist association or organization.

(1) Sales tax shall be collected on orders taken by a Kansas florist to be telegraphed to a second florist, whether the delivery is to be made within or without the state. Any handling charges in connection with these sales shall be included in the selling price that is subject to sales tax.

(2) A Kansas florist making deliveries pursuant to a telegraph order received from another florist shall not collect the tax, whether the florist forwarding the order is located within or without the state of Kansas.

For purposes of this subsection, "telegraph" means telegraph, telephone, or any other electronic means of long distance communication used by a florist organization. (Authorized by K.S.A. 79-3618, 79-3619; implementing K.S.A. 79-3603, K.S.A. 79-3619; effective June 26, 1998.)

**92-19-14.** (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-3602, 79-3603, 79-3606; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; revoked, E-71-21, July 1, 1971; revoked Jan. 1, 1972.)

**92-19-15. Undertakers and funeral directors.** Each funeral director who charges a lump sum for a funeral service that covers the total funeral charge, including services and tangible personal property, is required to collect, report, and remit sales tax on 50% of the entire amount charged for each funeral including embalming, casket, and usual services. When a funeral director charges separately for the sale of tangible personal property and for required services, the sales tax shall be collected only on an amount equal to the retail sales price of the tangible personal property if charges for tangible personal property are segregated from those for services rendered on the invoice furnished to the purchaser.

Cash advanced by the funeral director for the purchase of a cemetery lot or grave, associated cemetery expenses, remuneration to the minister and choir, use of the church, and press notices shall not be subject to sales tax.

Each funeral director shall collect and remit four percent on the full retail price of the sale of vaults, clothing, flowers and other special merchandise. Sales of hearses, furniture, instruments, and other equipment to a funeral director are taxable.

Each funeral director shall not collect and remit sales tax on a charge for embalming services when the services are not a part of a regular funeral service. Sales to a funeral director of embalming fluid and other material used in an embalming service are taxable.

When articles of personal property are ordered by the family from a merchant to be delivered to the funeral home, the merchant actually making the sale shall collect and remit the sales tax.

When bodies are shipped or delivered from one funeral director to another within the state of Kansas, the funeral director furnishing the merchandise shall collect and remit the sales tax.

When burial vaults or other items of personal property are sold in Kansas for ship-in cases, tax shall be charged and collected on the actual selling price of the merchandise.

Sales tax shall not be charged when the state of Kansas or another political subdivision pays for a burial. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1985 Supp. 79-3602, 79-3603 as amended by L. 1986, Ch. 386, Sec. 1; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987.)

**92-19-16.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987; amended May 1, 1988; revoked June 26, 1998.)

**92-19-16a. Gifts, premiums, prizes, coupons, and rebates.** (a) Each sale of tangible personal property shall be taxable if made to a person who will use the property as a prize or premium or who will give the property away as a gift. Donors of articles of tangible personal property shall be regarded as the users or consumers of the property. If a retailer donates property that was originally acquired for resale, the retailer shall accrue tax on the cost it paid for the property when the retailer files its next sales tax return, unless the retailer donates the property to an entity that is exempt from taxation on its purchases under K.S.A. 79-3606, and amendments thereto, or has provided the retailer with a resale exemption certificate.

(b) If a retailer making a retail sale that is subject to tax gives a premium or prize along with the item being sold, the transaction shall be regarded as the sale of both items to the purchaser if delivery of the premium or prize does not depend on chance.

(c) If the award of a premium or prize by a retailer depends on chance, the retailer's acquisition of the premium or prize shall be subject to sales tax. The retailer shall pay the tax at the time of acquisition of the premium or prize or, if the item is removed from resale inventory, shall accrue tax on the item's cost on its sales tax return.

(d) If a retailer accepts a coupon for a taxable product and will later be reimbursed by a manufacturer or other party for the reduction in selling price, the total sales value, including the coupon amount, shall be subject to sales tax. If a retailer accepts a coupon and will not be reimbursed for the reduction in selling price, the reduction shall be considered a discount, and the taxable amount shall be the net amount paid by the customer after deducting the value of the coupon. If a retailer enhances the value of a manufacturer's coupon, the amount of the unreimbursed enhancement shall be treated as a discount that is not subject to sales tax.

(e) For purposes of this regulation, "rebate" shall mean a return of part of the amount paid for a product after the time of sale, which is commonly obtained by sending proof of purchase to the manufacturer. Like manufacturers' coupons, a manufacturer's rebate is a form of payment. Therefore, even if a manufacturer's rebate is assigned to a retailer at the time of sale, the rebate shall not reduce the amount that is subject to sales tax.

(f) Sales of gift certificates, meal cards, or other forms of credit that can be redeemed by the holder for the equivalent cash value shall not be subject to tax when sold. If the certificate or other form of credit is used as a cash equivalent to purchase taxable goods or services, the retailer who redeems the certificate or other form of credit shall charge sales tax on the selling price of the goods or services, which shall not be reduced by the amount of the certificate or other credit being redeemed.

(g) Sales of coupon books and similar materials that entitle the holder to a discount or other price advantage on the purchase of goods or services shall be presumed to have value in addition to the coupons or discounts contained in them and shall be taxable as sales of tangible personal property, except when the sale of this type of book

is by a nonprofit organization that treats the receipts from the sales as a donation. If a coupon is redeemed from a coupon book or other material sold at retail, the retailer who redeems the coupon shall charge sales tax in accordance with the requirements for sales made with coupons that are specified in subsection (d).

(h) If a nonprofit organization treats receipts from the providing of coupon books and similar materials as donations, the nonprofit organization shall be liable for paying sales tax when it purchases the coupon books or other materials that are provided to a donor when a donation is made, unless the organization is otherwise exempted from paying tax on its purchases. If a coupon is redeemed, the retailer who redeems the coupon shall charge sales tax in accordance with the requirements for sales made with coupons that are specified in subsection (d). (Authorized by K.S.A. 2009 Supp. 75-5155 and 79-3618; implementing K.S.A. 2009 Supp. 79-3602 and K.S.A. 2009 Supp. 79-3603 as amended by L. 2010, ch. 160, sec. 1; effective July 27, 2001; amended April 23, 2007; amended April 1, 2011.)

**92-19-16b.** (Authorized by K.S.A. 2005 Supp. 75-5155 and K.S.A. 2005 Supp. 79-3618; implementing K.S.A. 2005 Supp. 79-3602, as amended by L. 2006, Ch. 202, Sec. 1, K.S.A. 2005 Supp. 79-3607, and K.S.A. 2005 Supp. 79-3609; effective April 13, 2007; revoked April 1, 2011.)

**92-19-17.** (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-3602, 79-3603; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; revoked, E-71-21, July 1, 1971; revoked Jan. 1, 1972.)

**92-19-18.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987; amended May 1, 1988; revoked June 26, 1998.)

**92-19-18a. Signs and billboards.** (a) Signs.

(1) The custom fabrication, sale, and installation of a sign shall be a retail sale. The sale shall be subject to sales tax on the full selling price charged to the consumer.

(2) The custom painting, lettering, maintenance, and repair of signs shall be retail sales of taxable services. These sales shall be subject to

sales tax on the full selling price charged to the consumer, whether the sign is on a door, window, building, motor vehicle, trailer, or other real or personal property.

(3) Materials that are used to fabricate, paint, maintain, or repair signs of others shall be exempt from sales tax when purchased by a sign dealer or custom painter since sales tax is required to be collected by the dealer or painter on the full selling price charged to the consumer. Sales to sign dealers and sign painters of tools, equipment, and machinery shall be subject to sales tax at the time of sale.

(b) Billboards.

(1) Sales tax shall not apply to charges for the rental or lease of billboard space, for advertising messages on electronic billboards, or for other advertising exposure time on other types of signs and billboards.

(2) When a billboard advertising company fabricates and erects a billboard, the billboard company's subsequent rental or lease of space on the billboard shall be considered to be a nontaxable advertising service. A billboard advertising company that erects its own billboards and leases billboard space shall be responsible for paying or accruing tax on the materials used to fabricate, erect, and alter the billboard.

(3) When a sign company fabricates and erects a billboard for a third party billboard advertising company that is buying the billboard, the sign company shall collect sales tax on the full selling price. Any subsequent rental or lease of space on the billboard by the billboard advertising company shall be considered to be a nontaxable service.

(c) Portable sign rentals. Sales tax shall apply to rental or lease charges for the use of portable advertising signs. Sales tax shall be collected on the lease and rental charges in the same manner as for other leases and rentals of tangible personal property. (Authorized by K.S.A. 79-3618 and 79-3619; implementing K.S.A. 79-3602, 79-3603, and K.S.A. 79-3619; effective June 26, 1998.)

**92-19-19.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, 79-3603 as amended by L. 1987, Ch. 182, Sec. 108, 79-3608, K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 64, Sec. 1; as further amended by L. 1987, Ch. 292, Sec. 32; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987; amended May 1, 1988; revoked June 26, 1998.)

**92-19-20. Gas, water, certain fuel and electricity.** (a) An exemption for gas, fuel or electricity shall not be allowed when utilized for the purpose of heating, cooling, and lighting buildings or business premises except electricity, gas, fuel and water actually used by hotels and motels in rented rooms taxable under K.S.A. 79-3603.

(b) An exemption for gas, water, fuel, and electricity shall not be allowed when utilized for the purpose of maintaining buildings, business premises, offices, plants, or warehouses except gas, fuel and electricity used for the operation of equipment in the actual process of providing services taxable under K.S.A. 79-3603(e) and (m). The following list is not exclusive but is an indication of the types of equipment and devices exempted when power is used in their operation:

(1) Automatic pinsetters, ball returns, telescope screens and scorer's tables in bowling alleys;

(2) ferris wheels, merry-go-rounds and other carnival rides;

(3) baseball pitching machines if rental fees are charged;

(4) pinball machines;

(5) movie projecting equipment and movie screens in theaters, and other similar devices.

(c) When claiming an exemption, the following procedures and conditions shall apply:

(1) When gas, electricity, or water is furnished through one meter for both taxable and exempt purposes, the taxpayer shall have the burden of establishing the exempt portion or percentage of the gas, water or electricity.

(2) The purchaser shall furnish the supplier a statement to enable the supplier to determine the percentage of the gas, water and electricity subject to exemption under K.S.A. 79-3606(f) and (n). The formula and computations used in determining the exemption shall be available for inspection any time by the department of revenue.

(3) The purchaser shall file a revised exemption statement with the supplier when the percentage used in processing tangible personal property changes.

(d) Tax is due on each payment for taxable gas, water, and electricity whether in the form of a minimum charge, a flat rate, or otherwise, and regardless if there is actual consumption.

(e) When an owner or operator of an office building or apartment house purchases gas, water, or electricity through a single meter, and remeters the gas, water, and electricity to their tenants through private meters, the owner or operator is

deemed the final user or consumer of the gas, water, and electricity and shall pay the tax on all bills rendered on these utilities. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1985 Supp. 79-3602, 79-3603 as amended by L. 1985, Ch. 386, Sec. 1, 79-3606 as amended by L. 1985, Ch. 384, Sec. 1, 79-3608; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; amended, E-71-21, July 1, 1971; amended Jan. 1, 1972; amended May 1, 1987.)

**92-19-21. Meals or drinks.** (a) Each boardinghouse shall pay the tax on their purchases of food and other supplies. When a boardinghouse serves meals only to persons regularly boarding there and not to the public, sales of these meals are not taxable. However, if a boardinghouse holds itself out as ready and willing to serve meals to the public, the sale of each meal shall be taxable.

(b) When meals are furnished by employers to employees and a charge is made, the employer must remit the tax on the price of the sales. When meals are finished by employers to employees at no charge, the furnishing of meals does not constitute a sale and is not taxable.

(c) When a private or public elementary or secondary school, or a public or private nonprofit educational institution operates its lunch room, cafeteria, or dining room for the purpose of providing meals for its respective students or teachers, the school or institution shall not be considered to be engaged in the business of regularly selling meals or drinks to the public and shall not collect or remit tax on these sales.

When a public or private elementary or secondary school or a public or private nonprofit educational institution makes its cafeteria, lunch room, or dining room available for use by the general public, the school or institution shall be considered to be in the business of conducting a place in which meals or drinks are regularly sold to the public, and shall collect and remit the sales tax. A caterer or concessionaire operating a cafeteria, lunch or dining room on the premises of any public or private elementary or secondary school or public or private nonprofit educational institution shall collect and remit sales tax.

(d) When a public or private nonprofit hospital operates a lunch room, cafeteria, or dining room for the exclusive purpose of providing meals for its respective employees and staff the hospital shall not be considered to be engaged in conducting a place where meals or drinks are regularly sold to

the public and shall not collect and remit tax on these sales.

When a public or private nonprofit hospital makes its cafeteria, lunch room, or dining room available for use by the general public, the hospital shall be considered to be in the business of conducting a place where meals or drinks are regularly sold to the public and shall collect and remit the sales tax. Caterers or concessionaires operating cafeterias, lunch, or dining rooms on the premises of any public or private nonprofit hospital shall collect and remit sales tax.

(e) The sale of a meal or other tangible personal property, consumed or not, while on a railway train or a dining car operated in or through Kansas, is deemed a sale at retail. Gross receipts from the sale of meals or other tangible personal property are taxable if the meals or tangible personal property are ordered within the boundaries of Kansas. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1985 Supp. 79-3602, 79-3603 as amended by L. 1986, Ch. 386, Sec. 1; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1975; amended May 1, 1987.)

**92-19-22.** (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-3602, 79-3603; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; revoked Dec. 13, 2002.)

**92-19-22a. Admissions.** (a) Definitions. For purposes of taxing the receipts received from the sale of admissions, the following definitions shall apply:

(1) "Admission" shall mean a right or privilege that allows a person access to, seating in, or use of a place of entertainment, amusement, or recreation. The person who gains admission may have a right to observe something or to participate in an activity.

(2) "Receipts from sales of admissions" shall mean the consideration received from charges paid for admission, including any charges for seating accommodation. This term shall include ticket charges, season ticket charges, gate charges, surcharges, cover charges, sky box charges, reserved seat charges, seating preference charges, and all other similar charges.

(3) "Place" shall mean any area with an exterior boundary that is defined by walls or fences, or in any other manner that allows the area to be readily

recognized and distinguished from the adjoining or surrounding property. This term shall include buildings, fenced enclosures, and areas delimited by posted signs or flags.

(4) "Place of amusement, entertainment, or recreation" shall mean any place where a show, sporting event, or exhibition takes place. This term shall include auditoriums; racetracks; street fairs; festival sites; historic sites; sites of athletic events or musical performances; dance halls; skating rinks; rodeo grounds; exhibition sites, including antique and flea markets, gun shows, boat shows, home shows, and similar exhibition events for retailers, manufacturers, or others; theaters; planetariums; zoos; bars; restaurants; museums; art galleries; lecture sites; fairgrounds; carnival sites; fishing lakes; skeet ranges; and all other similar venues.

(5) "Recreation" shall mean any diversion that restores or refreshes strength and spirit. This term shall include both active and passive pursuits, including watching baseball and visiting an art gallery or museum.

(b) Admission charges that shall be subject to sales tax shall include charges for the following:

(1) Admission to places of amusement, entertainment, or recreation;

(2) admission to athletic events, lectures, plays, concerts, and other forms of entertainment sponsored by public or private elementary or secondary schools or by public or private educational institutions in Kansas;

(3) admission to any state, county, district, or local fair in Kansas;

(4) admission to private parks, campgrounds, and other recreation areas;

(5) admission gained by tickets that are bartered or given by a promoter or another party for services or something else of value; and

(6) sightseeing rides or tours on buses, aircraft, boats, trains, or other forms of transportation. If a ride or tour is advertised or otherwise held out as being primarily for sightseeing or entertainment, the charge shall be considered to be for a recreational activity rather than for a transportation service.

(c) Admissions and charges that shall not be subject to sales tax shall include the following:

(1) Free admissions;

(2) charges for instructional seminars required to meet professional continuing education requirements;

(3) charges paid to nonprofit groups for admission to an event operated within the isolated or occasional sale limitations;

(4) charges for admission to any cultural and historical event that occurs once every three years;

(5) charges paid to nonprofit homeowners associations by members for use and maintenance of the association's recreational facilities, if membership is limited to a specified development, subdivision, or area and the facility is operated for the benefit of the property owners or their tenants;

(6) charges for instruction lessons conducted at a facility, if the charges are exclusively for the instruction lessons and include the use of the facility only during the period of time that the lessons take place;

(7) charges for admission to federal, state, city, or county parks, campgrounds, and recreation areas; and

(8) charges for church camps and religious retreats that are being operated exclusively for religious purposes and are exempt under K.S.A. 79-3606, and amendments thereto.

(d) If admission charges to a place in Kansas are taxable, Kansas sales tax shall be collected and remitted regardless of whether the admission ticket is sold within or without the state of Kansas.

(e) If a person or organization acquires the sole right to use a facility or the right to all of the admissions to any place for one or more occasions, the amount paid for the right shall not be subject to sales tax as an admission. The transaction shall be treated as a rental of real property. However, any admission charge made by the person or organization that acquired the right to use the facility shall be taxable.

(f) Each retailer shall report the sale of an admission ticket during the reporting period in which the ticket is sold. No sales tax refund or credit shall be allowed for nonuse of a ticket or other admission charge, unless the selling price of the ticket is also refunded.

(g)(1) An exemption for gas, fuel, or electricity shall not be allowed if the gas, fuel, or electricity is utilized for heating, cooling, or lighting a building or other area where admission is gained.

(2) An exemption shall not be allowed for water, cleaning supplies, toilet supplies, sanitary supplies, and other consumables and supplies used to furnish and maintain a building or other area where admission is gained so that the building or other area is fit for public occupancy as a place of entertainment. These exemptions shall not be allowed regardless of whether the business that owns the building or other area where admission is gained meets either of the following conditions:

(A) Rents or leases the building or premises as real property for use by the lessee; or

(B) charges taxable admission to consumers to enter and use the building or other property. (Authorized by K.S.A. 2005 Supp. 75-5155 and K.S.A. 2005 Supp. 79-3618; implementing K.S.A. 2005 Supp. 79-3602, K.S.A. 2005 Supp. 79-3603, and K.S.A. 2005 Supp. 79-3606; effective Dec. 13, 2002; amended March 24, 2006.)

**92-19-22b. Charges for participation in recreational activities.** (a) Definitions. For purposes of taxing the fees and charges received for participation in sports, games, and other recreational activities, the following definitions shall apply:

(1) "Sports, games, and other recreational activities" shall mean diversions that restore or refresh strength and spirits by means of pastime, exercise, or similar activities that involve strength, speed, dexterity, stamina, or training. These activities shall include golf, pool, billiards, skating, bowling, swimming, skiing, baseball, softball, basketball, volleyball, racquetball, handball, squash, tennis, carnival rides, motor sports, batting practice, skeet, trap, target shooting, horse riding, pinball, darts, electronic games, physical fitness services, and all other similar activities.

(2) "Physical fitness services" shall include exercise classes, whether aerobic, dance, water, jazzercise, or other type; the provision of equipment for weight lifting and training; the provision of exercise equipment, including treadmills, bicycles, stairstep machines, and rowing machines; the provision of running tracks; and the provision of all other similar equipment or facilities. "Physical fitness services" shall not include instructional lessons including those for self-defense, martial arts, yoga, stress management, tennis, golf, and swimming. "Instructional lessons" can be distinguished from "exercise classes" in that instruction about the activity is the primary focus in the former and exercise is the primary focus in the latter.

(3) "Entry fees" shall mean payments that allow a person or team the right to or privilege of entering and participating in a tournament or other type of competition.

(4) "League fees" shall mean payments that allow a person or a person's team to join an association of sports teams or clubs that compete chiefly among themselves and to participate in the underlying sport or other recreational activity.

(b) Charges for participation in sports, games, and other recreational activities shall be consid-

ered to be charges for the right or privilege to participate in them. Taxable receipts for participation in sports, games, and other recreational activities shall include all fees or charges, including entry fees and league fees.

(c) The following receipts for participation in sports, games, and other recreational activities shall not be subject to sales tax:

(1) Fees and charges by any political subdivision, green fees charged by municipal golf courses, entry fees, league fees, and other participant fees charged by park and recreation departments;

(2) fees and charges by Boy Scouts, Girl Scouts, YMCA, YWCA, and any other organization that is exempt from property taxation pursuant to paragraph *Ninth* of K.S.A. 79-201, and amendments thereto;

(3) fees and charges for participation in sports, games, and other recreational activities by any youth recreation organization that provides services exclusively to persons 18 years of age or younger and that is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986;

(4) fees and charges for participation in automobile races sponsored by a national racing association and any other similar entry fees and charges to special events or tournaments sanctioned by a national sporting association to which spectators are charged an admission that is taxable pursuant to K.A.R. 92-19-22a; and

(5) charges for instructional lessons in sports, arts, and crafts.

(d)(1) An exemption for gas, fuel, or electricity shall not be allowed if the gas, fuel, or electricity is utilized for heating, cooling, or lighting a building or business premises where sports, games, or recreational activities are conducted. An exemption shall not be allowed for water, cleaning supplies, toilet supplies, sanitary supplies, and other consumables and supplies used to furnish and maintain a building or business premises so that the business premises or building is fit for public occupancy as a place where sports, games, or recreational activities are conducted.

(2) An exemption shall be allowed for electricity or fuel that powers a machine that provides amusement or recreation and that directly interacts with the person who pays for the time-limited, interactive service that is being provided by the machine. This exemption shall include the following:

(A) Automatic pinsetters, ball returns, telescore screens, and scorers' tables in bowling alleys;

(B) Ferris wheels, merry-go-rounds, and other carnival rides;

(C) baseball pitching machines, if rental fees are charged;

(D) pinball machines; and

(E) movie projection devices in movie theatres. The exemption for electricity consumed by machines that provide time-limited, interactive services shall be determined in accordance with K.A.R. 92-19-20. (Authorized by K.S.A. 2001 Supp. 79-3618; implementing K.S.A. 2001 Supp. 79-3602, K.S.A. 2001 Supp. 79-3603, as amended by L. 2002, ch. 185, sec. 6, and K.S.A. 2001 Supp. 79-3606; effective Dec. 13, 2002.)

**92-19-23.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; revoked Dec. 13, 2002.)

**92-19-23a. Coin-operated devices, including vending machines.** (a) Except for laundry services, retailers shall collect state and local sales tax on the taxable sales of property, amusement, and services made through coin-operated devices.

(b)(1) For purposes of this regulation, “coin-operated device” shall be deemed to include vending machines and other devices that operate when activated by coins, paper money, credit cards, tokens, or similar payment or representation of monetary payment.

(2) Coin-operated devices shall include machines that dispense food, candy, drinks, or items of tangible personal property, including photocopies; that provide amusement and diversion; or that provide taxable services. Coin-operated devices that provide amusement and diversion shall include jukeboxes, pinball machines, pool tables, foosball tables, dart games, video games, and similar devices.

(3) State and local sales taxes shall be collected on coin-operated devices used for playing games of chance, except for devices that are being lawfully operated for gambling under the Kansas lottery act, Kansas parimutuel racing act, or federal Indian gaming laws. Sales tax shall be collected on the gross receipts from these devices, and no deductions shall be allowed for any money, credits, or property awarded as prizes.

(c) Each business’s receipts taken from a

coin-operated machine shall represent a tax-included amount. To calculate the gross receipts from a tax-included amount, the total amount of receipts taken from the device shall be divided by one plus the sum of the state and local sales tax rates, stated as a decimal. The result of this calculation shall be the gross receipts that are reported on tax returns as the gross receipts from the coin-operated device that are subject to state and local sales tax. A business that operates coin-operated devices shall not deduct commissions or any other payment made to businesses upon whose premises the devices are located.

(d) Any business that operates vending machines or other coin-operated devices at different locations may secure a single registration certificate and file a single consolidated return for all of these devices. Local sales tax shall be due based on the location of each device. Each business that requests to file a consolidated return in this manner shall submit a list with its written request that shows the location of each device, its serial number, and the type of property or service being sold or provided by the device. The business shall maintain a current list of device locations at its place of business, which shall be available to the department for inspection during normal business hours.

(e) Registered retailers, including taverns and bars, that operate coin-operated devices on their premises and account for the total receipts from the devices may report these receipts on their regular returns as tax-included receipts rather than securing a separate registration certificate.

(f) Receipts from car and truck washes shall be subject to tax, regardless of whether the washing and waxing services are performed by employees or by manual or automatic machines and whether the machines are coin-operated.

(g) Receipts from coin-operated laundry machines, including clothes washers and dryers, shall be exempt from sales tax. (Authorized by K.S.A. 2001 Supp. 79-3618; implementing K.S.A. 2001 Supp. 79-3603, as amended by L. 2002, ch. 185, sec. 6; effective Dec. 13, 2002.)

**92-19-24. Renting of rooms by hotels; taxable property and services.** (a) Sales tax shall be imposed on the total gross receipts received from the rental of rooms by hotels as defined in K.S.A. 36-501 and amendments thereto. Accommodations generally referred to as “sleeping rooms” shall be subject to sales tax. Each rental of a hotel sleeping room shall be subject to sales

tax regardless of the length of time for which the room is rented. The transient guest tax exemption for hotel rooms rented for more than 28 consecutive days shall not apply to the sales tax imposition. Sales tax shall not apply to rentals of ballrooms, banquet rooms, reception rooms, meeting rooms, and office space.

(b) Each hotel shall be deemed to be the consumer of all items that are not for resale and that are used to conduct the hotel's business. Each hotel shall pay sales tax on each purchase of tangible personal property and taxable services, unless specifically exempted by statute. Hotel purchases of beds, linens, towels, furniture, equipment, appliances, glass cups and ashtrays, and cable television services shall be subject to sales tax. Items that are used in the hotel room by the guest and that are disposable in nature, including toilet tissue, facial tissue, and soap and shampoo for the guest's personal use, shall be considered a component of the service of hotel room rental, and shall be exempt from sales tax.

(c) Services of installing, applying, repairing, servicing, maintaining, or altering the hotel's physical plant, including the equipment, shall be taxable.

(d) Each hotel may purchase, exempt from sales tax, premium cable television service channels that are separately billed to the guest. Each hotel shall collect sales tax for the cable television services billed by the hotel to the guest.

(e) Electricity, gas, fuel, and water actually used by a hotel in sleeping rooms shall be exempt from sales tax. The exemption shall not apply to electricity, gas, fuel, and water consumed in a hotel's common areas, parking lots, offices, swimming pools, ballrooms, banquet rooms, reception rooms, meeting rooms, and other areas that are either not rented by the hotel or whose rental charges are not taxed under the act. If electricity, gas, fuel, or water is furnished through one meter, the hotel shall furnish the utility with a statement showing the electricity, gas, fuel, or water actually used in the rented sleeping rooms of the hotel so the utility can determine the percentage of electricity, gas, fuel, or water that is taxable. Each hotel shall make available to the department of revenue the formula and computations used to determine the exemption.

(f) Receipts from providing laundry services, dry cleaning, and valet services shall be taxable. If a hotel sends a guest's clothing out to a third-party cleaner, the hotel may purchase the cleaning ex-

empt from sales tax for resale purposes, and shall include the charge and sales tax on the guest's bill.

(g) Each hotel purchasing water, soap, solvents, and other cleaning materials for the hotel's own use in cleaning or maintaining guest rooms, swimming pools, and other areas of the hotel shall be subject to sales tax. (Authorized by K.S.A. 2000 Supp. 79-3618; implementing K.S.A. 2000 Supp. 79-3602, K.S.A. 2000 Supp. 79-3603 as amended by SB 1, Sec. 1 and as further amended by SB 322, Sec. 2, K.S.A. 2000 Supp. 79-3606 as amended by HB 2029, Sec. 1 and as further amended by SB 332, Sec. 3; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987; amended May 1, 1988; amended July 27, 2001.)

**92-19-25.** (Authorized by K.S.A. 79-3609, 79-3610, 79-3611, 79-3618, K.S.A. 1971 Supp. 79-3602, 79-3603; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; revoked May 1, 1987.)

**92-19-25a.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3609, 79-3610, 79-3611, K.S.A. 1985 Supp. 79-3602, 79-3603 as amended by L. 1986, Ch. 386, Sec. 1; effective May 1, 1987; revoked June 26, 1998.)

**92-19-25b. Exemption certificates.** (a) All retail sales shall be presumed to be taxable. The burden of proving that a sale is exempt from tax shall be on the vendor, unless the vendor takes an exemption certificate from the purchaser in good faith.

(b) A vendor shall be deemed to have accepted an exemption certificate in good faith when the vendor maintains the completed certificate as part of its records, has ascertained the identity of the person or entity who presents the certificate, and has not been shown by the department by a preponderance of evidence to have had knowledge that the presentation of the certificate was improper.

(c) Exemption certificates shall substantially comply with the following format:

**KANSAS EXEMPTION CERTIFICATE**

I certify that the sale of tangible personal property or service by:

\_\_\_\_\_  
(Vendor's name)

\_\_\_\_\_  
of \_\_\_\_\_, Kansas, to me or to

the entity that I represent is exempt from the tax levied by the Kansas retailers' sales and compensating tax act for the following reasons:

\_\_\_\_\_

As purchaser, I understand and agree that if the property or service is used in any manner that is not exempt from tax under the act, the entity that I represent becomes liable for the tax, as do I personally.

Date: \_\_\_\_\_

Purchaser: \_\_\_\_\_  
(Signature and SSN or FEIN)

Name of the entity: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

(d) Each exemption certificate issued by a non-profit entity claiming an exemption shall contain the name and address of the entity; identify the subsection of K.S.A. 79-3606, and amendments thereto, under which the exemption is claimed; be signed by an officer, office manager, or other administrator of the entity; and contain the drivers license number of the signer. As a condition of honoring these exemption claims, a vendor may require that payment be made on the entity's check, warrant, or voucher, or be charged to the entity's account.

(e) A resale exemption certificate may be issued by a registered retailer to claim exemption from tax for purchases of property or services that the retailer intends to resell on the normal course of business or that the retailer is unable to determine will be resold or used by the retailer for some other purpose. Resale exemption certificates shall substantially comply with the following format:

**KANSAS RESELLER EXEMPTION CERTIFICATE**

\_\_\_\_\_  
(Name of purchaser)

\_\_\_\_\_

\_\_\_\_\_  
(Address of purchaser)

\_\_\_\_\_

I hereby certify that: I hold valid retailer registration No. \_\_\_\_\_ issued pursuant to the Kansas sales and compensating tax law:

I am engaged in the business of selling:

\_\_\_\_\_

\_\_\_\_\_;

The tangible personal property described here-in which I shall purchase from:

\_\_\_\_\_  
(Vendor's name)

will be resold by me in the form of tangible personal property;

I further agree that, if any of the property is used for any purpose other than retention, demonstration, or display while holding it for resale in the regular course of business, I will report and pay Kansas state and local sales tax to the Kansas Department of Revenue, based on the amount that I paid for the property.

Description of property to be purchased:

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature of purchaser or authorized agent and SSN or FEIN)

(f) Each purchaser claiming a resale exemption shall complete the certificate either by listing the particular property claimed to be for resale or by describing the types of property that are resold in the normal course of the purchaser's business. When a purchaser buys property for resale that is not of the type normally resold in the purchaser's line of business, the vendor may require the purchaser to issue a separate resale exemption certificate that lists the property and states that it is being purchased for resale. A vendor may require a purchaser to provide a copy of its registration certificate as a condition for honoring a resale exemption certificate.

(g) Vendors shall keep a record of each exempt sale of property or services made, showing the date, amount, consumer's name and address, item or service sold, and other pertinent information needed to support each deduction taken on a return. Each vendor shall make such records and exemption certificates available to the department for inspection. Each exemption certificate shall be retained by the vendor for at least three years after the end of the year in which the certificate was last honored or until the final determination of any audit or assessment that includes a period during which the certificate was honored. (Authorized by K.S.A. 79-3606, 79-3618; implementing K.S.A. 79-3602, 79-3603, 79-3609, 79-3610, 79-3611; effective June 26, 1998.)

**92-19-26.** (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-3606; effective, E-70-33,

July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; revoked May 1, 1987.)

**92-19-27.** (Authorized by K.S.A. 79-3608, K.S.A. 1973 Supp. 79-3602, 79-3618; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended Jan. 1, 1974; revoked May 1, 1987.)

**92-19-27a.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3608, K.S.A. 1985 Supp. 79-3602; effective May 1, 1987; revoked June 26, 1998.)

**92-19-28. Motor carriers.** Sales of tangible personal property or services to any motor carrier engaged in the transportation of persons or property in interstate common-carrier transportation are subject to the Kansas retailers' sales tax in the same manner as are sales to other firms, persons or corporations except as follows:

(a) Sales of rolling stock, including busses and trailers to each motor carrier qualifying as a public utility and engaged in either interstate commerce exclusively or interstate commerce and intrastate commerce, and the rolling stock are immediately and directly used in interstate commerce are exempt. The rolling stock may be temporarily stored within the state until it is directly and immediately consumed in interstate commerce. However, charges for labor services rendered to common carriers authorized to engage in interstate commerce by the interstate commerce commission for the servicing, maintenance, or repair of rolling stock including busses and trailers are taxable.

(b) Sales of all repair parts and replacement materials or parts to each motor carrier qualifying as a public utility, engaged in either interstate commerce exclusively or interstate commerce and intrastate commerce, when the repair parts and replacement material or parts are immediately and directly used in interstate commerce are exempt. The repair parts and replacement materials or parts may be temporarily stored within the state until they are directly or immediately consumed exclusively in interstate commerce.

(c) Sales of gasoline, distillate and other motor fuels to each motor carrier qualifying as a public utility, engaged in either interstate commerce exclusively or interstate commerce and intrastate commerce when the gasoline, distillate and other petroleum products are immediately and directly used in interstate commerce are exempt. The gasoline, distillate and other motor fuels may be

temporarily stored within the state until it is directly and immediately consumed in interstate commerce. (Authorized by K.S.A. 79-3618, K.S.A. 1986 Supp. 79-3602, 79-3603 as amended by L. 1987, Ch. 182, Sec. 108, 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988.)

**92-19-29. Sales in interstate commerce.** When tangible personal property is sold within the state and the seller is obligated to deliver it to a point outside the state or to deliver it to a carrier or to the mails for transportation to a point without the state, the retail sales tax does not apply: *Provided*, The property is not returned to a point within this state. The most acceptable proof of transportation outside the state will be:

(a) A waybill or bill of lading made out to the seller's order calling for delivery; or

(b) An insurance or registry receipt issued by the United States postal department, or a post office department's receipt; or

(c) A trip sheet signed by the seller's delivery agent and showing the signature and address of the person outside the state who received the delivered goods.

However, where tangible personal property pursuant to a sale is delivered in this state to the buyer or his agent other than a common carrier, the sales tax applies, notwithstanding that the buyer may subsequently transport the property out of this state. (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-3602, 79-3606; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

**92-19-30. Motor vehicles or trailers; isolated or occasional sale.** (a)(1) An isolated or occasional sale of motor vehicle or trailer is a sale made between private individuals or other entities who, at the time of the sale, are not retailers registered to collect and remit sales or use tax on the sale of such a vehicle or trailer.

(2) Kansas motor vehicle dealers and trailer dealers are retailers and cannot make isolated or occasional sales of vehicles or trailers. These dealers shall collect sales tax at the time of the sale on each taxable retail sale of a motor vehicle or trailer.

(b)(1) Unless a sale is one that is excepted from the imposition of sales tax by K.S.A. 79-3603(o)

or exempted from tax under K.S.A. 79-3606, and amendments thereto, sales tax shall be levied on the isolated or occasional sale of a motor vehicle or trailer. Tax on the isolated or occasional sale of a motor vehicle or trailer shall be paid to the county treasurer when the purchaser or other transferee applies for a certificate of title or a certificate of title and registration or to the director of taxation, as provided in paragraph (c)(3).

(2) When a person who has acquired a vehicle in an isolated or occasional sales transaction applies for a certificate of title or certificate of title and registration, the county treasurer shall collect the sales tax that is due along with a service fee of 50 cents, and give the applicant a receipt for the tax and fee paid. A certificate of title or certificate of title and registration shall not be issued until the transferee pays the tax and applicable fee or proves to the satisfaction of the county treasurer or the director of taxation that the transfer is not taxable.

(c)(1) County treasurers shall be assisted by the director of taxation or director of vehicles in determining whether or not a transaction is taxable or exempt. Refusal to issue a certificate of title or certificate of title and registration for a vehicle may be requested by the director of taxation or director of vehicles until sales tax is paid. Sales tax shall be collected by a county treasurer if any doubt exists as to an applicant's exemption claim. An applicant who pays sales tax may file a refund claim with the director of taxation if the applicant believes the tax has been erroneously collected by county treasurer or department of revenue.

(2) Each determination made by a county treasurer to exempt an isolated or occasional sale may be reviewed by the director of taxation. Following this review, a sales tax assessment may be issued to the vehicle registrant for any sales tax that is unpaid or underpaid because of clerical error, misinformation, or other cause.

(3) Any sales tax that is finally determined to be due under an assessment shall be paid to the director of taxation. Payment of sales or use tax on isolated or occasional sales of motor vehicles or trailers may be made to the director of taxation instead of the county treasurer, as provided in paragraph (b)(1), to correct any other underpayment or as an accommodation to the taxpayer.

(d) As a general rule, the base for computing the tax shall be the actual selling price of the vehicle. However, the tax shall be computed on the fair market value of the vehicle by the county trea-

surer or the director of taxation under either of the following circumstances:

(1) The selling price of the vehicle is unknown; or

(2) the stated selling price is not indicative of, and bears no reasonable relationship to, the fair market value of the vehicle or the average retail value as shown in the latest publication of the national automobile dealers' association official used car guide book.

(e) The actual selling price shall be the base for computing the tax on the sale of wrecked or damaged vehicles.

(f)(1) "Sale" or "sales" means the exchange of property, a sale for money, and every other transaction in which consideration is given, whether conditional or otherwise.

(2) "Vehicle" means motor vehicle or trailer.

(3) "Transferor" means the seller, donor, or other person who sells, gives away, or otherwise parts with the vehicle.

(4) "Transferee" means the purchaser, donee, or other person who purchases, is given, or otherwise acquires ownership of the vehicle.

(g) K.S.A. 79-3603(o), and amendments thereto, which imposes sales tax on isolated or occasional sale of trailers and motor vehicles, excepts the following transfers or sales from the tax imposition on these isolated or occasional sales:

(1) Transfers by an individual to a corporation solely in exchange for stock in the corporation;

(2) transfers from one corporation to another corporation when done as part of the transfer of all the corporate assets; and

(3) sales of automobiles, light trucks, trailers or motorcycles between immediate family members.

(h) "Immediate family member" is any person in a class that is defined by statute to mean lineal ascendants and descendants and their spouses. Since a person may have lineal ascendants and descendants and may also be the spouse of someone who has lineal ascendants and descendants, this class includes the grandfather, grandmother, father, mother, son, daughter, and adopted child of the person; the spouses of these ascendants and descendants; the grandfather, grandmother, father, mother, son, daughter, and adopted child of the person's spouse; and any other ascendants and descendants that are further removed, including great-grandparents and great-grandchildren. The sale or transfer of an automobile, light truck, trailer or motorcycle between members of this class shall be exempt from sales tax.

(i) Certain transfers of motor vehicles or trailers are not sales, as defined in paragraph (f)(1), and shall not be taxed. These include name changes, transfers by gift, and certain transfers made by operation of law. The following rules shall apply to these transfers.

(1) A transfer shall be presumed to be a gift when the transferee is the spouse, mother, father, brother, sister, child, grandmother or grandfather, aunt, uncle, niece, or nephew of the transferor and money is not exchanged for the vehicle. A gift shall also be presumed when these relatives trade or exchange vehicles and money is not exchanged as part of the trade or exchange. However, if money is exchanged for the vehicle, the transfer shall be taxable, unless the sale is exempted as set forth in subsection (h).

(2) A vehicle transfer by gift is not a sale and shall not be taxed. To qualify as a gift, the vehicle shall be given without any consideration and with an intention on the part of the donor that the transfer is a gift. When the relationship of the parties is not one of the relationships set forth above in paragraph (i)(1), the transferee claiming the transfer is a gift shall submit proof of this claim to the satisfaction of the county treasurer or director of taxation.

(3) The change of an owner's name on the title when there is no actual transfer of vehicle ownership to a different person or entity is not a sale and shall not be taxed. However, the transfer of a motor vehicle or trailer from a corporation to an individual shall be taxed since there is a change of ownership from one legal entity to another. The vehicle transfer shall be presumed to be the corporation's payment of a wage, dividend, bonus, or other benefit to the officer, employee, shareholder, or other transferee.

(4) A transfer to an heir or legatee by will or pursuant to the inheritance or intestacy laws of a state is not a sale and shall not be taxed. A certified copy of the probate court order making the distribution shall be filed with the county treasurer.

(5) The sale to a person who takes title to a vehicle with the intention of transferring it to the winner of a drawing or raffle shall be taxed. The subsequent transfer of the vehicle to the winner of a drawing or raffle is a gift from the donor to the winner and shall not be taxed. When a donor pays a motor vehicle dealer for a vehicle and the vehicle is transferred from the dealer directly to the winner of a drawing or raffle, the gift is considered to be the payment made for the automobile

rather than the automobile itself, and the winner shall be liable for the sales tax that is charged by the dealer on the vehicle sale. Whenever a vehicle is won as a prize and sales tax has not been paid by either the vehicle donor or vehicle winner to this state or another state, the winner shall pay Kansas sales or use tax when the vehicle is registered with the county treasurer.

(6) When the title to a vehicle is transferred to the holder of an encumbrance as a result of repossession under the terms of a written agreement entered into at the time of original purchase by the purchaser and encumbrance holder, the transfer is not a sale and shall not be taxed. However, any registration or subsequent sale of the vehicle by the encumbrance holder shall be taxed.

(7) When a lender grants a debtor permission to redeem a vehicle pursuant to K.S.A. 84-9-506, and amendments thereto, the redemption of the vehicle by the debtor is not a sale and shall not be taxed.

(8) When a lien holder acquires title to a vehicle through a court-ordered foreclosure of a mechanic's lien, landlord's lien, storage lien, or other statutory lien, the transfer of title to the lien holder shall be exempt if the lien holder does not register the vehicle. However, any registration or subsequent sale of the vehicle by the lien holder shall be taxed. The redemption of a vehicle from a lien holder by a debtor who satisfies the underlying debt is not a sale and shall not be taxed.

(j) The following transfers shall be considered sales, and shall be subject to sales tax.

(1) K.S.A. 79-3602(h)(2), and amendments thereto, allows a credit or discount for a vehicle that is traded for another vehicle. When vehicles of different value are traded by private individuals, the person who pays cash or tenders some other consideration in addition to the vehicle being traded or exchanged shall pay sales tax on the amount of the cash payment or on the fair market value of the consideration. In this trade, sales tax shall not be due from the person who traded or exchanged a vehicle but did not pay any additional cash or provide any additional consideration. Each person claiming a sales tax credit or discount for a vehicle that is traded shall file an affidavit with the county treasurer on a form furnished by the department of revenue that contains information necessary to support the credit or discount being claimed.

When the stated cash amount or stated value of the other consideration is not indicative of, and

bears no reasonable relationship to, the difference between the fair market value of the vehicle traded and the fair market value of the vehicle received by the purchaser, the tax shall be computed by the county treasurer or the director of taxation on the difference between the fair market value of the vehicles or the difference between the average retail value of the vehicles as shown in the latest publication of the national automobile dealers' association official used car guide book.

(2) The purchase of a vehicle that the purchaser intends to give to someone else shall be taxed, even though tax is not due on the subsequent transfer from the purchaser to the donee.

(3) A transfer of a vehicle from a partner to the partnership or from a partnership to a partner shall be presumed to be a taxable transfer. A transfer from the partner to the partnership shall be presumed to be made in consideration of an increased partnership interest. A transfer from the partnership to the partner shall be presumed to be made for services rendered to the partnership or for other value passing between the partner and the partnership.

(4) If a donor gives a donee a gift of cash or other property for the purpose of purchasing a vehicle, the donee shall be liable for the tax, if the vehicle is purchased.

(5) The transfer of a vehicle in exchange for the transferee's assumption of an obligation to pay all or part of an encumbrance on the vehicle is a sale and shall be taxed, unless the sale is between immediate family members or is exempt under K.S.A. 79-3606, and amendments thereto. When the transfer does not involve a gift and is not otherwise exempt, the tax base shall be the sum of any payment made by the buyer to the seller plus the amount of the encumbrance being assumed. Sales tax shall be computed as set forth in subsection (d) of this regulation if this amount is not indicative of, or bears no reasonable relationship to the fair market value of the vehicle. When the transfer represents a gift of part of the value of the vehicle that has been established in accordance with paragraphs (i)(1) or (i)(2) of this regulation and is not otherwise exempt, the tax base shall be the sum of any payments made by the buyer to the seller plus the amount of the encumbrance being assumed, regardless of the fair market value of the vehicle.

(6) When a vehicle is purchased to replace a vehicle that has been stolen or destroyed by accident, fire, or other adversity, the purchase of

the replacement vehicle is not exempt and shall be taxed. Each purchase of a replacement vehicle shall be taxed whether the replacement vehicle is purchased by the owner of the vehicle that was stolen or destroyed or by an insurance company that is obligated to provide a replacement vehicle.

(7) A transfer of a vehicle from a corporation to an officer, shareholder, board member, or employee shall be presumed to be a taxable transfer and shall be presumed to be made in consideration for services rendered to the corporation or for other value passing between the corporation and transferee.

(k)(1) Each transferee claiming exemption shall complete an affidavit form furnished by the department of revenue and file it with the county treasurer when the vehicle is registered. The exemption affidavit shall be completed in its entirety and shall contain the names, addresses, and telephone numbers of the transferor and transferee; the make, year, model and body style of the motor vehicle or trailer; and any additional information that is needed to support the exemption claim. The affidavit shall contain facts in detail sufficient to clearly bring the transferee within the exemption being claimed.

(2) Each transferee claiming a family relationship as the basis for the exemption of a vehicle sale or as the basis for the presumption of a gift may be required to file an additional affidavit that establishes the relationship.

(3) Exemption affidavits that are not correct in both substance and form shall not be accepted by the county treasurer, and the tax shall be collected if any doubt exists as to the validity of the exemption claim.

(4) Any taxpayer may file a refund claim with the director of taxation if the taxpayer believes the tax has been erroneously collected by the county treasurer or the director.

(l)(1) When a motor vehicle or trailer is purchased out of state in an isolated or occasional sale, the purchaser shall pay Kansas state and local use tax to the county treasurer upon application for a certificate of title or certificate of title and registration. When a motor vehicle or trailer is purchased from an out-of-state dealer who is not registered to collect and remit Kansas state and local retailers' use tax and has not collected sales tax on the sale for the state of purchase, the purchaser shall pay Kansas state and local use tax to the county treasurer upon application for a certificate of title or certificate of title and registration.

(2) When the purchaser has paid state and local sales tax to another state at a rate that is less than Kansas state and local use tax rates where the vehicle is registered, the purchaser shall pay Kansas state and local use tax to the county treasurer at a rate that is equal to the difference between the combined state and local tax rates for the Kansas location and the combined state and local tax rates that were used to determine the tax paid to the other state. (Authorized by K.S.A. 8-132, 79-3618; implementing K.S.A. 8-132, K.S.A. 79-3602, 79-3603, 79-3604; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987; amended June 26, 1998.)

**92-19-30a. Motor vehicles or trailers.**

Sales tax shall be imposed on the total selling price of each motor vehicle or trailer to the ultimate user or consumer. The total selling price includes all tangible personal property mounted, installed, applied or otherwise attached or affixed to the motor vehicle or trailer. For sales tax purposes, tangible personal property is not separable from the motor vehicle or trailer to which it is mounted, installed, applied or otherwise attached or affixed.

When calculating sales tax on the retail sale of a motor vehicle or trailer, the retailer shall not exclude or deduct for the tangible personal property, regardless of how any contract, invoice or other evidence of the transaction is stated or computed, and whether separately charged or segregated on the same contract or invoice. Any charge attributed to the tangible personal property mounted, installed, applied or otherwise attached or affixed to a motor vehicle or trailer cannot be separately billed or segregated on an invoice or contract in order to qualify for an isolated or occasional sale exemption. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3602; effective May 1, 1988.)

**92-19-31.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 1981 Supp. 79-3603, 79-3606; modified, L. 1979, Ch. 349, May 1, 1979; amended, E-82-26, Dec. 16, 1981; amended May 1, 1982; revoked May 1, 1988.)

**92-19-32.** (Authorized by K.S.A. 79-3618, K.S.A. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; amended May 1, 1988; revoked June 26, 1998.)

**92-19-33. Permanent extensions of time to file sales and use tax returns.** (a) A permanent extension of not more than 60 days, may be granted by the director of taxation, for good cause, for filing sales or compensating use returns and for payment of the tax that is due. A request for an extension shall meet the following requirements:

- (1) Be submitted in writing;
- (2) explain why accurate returns cannot reasonably be filed by the normal due date; and
- (3) set forth any additional facts relied on to establish good cause for granting the extension.

(b) The taxpayer shall be notified in writing when the request is granted or denied. The grant of a permanent extension may be conditioned on the taxpayer's acceptance of and compliance with a payment plan for remitting any additional interest that may be due because of the extension. (Authorized by K.S.A. 2000 Supp. 79-3618, K.S.A. 79-3707; implementing K.S.A. 79-3607, K.S.A. 2000 Supp. 79-3706; effective May 1, 1979; amended May 1, 1984; amended July 27, 2001.)

**92-19-34.** (Authorized by K.S.A. 79-3618; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked June 26, 1998.)

**92-19-35.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3616; effective May 1, 1979; amended May 1, 1986; revoked June 26, 1998.)

**92-19-35a. Securities: surety bonds, escrow accounts, and cash bonds.** (a) General. Pursuant to K.S.A. 79-3616 and amendments thereto, a retailer may be required to post a security before or after a registration certificate is issued. If a security is required, a written demand for security shall be sent to the retailer. If a person fails or refuses to post a security as required within 30 days of mailing of the notice, issuance of a registration certificate may be refused by the director of taxation, or a certificate that has been issued may be cancelled by the director.

(b) Refusal to issue a certificate or cancellation of a certificate.

(1) If a written demand for a security is sent to a person who is applying for a registration certificate, the person who receives the demand shall either post the security or object to the demand. To object, the person shall submit the objection in writing within 30 days from the date that the demand was mailed. Once an objection is received, a hearing shall be scheduled by the secretary or sec-

retary's designee to determine whether the posting of the security is an appropriate prerequisite for issuing the registration certificate.

(2) If an existing registration certificate is to be cancelled because a security has not been posted within 30 days of the demand, the certificate holder shall be notified in writing of the director's intention to cancel the certificate and the date when the cancellation is final. The certificate shall be cancelled on the date specified in the notice, unless the certificate holder objects in writing within 30 days from the date that the notice of intention to cancel is mailed. If a certificate holder objects to the cancellation, a hearing shall be scheduled by the secretary or secretary's designee to determine whether cancellation of the certificate for failure to post a security is appropriate.

(c) When required for active businesses.

(1) Businesses with chronic delinquencies. A retailer shall post a security if the retailer has had four or more delinquencies during the last 24 months for sales and use taxes or if the retailer has had six or more delinquencies during the last 24 months for taxes imposed under chapter 79 of the Kansas statutes annotated and amendments thereto, including withholding tax, income tax, sales and use taxes, liquor excise tax, and all other excise taxes. Delinquencies shall include the failure to file a return, the filing of a late return, the filing of an improper return, nonpayment, late payment, and payment by an insufficient funds check. The simultaneous late filing of the return and the late payment of tax shall count as one delinquency. A delinquency shall be excused if the retailer establishes that, had a timely request been made under K.A.R. 92-19-5a, good cause would have existed for an extension.

(2) When required of a new applicant. A security shall be required of a new applicant if the applicant is substantially similar to a person who would have been required to post a security because of past delinquencies. An applicant shall be deemed to be similar to the extent that the applicant is owned or controlled by a person or persons who owned or controlled a previously registered retailer that became delinquent. Substantial similarity may be established by facts that tend to show common ownership or control of both businesses.

(d) Determination of security amount. The amount of a security for an annual filer shall be \$25, and the security shall be made only as a cash bond. If a security is required of a monthly or quarterly filer, the amount of the security shall be

fixed by the director and shall be equal to at least the average tax liability for state and local taxes for six months, or \$1,000, whichever is greater. The average tax liability shall be based on the previous 12-month period, if there was a reporting history for those months. Amounts based on the average liability for a monthly or quarterly reporting period shall be rounded to the next higher, even \$100 amount. If a retailer has no reporting history, the amount of the security may be based on the estimated tax liability as shown on the registration application, the predecessor's tax liability at the location specified on the registration application, and other factors that are based on the department's experience with similar businesses. After one year, the security amount fixed by the director for a new account may be increased or decreased based upon the retailer's compliance record, payment history, and annual average sales tax liability.

(e) Types of security. Acceptable types of security shall include the following:

(1) Money posted or deposited with the department as a cash bond. A cash bond may be required by the director to be paid in guaranteed funds by means of a cashier's check or money order. Cash bonds shall not pay interest;

(2) a surety bond issued by a bonding company that is authorized to do business in Kansas by the Kansas insurance commission. Each surety bond shall be issued on a form prescribed by the department and shall bear the seal of the insurance company, the effective date, and the signature of the applicant. If a bond is signed by an agent or other attorney-in-fact for the insurance company, the bond shall be accompanied by a power of attorney that grants to the attorney-in-fact the power to obligate the company for this type of liability; and

(3) an escrow account with a Kansas financial institution that is entered into on a form prescribed by the department. Escrow funds may be held in a savings account or certificate of deposit and shall be payable to the department upon demand. Interest earned on an escrow account may be paid to the retailer unless the director has made demand for payment on the account. Other than interest, an escrow account shall not be accessible to the retailer or to creditors of the retailer until the account is released in writing by the director.

(f) Release or cancellation of the security. A security that has been posted by a retailer who files on a monthly or quarterly basis may be released to the retailer upon request if the retailer has, for 24 consecutive months, timely filed and paid all

returns required to be filed under chapter 79 of the Kansas statutes annotated, and amendments thereto. The 24-month compliance requirement shall begin on the day the security is received by the department. If a retailer does not meet the compliance requirements, the security shall continue to be required until the taxpayer has been in compliance for 24 consecutive months from the date of the latest noncompliance. A \$25 cash bond required to be posted by a retailer who files on an annual basis shall be held by the department until the retailer terminates business or is required to file returns on a monthly or quarterly basis. (Authorized by K.S.A. 2001 Supp. 79-3618; implementing K.S.A. 79-3616; effective Aug. 23, 2002.)

**92-19-36. Jeopardy assessments.** The following actions by any person liable for tax under the Kansas retailers' sales tax act shall be deemed reason to believe that a taxpayer is about to depart from the state, or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act which tends to prejudice, jeopardize, or render wholly or partly ineffectual the collection of sales tax: (a) Failure to file sales tax returns after notice as provided by K.S.A. 79-3613, and subsequent termination of business operations by the retailer; or

(b) failure to file sales tax returns after notice as provided by K.S.A. 79-3613, and continuation of the act of making retail sales. (Authorized by K.S.A. 79-3610, 79-3618; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979.)

**92-19-37. Natural gas, electricity, heat and water; sales to residential premises.** (a) Where sales of natural gas, electricity, heat and water delivered through mains, lines or pipes are made to multi-family dwellings or other buildings in which residential premises are not individually metered and billed, only the prorata portion of these sales equal to the percentage of the building actually occupied as residential premises shall be subject to exemption. As used in this regulation, "residential premises" shall have the meaning ascribed to it in K.A.R. 92-19-38.

(b) Where utility services are not metered individually between residential and commercial use in combination purpose buildings, the occupant owner or lessee shall file an exemption certificate with each retailer providing sales of exempted commodities. The exemption in this case shall be

prorated based on the portion of the commodities used in portions of the premises actually occupied as a residence and used for noncommercial purposes. Formulas and computations used in establishing the percentage of exempt use shall be available for inspection by the department of revenue at any time. Sales of otherwise taxable materials or services shall not be exempted by virtue of being sold in connection with commodities exempt from sales tax hereunder. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1981 Supp. 79-3606; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; amended, E-82-26, Dec. 16, 1981; amended May 1, 1982.)

**92-19-38. Propane gas, LP-gas, coal, wood, and other fuel sources; sales to residential premises.** (a) Sales of propane gas, LP-gas, coal and wood for the production of heat or lighting for the noncommercial use of an occupant of residential premises are exempt from sales tax. Sales of bottled water or such nonprimary heat or light sources as charcoal, candles, canned heat, batteries, lighter fluid or matches are not exempt. Sales of otherwise taxable materials or services are not exempted by virtue of being sold in connection with commodities exempt from sales tax hereunder.

(b) As used in this regulation and K.A.R. 92-19-37 and 92-19-40, "residential premises" means and includes any building or structure, or portion thereof, used for human habitation. Such term shall not include travel trailers or recreational vehicles. (Authorized by K.S.A. 79-3618, K.S.A. 1979 Supp. 79-3606; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980.)

**92-19-39.** (Authorized by K.S.A. 79-3618, K.S.A. 1979 Supp. 79-3606; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked June 26, 1998.)

**92-19-40.** (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; amended May 1, 1988; revoked April 1, 2011.)

**92-19-41.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3603 as amended by L. 1986, Ch. 386, Sec. 1; effective, E-81-1, Jan. 10, 1980; effective May 1, 1980; amended May 1, 1987; revoked May 1, 1988.)

**92-19-42.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 1980 Supp. 79-3602, 79-3603, 79-3606; effective May 1, 1981; revoked April 1, 2011.)

**92-19-43. Tax due upon registration of vehicle by dealer; exception; credit upon subsequent transfer.** (a) The registration of a vehicle by a licensed vehicle dealer pursuant to the provisions of article 1 of chapter 8 of Kansas Statutes Annotated shall constitute the taking of tangible personal property from a stock of goods within the meaning of K.A.R. 92-19-11 and amendments thereto. Except as provided in subsections (b) and (c), sales tax shall be due and payable to the county treasurer at the time the dealer makes application for the registration of the vehicle.

(b) Notwithstanding the provisions of subsection (a), whenever a vehicle is registered by a licensed vehicle dealer for the purpose of subsequently leasing the vehicle, sales tax shall be collected by the licensed vehicle dealer on each lease payment made by the lessee. At the time of making application for registration, the dealer shall provide the county treasurer with a resale exemption certificate pursuant to K.A.R. 92-19-25.

(c) Whenever a vehicle which has been registered by a licensed vehicle dealer, and upon which the sales tax has been paid, is sold or is otherwise transferred in a taxable transaction within 15 days from the date the vehicle was registered by the dealer, the taking of the vehicle from a stock of goods and the subsequent transfer shall be deemed to constitute a single transaction for sales tax purposes. Upon the subsequent transfer, the dealer shall collect the sales tax from the ultimate consumer and may apply for credit from the director of taxation for the tax paid by the dealer to the county treasurer. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1982 Supp. 79-3602, 79-3603; effective May 1, 1983.)

**92-19-44. Sampling methods.** At the discretion of the director of taxation, sampling principles or methods may be used in lieu of a 100% examination of records in conducting a sales or use tax audit. (Authorized by K.S.A. 79-3618, 79-3707; implementing K.S.A. 79-3609, 79-3707; effective May 1, 1987.)

**92-19-45. Audit facilities.** Each taxpayer shall furnish reasonably sufficient work space, lighting, and working conditions for department of revenue agents for the conducting of sales or

use tax audits. (Authorized by K.S.A. 79-3618, 79-3707; implementing K.S.A. 79-3609, 79-3707; effective May 1, 1987.)

**92-19-46. Selling price.** (a) Selling price is the total consideration given in each transaction, whether in the form of money, rights, property, promise or anything of value, or by exchange or barter. The key element in imposing sales tax on a transaction is not based on what a transaction may be called or termed, but on the operation of the transaction. The term selling price includes the following:

(1) The total monetary value of the consideration of all those things which in fact are, or are promised to be paid by the consumer to a seller in the consummation and complete performance of a retail sale, whether or not the seller receives any benefit from the consideration;

(2) the total cost to the consumer without any deduction or exclusion for the cost of the property or service sold, labor or service used or expended, materials used, losses, overhead or any other costs or expenses, or profit, regardless of how any contract, invoice or other evidence of the transaction is stated or computed, and whether separately billed or segregated on the same bill; and

(3) all transactions in which a person secures for a consideration, the use of tangible personal property or services and includes transactions which may be termed royalties or licenses.

(b) Any discounts allowed and credited by the retailer are excludable from the selling price. However, all transportation, freight, handling, drayage or other similar charges are to be included in the selling price, regardless of how any contract, invoice or other evidence of the transaction is stated or computed, and whether the charges are separately billed or segregated on the same bill. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602; effective May 1, 1988.)

**92-19-47.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602; effective May 1, 1988; revoked March 19, 2021.)

**92-19-49.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108, K.S.A. 79-3609, K.S.A. 1986 Supp. 79-3607, K.S.A. 1986 Supp. 79-3610 as amended by L. 1987, Ch. 391, Sec. 1; effective May 1, 1988; revoked June 26, 1998.)

**92-19-49a.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3609, K.S.A. 79-3650; effective June 26, 1998; revoked May 27, 2005.)

**92-19-49b. Goods returned when a sale is rescinded.** (a)(1) When a retailer and consumer rescind a taxable sale of goods that the retailer reported on an earlier return, the retailer shall be entitled to deduct the original selling price of the returned goods from its current report of gross receipts, except as provided in paragraph (a)(2). A retail sale of goods shall be considered to be rescinded once the retailer accepts possession of the returned goods and the consumer accepts the repayment of all or part of the selling price and sales tax that was originally paid to buy the goods. This repayment to the consumer may be made by credit or refund.

(2) If a retailer reduces the amount credited or refunded to the consumer for the returned goods as compensation for depreciation, consumer usage, or any other reduction in the value of the goods, the amount of the reduction shall be considered a charge by the retailer for the consumer's use of the goods and shall be subject to sales tax as if it were a rental charge being billed to the consumer. Both the deduction from gross receipts taken by the retailer on its current return and the selling price credited or refunded to the consumer shall be reduced by the amount taken as compensation for the reduced value of the goods. The amount of tax that is required to be credited or refunded to the consumer shall be reduced in a proportional amount.

(3) A retailer shall not be required to report its taxable receipts from a retail sale that is rescinded if the original sale, the acceptance of the returned goods by the retailer, and the full repayment to the consumer are all completed during one reporting period. If only partial repayment of the selling price and sales tax is made to the consumer, the retailer shall report the amount used as the reduced value of the goods as part of its gross receipts for that reporting period.

(4) If a retailer does not reduce the amount refunded to a consumer under paragraph (a)(2) or (a)(3) for a reduction in the value of the goods and charges a restocking or reshelving fee to the consumer after goods are returned, this fee shall not be taxable. A restocking or reshelving fee shall be defined as a fee charged by a retailer to cover the time and expense incurred returning goods to resale inventory if the consumer has not used the goods in a way that reduces their value.

(b) Each retailer shall maintain records that clearly establish and support its deduction claim when a sale is rescinded.

(c) Any retailer may take a deduction or credit for a refund claim on its sales tax return only if the deduction or credit has been authorized in writing by the department or is allowed under this regulation, K.A.R. 92-19-3b, K.A.R. 92-19-3c, or another department regulation. All other refund claims shall be made by submitting a written refund application to the department, in accordance with K.A.R. 92-19-49c.

(d) Repossessed goods shall be treated as specified in K.A.R. 92-19-3c.

(e) Despite any other provision of this regulation, any motor vehicle manufacturer, manufacturer's agent, or authorized dealer may apply to the department for a refund or take a deduction during the reporting period if a consumer returns a motor vehicle in accordance with K.S.A. 50-645, and amendments thereto, and is refunded the total amount that the consumer paid for the vehicle, including sales tax, less a reasonable allowance for the consumer's use of the vehicle, which shall include the sales tax associated with that use. The manufacturer, agent, or dealer shall maintain records that clearly reflect the acceptance of the returned vehicle under K.S.A. 50-645 and amendments thereto, the amount of the refund, and the amount of taxes refunded. (Authorized by K.S.A. 2009 Supp. 75-5155 and K.S.A. 2009 Supp. 79-3618; implementing K.S.A. 2009 Supp. 79-3607 as amended by L. 2010, ch. 123, sec. 11, and K.S.A. 2009 Supp. 79-3609 as amended by L. 2010, ch. 123, sec. 12; effective May 27, 2005; amended April 1, 2011.)

**92-19-49c. Refund applications; refund claims; required forms.** (a) Definition.

(1) "Refund claim" shall mean an application for the refund of sales or compensating use tax, penalty, or interest submitted in writing on a form prescribed by the department that has been completed and is accompanied by all documentation needed to verify and process the claim. A refund application that is incomplete or is not documented as required by this regulation shall not be considered to be a refund claim. As used in these regulations, the term "refund claim" may include a claim for payment, a credit, or an entitlement to a deduction.

(2) Each refund application shall be submitted on the appropriate form prescribed by the depart-

ment for the kind of refund being requested. The refund application may be required by the department to be filed electronically. Refund application forms may be obtained from the department.

(3) Each agent, representative, or other third party filing a refund application on behalf of another shall submit a power of attorney that authorizes the agent, representative, or other third party to act on behalf of the claimant.

(b) Retailer-filed refund applications.

(1) Any business or individual who is registered with the department as a retailer and who reported and remitted sales tax to the department that was not owed, was remitted in error, or was an overpayment may apply for a refund. Each registered retailer shall have a continuing duty to correct any errors in sales tax returns filed with the department and to enable purchasers to obtain refunds of taxes that were overpaid or paid in error.

(2) Each refund claim filed by an entity that files sales or compensating use tax returns shall be treated as an application to adjust or amend the return. The amended tax return shall be subject to verification by examination of the taxpayer's records.

(3) Refund applications shall be filed on the appropriate form and shall be completed in the manner prescribed by the form. Each refund application shall contain all the information requested and shall be accompanied by all additional documentation prescribed by the form and this regulation that is needed to determine the validity of the claim and verify and process the claim. Each refund application that contains insufficient information or documentation to verify and process the application shall be returned to the applicant with directions to file a new, complete application. If a refund application has been returned by the department, a refund claim shall not be considered to have been filed until a new application is submitted that contains sufficient information and is supported by sufficient documentation to verify and process the claim.

(4) The information provided on each retailer-filed refund application form or accompanying the form shall include the following:

(A) An amended return for each period for which a refund is sought, which shall contain the retailer's current name, mailing address, employee identification number, and Kansas sales tax registration number;

(B) the name and telephone number of the person whom the department should contact if additional information is needed;

(C) an explanation of the reason why a refund is due, which may include an overpayment due to mathematical or clerical errors, the payment of tax on an exempt sale, or other explanation. If applicable, the explanation shall include a detailed, factual description of how the items sold were used by the consumer and an explanation of the legal theory that underlies the refund claim. A statement of such usage that only references Kansas statutes and Kansas administrative regulations shall be deemed an insufficient explanation of the factual basis for a refund;

(D) if tax has been refunded to the consumer, the amount, the name of the refund recipient, and an explanation of how the refund was made, whether by cash, check, credit, or other means;

(E) a schedule listing each invoice in chronological order that includes the name and address of the purchaser, a description of the items sold, the date of purchase, the invoice number, the amount subject to tax, the amount of tax collected, the reporting period and jurisdiction code for the tax, the location of the sale, the account codes, the department codes, and a detailed statement of usage of the item purchased. If the claimant or its agent maintains its records or prepares the schedule in an electronic, machine-sensible format, all schedules submitted to support the refund claim shall be provided in an electronic, machine-sensible format in addition to the paper document;

(F) the signature of the payee or the owner, a partner, or an officer of the business listed as payee, and the signature of the retailer or the owner, a partner, or an officer of the business listed as the retailer; and

(G) any additional information required by the application form that is needed to verify and process the specific refund application, including employment data for a refund pursuant to K.S.A. 79-3606(cc), and amendments thereto.

(5) The documentation provided with a retailer-filed refund application form shall include a copy of each of the following:

(A) A properly completed exemption certificate from the consumer, if the consumer is seeking a refund based on an exemption claim;

(B) if the retailer has refunded taxes to the consumer, a cancelled check or irrevocable credit memo issued by the retailer showing that the retailer has credited or refunded the tax previously collected from the consumer, a written agreement that the refund shall be jointly issued to the retailer and the consumer, or other proof of repayment; and

(C) all invoices pertaining to the schedule required to be submitted under paragraph(b)(4) (E) and any other documentation needed to verify and process the specific refund claim being made in the schedule, which may include credit memos, contracts, job cost records, tax accrual worksheets with refund items identified, charts of account, and any other documentation, including employment data for claims related to K.S.A. 79-3606(cc), and amendments thereto.

(6) Each business that files consumers' compensating use tax returns with the department shall comply with the requirements of this subsection when filing a refund claim for consumers' compensating use tax that the business accrued, reported, and paid to the department.

(c) Consumer-filed refund applications.

(1) Except as authorized by K.S.A. 79-3650 and amendments thereto and as provided by paragraph (b)(6) of this regulation, a consumer seeking a refund of retailers' sales or compensating use tax shall request the refund from the retailer that collected the tax on the sale.

(2)(A) A consumer that paid tax to a retailer may apply directly to the department for a refund if the consumer submits an application and supporting documentation together with an affidavit that verifies any of the following:

(i) The retailer that collected the tax is no longer in business.

(ii) The retailer has moved and cannot be located.

(iii) The retailer is insolvent and is financially unable to make the refund.

(iv) The consumer has attempted in good faith to obtain the refund from the retailer and can document that the retailer refuses or is unavailable to refund the tax or has refused to act in a timely manner on the consumer's refund application.

(B) The documentation required to demonstrate that a retailer refused to refund the tax under paragraph (c)(2)(A)(iv) shall include a written denial of the consumer's refund request issued by the retailer. The documentation required to demonstrate that a retailer did not act on the refund request in a timely manner under paragraph (c)(2)(A)(iv) shall include a copy of the refund request sent to the retailer by certified mail at least 60 days before the consumer filed the refund application with the department. This documentation shall include the consumer's refund application, a copy of the certified mail receipt, and the consumer's refund application, a copy of the

certified mail receipt, and the consumer's affidavit stating that it acted in good faith in attempting to obtain the refund from the retailer.

(C) The consumer's affidavit shall state the date that the refund request was submitted to the retailer and shall identify the information and documentation included with the request. A copy of each piece of documentation shall be submitted to the department with the consumer's affidavit.

(D) The retailer may be contacted by the department to confirm that the consumer has acted in good faith in attempting to obtain the refund from the retailer. As used in this regulation, "good faith" shall mean that the consumer has provided the retailer with all of the information and documentation needed to validate and process the refund request, has complied with the requirements specified in K.S.A. 79-3650(a) and amendments thereto, and has otherwise made a reasonable attempt to obtain the refund from the retailer. The mere fact that a retailer agrees to allow the consumer to file a refund application directly with the department shall not satisfy the requirements of K.S.A. 79-3650(a), and amendments thereto, and shall not constitute a good faith attempt to obtain the refund from the retailer.

(E) For purposes of refund claims filed with the department pursuant to K.S.A. 79-3650 and amendments thereto, if the director of taxation finds that the retailer failed to act on the consumer's refund request in a timely manner, the period of limitations applicable to the filing of the consumer's refund claim may be extended by the director by not more than 90 days. As used in K.S.A. 79-3650 and amendments thereto and in this regulation, "timely manner" shall mean within 60 days after the retailer received written notice of the consumer's refund request. As used in K.S.A. 79-3650 and amendments thereto, "proper showing" shall mean the submission to the director of the consumer's affidavit, the completed refund application, and all supporting information and documentation that is needed to verify and process the refund.

(F) If the director finds that a refund application, information, and documentation submitted by a consumer to a retailer are insufficient to verify and process the refund claim, the limitations period for filing the consumer's refund claim with the department shall not be extended, and the refund application shall not be reviewed by the department but shall instead be returned to the consumer.

(3) The information provided on each consumer-filed refund application form or accompanying the form shall include the following:

(A) The consumer's name, current mailing address, and telephone number;

(B) the name and telephone number of the person whom the department should contact if additional information is needed;

(C) the retailer's name, current mailing address, and telephone number;

(D) a description of the items purchased, the date of purchase, the location of the purchase, the invoice number, the amount subject to tax, and the amount of tax paid;

(E) if applicable, a properly completed exemption certificate. The exemption certificate shall include a detailed factual description of how the items sold were used by the consumer. A statement of usage on an exemption certificate that only references Kansas statutes and Kansas administrative regulations shall be deemed an insufficient explanation of the factual basis for a refund;

(F) an explanation of the reason why a refund is due. If applicable, this explanation shall include a detailed, factual description of how the items sold were used by the consumer. A statement of usage that only references Kansas statutes and regulations shall be deemed an insufficient explanation of the factual basis for a refund;

(G) a schedule listing each invoice in chronological order that includes the name and address of the retailer, a description of the items sold, the date of purchase, the invoice number, the amount subject to tax, the amount of tax paid, the reporting period and jurisdiction code for the tax, the account codes, the department codes, the location of the purchase, and a detailed statement of usage for the purchase. If the claimant or the claimant's agent maintains its records or prepares the schedule in an electronic, machine-sensible format, all schedules submitted to support the refund claim shall be provided in an electronic, machine-sensible format in addition to the paper document;

(H) the signature of either the consumer or a business owner, partner, or officer of the business; and

(I) any additional information required by the form that is needed to verify and process the refund, including employment data for a refund pursuant to K.S.A. 79-3606(cc), and amendments thereto.

(4) The documentation provided with each consumer-filed refund application form shall include a copy of each of the following:

(A) A properly completed exemption certificate from the consumer, if the consumer is claiming refund entitlement based on an exemption;

(B) all original invoices pertaining to the refund claim placed in chronological order, with monthly subtotals, credit memos, contracts, cancelled checks, tax accrual worksheets, charts of accounts, and any other documentation required to verify the specific refund claim being made; and

(C) a written statement signed by the consumer stating that the consumer has not and will not seek a duplicate refund from the retailer. (Authorized by K.S.A. 2004 Supp. 75-5155 and K.S.A. 2004 Supp. 79-3618; implementing K.S.A. 2004 Supp. 79-3607, K.S.A. 2004 Supp. 79-3609, and K.S.A. 2004 Supp. 79-3650; effective May 27, 2005.)

**92-19-49d. Review of refund applications; processing of refund claims.** (a) Statute of limitations.

(1) Whenever a retailer or consumer that has filed a sales or compensating use tax return seeks a refund for the erroneous payment of the tax, penalty, or interest, the refund claim shall be filed within three years from the due date of the return for the reporting period as specified in K.S.A. 79-3607, and amendments thereto, unless the director of taxation has extended the time for filing the refund request pursuant to K.S.A. 79-3650(b), and amendments thereto.

(2) A written agreement may be entered into by the secretary and the taxpayer to extend the period within which the taxpayer may file a refund application, and an assessment may be made by the secretary. If such a mutual agreement is entered into, any additional interest due on an assessment that is in excess of 48 months shall be waived. This agreement shall be entered into before the expiration of the three-year statute of limitations.

(3) The provisions of K.S.A. 60-206, and amendments thereto, for the computation of time shall apply to determine the timeliness of the filing of a refund claim. Each refund claim shall be presumed to have been filed with the department on its postmark date.

(4) A person against whom an assessment or administrative decision has become final shall not be entitled to pay the amount of the assessment and then file a refund claim for the amount paid.

(b) Incomplete refund applications.

(1) A refund application that is incomplete, not supported by the required documentation, or otherwise fails to meet the requirements specified in K.A.R. 92-19-49c, whether submitted to the department or to a retailer, shall not be considered to be a refund claim or refund request for the purpose of any of the following:

(A) Tolling the statute of limitations provisions of K.S.A. 79-3609, and amendments thereto;

(B) commencing the running of the 60-day provision of K.S.A. 79-3609(d), and amendments thereto, for payment of refunds without interest; or

(C) extending the time for filing the refund application or refund request beyond the three-year statute of limitations under the provisions of K.S.A. 79-3650(b), and amendments thereto.

(2)(A) If a refund application is incomplete, not supported by the required documentation, or otherwise fails to meet the requirements specified in K.A.R. 92-19-49c, the substance or merits of the incomplete refund application shall not be reviewed by the department, and the incomplete application shall be returned to the applicant. At that time, the applicant shall be notified in writing of the actions, corrections, information, or additional documentation that is needed to complete a new refund application. The applicant also shall be provided with a written description of the method by which an informal conference may be requested pursuant to K.S.A. 79-3226, and amendments thereto, to request a review of the determination that the refund application is incomplete.

(B) Each review of the department's determination that the taxpayer submitted a refund application that was incomplete, not supported by the required documentation, or otherwise failed to meet the requirements specified in K.A.R. 92-19-49c shall be limited to determining whether the refund application, as originally submitted, complied with the requirements of K.A.R. 92-19-49c by providing sufficient information and documentation to allow the refund application to be verified and processed. If, upon review at the informal conference, it is determined that the refund application failed to meet the requirements specified in K.A.R. 92-19-49c when submitted so that the refund application could not be verified and processed, the applicant shall be required to file a new refund application for the refund being claimed.

(c) Review of refund claims.

(1) Each refund application that meets the requirements specified in K.A.R. 92-19-49c so that it can be verified and processed shall be reviewed

by the department as a refund claim and its validity determined. Each claimant shall be notified in writing of the department's determination and, if the refund claim is denied in whole or in part, shall be provided with a written description of the method by which an informal conference pursuant to K.S.A. 79-3226, and amendments thereto, may be requested. Each denial of a refund claim by the department shall be final, unless the claimant timely requests an informal conference pursuant to K.S.A. 79-3226, and amendments thereto.

(2) Once an informal conference is requested, an informal conference shall be held by the secretary or designee, and a written final determination shall be issued by the secretary or designee, in accordance with K.S.A. 79-3226, and amendments thereto. The written final determination shall constitute a final agency action subject to administrative review by the Kansas board of tax appeals, as provided in K.S.A. 74-2438 and amendments thereto.

(d) Offsetting overpayments against deficiencies.

(1) If the department determines that a refund is due, the refund may first be set off against any outstanding tax liability for a tax that is administered by the department and owed by the person to whom the refund is ultimately due. Any refund amount that remains may be set off against any other outstanding state liabilities or shall be refunded. A retailer shall be considered to be the person to whom the refund is ultimately due under this subsection if the retailer previously credited or refunded the tax to the consumer. This person shall be provided with written notice of the setoff and informed of the right to seek administrative review of the setoff pursuant to K.S.A. 79-3226, and amendments thereto.

(2) If the department determines, upon review of a tax return, that there has been an overpayment of tax for the taxable period to which the return relates, either of the following actions may be taken by the department:

(A) Crediting the overpayment amount to the taxpayer without requiring the taxpayer to file a refund claim; or

(B) setting off the overpayment in accordance with subsection (c).

(e) Audits.

(1) If an audit by the department discovers that both underpayments and overpayments of a tax have been made in different reporting periods, the tax overpayments shall be credited against the tax underpayments if the taxpayer submits an affidavit that meets the requirements of paragraph (e)(2).

(2) To be entitled to the provision specified in paragraph (e)(1), the taxpayer shall provide the department with an affidavit signed by the taxpayer's owner, partner, or corporate officer that attests that the taxpayer has not claimed a duplicate refund or taken a credit on a return and will not claim a duplicate refund or credit for those taxes in the future. A retailer shall not be allowed to utilize the provisions of this subsection or any other setoff provisions for taxes that the taxpayer collected from its customers and has not credited or refunded to the customer.

(3) Once an audit engagement letter is issued by the department to a taxpayer, the taxpayer shall submit all refund claims for any tax overpayment that is alleged to have occurred during the audit period to the department to be considered as part of the audit review.

(f) Audits based on sampling.

(1) After a business pays a liability or accepts a refund that was determined under an audit assessment that applied a sampling technique to an established population, the population that served as the base for the sampling portion of the assessment shall be closed to all additional assessments and refunds.

(2) Refund applications based on sampling techniques shall not be allowed.

(g) Erroneous refunds. If the department erroneously refunds or credits any sales or compensating tax to a retailer or consumer, a notice of tax assessment for the erroneous refund or credit may be issued by the department in either of the following periods:

(1) Within three years from the date the refund was made; or

(2) if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact, within two years from the date of discovery of the fraud or misrepresentation.

The amount of the assessment shall be limited to the amount of the erroneous refund including interest, unless fraud is involved. (Authorized by K.S.A. 2004 Supp. 75-5155 and K.S.A. 2004 Supp. 79-3618; implementing K.S.A. 2004 Supp. 79-3233j, K.S.A. 2004 Supp. 79-3607, K.S.A. 2004 Supp. 79-3609, and K.S.A. 2004 Supp. 79-3650; effective May 27, 2005.)

**92-19-50.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602; effective May 1, 1988; revoked Dec. 13, 2002.)

**92-19-51. Gratuities, service charges and minimum charges.** (a) Each cover charge or minimum charge entitling the customer to receive entertainment, recreation, amusement, or food, meals or drinks furnished by any place where food, meals or drinks are regularly sold to the public, whether listed separately on a bill or collected as an admission fee or fixed charge shall be subject to sales tax.

(b) Each retailer shall include in the total selling price of the food, meals or drinks subject to sales tax, any amounts designated as a service charge which are added to the price of food, meals or drinks, even if the charges are made in lieu of tips and are paid over by the retailer in whole or in part to the retailer's employees.

(c) Cash gratuities or gratuities added by the consumer to a bill which are turned over in full to the employee, and gratuities given directly to an employee by a consumer and not pursuant to an arrangement made with the retailer shall not be subject to sales tax.

(d) Each retailer shall include in the total selling price of the food, meals or drink subject to sales tax, any gratuities which are mandatory in order for a consumer to receive food, meals, drinks or service, even though a portion or all of the mandatory gratuities collected may be paid over by the retailer to the retailer's employees.

(e) Each retailer shall include in the total selling price of food, meals or drinks subject to sales tax, any gratuities which are required by the retailer to be turned over either in whole or in part by the employees and which are credited by the retailer as a part of the minimum wage of the employees pursuant to federal or state laws, even though a portion or all of the gratuities collected may be paid over by the retailer to the retailer's employees. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3602; effective May 1, 1988.)

**92-19-52. Agency relationships; direct purchases.** (a) Unless specifically authorized by the sales tax act, an agency relationship between a purchaser and its principal shall not be recognized by the department of revenue for sales tax exemption purposes.

(b) To qualify as a direct purchase under K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1 and amendments, any bill, invoice, contract or other evidence of the transaction shall be made

out in the name of the entity which qualifies for an exemption under the act, and the payment shall be made on that entity's check, warrant or voucher.

(c) Each sale of tangible personal property or taxable service made to and paid for by an agent, employee or other representative shall be taxable, even though the same purchase would have been exempt from sales tax had the principal or employer directly purchased the tangible personal property or service. Any contractual arrangement or understanding between an agent, employee or other representative and a principal or employer shall not be recognized by the department. Each retailer shall charge and collect the sales tax on the total selling price of tangible personal property or service even though the agent, employee, or other representative:

(1) Is on official business on behalf of the principal or employer;

(2) is on a per diem from the principal or employer;

(3) is on an expense account or will otherwise be reimbursed by the principal or employer; or

(4) has or will receive monies, credits or other assets from the principal or employer to pay for the transaction. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988.)

**92-19-53. Consumed in production.** (a) In order for purchases of tangible personal property to qualify for exemption under K.S.A. 1986 Supp. 79-3606(n) as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1 and amendments, the following requirements must be met:

(1) The tangible personal property must be essential or necessary to the process;

(2) the tangible personal property must be used in the actual process;

(3) the tangible personal property must be immediately consumed or dissipated in the process;

(4) the tangible personal property must be used in the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, the providing of services or the irrigation of crops for ultimate sale at retail in the regular course of business; and

(5) the tangible personal property cannot be reusable for such purposes. The identity of the buyer, seller or item purchased is immaterial.

Whether the purchase qualifies for exemption is determined by how the item is used in the production or processing activity. An item may be taxable for one use and exempt for another use, even though purchased by the same consumer. Each transaction shall be separately measured against the statutes and regulations to determine the taxability of the transaction.

(b) For the purposes of determining whether tangible personal property is consumed in the providing of services, the term "service" refers only to taxable services enumerated under the sales tax act. Each person providing a nontaxable service shall pay sales tax on all articles of tangible personal property and all services purchased by the person to provide the nontaxable service, and may not claim an exemption from sales tax.

(c) "Used in the actual process" means the use of the tangible personal property used shall:

(1) Be integral and essential to the production or processing activity;

(2) occur at the location where the production or processing activity is carried on; and

(3) occur during the production activity.

The fact that a particular item of tangible personal property may be considered important to a production process does not, of itself, mean that the tangible personal property is used in the actual process. The following uses of tangible personal property do not qualify for exemption from sales tax as consumed in production: shipping, testing, repairing, servicing, maintaining, cleaning the equipment and the physical plant, and storing. Tangible personal property used in the administration of the business and wholesale, commercial or retail facilities or buildings do not qualify for exemption from sales tax as consumed in production.

(d) "Immediately consumed or dissipated" means that tangible personal property shall be consumed or destroyed both economically and physically in a time reasonably requisite in the production or processing activity. The fact that tangible personal property may be used for only one production or processing activity and then discarded, or that tangible personal property is rendered obsolete or worthless in a short time is not the determining factor. Purchases of tangible personal property used in a repetitive function to produce articles of tangible personal property designed to be sold to consumers and not immediately consumed or dissipated are subject to sales tax. Tangible personal property that is specifically produced to perform a specific job for a specific consumer and has no other val-

ue other than as scrap, may qualify for exemption from sales tax as consumed in production, if the purchased property meets the other requirements under the exemption. Tangible personal property which breaks, depreciates, wears out or becomes obsolete, albeit in a short time span, does not qualify for exemption from sales tax as consumed in production.

(e) Natural gas, electricity, heat and water consumed by machinery and equipment actually used to produce, manufacture, process, mine, drill, refine or compound tangible personal property, provide taxable services or irrigate crops for resale in the regular course of business, qualify for exemption as consumed in production.

(f) All purchases of tangible personal property by contractors, subcontractors, or repairmen for incorporation into any structure or for use in altering, servicing, repairing or maintaining personal property or personal property that has been affixed to real property are subject to sales tax unless specifically exempted by K.S.A. 1986 Supp. 79-3606(d), (e) as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1.

Contractors, subcontractors, repairmen, and consumers shall not purchase materials exempt from sales tax as consumed in the production of services whether or not the project is original construction. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec 108, K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988.)

#### **92-19-54. Ingredient or component part.**

(a) For purchases of tangible personal property to qualify for exemption under K.S.A. 1986 Supp. 79-3606(m) as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1 and amendments, the following requirements must be met:

(1) The tangible personal property shall be essential or necessary to the tangible personal property or service produced, manufactured or compounded;

(2) the tangible personal property shall be actually used in or on the tangible personal property or service produced, manufactured or compounded;

(3) the tangible personal property shall become an integral and material part of the tangible personal property or service produced, manufactured or compounded; and

(4) the tangible personal property must become an ingredient or compound part of tangible personal property or service for ultimate sale at retail.

The identity of the buyer, seller or the item is immaterial. Whether the purchase qualifies for exemption shall be determined by how the item is used in the production or processing activity. An item may be taxable for one use and exempt for another use, even though purchased by the same consumer. Each transaction shall be separately measured against the statutes and regulations to determine the taxability of the transaction.

(b) For the purpose of determining whether tangible personal property is an ingredient or component part of a service, the term "service" refers only to taxable services enumerated under the sales tax act. Each person providing a nontaxable service shall pay sales tax on all articles of tangible personal property and services purchased to provide the nontaxable service, and may not claim an exemption from sales tax.

(c) "Integral and material" means:

(1) The physical incorporation of two or more parts or elements by chemical or mechanical process in a manufacturing, production or compounding process, the result of which renders a third item or product separate and distinct from the constituent parts or elements; or

(2) an attachment or part that is so necessary and essential to the final product that, if omitted, would render the final product valueless for its intended purpose.

Except as provided in paragraph (d), tangible personal property that is important to the production process but does not become an integral and material or physical part of the tangible personal property for sale at retail is not exempt from sales tax.

(d) Each container, wrapper or other shipping or handling material actually accompanying the product sold is not subject to sales tax.

(e) Each retailer purchasing a container or other shipping or handling material for consumption which is not for resale as described in paragraph (d) is subject to sales tax. Each purchase by a retailer of a container or other shipping or handling material in which title remains with the retailer when the tangible personal property contained therein is sold by the retailer, or where the container or other shipping or handling materials are to be returned to the retailer by the consumer of the tangible personal property, is subject to sales tax.

(f) Each purchase of a container, wrapper or other shipping or handling material by a retailer using the container, wrapper or other handling material to provide nontaxable services is deemed to be consumed by the service provider and is subject to tax. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988.)

**92-19-55.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108, K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1, effective May 1, 1988; revoked Aug. 23, 2002.)

**92-19-55a.** (Authorized by K.S.A. 2001 Supp. 79-3618; implementing K.S.A. 2001 Supp. 79-3602, K.S.A. 2001 Supp. 79-3603 as amended by L. 2002, ch. 89, sec. 1 and by L. 2002, ch. 185, sec. 6, K.S.A. 79-3604, K.S.A. 2001 Supp. 79-3606; effective Aug. 23, 2002; revoked April 13, 2007.)

**92-19-55b. Operating leases.** (a) Definitions.

(1) "Financing lease" shall have the meaning specified in K.A.R. 92-19-3a.

(2) "Goods" shall have the meaning as specified in K.A.R. 92-19-3a. For purposes of this regulation, "equipment" may be substituted for the word "goods" whenever equipment rentals or leases are being considered.

(3) "Lease or rental" shall have the meaning specified in K.S.A. 79-3602, and amendments thereto. When used in this regulation, these two terms and their derivatives are synonymous.

(4) "Lessee" shall mean a person who acquires the right to possess or control goods under a lease or rental agreement.

(5) "Lessor" shall mean a person who is engaged in the business of leasing or renting goods to others.

(6) "Operating lease" shall mean a lease agreement that gives the lessee possession or control of goods for a fixed or indeterminate period, while the lessor retains all or substantially all of the risk and rewards of ownership of the goods. This term shall be synonymous with "true lease."

(7) "Primary property location" shall have the meaning specified in K.S.A. 79-3670, and amendments thereto.

(8) "Sales tax" or "tax" shall have the meaning specified in K.A.R. 92-19-3a.

(9) "Transportation equipment" shall have the meaning specified in K.S.A. 79-3670, and amendments thereto. When the term "motor vehicle" or "vehicle" is used, the term shall mean any passenger vehicle, truck, trailer, semitrailer, or truck tractor, as defined in K.S.A. 8-126 and amendments thereto, that is not classified as "transportation equipment" under K.S.A. 79-3670, and amendments thereto.

(b) Operating leases and rentals.

(1) Each agreement that is structured as a lease shall be treated as an operating lease unless the agreement meets the definition of a "financing lease" in K.A.R. 92-19-3a. Any operating-lease agreement may contain a future option to purchase the goods that are being leased or to extend the agreement, or both. Each oral lease shall be treated as an operating lease.

(2) Each person who rents or leases goods at retail for use in Kansas under an operating lease shall be deemed a retailer doing business in this state and shall register with the department and report tax on its taxable receipts as provided in this regulation. If tax is not collected on a taxable charge for a rental or lease, the tax together with interest and penalty may be collected by the department from either the lessor or the lessee.

(3) Each lessor shall collect tax on every taxable rental or lease charge that it bills to its lessees. A lessor shall not forgo this collection duty and elect instead to pay sales tax when the lessor buys goods to rent or lease.

(4) Each recurring periodic payment made under a rental or lease agreement shall be treated as a payment for a separate sales transaction in time units defined by the agreement of the parties. Each recurring periodic payment period under an agreement shall be treated as a complete sale for purposes of determining the following:

(A) Whether tax is required to be collected or paid on a periodic payment because of the enactment of a new tax imposition or exemption;

(B) whether a change in the tax rate applies to a periodic payment;

(C) what the appropriate local tax jurisdiction is when the primary property location is changed from one local taxing jurisdiction in Kansas to another; and

(D) what the appropriate state tax jurisdiction is when the primary property location is changed to Kansas from another state or from Kansas to another state.

(5) If a lease or rental agreement does not require recurring periodic payments to be made, the lump-sum payment shall be treated as a complete sale for purposes of applying exemptions, tax rates, sourcing requirements, and other requirements of the sales tax act to the lease payment. No refund claim shall be allowed or assessment issued that is based on an enactment that takes effect after payment but during the term of this type of lease or rental, unless the enactment specifies otherwise.

(6) Each “rent-to-own” or “rental-purchase” agreement that is subject to the Kansas consumer lease-purchase agreement act, K.S.A. 50-680 et seq. and amendments thereto, shall be treated as an operating lease. A reinstatement fee charged under this type of an agreement shall be taxable.

(7) A rental or lease shall not qualify for exemption as an isolated or occasional sale of goods.

(c) Sourcing receipts from operating leases. Each receipt from the lease or rental of goods shall be sourced according to the following:

(1) Classification of the receipt as a down payment, recurring periodic payment, or a single payment for the entire lease or rental period; and

(2) the type of goods being leased or rented.

Each different type of receipt shall be sourced according to K.S.A. 79-3670 and amendments thereto.

(d) Computation of the tax.

(1) Sales tax shall be computed on the total amount of each lease charge billed to the lessee without any deduction for mandatory insurance, damage waiver fees, property taxes, maintenance, service, repair, pickup, delivery, and other handling charges, administrative charges, late payment charges or penalties, reinstatement fees, late return charges, fuel charges, surcharges, and other charges or expenses whether paid by the lessor or lessee. Each of these fees or expenses shall be considered to be part of a taxable lease charge, even when the fee or expense is separately stated on an invoice given to a lessee or when separate contracts are entered into for the rental or lease and for the payment of one or more of these fees or expenses.

(2) All payments of interest, financing, and carrying charges, and any other payment that a lessee makes to reimburse a lessor for the costs or expenses the lessee incurs under the lease, shall be subject to sales tax whether billed as a separate line-item charge or on a separate invoice.

(3) When a rental or lease agreement has been subject to sales tax, sales tax shall apply to any charge made for either of the following:

(A) The cancellation of the agreement; or

(B) the early return of the rented or leased goods.

(4) Each late return charge that is billed for a customer’s failure to return goods to a rental company or other lessor within the agreed-upon rental or lease term shall be treated as a charge for the customer’s continued possession or control of the goods. This charge shall be subject to sales tax regardless of whether the charge meets any of the following conditions:

(A) Is designated a late return charge, a penalty, or a credit charge;

(B) exceeds the standard rental charge; or

(C) is a flat charge that appears to be a fine.

(e) A lessor’s purchase of goods to rent or lease.

(1) Any registered lessor that rents or leases goods may claim that the goods are purchased for resale when the lessor buys goods for the sole purpose of renting or leasing to others.

(2) A lessor that rents or leases equipment or other goods to others shall not claim the equipment or goods are purchased for resale when the lessor buys the equipment or goods if the lessor engages in a service business that does either of the following:

(A) Uses the equipment or other goods to perform services, in addition to renting or leasing the equipment or goods; or

(B) furnishes the equipment or goods to others with an operator.

(3) If a lessor paid tax when it purchased goods, the payment of tax shall not exempt any subsequent charges that the lessor bills for the rental or lease of the goods and shall not entitle the lessor to claim a credit for the taxes paid. Each lessor that is allowed to claim that goods are purchased for resale as provided in paragraph (e)(1) but paid tax on the purchase of the goods in error shall apply to the department for a refund of the tax.

(4) If a lessor that purchased goods solely for rental or lease later withdraws the goods from its rental or lease inventory for its own occasional use and then returns them to its inventory, the lessor shall accrue sales tax on the regular rental amount that the retailer would charge to a customer for use of the goods under a rental or lease agreement.

(f) Purchases of repair services and repair parts.

(1) A lessor’s purchases of repair services and repair parts for incorporation into the goods or equipment that the lessor uses exclusively to rent or lease shall not be considered to be a retail sale. A lessor’s purchases of oil, grease, filters, lubri-

cants, and similar items that are purchased for use in equipment that the lessor uses exclusively to rent or lease shall not be considered to be a retail sale. Sales tax shall be collected on any charges for these items that are separately billed to a lessee.

(2) The sale of repair services, repair parts, oil, grease, filters, lubricants, and similar items to a rental or lease business for use in equipment in its rental or lease inventory shall be a retail sale if the business uses equipment from its inventory to perform services or if the business furnishes equipment from its inventory to others with an operator.

(g) Furnishing equipment with an operator.

(1) Each charge for furnishing equipment with an operator who will use the equipment to perform services shall be taxed as a service rather than a rental or lease and shall be subject to the impositions on services set forth in K.S.A. 79-3603, and amendments thereto.

(2) Each lessor shall charge and collect sales tax on each lease or rental charge that the lessor bills to a lessee who intends to use the equipment being rented or leased to perform services for others.

(3) When a lessee bills a customer for taxable services that it performed using leased equipment, the lessee shall not deduct or otherwise exclude the lease charges that it paid to the lessor when the lessee bills its customer for the taxable services.

(4) Equipment shall be considered to be leased or rented rather than provided with an operator if the only services the lessor provides are setup, inspection, or maintenance services that are performed on the leased equipment itself.

(h) Disposal of rental or lease inventory. When goods that were purchased for rental or lease are sold at retail, the lessor shall collect sales tax on the full selling price without regard to any tax that has been collected and remitted on receipts from the rental or lease of the goods. The sale of any goods that a retailer makes from its rental or lease inventory shall not qualify as an isolated or occasional sale.

(i) Real property considerations.

(1) If a contract for the rental or lease of real property requires goods, including furniture and restaurant equipment, to be provided to a tenant with real property, no sales tax shall be due on any amount that is separately charged to the tenant for the goods. When a business purchases or leases goods to use to furnish or equip an apartment, office, restaurant, or other real property that the business intends to lease or rent, the sale or lease of the goods to the business shall be considered a

retail sale or lease, and the business shall pay sales tax on the purchase price or lease charges as the final user of the goods.

(2) Each rental or lease of goods, including computers, typewriters, and word processors, to a person who obtains the exclusive right to use the goods for a fixed term shall be subject to sales tax even though the goods are attached or affixed to real property, unless the goods are being furnished with the rental or lease of a real property as specified in paragraph (i)(1).

(3) For purposes of determining the taxability of a rental or lease transaction that involves tangible personal property attached to realty, taxability shall be presumed if the property being leased or rented is considered "goods" pursuant to K.S.A. 84-2-107(2), and amendments thereto, unless the goods are being furnished with the rental or lease of real property as specified in paragraph (i)(1).

(j) Exemptions, discounts, and deductions. Any discount, deduction, or exemption may be claimed when a rental or lease of goods or services is entered into if the same discount, deduction, or exemption would be allowed when the same goods or services are sold at retail. When a lessee that makes recurring periodic payments claims entitlement to a new discount, deduction, or exemption that first takes effect during the term of a lease, any discount, deduction, or exemption may be applied to the periodic payments as provided in paragraph (b)(4).

(k) Conditional sales. Each financing lease and other financing transactions shall be taxed as provided in K.A.R. 92-19-3a. (Authorized by K.S.A. 2010 Supp. 75-5155 and 79-3618; implementing K.S.A. 2010 Supp. 79-3602, 79-3603, 79-3604, 79-3618, 79-3669, 79-3670, and 79-3702; effective April 1, 2011.)

**92-19-56.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective May 1, 1988; revoked Jan. 3, 2020.)

**92-19-57. Sales tax on motor fuels, special fuels, liquefied petroleum, and other fuels.**

(a) Each sale of motor fuel, special fuel, liquefied petroleum, and any other similar fuel that is subject to a Kansas fuel excise tax shall be exempt from sales tax if a Kansas fuel excise tax has been imposed and the fuel excise tax is not refundable. However, each sale of these fuels shall be subject to sales tax if no Kansas fuel excise tax has been

imposed, unless the sale is specifically exempt under the sales tax act.

(b) Except as provided in subsection (a), each sale of motor fuel, special fuel, liquefied petroleum, and any other similar fuel for use in cooling, refrigerating, or heating for nonresidential or nonagricultural purposes shall be subject to sales tax. Fuel used to power refrigeration units on trucks and trailers, other than fuel used in such units by interstate common carriers, shall be subject to sales tax.

(c) Except as provided in subsection (a), each sale of motor fuel, special fuel, liquefied petroleum, and any other similar fuel for use in aircraft, other than purchases of these fuels by passenger airlines and other interstate common carriers, shall be subject to sales tax. (Authorized by K.S.A. 2001 Supp. 79-3618; implementing K.S.A. 2001 Supp. 79-3602, 79-3606; effective May 1, 1988; amended Dec. 13, 2002.)

**92-19-58. Revenue rulings.** (a) A revenue ruling is a statement of the department of revenue issued to the general public, and is of general application. A revenue ruling interprets the statute and regulation to which the ruling relates and is ordinarily issued in response to newly enacted legislation, recent court decisions and areas of sales tax interpretation and application which affect a large number of taxpayers.

(b) A revenue ruling is general in nature, and is not issued to address a specified set of facts. A revenue ruling shall be measured against each transaction separately and the facts of each transaction shall determine the sales tax consequences to which the ruling applies.

(c) A revenue ruling shall cease to be valid when any one or all of the following occur:

(1) The statute or regulation to which the ruling applies is changed in any pertinent part by the Kansas Legislature;

(2) a pertinent change in the interpretation of the statute or regulation is made by a court decision;

(3) the regulation or interpretation is changed in any pertinent part by a department regulation or revenue ruling, whether the change is accomplished by means of a new regulation or revenue ruling or by means of a revision of an existing regulation or revenue ruling; or,

(4) the department rescinds an outstanding ruling issued prior to any given specified date by issuing a general bulletin or notice in the Kansas register. (Authorized by and implementing K.S.A. 79-3618; effective May 1, 1988.)

**92-19-59. Private letter rulings.** (a) A "private letter ruling" shall mean a statement of the secretary of revenue or the secretary's authorized agent issued to an individual retailer and shall be of limited application. A private letter ruling interprets the statute or regulation to which the ruling relates. A private letter ruling is issued in response to a retailer's written request for clarification of the tax statute or regulation relating to a specified set of circumstances affecting the retailer's collections duties as they relate to a claim of exemption from sales tax.

(b) A retailer, consumer, or other person shall not rely upon a verbal opinion from the department of revenue. Only a written private letter ruling issued to a retailer that concerns the retailer's collection duties shall bind the department. Each retailer seeking a private letter ruling from the department shall submit a written request for the ruling to the department. The written request shall identify the retailer and state with specificity the facts and circumstances relating to the issue for which the ruling is sought. If insufficient facts are presented with a retailer's request for a ruling, a private letter ruling shall not be issued by the department. If material facts are misrepresented in a retailer's request for a ruling, a private letter ruling that is issued by the department shall be of no effect and shall not be binding on the department. Department correspondence that does not state that the correspondence is a "private letter ruling" shall not be considered or otherwise treated as a private letter ruling.

(c) Nothing contained in a private letter ruling shall be construed as altering any provision of the Kansas retailers' sales tax act or any department regulation or as otherwise meeting any of the following conditions:

(1) Having the force and effect of law;

(2) being a notice, revenue ruling, or other tax-policy statement that has been published by the department; or

(3) being a precedent that can be cited or relied upon by any person other than the retailer to whom the ruling is issued, except to identify a ruling that is being relied upon as support for a request for the reduction or waiver of penalty or interest.

(d) If a private letter ruling erroneously instructs an individual retailer that it is not required to collect sales tax under a specific set of facts and circumstances, that retailer shall be absolved of its statutory duty to collect sales tax under a com-

parable set of facts and circumstances, unless the ruling has been rescinded or was based on the retailer's misrepresentation of material facts. A consumer that did not pay the tax to the retailer shall continue to be liable for the uncollected tax. However, if the consumer belatedly pays or is later assessed the tax, penalty shall be waived, and any interest on the consumer's late payment may be waived or reduced, upon the consumer's request unless the consumer misrepresented material facts to either the retailer or the department.

(e) Each private letter ruling shall cease to be valid and shall be deemed to have been rescinded when any one of the following occurs:

(1) A statute or regulation that the department relied upon as a basis for the ruling is changed in any substantive part by the Kansas legislature or department of revenue.

(2) A substantive change in the interpretation of a statute or regulation that the department relied upon as a basis for the ruling is made by a court decision.

(3) An interpretation that the department relied upon as a basis for the ruling is changed in any substantive part by a more recent department notice, guideline, revenue ruling, or other published policy directive that rescinds all prior published policy statements about issues that are discussed in the policy directive. Any policy statement that has been rescinded by the department may be cited as support for a taxpayer's request for the reduction or waiver of penalty or interest. (Authorized by K.S.A. 2009 Supp. 75-5155 and 79-3618; implementing K.S.A. 2009 Supp. 79-3604 and K.S.A. 79-3646; effective May 1, 1988; amended April 1, 2011.)

**92-19-61.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108, K.S.A. 79-3604; effective May 1, 1988; revoked Aug. 23, 2002.)

**92-19-61a. Retailers' responsibility to collect sales tax; presumption of taxability.**

(a) Each retailer shall collect the tax imposed by the act from the retailer's customers. Each retailer who fails or refuses to collect tax that is lawfully due shall be liable for payment of the uncollected tax.

(b) A retailer shall not advertise, hold out, or otherwise state to the public or to any customer either of the following:

(1) The tax will be assumed, absorbed, or paid by the retailer for the customer.

(2) The tax will not be charged, or if the tax is charged and collected, the tax will be refunded.

These two requirements shall not prevent a retailer from billing tax as part of a tax-included charge, if proper notice is given to the customer or public as specified in subsection (d).

(c) Each retail sale shall be presumed to be taxable. If the director establishes that a transaction was a retail sale to a final user or consumer, the retailer shall have the burden to show that the tax was collected from the customer and remitted to the state or that an exemption certificate was secured from the customer that covers the transaction.

(d)(1) Whenever practical, each retailer shall add the tax as a separate line item to the selling price when billing the customers. The initial invoice, bill, charge ticket, sales slip, or other billing memorandum shall separately state the amount of the tax being charged or contain a written statement that tax is included in the price. If the initial billing memorandum fails to reflect tax as a separate line item or to state that tax is included in the price, it shall be presumed that tax was not charged to the customer or collected.

(2) Each retailer who makes large numbers of cash sales and desires to fix a sum for the selling price and applicable tax, including sporting event concessionaires, may charge customers a tax-included amount. The tax collected as part of a tax-included price shall be factored from the total receipts to arrive at the amount of gross receipts to report to the department.

(3) Each retailer who makes tax-included sales in which tax is an unspecified part of the customer charge shall conspicuously post a sign or notice that the customer charges are "sales tax included." Menus and any billing memorandum given to customers shall also include the statement "sales tax included" or indicate that the price being charged is a tax-included amount.

(4) "Factoring" shall mean the method used to determine the amount of the tax due when the tax has been collected as an unspecified part of the customer charge, including tax-included sales and sales made through vending machines and other coin-operated machines. To calculate gross receipts from a tax-included amount, the total amount of the tax-included receipts shall be divided by one plus the sum of state and local sale tax rates, stated as a decimal. The result of this calculation shall be the gross receipts that are re-

ported on tax returns as the amount that is subject to state and local sales tax.

(e) Taxes collected by retailers shall be deemed to be held in trust until paid to the department. In addition, all funds paid by a customer to a retailer as taxes that exceed the taxes that are actually due shall be refunded to the consumer or, if the funds cannot be refunded, treated as public money that is held in trust for and payable to the state of Kansas.

(f) When billing the Kansas sales tax or use tax, an out-of-state retailer shall identify the tax being charged as Kansas tax, and not the tax of another state. (Authorized by K.S.A. 2001 Supp. 79-3618; implementing K.S.A. 79-3604, 79-3605; effective Aug. 23, 2002.)

**92-19-62. Warranties, service and maintenance contracts.** (a) Each warranty included in the selling price of tangible personal property which is not charged to the consumer separately from the tangible personal property is subject to sales tax.

(b) Each charge made by a retailer separate and apart from the selling price of the tangible personal property for an optional warranty, extended warranty, service contract, maintenance contract and other similar instruments is subject to sales tax. Each retailer shall collect sales tax on the total charge to the consumer for the contract.

(c) Each service rendered by a retailer, including supplying parts and services, without charge to the consumer under a warranty, maintenance or service contract is not subject to sales tax on the amount of the reimbursement received from the warrantor, whether reimbursement is in the form of money, credit or the replacement of parts used to perform the repair work. However, any charge such as a deductible or similar charge which the consumer is obligated to pay under the warranty, maintenance or service contract is fully taxable, and each retailer shall collect sales tax on the total charge paid by the consumer.

(d) If a retailer does not perform repair services under a warranty, maintenance or service contract, but instead has a third party perform the repairs, the third party's gross receipts received from that retailer are not subject to sales tax. The third party shall secure an exemption certificate from the retailer which states:

(1) that the service performed by the third party was pursuant to a warranty, maintenance or service contract;

(2) that the retailer collected from the consum-

er sales tax on the total selling price of the warranty, maintenance or service contract; and

(3) the retailer's sales tax registration number.

If a retailer has collected a deductible or similar charge from the consumer, the retailer shall include the amount in the retailer's taxable gross receipts, even though a third party may actually perform the service under the warranty, maintenance or service contract.

(e) Each retailer gratuitously providing parts, services or both to a consumer, is deemed to be the consumer of any materials, parts and third party services used. In this instance, each retailer shall pay sales tax to any third party service provider, report the cost of materials and parts on the retailer's sales tax return, and pay the appropriate sales tax. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective May 1, 1988.)

**92-19-63. Limitations.** The tax imposed under the sales tax act shall be assessed within three years from the date the return is filed. However, if any person obligated to file a return for taxes imposed under the sales tax act fails to file a return for any reason, the tax may be assessed at any time. A levy or other proceeding to enforce the collection of the tax, penalty and interest may also be commenced at any time. (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3609; effective May 1, 1988.)

**92-19-64.** (Authorized by 79-3618; implementing K.S.A. 79-3643; effective May 1, 1988; revoked July 27, 2001.)

**92-19-64a. Responsible individuals.** (a) Under K.S.A. 79-3643, and amendments thereto, a person may be held liable for sales taxes not paid to the state of Kansas if that person is a responsible individual, and has willfully failed to collect, account for, or pay over to the state the taxes that are due, or has otherwise acted to evade or defeat payment of these taxes.

(b) "Responsible individual" shall mean any person with sufficient status, duties, and authority to have significant control over business finances or the disbursement of business funds.

(c) Having one or more of the following factors that establish status, duties, and authority of a person shall be sufficient to establish that the person has significant control over business finances or the disbursement of business funds:

(1) A significant ownership interest in a business;  
 (2) a significant involvement in the day-to-day management of the business;

(3) the authority to sign business checks or tax returns;

(4) the authority to direct payment of business funds to creditors;

(5) the authority to pledge business assets as collateral for loans, advances, or lines of credit for the business;

(6) the authority to bind the business to contracts entered into as part of the day-to-day business operations; or

(7) the authority to hire or fire employees who are authorized to perform any act described in paragraphs (3) through (6) of this subsection.

(d) The term "willfully" in K.S.A. 79-3643, and amendments thereto, shall have the same meaning as when the term "willfully" is used in K.S.A. 79-32,107(e), and amendments thereto.

(e) Acts or omissions showing that a responsible individual acted willfully in failing to collect, account for, or remit taxes may include one or more of the following:

(1) Making a deliberate choice that the business should pay other creditors in spite of having knowledge that taxes collected are not being remitted to the state of Kansas;

(2) having knowledge of the tax delinquency and failing to exercise authority to rectify it if funds were available to pay the state of Kansas;

(3) performing a voluntary or intentional act or failing to perform such an act with knowledge that the act or omission will result in the failure of the business to collect, account for, or remit taxes owed to the state of Kansas;

(4) failing to investigate or to correct mismanagement after notice that taxes owed to the state of Kansas are not being remitted; or

(5) embezzling business funds.

(f) The liability of a responsible individual who acted willfully shall survive the dissolution of a corporation or other business. (Authorized by K.S.A. 2000 Supp. 79-3618; implementing K.S.A. 2000 Supp. 79-3643; effective July 27, 2001.)

**92-19-65. Medical equipment and supplies.** (a) "Medical supplies" means tangible personal property specifically designed for and exclusively used in the cure, treatment or diagnosis of an injury, illness or other malady of the human body, and consumed in a single usage. Medical supplies do not include tangible personal property

designed or customarily used for human habitation purposes, or as a means for generally maintaining a quality of life not directly related to the cure, treatment or diagnosis of an injury, illness or other malady of the human body.

(b) "Medical equipment" means equipment specifically designed for and exclusively used in the cure, treatment or diagnosis of an injury, illness or other malady of the human body. Medical equipment does not include equipment designed or customarily used for human habitation purposes, or as a means for generally maintaining a quality of life not directly related to the cure, treatment or diagnosis of an injury, illness or other malady of the human body, even though the equipment may be used to assist in providing certain services. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988.)

**92-19-66. Contractors, subcontractors and repairmen; purchases of material.**

(a) Sales of building material or other property to contractors, subcontractors or repairmen for use by them in building, constructing, erecting, equipping, furnishing, repairing, servicing, altering, maintaining, enlarging, reconstructing or remodeling shall be taxable. Material used by a contractor, subcontractor or repairman for a project under original construction shall be subject to sales tax. Each contractor, subcontractor or repairman is deemed to be the final user or consumer of material used by the contractor, subcontractor, and repairman in construction projects. Each contractor, subcontractor or repairman shall not give, and each retailer shall not accept, a resale exemption certificate to purchase material without sales tax.

(b) Each contractor, subcontractor or repairman shall be responsible for the payment of sales tax on all materials and supplies purchased for use by the contractor, subcontractor or repairman in erecting structures for others, or for building on, or otherwise improving, altering or repairing real or personal property of others.

(c) Each retailer whose principal line of business is the retail selling of tangible personal property to the final user or consumer, but who also performs contractor services, may purchase material exempt from sales tax for resale purposes. When the retailer engages in a construction project as a contractor and removes material from inventory to perform the project, the retailer shall

report and pay the proper sales tax on the cost of the material on the retailer's sales tax return.

(d) The taxing event shall be deemed to occur at the time a contractor purchases material, or when a retailer who is also a contractor removes material from inventory to perform a construction project. Therefore, bulk purchases of all material by persons who are contractors only, and all material removed from inventory by a retailer to perform a construction project shall be subject to sales tax at the time of purchase or at the time the material is removed from inventory, even though the material may be used in a construction project outside of Kansas. No deduction, exclusion, refund or credit for sales tax shall be allowed when a contractor purchases material in Kansas, or when a retailer who is also a contractor removes material from inventory as a sale in interstate commerce, even though the material may be used in a construction project outside of Kansas. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective May 1, 1988.)

**92-19-66a.** (Authorized by 79-3618; implementing K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988; revoked June 26, 1998.)

**92-19-66b. Labor services.** (a) Each contractor, subcontractor, and repairman shall be responsible for collecting and remitting sales tax on taxable services performed for others, including taxable services performed for other contractors. A contractor, subcontractor, or repairman shall not issue or accept a resale exemption certificate that claims an exemption from sales tax for services being purchased from or sold to another contractor, subcontractor, or repairman.

(b) The taxable base for all contracts involving the application or installation of tangible personal property shall be the difference between the contract price and the cost of material, supplies, and payments to subcontractors, including sales or compensating tax paid by the contractor on the materials, supplies, and subcontractor charges purchased by the contractor to complete the contract.

(c) Each contractor, subcontractor, or repairman who does not separately state the amount of sales tax for services performed in that person's contract, bid estimates, customer billings, or other

evidence of the transaction shall state in the document that all applicable sales taxes are included in the selling price. If the statement does not appear in the contract, bid estimate, billing, or other evidence of the transaction, it shall be presumed that the sales tax was not charged to the consumer. Each retailer shall carry the burden of proving that the sales tax was charged to the consumer and properly remitted to the state.

(d) The service of installing or applying tangible personal property in connection with the original construction, which is the first or initial construction of a new building or facility, shall not be subject to sales tax. The erection of a building or facility on a site previously occupied by a building or facility that has been demolished, razed, or dismantled shall be considered to be original construction if the building or facility is totally new, whether or not the old foundation was also demolished.

(e) The service of installing or applying tangible personal property for the addition of an entire room or floor to the exterior of an existing building or facility shall not be subject to sales tax. Any replacement, remodeling, restoration, repair, renovation, or reconstruction done in the interior of an existing building or facility necessary to the construction of an entire room or floor added to the exterior of an existing building or facility shall be considered to be original construction and not subject to sales tax when any of these conditions is met.

(1) Except for the addition of the entire room or floor to the exterior of the building or facility, the work performed inside the existing building or facility would not be necessary.

(2) The work being done in the existing building or facility is necessary to support the addition of the new room or floor being added to the exterior of the building, facility, or the machinery contained therein.

(3) The support to the entire room or floor being added to the exterior of the existing building or facility is the direct causal factor of the construction being performed to the interior of the existing building or facility.

If none of the three requirements can be met, the services performed to the interior of the existing building or facility shall be subject to sales tax, and the cost of services rendered in connection with the entire project shall be allocated between the addition of the new room or floor and the services performed to the interior of the existing

building or facility. Sales tax shall be collected and remitted for that portion of services allocated to those services performed to the interior of the existing building or facility.

(f) Services of installing or applying tangible personal property to complete unfinished portions of newly constructed buildings, facilities, shopping centers, and malls when space within the building, facility, center, or mall is leased or sold to the first or initial tenant of that space shall not be subject to sales tax. Services performed to install or apply tangible personal property for the completion of an unfinished portion of an existing building or facility shall be presumed not to be taxable when all of the following conditions are met.

(1) The service being rendered was called for in the original blueprint, building plan, or building specification at the time original construction of the building or facility was started, including any change orders issued during the original construction of the building or facility.

(2) The completion of the unfinished portion of the building or facility is within a time that is reasonably close to the time of the original construction of the building or facility.

(3) The service rendered would have been performed at the time of the original construction of the building or facility, except for circumstances beyond the owner's control. Those circumstances shall not include instances in which the project is essentially completed and usable for the purposes intended, but the owner merely fell short of funds, or when the owner, after taking possession or occupancy of the building or facility, contracts for additional services.

(4) The owner or occupant is the first or initial owner or occupant of the building or facility.

(g) Sales tax shall not be imposed on the service of installing or applying tangible personal property for the purpose of restoring, reconstructing, or replacing a building or facility damaged or destroyed by fire, flood, tornado, lightning, explosion, or earthquake. This exemption shall not apply to restoration, reconstruction, or replacement of a building or facility due to normal deterioration resulting from the continuous exposure to the elements, or the obsolescence of the building or facility. Each retailer performing a service under this exemption shall secure an affidavit from the owner of the building or facility stating that the building or facility was damaged or destroyed by one or more of the above-mentioned causes.

Each retailer shall retain the affidavit in the retailer's records for three years. The affidavit shall be in substantially the following form:

State of Kansas, County of \_\_\_\_\_  
 ss. \_\_\_\_\_  
 of lawful age, being first duly sworn, deposes, and states: \_\_\_\_\_

Subscribed in my presence and duly sworn to before me,  
 this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

(Signature of Notary Public)

(h) Services performed to dismantle, demolish, raze, or destroy a building or facility or a portion of a building or facility shall be subject to sales tax. If the services are performed in connection with the original construction of a building or facility, and the building or facility is constructed on the same site, the service of dismantling, demolishing, razing, or destroying the original building or facility shall not be subject to sales tax. (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3603; effective May 1, 1988; amended June 26, 1998.)

**92-19-66c. Purchase and lease of tools and equipment.**

(a) Each contractor, subcontractor and repairman shall be considered the final user or consumer of all tools, equipment and machinery purchased to perform construction services. Sales of tools, equipment and machinery to contractors, subcontractors and repairmen to perform construction services shall be subject to sales tax. With the exception of leases of equipment and machinery by a contractor under a project exemption certificate, leases of tools, machinery and equipment by a contractor to perform construction services shall be subject to sales tax.

(b) Leases of tools, equipment and machinery by a contractor are not exempt from sales tax as an ingredient or component part of the services performed by the contractor, whether the services are taxable or exempt from the sales tax.

(c) Leases of tools, equipment and machinery by a contractor are not exempt from sales tax as consumed in the production of the service performed by the contractor, whether the services are taxable or exempt from the sales tax. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective May 1, 1988.)

**92-19-66d.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3603 as

amended by L. 1987, Ch. 182, Sec. 108; effective May 1, 1988; revoked June 26, 1998.)

**92-19-66e. Project exemptions.** (a) “Project exemption” means a type of sales tax exemption that allows a qualifying entity to pass its exempt status through a contractor to suppliers when the contractor purchases materials for use in improving the entity’s real property. K.S.A. 79-3606(d), K.S.A. 79-3606(e), and K.S.A. 79-3606(cc), and amendments thereto, identify the entities that may qualify for a project exemption.

(b) Project exemptions shall be limited to exempting purchases by contractors for construction projects performed for qualifying entities that have secured a project exemption certificate. Project exemption certificates shall be considered to provide a specific, limited exemption that contractors may claim for a single construction project of limited duration and shall not create an express or implied agency relationship between the exempt entity, the contractor, or the supplier. For purposes of this regulation, “contractor” means the general contractor, subcontractors, and repairmen, unless the context clearly indicates otherwise. “Supplier” means retail vendors of construction materials and other building supplies.

(c) Project exemption certificates may be issued by the department of revenue or by an entity that has been designated by the secretary of revenue as an agent of the department for purposes of issuing the certificates. Only entities that are entitled to be granted a project exemption under K.S.A. 79-3606(d) or K.S.A. 79-3606(e), and amendments thereto, may be designated as an agent of the department for this purpose. Businesses that qualify for project exemption because of economic development laws shall not be granted agency status. For purposes of this regulation, “the secretary of revenue” or the “secretary” means the secretary of revenue or that individual’s designee.

(d) Entities that have not been designated as agents of the department shall apply to the department for a project exemption certificate for each construction project. Upon approval of the application, a project exemption certificate shall be issued by the department directly to the entity making application.

(e) Each application to the department for a project exemption certificate shall provide the following information:

- (1) The exempt entity’s name and address;
- (2) the general contractor’s name and address;

(3) the project location, description, and the job number being assigned to the project by the entity;

(4) the starting date for construction;

(5) the estimated completion date of the project; and

(6) any additional information required on forms approved by the department for use in applying for project exemption.

(f) Requests by an entity for agency status to issue its own project exemption certificates shall be made on forms issued by the department. Each entity’s request for agency status shall be approved or denied in writing by the secretary of revenue.

(g) Each entity that is authorized to issue its own project exemption certificates shall meet these requirements:

(1) Use certificate forms that have been approved by the department;

(2) issue certificates in a numbered sequence;

(3) record each project exemption certificate number when the certificate is issued;

(4) maintain records that contain the information required in subsection (e);

(5) maintain records in a form that is acceptable to the department; and

(6) establish procedures for releasing the information in its records to department auditors.

(h) All records that concern an entity’s issuance of project exemption certificates shall be made available to the department for inspection during normal business hours. Entities that receive authorization to issue their own project exemption certificates may be required to file quarterly reports with the department. Forms for certifying the contents of its records on project exemptions for purposes of the hearsay exception requirements of K.S.A. 60-460(m), K.S.A. 60-460(n), and K.S.A. 60-460(o), and amendments thereto, shall be made available to authorized entities by the department upon request. An entity’s authorization to issue project exemption certificates may be revoked if the entity fails to maintain proper records, issues certificates for projects that do not qualify for exemption, refuses to make information available to the department, has backdated a project exemption certificate, or for other good cause.

(i) An entity that is authorized to issue its own project exemption certificates may issue certificates only for wholly owned projects. It shall not issue certificates for joint projects that involve separate entities, including joint projects between a municipality and a school, educational institu-

tion, other governmental unit, or a nonprofit corporation. When a project involves two or more entities, the entities shall file a joint application for project exemption with the department.

(j) An entity that issues a project exemption certificate for a project that does not qualify for exemption shall be liable for all taxes that would have otherwise been paid on the project by contractors who worked on the project, together with interest and penalty. Assessments may be issued based on projections of tax liability from material cost records and other records.

(k) When an exempt entity buys construction materials that are billed to and paid for by the exempt entity, the purchases shall be exempt without a project exemption certificate. Only indirect purchases made by an entity's contractor shall require a project exemption certificate for exemption. Project exemption certificates shall not be issued for direct purchases or for projects that do not involve improvements to real property.

(l) Each exempt entity shall maintain the original project exemption certificate as part of its records and provide photostatic copies to the project's general contractor for distribution to subcontractors, repairmen and suppliers. Each subcontractor, repairman, or supplier who is presented with a project exemption certificate or who uses one to exempt purchases shall maintain a copy of the certificate as part of its records. Each supplier shall inscribe the project exemption number on invoices or other billing documents issued to contractors, subcontractors, or repairmen who claim exemption under a certificate. Suppliers may honor a project exemption certificate only when the sales being exempted are consistent with the dates and other information contained in the certificate.

(m) Project exemption certificates shall be considered to operate prospectively. Each certificate shall be issued for a specific project of limited duration and shall contain an expiration date. If an entity qualifies for a project exemption but fails to secure or issue a certificate before purchases for the project are made, contractors shall pay tax on their purchases. An exempt entity that fails to secure or issue a project exemption certificate in time for a contractor to secure exemption from its suppliers shall seek a refund from the department in accordance with subsection (n) and shall not backdate the certificate or refuse to pay the tax to the contractor.

(n)(1) Any exempt entity that fails to secure a project exemption certificate in time for a con-

tractor to secure exemption for part or all of its purchases may apply to the department for permission to seek from its contractors' suppliers a refund of taxes on sales that would have been exempt had a project exemption certificate been secured in time for its contractors to claim exemption on their purchases. The refund request shall be accompanied by the following documents or shall show the following:

(A) Proof that the project qualified for project exemption; and

(B) affidavits from the contractor, subcontractors, and repairmen verifying the amount of taxes they paid to suppliers on purchases for the project. The affidavit shall be supported by a schedule listing the taxes paid by the contractor, subcontractor, and repairmen; the supplier to whom the taxes were paid; and the date of the sale. Copies of invoices and other documentation that verifies the tax payments listed in the schedule shall accompany the affidavit and schedule. The affidavit shall include a waiver by all contractors, subcontractors, and repairmen that relinquish all claims to the refund.

(2) Each application shall be reviewed by the department. If the department determines that the sales to a contractor, subcontractor, or repairman would have been exempt had a project exemption certificate been obtained before purchases were made, the entity shall be provided with written authorization for the entity to seek a refund from the suppliers for the scheduled taxes paid by the contractors, subcontractors, and repairmen. To secure the refund, the entities shall submit the refund authorization to the supplier under the provisions of K.A.R. 92-19-49a.

(o) Each contractor who makes exempt purchases under a project exemption certificate shall maintain adequate records to show disposition of the materials, supplies, and services that were purchased exempt. Upon completion of an exempt project, each contractor shall furnish a sworn statement to the exempt entity indicating that all purchases made exempt under the project exemption certificate were entitled to exemption under the act. Forms for these affidavits shall be furnished by the department.

(p) A project exemption certificate shall not relieve a contractor from liability for taxes on materials and supplies that are not incorporated or consumed on an exempt project. Any material purchased under a project exemption certificate that has not been consumed or incorporated into

the project or that has not been returned to the supplier for credit shall be subject to sales tax. Each contractor shall file a return and remit tax on the material directly to the department. This return shall be filed for the reporting period that follows the month in which the contractor determines that the materials or supplies were not used in the exempt project. (Authorized by and implementing K.S.A. 79-3606, 79-3618; effective June 26, 1998.)

**92-19-67.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602; effective May 1, 1988; revoked March 19, 2021.)

**92-19-68.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 3602; effective May 1, 1988; revoked June 26, 1998.)

**92-19-69. Caterers.** (a) Each person engaged in the business of catering is a retailer as defined in K.S.A. 1986 Supp. 79-3602(d). Each retailer shall collect sales tax on the total gross receipts received from the sale of food, meals and drinks, other than alcoholic liquor as defined in K.S.A. 41-102 as amended by L. 1987, Ch. 182, Sec. 1 and amendments, and cereal malt beverages as defined in K.S.A. 41-2701 as amended by L. 1987, Ch. 182, Sec. 97, and amendments, unless specifically exempt. Sales tax shall be imposed on the total selling price of the transaction without any deduction or exclusion for labor or services expended, skill, time spent, overhead and other expenses incurred by the caterer in producing the tangible personal property or profit thereon, regardless of how any contract, invoice or other evidence of the transaction is stated or computed, and whether separately billed or segregated on the same bill.

(b) Each amount designated as a service charge added to the price of food, meals or drinks, shall be a part of the selling price of the food, meals or drinks, and shall be included in the total selling price subject to sales tax, even though such charges are made in lieu of tips and are paid over by the retailer in whole or in part to the retailer's employees.

(c) The gross receipts received by a person holding a temporary permit as defined in K.S.A. 41-2601 as amended by L. 1987, Ch. 182, Sec. 60, from each sale of alcoholic liquor as defined in K.S.A. 41-102 as amended by L. 1987, Ch. 182, Sec. 1 and amendments, and cereal malt beverages as defined in K.S.A. 41-2701 as amended by

L. 1987, Ch. 182, Sec. 97 and amendments, upon which no Kansas excise tax has been paid, shall be subject to sales tax. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988.)

**92-19-70.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, K.S.A. 1986 Supp. 3603 as amended by L. 1987, Ch. 182, Sec. 108, K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1, effective May 1, 1988; revoked June 20, 2008.)

**92-19-71. Mobile phone, cellular phone, beeper and similar services.** (a) Sales tax shall be imposed on the gross receipts received from cable, community antenna, subscriber radio and television services. A mobile phone, cellular phone, beeper or other similar services is deemed to be a subscriber radio service. The gross receipts received from mobile phone, cellular phone, beeper and other similar services are subject to sales tax.

(b) Sales tax shall be imposed on the total cost to the consumer without any deduction or exclusion for:

- (1) The cost of the property or service sold;
- (2) services used or expended;
- (3) materials used;
- (4) losses, overhead or any other cost or expense; or
- (5) profit, regardless of how any contract, invoice or other evidence of the transaction is stated or computed, and whether separately billed or segregated on the same bill.

(c) Sales tax applies to all amounts paid for a mobile phone, cellular phone, beeper or other similar service, regardless of whether there is actual consumption of the service.

(d) Each charge for the use of equipment and facilities furnished in connection with, supplemental to or as an aid in the usage of a mobile phone, cellular phone, beeper or other similar tangible personal property shall be taxable.

(e) Each retailer shall collect sales tax on subscriber radio services which are resold to their customers. Each retailer furnishing a mobile phone, cellular phone or other similar service may purchase the service from the retailer's vendor exempt from sales tax for resale purposes by

furnishing the vendor a Kansas resale exemption certificate.

(f) Each retail sale involving the use or furnishing of a mobile phone, cellular phone, beeper or other similar service shall be considered to have been consummated at the billing address of the subscriber as it appears in the retailer's records. Each retail lease of telecommunication and data processing equipment used in connection with a mobile phone, cellular phone, beeper or other similar service shall be considered to have been consummated at the billing address of the lessee as it appears in the retailer's records. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective May 1, 1988.)

**92-19-72. Retail sales between related entities.** (a) Each interdepartmental transfer of tangible personal property and taxable services between various departments of a single legal entity shall not constitute a sale subject to sales tax.

(b) Each transfer of tangible personal property and taxable services between separate legal entities for use or consumption, and not for resale, shall be taxable, even though the entities:

- (1) Share common principals or ownership and operations;
- (2) share the same business location;
- (3) file consolidated income tax returns for federal and state income purposes; or
- (4) do not enjoy a profit or expense as a result of the transaction.

When a transaction would be subject to sales tax if the transaction were between two separately owned and operated entities, the commonality of the two entities is irrelevant, and sales tax is imposed on the transaction between the two related entities.

(c) "Separate legal entities" shall mean entities which are recognized as individual entities either in fact or at law. Each transfer of tangible personal property and taxable services between separate legal entities for use or consumption, and not for resale, shall include:

- (1) Transfers between individuals and partnerships;
- (2) transfers between individuals and corporations;
- (3) transfers between individuals and unincorporated associations;
- (4) transfers between partnerships and corporations;

(5) transfers between partnerships and unincorporated associations;

(6) transfers between partnerships;

(7) transfers between unincorporated associations and corporations; and

(8) transfers between corporations, whether between sister corporations or parent and subsidiary corporations. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602; effective May 1, 1988.)

**92-19-73. Membership fees and dues.** (a) Each public or private club, organization, or business charging dues to members for the use of the facilities for recreation or entertainment shall collect sales tax on the gross receipts received from the dues, except for the following:

(1) Clubs and organizations that are exempt from property tax pursuant to the "eighth" paragraph of K.S.A. 79-201 and amendments thereto, including the American legion, the veterans of foreign wars, and certain other military veterans' organizations;

(2) clubs and organizations that are exempt from property tax pursuant to the "ninth" paragraph of K.S.A. 79-201 and amendments thereto, including the Y.M.C.A., Y.W.C.A., Boy Scouts, Girl Scouts, and certain other humanitarian community service organizations; and

(3) nonprofit organizations that support nonprofit zoos, if the organization is exempt pursuant to section 501(c)(3) of the federal internal revenue code of 1986 and the dues are used to support the operation of the zoo.

(b)(1) "Dues" means any charge that is a debt owed to the club, organization, or business by an existing member or prospective member in order for the member or prospective member to enjoy the use of the facilities of the club, organization, or business for recreation or entertainment, and, except as provided in paragraph (b)(2), shall include periodic or one-time special assessments, initiation fees, and entry fees charged to members by a nonprofit club or organization if a member's continued nonpayment of the assessment or fee will result in the loss of membership or membership rights.

(2) Dues shall not include the redeemable amount of a contribution required for membership in an equity country club or other equity entity organized for recreation or entertainment in which none of the net earnings inure to the benefit of any shareholder or other person, in-

cluding organizations described by I.R.C. 501(c) (7), if the club or organization is obligated to repay the redeemable amount of the contribution, and the redeemable amount either is reflected as a liability owed to the member on the club's or organization's books and records or is required to be repaid to the member under a written contract. The repayment obligation may be conditioned upon the club's or organization's receipt of a membership contribution from a new member. The redeemable amount of a contribution required for membership shall include payments made by a member or prospective member for membership stock, certificates of membership, refundable deposits, refundable capital improvement surcharges, refundable special or one-time assessments, or similar membership payments in an amount equal to the amount that the club or organization is obligated to repay to the member. These payments to a club shall not be considered redeemable contributions if the club's repayment obligation is contingent solely on a club ceasing its operations as a nonprofit social organization sometime in the future.

(3) If all or part of a redeemable contribution paid to acquire or retain membership ceases to be carried as a liability on the books and records of a club that continues operation, or its successor, and the contribution has not been redeemed by a former member or former member's estate, the amount of the contribution that is no longer carried as a liability and can no longer be redeemed shall be subject to sales tax.

(c) "Recreation or entertainment" means any activity that provides a diversion, amusement, sport, or refreshment to the member. This term shall include the health, physical fitness, exercise, and athletic activities identified in K.A.R. 92-19-22b.

(d) An exemption for gas, fuel, or electricity shall not be allowed for a public or private club, organization, or other business that charges dues to members if the gas, fuel, or electricity is utilized for heating, cooling, or lighting a building, facility, or other area that is used for recreation or entertainment. An exemption shall not be allowed for water, cleaning supplies, toilet supplies, sanitary supplies, and other consumables and supplies that are used by a public or private club, organization, or other business that enable dues-paying members or others to use the building or facility for recreation or entertainment. These exemptions shall not be allowed regardless of whether the business charges dues-paying members or others

for admission or for participation in sports, games, or recreation. (Authorized by K.S.A. 2009 Supp. 75-5155 and K.S.A. 2009 Supp. 79-3618; implementing K.S.A. 2009 Supp. 75-5155, K.S.A. 2009 Supp. 79-3603 as amended by L. 2010, ch. 160, sec. 1 and K.S.A. 2009 Supp. 79-3618; effective May 1, 1988; amended July 27, 2001; amended April 1, 2011.)

**92-19-74. Accounting periods; monthly filing of returns.** Each retailer whose total tax liability exceeds \$1600.00 in any one calendar year shall file a sales tax return on or before the twenty-fifth day of every calendar month, regardless of the accounting method employed by the retailer. Because all accounting periods end within a calendar month, a sales tax return shall be filed no later than the twenty-fifth day of the month following the month in which the accounting period ends. If there is a calendar month in which two accounting periods end, the tax return for that month shall include all retail sales made during both of these accounting periods. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 3607; effective May 1, 1988.)

**92-19-75.** (Authorized by 79-3618; implementing K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988; revoked July 27, 2001.)

**92-19-76. Sales to political subdivisions of the state of Kansas.** (a) All direct purchases of tangible personal property and taxable services by a political subdivision of the state of Kansas shall be exempt from sales tax, unless otherwise provided by law.

(b) To qualify as a direct purchase, each bill, invoice, contract or other evidence of the transaction shall be made out in the name of the political subdivision which qualifies for an exemption under the act, and each payment shall be made on the check, warrant or voucher of that political subdivision.

(c) All sales of tangible personal property or taxable services made to and paid for by an agent, employee or other representative of a political subdivision shall be subject to sales tax, unless expressly authorized under a project exemption certificate issued by the department of revenue, even though the same purchase would have been exempt from sales tax had the political subdivision directly purchased the tangible personal property

or service. Any contractual arrangement or understanding between an agent or employee and a political subdivision shall not be recognized by the department, and the retailer shall charge and collect the sales tax on the total selling price of tangible personal property or service, even though:

(1) The agent or employee may be on official business on behalf of the political subdivision;

(2) is on a per diem from the political subdivision;

(3) is on an expense account, allowance or shall otherwise be reimbursed by the political subdivision; or

(4) has or will receive monies, credits or other assets from the political subdivision to pay for the transaction.

(d) The exemption from sales tax for political subdivisions applies only to the extent the political subdivision is not engaged nor proposes to engage in the business of furnishing gas, water, electricity or heat to others and the tangible personal property or taxable services are used or proposed to be used in such business. When a political subdivision is engaged or proposes to engage in furnishing any of these four businesses, the political subdivision shall pay sales tax on all purchases of tangible personal property and taxable services used in these businesses. Nothing under this section of the act shall be construed to limit other exemptions which may be available to a political subdivision which furnishes gas, water, electricity or heat. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988.)

**92-19-77. Sales to the United States, its agencies and instrumentalities.** (a) All direct purchases made by the United States, its agencies or instrumentalities for the use of the United States, its agencies or instrumentalities shall not be taxable except when the United States has provided by federal statute that a particular agency or instrumentality shall be subject to a state's tax laws.

(b) To qualify as a direct purchase, each bill, invoice, contract or other evidence of the transaction shall be made out in the name of the United States, its agency or instrumentality, and payment shall be made on a federal check, warrant or voucher.

(c) Sales of tangible personal property or taxable services made to and paid for by an agent, employee or other representative of the United

States, its agencies or instrumentalities shall be taxable, even though the same purchase would have been exempt from sales tax had the United States, its agency or instrumentality directly purchased the tangible personal property or services. Contractual arrangements or understandings between an agent or employee and the United States, its agencies or instrumentalities shall not be recognized by the department, and the retailer shall charge and collect the sales tax on the total selling price of tangible personal property or services, even though the agent or employee:

(1) is on official business on behalf of the United States, its agencies or instrumentalities;

(2) is on a per diem;

(3) is on an expense account, allowance or shall otherwise be reimbursed by the United States, its agencies or instrumentalities; or

(4) or has or shall receive monies, credits or other assets from the United States, its agencies or instrumentalities to pay for the transaction.

(d) All sales of tangible personal property and taxable services sold to national banks, federal savings and loans and federal credit unions shall be subject to Kansas sales tax. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988.)

**92-19-78.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3615; effective May 1, 1988; revoked June 26, 1998.)

**92-19-79. Oil, gas and water wells.** (a) Sales of drilling materials or other property incorporated into an oil, gas or water well to contractors, subcontractors or repairmen for use by them in original construction projects including drilling, equipping, furnishing, repairing, servicing, altering, maintaining, enlarging or redrilling shall be subject to sales tax. Each contractor shall be considered the final user or consumer of materials used by them in the construction projects. A contractor, subcontractor or repairman shall not give, and retailers shall not accept, a resale exemption certificate to purchase the materials without sales tax.

(b) Each contractor, subcontractor or repairman shall be responsible for the payment of sales tax on all materials and supplies which are purchased for use by them in drilling, redrilling, or otherwise improving, altering or repairing oil, gas or water wells for others.

(c) Each contractor, subcontractor or repairman shall be responsible for collecting sales tax on taxable services performed for others, including taxable services performed for other contractors. A contractor, subcontractor or repairman shall not purchase or sell services exempt from sales tax under a resale exemption certificate.

(d) The taxable base for all contracts involving the application or installation of tangible personal property shall be the difference between the contract price and the cost of material, supplies and payments to subcontractors, including sales or compensating tax paid by the contractor on the materials, supplies and subcontractor charges purchased by the contractor to complete the contract.

(e) Contractors, subcontractors or repairmen who do not separately state the amount of sales tax for their services in the contract, bid estimate or customer billing shall include a statement in the document in substantially the following form: "All applicable sales taxes are included in the selling price." If the statement does not appear in the contract, bid estimate, billing or other evidence of the transaction, it shall be presumed that the sales tax was not charged to the consumer. If a statement does not appear on the document, the retailer shall carry the burden of proving that the sales tax was charged to the consumer and properly remitted to the state.

(f) The service of installing or applying tangible personal property in connection with original construction that is the first or initial construction of a new oil, gas or water well shall not be subject to sales tax. "Original construction" of an oil, gas or water well means all services performed by a contractor through the date of completion of the well. Any service performed in or on oil, gas or water wells other than as set forth herein shall be subject to sales tax. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective May 1, 1988.)

**92-19-80.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602; K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective May 1, 1988, revoked, T-89-16, May 1, 1988; revoked Nov. 14, 1988.)

**92-19-81. Abatement of final tax liabilities.** The requirements and procedures for abatement of final sales and compensating tax liabilities shall be those requirements and proce-

dures specified in K.A.R. 92-12-66a. (Authorized by and implementing K.S.A. 2005 Supp. 75-5155 and K.S.A. 2005 Supp. 79-3618; effective Dec. 13, 2002; amended May 27, 2005; amended April 13, 2007.)

**92-19-82. Direct pay permits.** (a)(1) "Certificate," as used in this regulation, shall mean a direct payment certificate issued by the department to a permit holder that explains direct pay authority to retailers and can be provided to retailers in lieu of a direct pay permit.

(2) "Department" shall mean the Kansas department of revenue.

(3) "Kansas sales and use tax laws" shall mean the following:

(A) Chapters 36 and 37 of article 79 of the Kansas statutes annotated, and amendments thereto;

(B) K.S.A. 12-187 *et seq.*, and amendments thereto; and

(C) articles 19, 20, and 21 of these regulations.

(4) "Permit" shall mean a direct payment permit issued by the secretary that, under K.S.A. 79-3619 and amendments thereto, allows the holder of the permit to accrue and pay state and local sales and use taxes directly to the department of revenue.

(5) "Secretary" shall mean the secretary of revenue or the designee of the secretary.

(b) Application for permit. Each application for a permit shall be submitted in writing to the secretary. The application shall contain the applicant's name, address, and sales and use tax account numbers, the location of the place or places of business for which direct payment of tax will be made, the business's standard industrial classification number or its equivalent, and any other information prescribed by the secretary.

(c) Qualification process and requirements.

(1) Each applicant for a permit shall demonstrate the applicant's ability to comply with the Kansas sales and use tax laws. The applicant shall provide a description of the applicant's accounting system and shall demonstrate that the system calculates the correct amount of state and local tax.

(2) The applicant shall provide documentation of at least one of the following:

(A) The applicant makes annual purchases of at least \$1 million of tangible personal property for business use and not for resale.

(B) The applicant purchases substantial amounts of property for business use under circumstances that normally make it difficult or impractical at the time of purchase to determine

whether the property will be subject to or exempt from sales or use tax.

(3) The applicant shall provide a statement that explains the business purpose for the permit and demonstrates how the grant of direct payment authority will meet one or more of the following criteria:

- (A) Insure tax compliance;
- (B) reduce the administrative work needed to determine taxability, or to collect, verify, calculate, or remit tax;
- (C) improve compliance with Kansas tax laws;
- (D) provide accurate compliance if the determination of taxability of the item is difficult or impractical at the time of purchase;
- (E) more accurately calculate tax using new or electronic business processes, including electronic data interchange, evaluated receipts settlement, and procurement cards; or
- (F) more accurately determine and calculate tax, based on a showing that the applicant has significantly automated or centralized its purchasing or accounting processes and that the applicant's business activities require it to comply with the laws and regulations of multiple state and local jurisdictions.

(4) Within 90 days of the date the secretary receives the application, the applicant shall be notified by the secretary of whether the permit is granted or denied or whether a conference shall be scheduled because additional documentation is required to complete the review.

(d) Recordkeeping requirements. Each permit holder shall maintain records necessary to determine the correct tax liability. These records shall be made available upon request by the secretary pursuant to K.S.A. 79-3610 and K.S.A. 79-3611, and amendments thereto. Books and records shall be retained in accordance with K.S.A. 79-3609, and amendments thereto, and K.A.R. 92-19-4b.

(e) Tax reporting. Each permit holder shall accrue and pay tax directly to the department for all taxable transactions on which direct payment authority applies or is claimed by the permit holder. The tax shall be reported on forms prescribed by the department. The tax owed shall be due and payable on the next tax return due following the date on which a determination of taxability is made, or in the exercise of reasonable care should be made, for a given transaction, unless otherwise provided by written agreement between the taxpayer and the department.

(f) Certain transactions not permitted. A permit holder shall not use the permit in connection with the following purchases:

- (1) Taxable meals or beverages;
- (2) taxable lodging or services related to lodging;
- (3) admission to places of amusement, entertainment or athletic events, and charges for use of amusement devices;
- (4) memberships, dues, fees, or other similar charges paid to private and public clubs or other organizations;
- (5) taxable fees to participate in sports, games, and other recreational activities;
- (6) motor vehicles, aircraft, boats, and other tangible personal property required to be licensed or titled with any taxing authority;
- (7) telephone or telegraph services, subscriber television or radio services, telephone answering services, mobile phone services, beeper services, and other similar services;
- (8) real property construction services taxable under K.S.A. 79-3603, and amendments thereto; and
- (9) any other purchases prescribed by the secretary or agreed to by the permit holder and the secretary.

(g) Permit holder duties. The permit holder shall provide a copy of the permit or certificate to each vendor from whom the holder purchases tangible personal property or services, other than to those identified in subsection (f). Once presented, a permit holder shall not be required to pay the tax to the vendor as prescribed by the Kansas sales and use tax laws, and the vendor who retains the permit or certificate as part of the vendor's records shall not be required to collect sales tax. The permit holder shall accrue and pay the tax directly to the department on all taxable transactions not taxed at the time of the sale. A vendor who has been presented a permit or certificate may rely on the permit or certificate until it is withdrawn by the permit holder or notice is otherwise given that the authority has been withdrawn. If the secretary and permit holder agree in writing, the permit holder may maintain accounting records in sufficient detail to show in summary, and in respect to each transaction, the amount of sales and use taxes paid to vendors who have been not been asked to honor a permit or certificate for each reporting period.

(h) Vendor responsibilities. Receipt and maintenance of a copy of a direct payment permit or certificate shall relieve the vendor of the responsibility to collect tax on sales made to a permit hold-

er on qualifying transactions. Each vendor who makes sales upon which the tax is not collected because of this regulation shall maintain records that identify each sale, the amount of the sale, and the purchaser. The vendor's receipts from these sales shall not be subject to the tax levied under the Kansas sales and use tax laws.

(i) Local taxes. Each permit holder who makes taxable purchases of tangible personal property or services shall report and pay the applicable state and local tax on the purchases. A permit holder shall not use a permit as a device to defer payment of tax on purchases, or to avoid accruing and paying local sales tax to the appropriate local taxing jurisdiction pursuant to the local sales tax statutes.

(j) Revocation of permit.

(1) A direct payment permit shall not be transferable, and its use shall not be assigned to third parties, including contractors. A permit may be revoked by the secretary at any time if the secretary determines that the holder has not complied with the provisions of the law or that revocation is in the best interest of the department. The department's interests shall include increased audit expenses caused by permits, including larger staff, additional travel expenses, and adoption of new systems for tax reporting and auditing. The written notice of revocation shall be effective at the end of the direct payment permit holder's next reporting period.

(2) If a business is reorganized but ongoing business operations are unchanged, the new entity shall be allowed 120 days to apply for a new permit. During the 120-day period, the previous permit shall remain in effect.

(3) Each person whose permit is voluntarily forfeited or is revoked by the department shall return the permit to the department and shall immediately notify all vendors from whom purchases of taxable items are made, advising them that the permit and any certificates are no longer valid and should not be honored. Failure to give this notification shall be a violation of K.S.A. 79-3651(e) and amendments thereto. (Authorized by K.S.A. 2001 Supp. 79-3618; implementing K.S.A. 2001 Supp. 79-3619; effective Aug. 23, 2002.)

**92-19-200. Refund of sales tax paid upon food; definitions of "member of a household."** (a) "Member of a household" shall mean any of the following:

(1) If the claimant files an individual income tax return, a person, other than the claimant, for

whom a personal exemption is or may be claimed by the claimant for income tax purposes on the income tax return filed by the claimant for the year in which the food sales tax refund claim is made and who occupies a residence with the claimant for all or any part of the year;

(2) if the claimant does not file an individual income tax return, a person, other than the claimant, for whom a personal exemption could have been claimed by the claimant for income tax purposes for the year in which the food sales tax refund claim is made if an individual income tax return had been filed and who occupies a residence with the claimant for all or any part of the year; or

(3) a deceased spouse of a claimant for whom a personal exemption may be claimed by the claimant for income tax purposes for the year in which the food sales tax refund claim is made.

(b) "Member of a household" shall not include a person for whom a personal exemption is not allowed to be claimed by the claimant for income tax purposes for the year in which the food sales tax refund claim is made, regardless of how long the person occupies a residence with the claimant. (Authorized by K.S.A. 79-3636; implementing K.S.A. 2001 Supp. 79-3633; effective April 18, 2003.)

**92-19-201. Refund of sales tax paid upon food; definition of domicile; residency requirement; temporary absence.** (a) "Domicile" shall mean that place where a person resides, where the person has an intention to remain, and to which that person intends to return following any absence.

(b) Each claimant shall have maintained a domicile within the state of Kansas and resided within the state of Kansas during the entire year preceding the year in which the claim is filed to be eligible for a food sales tax refund.

(c) For purposes of the food sales tax refund program, a claimant shall be domiciled in this state if the claimant resides in this state and maintains the principal home within this state.

(d) A temporary absence from the domicile shall not disqualify a claimant for a refund. A seasonal absence or absence of a reasonable duration shall constitute a temporary absence. (Authorized by K.S.A. 79-3636; implementing K.S.A. 2001 Supp. 79-3633; effective April 18, 2003.)

**92-19-202. Refund of sales tax paid upon food; right of representative to make a claim**

**on behalf of claimant.** (a) Each individual filing a refund claim as a legal guardian or conservator of a claimant shall include with the claim an attested copy of the court order granting the power to act as a legal guardian or conservator for the claimant. A refund claim filed pursuant to the authority of a legal guardian or conservator shall be denied unless a copy of the court order granting the power to act as a legal guardian or conservator for the claimant is included with the refund claim.

(b) Each individual filing a refund claim as an attorney-in-fact for a claimant shall include with the claim a written document stating that an attorney-client relationship with the claimant exists. A refund claim filed pursuant to an authority of a power of attorney shall be denied unless a copy of the duly executed power of attorney for the claimant is included with the refund claim.

(c) An individual may file a refund claim on behalf of the claimant if the individual completes and includes with the claim an affidavit in support of the demand for a food sales tax refund on a form prescribed by the director of taxation. (Authorized by K.S.A. 79-3636; implementing K.S.A. 79-3634; effective April 18, 2003.)

**92-19-203. Refund of sales tax paid upon food; death of claimant subsequent to filing claim; disbursement of refund.** (a) If a claimant dies after timely filing a refund claim and a member of the household survives, the surviving member shall submit an affidavit of membership in the claimant's household and either a copy of the claimant's death certificate or other proof of the claimant's death to the director before receiving a disbursement.

(b) If a claimant dies after timely filing a refund claim and was the only member of the household, the individual appointed as executor or administrator of the claimant's estate shall submit an attested copy of the court order appointing that individual as executor or administrator and either a copy of the claimant's death certificate or other proof of the claimant's death to the director of taxation before receiving a disbursement. If an executor or administrator has not been appointed and qualified, an heir at law shall submit an affidavit of heirship and either a copy of the claimant's death certificate or other proof of the claimant's death to the director of taxation before receiving a disbursement. (Authorized by K.S.A. 79-3636; implementing K.S.A. 79-3634; effective April 18, 2003.)

## Article 20.— COMPENSATING TAX

**92-20-1. Purposes.** The Kansas compensating (use) tax act, as amended, supplements the Kansas retailers' sales tax act by imposing a like tax for the privilege of using, storing, or consuming within this state tangible personal property purchased at retail or for the privilege of utilizing taxable services within this state and in respect to which neither sales tax nor use tax of four percent or more has been imposed on property or taxable services by this state or any other state. (Authorized by K.S.A. 79-3707; implementing K.S.A. 79-3702, 79-3703 as amended by L. 1986, Ch. 386, Sec. 3, 79-3704; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987.)

**92-20-2.** (Authorized by K.S.A. 79-3703, 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; revoked May 1, 1987.)

**92-20-2a. Transactions on which tax applies.** Each person storing, using, or otherwise consuming personal property in this state is liable for the compensating tax regardless of whether the property was purchased or leased within or without this state. Unless the storage, use, or consumption of the property is exempt from compensating tax by K.S.A. 79-3704 and amendments thereto, each person shall be liable until the tax is paid to the state or collected by a retailer registered under the sales or compensating act. (Authorized by K.S.A. 79-3707; implementing K.S.A. 79-3703 as amended by L. 1986, Ch. 386, Sec. 3; effective May 1, 1987.)

**92-20-3. Sales tax rules and regulations also apply to compensating tax.** Each Kansas retailers' sales tax rule and regulation relating to enforcement, collection, and administration, which are compatible to compensating tax rules and regulations, shall also apply to the enforcement, collection and administration of the Kansas compensating (use) tax act. (Authorized by K.S.A. 79-3707; implementing K.S.A. 79-3702, 79-3703 as amended by L. 1986, Ch. 386, Sec. 3, 79-3704; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987.)

**92-20-4. Purchase price, consideration, trade-ins.** The actual cost of transportation from the place where the article was purchased to the

person using the same in this state is taxable as a part of the consideration and purchase price. Transportation costs mean freight, express, parcel post, or other hauling charges. It shall include charges for crating, packing and preparing tangible personal property for shipment.

The tax is applicable to the full amount of the contract in case of installment, conditional, or credit sales or purchases as the full amount is deemed to be contracted to be paid. Interest, finance or carrying charges on installment purchases are not a part of the purchase price and not taxable when such charges are separately made and so shown by the seller on invoices rendered the purchaser.

Discounts allowed by the seller and taken by the purchaser, shall be deducted in determining purchase price.

An amount equal to the allowance given for the trade-in of property on a sale shall be deducted in arriving at the purchase price.

A manufacturer's excise tax imposed by the federal government, paid at the source by the manufacturer, is a part of the purchase price and is taxable, even though the seller may segregate this tax on the sale invoice. (Authorized by K.S.A. 79-3702, 79-3703, 79-3707, K.S.A. 1971 Supp. 79-3602; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

**92-20-5. Payment of tax.** Each registered retailer as defined by this act shall collect from the consumer or user at the time of sale of tangible personal property or at the time of the furnishing of taxable services the full amount of the tax imposed by this act. The tax shall be a debt from the purchaser to the retailer and shall be added to the original purchase price. The tax is recoverable at law in the same manner as other debts. It is not to be absorbed by the registered retailer as part of the purchase price.

If the registered retailer fails to collect from the consumer or user the full amount of the tax, then the person using, consuming or storing taxable personal property in this state or utilizing taxable services furnished within this state shall file a return and pay the tax as required by K.S.A. 79-3706 and amendments thereto. The filing of a return by a user or consumer shall not relieve the registered retailer from the obligation of collecting the tax.

If the purchase is made from a nonregistered retailer, then the person using, consuming or stor-

ing taxable personal property or utilizing taxable services furnished in this state shall file a return and pay the tax as required by K.S.A. 79-3706 and amendments thereto. (Authorized by K.S.A. 79-3707; implementing K.S.A. 79-3702, 79-3703 as amended by L. 1986, Ch. 386, Sec. 3, 79-3704, 79-3705, 79-3706; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987.)

**92-20-6. Filing of returns.** Each registered retailer shall, on or before the 25th day of each month, file a return with the director on forms furnished by the director. The return shall cover the sale of tangible personal property or the providing of taxable services subject to the Kansas compensating (use) tax sold for use, storage, or consumption or provided within this state during the preceding reporting period in which the sales or use occurred as prescribed in K.S.A. 79-3607 and amendments thereto.

The registered retailer or user shall remit, with the return, four percent of the total amount charged on all sales of tangible personal property or furnishing of taxable services to the purchaser, including transportation and other incidental charges. If transportation charges cannot be included or collected by the retailer, the purchaser shall pay the tax directly to the state.

Each individual or person who purchases tangible personal property or receives services furnished subject to the tax imposed by K.S.A. 79-3703 and amendments, for which the tax is not collected by the seller, shall file a return with the director as prescribed in K.S.A. 79-3607 and amendments thereto. The return shall show in detail the total purchase price of tangible personal property used, stored, or consumed by the person or the value of taxable services received within the state during the reporting period subject to the tax, with such other information as the director may deem proper. Each person making an individual return as a purchaser or consumer shall remit four percent of the purchase price, including transportation and other incidental charges with the return.

Each check shall be made payable to the director of taxation, state office building, Topeka, Kansas. (Authorized by K.S.A. 79-3707; implementing K.S.A. 79-3704, 79-3705, 79-3706; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987.)

**92-20-7. Registration of out-of-state retailers; collection of tax by retailers.** (a) A retailer shall be deemed to be doing business in this state when engaged in business within this state under, but not limited to, any of the following methods of transacting business:

(1) Maintaining directly, indirectly, or through a subsidiary, an office, distribution house, sales house, warehouse or other place of business;

(2) having an agent, salesperson, or solicitor operating within the state under the authority of the retailer or its subsidiary, regardless of whether the agent, salesperson or solicitor is located in this state permanently or temporarily, or whether the retailer or subsidiary is qualified to do business within this state; or

(3) soliciting orders within this state through catalogues or other advertising media.

The director shall require an out-of-state retailer to apply for authority to collect and remit the tax.

Each retailer shall be deemed to have agents in this state even though the agents solicit sales intermittently; e.g. once a year or oftener, and regardless of the residency of the agent.

(b) Each retailer doing business in this state shall register, collect and remit the compensating (use) tax on tangible personal property sold for use, storage or consumption in this state, by any agent, salesperson, representative, trucker, peddler, or canvasser, regardless of whether:

(1) Sales are made on their own behalf or on behalf of the retailer;

(2) delivery and collection is made by the agent, salesperson, representative, trucker, peddler, or canvasser; or

(3) the property is shipped and collection is made by the retailer.

(c) Each salesperson, representative, trucker, peddler, canvasser, or agent shall collect the tax from the purchaser, if full collection is made from the purchaser, and remit the tax to the registered retailer. Each salesperson, representative, trucker, peddler, canvasser, or agent authorized by the retailer to make full collection from the purchaser shall be issued a compensating (use) tax registration identification card bearing the account identification number issued to the out-of-state retailer. Each salesman, representative, trucker, peddler, canvasser, or agent shall carry upon their person this identification card and shall show it to the purchaser as proof of authority to collect the compensating (use) tax.

(d) Each holder of a certificate of registration shall indicate the account identification number

found on the certificate on each billing or invoice. The retailer shall bill the compensating (use) tax due, as a separate item, on each billing or invoice. The registered retailer shall give each purchaser a receipt for each remittance of compensating (use) tax paid to the retailer. Each receipt of remittance shall be proof the purchaser has paid the compensating (use) tax. The billing shall be in substantially the form as shown:

Merchandise .....	\$ _____
4% Kansas compensating (use) tax .....	\$ _____
Kansas registration number .....	_____

If the registered vendor maintains two or more locations from which tangible personal property may be invoiced, shipped and delivered into the state of Kansas, duplicate certificates of registration shall be issued for each location.

(e) Each retail seller is required to report, collect and remit compensating (use) tax to the state of Kansas if:

(1) Tangible personal property is purchased for use, storage, or consumption in the state of Kansas;

(2) the seller is a retailer doing business in the state of Kansas;

(3) delivery is made in the state of Kansas; and

(4) use, storage or consumption is subject to the compensating (use) tax. Each registered retailer shall collect the tax even when the purchaser's order specifies that the goods are to be manufactured or procured by the seller at a point outside the state of Kansas and shipped directly to the purchaser from the point of origin. It is immaterial that the contract of sale is closed by acceptance outside the state or that the contract is made before the property is brought into the state of Kansas. (Authorized by K.S.A. 79-3707; implementing K.S.A. 79-3702, 79-3704, 79-3705, 79-3706, 79-3708; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987.)

**92-20-8. Delivery.** Delivery is held to have taken place in this state (1) when physical possession of tangible personal property is actually transferred to the buyer within this state or (2) when the tangible personal property is placed in the mails at a point outside this state directed to the buyer within this state or placed on board a carrier at a point outside this state, (or shipped otherwise) and directed to the buyer in this state. (Authorized by K.S.A. 79-3703, 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

**92-20-9. Application for certificates.** (a) Each retailer doing business in the state of Kansas shall apply for a certificate of registration. Each application shall be on a form prescribed by the director of taxation and shall include the following information:

(1) The name of the person, firm or corporation to whom the certificate is to be issued;

(2) the address of the location of each business;

(3) if the applicant is a corporation, the name and address of each officer;

(4) if the applicant is a partnership, the name and address of each partner;

(5) the name of the owner, if the applicant is an individual owner;

(6) the date when the applicant will begin selling tangible personal property subject to the Kansas compensating (use) tax;

(7) the name and address of each office, warehouse, or other place of business in Kansas, either owned or leased by the applicant or the applicant's subsidiary;

(8) the name and address of each agent, representative, or salesperson of the applicant operating in the state of Kansas, either temporarily or permanently; and

(9) the name and address of each out-of-state location from which tangible personal property will be delivered to purchasers in Kansas and from which billing for merchandise will be made.

(b) Each application shall be completed and mailed to the director of taxation, state office building, Topeka, Kansas. The director shall issue each registration certificate without cost to the applicant. (Authorized by K.S.A. 79-3707; implementing K.S.A. 79-3702, 79-3703 as amended by L. 1986, Ch. 386, Sec. 3, 79-3704, 79-3705, 79-3706; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987.)

**92-20-10.** (Authorized by K.S.A. 79-3702, K.S.A. 1973 Supp. 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended Jan. 1, 1974; revoked May 1, 1987.)

**92-20-11.** (Authorized by K.S.A. 79-3707; implementing K.S.A. 79-3702, 79-3704, K.S.A. 1986 Supp. 79-3703; effective, E-70-33, July 2, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; revoked Aug. 23, 2002.)

**92-20-12. Sales tax exemptions also apply to compensating tax.** The compensating tax does not apply in respect to the use, storage, or consumption of any article of tangible personal property or the furnishing of taxable services brought into or used within the state of Kansas if such article of tangible personal property or taxable services would not have been subject to the tax under the provisions of the retailers' sales tax act of this state if purchased or utilized in this state. (Authorized by K.S.A. 79-3704, 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

**92-20-13. Property formerly used in another state.** When property purchased in another state and used outside the state of Kansas is later brought into the state of Kansas for use, storage, or consumption, it will be presumed that compensating or use tax shall apply unless the purchaser conclusively establishes the following conditions:

(1) When purchased, the property was intended for bona fide use outside the state of Kansas;

(2) the first actual use of the property was outside the state of Kansas; and

(3) the first actual use of the property was substantial and constituted the primary use for which the property was purchased.

Each purchaser has the burden of proving these facts to the satisfaction of the director of taxation. (Authorized by and implementing K.S.A. 79-3702, K.S.A. 1986 Supp. 79-3703, 79-3704; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988.)

**92-20-14. Purchases other than at retail; property used in processing.** The test of a retail purchase is the purpose for which the purchase is made. Purchases for final use, storage, or consumption are retail purchases as distinguished from purchases for resale. The status of the seller is not a controlling factor; purchases at retail may be made from so-called retailers, or from jobbers, wholesalers, manufacturers, compounders, processors or other middlemen, or producers. The important consideration is whether the purchase is made for final use, storage or consumption.

Tangible personal property brought into the state for resale is not subject to the tax.

Tangible personal property stored for the purpose of resale is not subject to the tax.

Tangible personal property stored for subsequent use solely outside the state is not subject to the tax.

Tangible personal property shipped or brought into the state for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state is not subject to the tax. (Authorized by K.S.A. 79-3702, 79-3704, 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

**92-20-15. Property already subjected to sales or use tax.** The sale or use of property on which the state of Kansas or any other state of the United States has imposed sales or use tax equal to or greater than four percent (4%) is exempt from the tax. However, this exemption shall be denied if a tax paid in another state was not legally due and owing.

The sale or use of property on which the state of Kansas or any other state of the United States has imposed a sales or use tax at a rate of less than four percent (4%) is taxable at a rate determined by the difference between four percent (4%) and the rate of tax previously imposed.

Taxes imposed as a privilege tax which do not attach to the selling price of tangible personal property by law shall not be allowed as a credit against Kansas compensating (use) tax. (Authorized by K.S.A. 79-3707; implementing K.S.A. 79-3704, 79-3705; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987.)

**92-20-16. Railroads—interstate commerce.** All tangible personal property purchased out of the state and brought into the state of Kansas for use, storage, or consumption by railroads is subject to the tax in the same manner as is tangible personal property brought into the state by other firms, persons, or corporations, except as exempted herein.

Rolling stock, including locomotives, engines and cars of all kinds purchased by railroads in another state and brought into Kansas for movement in interstate commerce are exempt.

All repair parts and replacement material or parts brought into and stored in the state of Kansas which become a part of interstate commerce rolling stock are exempt. (Authorized by K.S.A. 79-3704, 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

**92-20-17. Airlines—interstate commerce.** Any airline engaged in the transportation by aircraft of persons or property in interstate common

carrier transportation shall be deemed to be a “public utility” as used in section 79-3704(a) of the act.

All tangible personal property purchased out of the state and brought into the state of Kansas for use, storage, or consumption by such airlines is subject to the tax in the same manner as is tangible personal property brought into the state by other firms, persons, or corporations, except as exempted herein.

All aircraft and flight equipment brought into the state for use in interstate transportation, including equipment to be installed in such aircraft, shall be exempt.

All repair parts and replacement materials or parts brought into and stored in the state of Kansas which become a part of the aircraft or flight equipment operating in interstate commerce, are exempt.

“Aircraft” when used herein, means airplanes or any vehicle used for air navigation. “Flight equipment” means any apparatus or accessories that are attached to or become a part of the aircraft. (Authorized by K.S.A. 79-3704, 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

**92-20-18. Motor carriers—interstate commerce.** Motor carriers authorized by the interstate commerce commission as common carriers and engaged in the transportation of persons or property shall be deemed to be a public utility within the meaning of the term “public utility” as used in section 79-3704 (a) of the act.

Charges for labor services rendered to common carriers authorized to engage in interstate commerce by the interstate commerce commission for the servicing, maintenance, or repair of rolling stock including buses and trailers are taxable.

All tangible personal property purchased out of the state and brought into the state of Kansas for use, storage, or consumption by common carriers is subject to the tax in the same manner as is tangible personal property brought into the state by other firms, persons, or corporations, except as exempted herein.

Rolling stock including buses and trailers, purchased by common carriers authorized to engage in interstate transportation by the interstate commerce commission, which tangible personal property is brought into the state of Kansas for movement directly and immediately in interstate commerce, is exempt.

All repair parts and replacement material or parts brought into and stored in the state of Kansas which become a part of interstate commerce rolling stock are exempt. (Authorized by K.S.A. 79-3704, K.S.A. 1973 Supp. 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended Jan. 1, 1974.)

**92-20-19. Pipe lines—interstate commerce.** All pipe lines engaged in the transportation of property shall be deemed to be a public utility within the meaning of the term “public utility” as used in section 79-3704(a) of the act.

All tangible personal property purchased out of the state and brought into the state of Kansas for use, storage, or consumption by pipe lines is subject to the tax in the same manner as is tangible personal property brought into the state by other firms, persons, or corporations, except as exempted herein. (Authorized by K.S.A. 79-3704, 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

**92-20-20. Radio broadcasting and television stations—interstate commerce.** All tangible personal property purchased out of the state and brought into the state of Kansas for use, storage, or consumption by radio broadcasting and television stations is subject to the tax in the same manner as is tangible personal property brought into the state by other firms, persons, or corporations. (Authorized by K.S.A. 79-3704, 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

**92-20-21. Telephone and telegraph companies—interstate commerce.** All telephone and telegraph companies engaged in the transmission of messages shall be deemed to be a public utility within the meaning of the term “public utility” as used in section 79-3704(a) of the act.

All tangible personal property purchased out of the state and brought into the state of Kansas for use, storage, or consumption by telephone or telegraph companies is subject to the tax in the same manner as is tangible personal property brought in to the state by other firms, persons, or corporations, except as exempted herein. (Authorized by K.S.A. 79-3704, 79-3707; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

## Article 21.— LOCAL RETAILERS’ SALES TAX

**92-21-1. State sales tax regulations.** The substance and provisions of all regulations pertaining to the state sales tax laws which are now in effect or which may hereafter be adopted and are not incompatible are hereby made a part of the local sales tax regulations as far as they are applicable. (Authorized by K.S.A. 79-3618, 79-3619, K.S.A. 1971 Supp. 79-4425 and 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972.)

**92-21-2.** (Authorized by K.S.A. 79-3618, 79-3619, K.S.A. 1971 Supp. 79-3603, 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972; revoked, T-83-48, Dec. 22, 1982; revoked May 1, 1983.)

**92-21-3. Registration.** A retailer’s registration under the state sales tax act is sufficient for the purposes of the local sales tax act. Special registration for collection of local sales tax will not be required. (Authorized by K.S.A. 79-3608, 79-3618, 79-3619, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972.)

**92-21-4. Interest—penalties—limitations—procedure.** All interest, penalties and procedures such as the making of assessments, the venue and mode of conducting hearings, matters pertaining to review of decisions and statutes of limitation are the same as interest, penalties and procedures for state sales tax. (Authorized by K.S.A. 79-3607, 79-3609, 79-3618, 79-3619, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972.)

**92-21-5. Filing of returns.** Every person responsible for the collection of local sales tax is required to make a combined state and local sales tax return to the department of revenue in the same manner and same time as required for filing state sales tax returns. The return form, including all schedules and instructions, is made a part of this regulation. (Authorized by K.S.A. 79-3618, 79-3619, 79-3607, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972.)

**92-21-6. Application of local sales tax.** Local sales tax applies in any case in which state sales tax applies if the sale is consummated as provided

by state statutes or regulations in a county or city having a local sales tax. Local sales tax applies to certain enumerated sales that are not subject to state sales tax including sales of natural gas, electricity, heat and water delivered through mains, lines or pipes to residential premises for noncommercial use. (Authorized by K.S.A. 1986 Supp. 12-189 as amended by Ch. 63, Sec. 2; implementing K.S.A. 12-189a as amended by L. 1987, Ch. 63, Sec. 2, K.S.A. 1986 Supp. 12-191; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972; amended May 1, 1988.)

**92-21-7.** (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972; revoked April 13, 2007.)

**92-21-8.** (Authorized by K.S.A. 12-189 as amended by L. 1987, Ch. 63, Sec. 2; implementing K.S.A. 12-189 as amended by L. 1987, Ch. 63, Sec. 2, K.S.A. 1986 Supp. 12-191; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; revoked April 13, 2007.)

**92-21-9. Place of sale—telephone—gas—water—electricity—heat.** For local sales tax purposes retail sales involving the use, consumption or furnishing of gas, water, electricity and heat shall be considered to have been consummated at the situs of the user or recipient thereof, and retail sales involving the use or furnishing of telephone service, shall be considered to have been consummated at the situs of the subscriber billed therefore. (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972.)

**92-21-10.** (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-4425, 79-4426, K.S.A. 12-189 as amended by L. 1987, Ch. 63, Sec. 2; implementing K.S.A. 12-189 as amended by L. 1987, Ch. 63, Sec. 2, K.S.A. 1986 Supp. 12-191; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; revoked April 13, 2007.)

**92-21-11. Place of sale—no fixed place of business.** Sales made by retailers who have no fixed or determinable place of business are considered, for local sales tax purposes, to be consummated at the place where the sale is made irrespective of the location of their permanent mailing address. (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972.)

**92-21-12. Place of business—auctioneers.** For the purpose of local sales tax the place of business of auctioneers who conduct auction sales in different taxing jurisdictions shall be deemed to be the place where the auction is held. (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972.)

**92-21-13. Place of business—vending machines.** The retailer's place of business when making sales through a vending machine is the place where the vending machine is located when such sales are made. (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972.)

**92-21-14. Place of business; sales from vehicle.** If a retailer makes actual sales or deliveries from a vehicle in which a stock of goods is being carried for sale, the retailer's place of business shall be each place where a sale or delivery is made. The vehicle carrying the stock of goods for sale shall be deemed to be a portable place of business. (Authorized by K.S.A. 2005 Supp. 12-189, as amended by L. 2006, Ch. 191, Sec. 2 and by L. 2006, Ch. 204, Sec. 2, and K.S.A. 2005 Supp. 75-5155; implementing K.S.A. 2005 Supp. 12-189, as amended by L. 2006, Ch. 191, Sec. 2 and by L. 2006, Ch. 204, Sec. 2, K.S.A. 2005 Supp. 12-191; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; amended April 13, 2007.)

**92-21-15. Place of sale—meals, food and drinks sold on common carriers.** Retail sales of meals, food and drinks sold on common carriers shall be considered to have been consummated at the place where the first element of the sale occurred. (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972.)

**92-21-16.** (Authorized by K.S.A. 79-3618, 79-3619, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972; revoked April 13, 2007.)

**92-21-17.** (Authorized by K.S.A. 1985 Supp. 12-189; implementing K.S.A. 1985 Supp. 12-191; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972; amended, E-77-1, Jan. 13, 1976; amended Feb. 15, 1977; amended May 1, 1987; revoked April 13, 2007.)

**92-21-18.** (Authorized by K.S.A. 79-3618, 79-3619, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972; revoked June 26, 1998.)

**92-21-19. Gross receipts as applied to local sales tax.** Local sales tax is imposed on the gross receipts received from taxable retail sales. Gross receipts are the same for local sales tax purposes as they are for state sales tax purposes and shall include freight and transportation charges when such charges are subject to the state sales tax, regardless of the place to which delivery is made. (Authorized by K.S.A. 79-3618, 79-3619, K.S.A. 1971 Supp. 79-4425, 79-4426; effective, E-71-21, July 1, 1971; effective Jan. 1, 1972.)

**92-21-20.** (Authorized by K.S.A. 12-189, 79-3618, 79-3619; implementing K.S.A. 12-189, K.S.A. 1982 Supp. 79-3603; effective, T-83-48, Dec. 22, 1982; effective May 1, 1983; revoked May 1, 1987.)

**92-21-21.** (Authorized by K.S.A. 79-3618, 79-3619, K.S.A. 1985 Supp. 12-189; implementing K.S.A. 79-3603 as amended by L. 1986, Ch. 386, Sec. 1, K.S.A. 1985 Supp. 12-189; effective May 1, 1987; revoked June 26, 1998.)

#### Article 22.— HOMESTEAD TAX RELIEF

**92-22-1.** (Authorized by K.S.A. 79-4510, K.S.A. 1979 Supp. 79-4508; effective Jan. 1, 1974; amended, E-80-2, Jan. 18, 1979; amended May 1, 1979; revoked, L. 1980, ch. 342, May 1, 1980.)

**92-22-2.** (Authorized by K.S.A. 79-4501, 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked, E-80-2, Jan. 18, 1979; revoked May 1, 1979.)

**92-22-3.** (Authorized by K.S.A. 79-4510, K.S.A. 1978 Supp. 79-4501, 79-4502(e), 79-4508; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended, E-80-2, Jan. 18, 1979; amended May 1, 1979; revoked May 1, 1986.)

**92-22-4. Domicile; temporary absence.** (a) "Domicile" shall mean that place where a person resides, where the person has an intention to remain, and to which that person intends to return following any absence.

(b) The claimant shall have maintained a domicile within the state of Kansas during the entire year preceding the year in which the homestead

claim is filed to be eligible for a homestead property tax refund.

(c) For purposes of the homestead property tax refund act, a claimant shall be domiciled in this state if the claimant resides in this state and maintains the principal home within this state.

(d) Temporary absence from the domicile shall not disqualify a claimant for a refund. A seasonal absence or absence of a reasonable duration shall constitute a temporary absence. (Authorized by K.S.A. 79-4510; implementing K.S.A. 2000 Supp. 79-4502; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended May 1, 1986; amended April 19, 2002.)

**92-22-5. Homestead used for rental or business purposes.** If a portion of the homestead is used for rental or business purposes, that part of ad valorem property tax applicable to the rented or business portion of the homestead shall not be subject to refund. (Authorized by K.S.A. 79-4510; implementing K.S.A. 79-4502; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended May 1, 1986.)

**92-22-6.** (Authorized by K.S.A. 1976 Supp. 79-4502(i), 79-4502(j), 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

**92-22-7.** (Authorized by K.S.A. 1976 Supp. 79-4502(g), 79-4502(h), 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

**92-22-8. Proof of disability.** (a) Disability may be proved by filing a certified statement of a physician licensed to practice in the state of Kansas. In lieu of the statement, the claimant may file a copy of a social security or other employer's certificate of disability showing that the claimant is receiving benefits based upon a total and permanent disability which prevented the claimant from engaging in any substantial gainful activity during the entire calendar year preceding the year in which the claim is filed for refund.

(b) A statement signed by a physician licensed to practice in the state of Kansas indicating central visual acuity of 20/200 or less in the better eye with the use of correcting lens or a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall constitute medical proof establishing blindness. (Authorized by K.S.A. 79-

4510; implementing K.S.A. 79-4511; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended May 1, 1986.)

**92-22-9.** (Authorized by K.S.A. 1976 Supp. 79-4502(a), 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

**92-22-10.** (Authorized by K.S.A. 1976 Supp. 79-4502(b), 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

**92-22-11. Household income.** Household income shall not include the income of a dependent minor or an incapacitated person who occupies the homestead if the person is not seized of legal title or a party to the rental agreement of the homestead. (Authorized by K.S.A. 79-4510; implementing K.S.A. 79-4502; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended May 1, 1986.)

**92-22-12. Ownership; definitions.** Ownership shall include a vendee in possession under a land contract, a life tenant, a beneficiary under a trust and one or more joint tenants or tenants in common.

(a) Vendee in possession under land contract: a claimant purchasing a homestead under a land contract shall be deemed to be the owner thereof.

(b) Life estate: a claimant retaining a life estate in the homestead, with a remainder over, shall be deemed the owner thereof; provided that, the ad valorem taxes assessed upon such property are paid by the claimant.

(c) Beneficiary under a trust: a claimant who, as a beneficiary under a trust, possesses the homestead shall be deemed to be the owner thereof; provided that, the ad valorem taxes assessed upon such property are paid by the claimant.

(d) Joint tenancy: a claimant whose ownership interest in the homestead is in joint tenancy with one (1) or more individuals, shall be deemed to own the whole; provided that, all ad valorem property taxes assessed thereon are paid by the claimant.

(e) Tenancy in common: a claimant whose ownership interest is as a tenant in common with one (1) or more co-tenants, shall be deemed to own the whole; provided that, all co-tenants are members of the claimant's household and that all ad valorem property taxes assessed thereon are paid by the claimant. In the event one or more

co-tenants are not members of the claimant's household, the claimant shall be deemed to own only that percentage of the property as reflects his legal interest.

(f) Multiple unit dwellings: two (2) or more claimants who are seized with legal title in a multiple unit dwelling such as a duplex, condominium or a similar type dwelling as joint tenants or tenants in common, and who maintain separate distinct units thereof as their individual homesteads, shall be deemed to own that portion of the multiple unit dwelling represented by their individual homestead units; provided that, each claimant has paid that portion of the ad valorem property tax assessed on the multiple unit dwelling proportionate to the separate homestead unit that each claimant is deemed to own.

(g) Statutory inchoate spousal interest: a claimant whose homestead is held solely in the name of that claimant's spouse and whose spouse is ineligible as a claimant, shall be deemed to own the homestead pursuant to the statutory inchoate spousal interest set forth at K.S.A. 59-505, and for purposes of this act, the claimant shall be deemed to hold the same ownership interest as a tenant in common. (Authorized by K.S.A. 59-505, K.S.A. 1976 Supp. 79-4502(d), 79-4502(f), 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977.)

**92-22-13.** (Authorized by K.S.A. 1976 Supp. 79-4502(f), 79-4509, 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

**92-22-14. Rent constituting property taxes accrued; services.** A claimant shall not include services rendered within gross rent as an equivalent of cash. (Authorized by K.S.A. 79-4510; implementing K.S.A. 79-4502; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended May 1, 1986.)

**92-22-15.** (Authorized by K.S.A. 1976 Supp. 79-4502(e), 79-4507, 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

**92-22-16.** (Authorized by K.S.A. 1976 Supp. 79-4510, 79-4515; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

**92-22-17. Exercise of right to file claim on behalf of claimant.** Each individual filing

a claim as a legal guardian or conservator shall attach an attested copy of the court order granting the power under which the claim is filed. An individual filing a claim as an attorney-in-fact shall attach a written document stating that an attorney-client relationship in fact exists. A claim for refund allegedly filed pursuant to the authority of a power of attorney shall not be allowed unless a copy of the duly executed and recorded power of attorney is attached to the claim. In lieu of a duly executed and recorded limited power of attorney, an individual may file a claim on behalf of the claimant if the person completes and submits to the director of taxation an affidavit in support of demand for homestead property tax refund on a form prescribed by the director. (Authorized by K.S.A. 79-4510; implementing K.S.A. 79-4503; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended, E-80-2, Jan. 18, 1979; amended May 1, 1979; amended May 1, 1986.)

**92-22-18. Death of claimant subsequent to filing claim; disbursement of refund.** (a) When a claimant dies after properly filing a timely claim, a disbursement to another member of the household shall not be allowed by the director of taxation unless an affidavit of membership in the claimant's household and a copy of the death certificate or other proof of death are submitted to the director.

(b) A disbursement to an individual appointed executor or administrator of the claimant's estate shall not be allowed unless an attested copy of the court order appointing that individual as executor or administrator and a copy of the death certificate or other proof of death are submitted to the director of taxation.

(c) A disbursement to an heir at law shall not be allowed unless an affidavit of heirship and a copy of the death certificate or other proof of death are submitted to the director of taxation. (Authorized by K.S.A. 79-4510; implementing K.S.A. 79-4503; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended May 1, 1986.)

**92-22-19.** (Authorized by K.S.A. 79-4510; implementing K.S.A. 79-4505, 79-4517; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended May 1, 1986; revoked April 19, 2002.)

**92-22-20.** (Authorized by K.S.A. 1976 Supp. 79-4508, 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

**92-22-21.** (Authorized by K.S.A. 1976 Supp. 79-4504, 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

**92-22-22.** (Authorized by K.S.A. 1976 Supp. 79-4502(f), 79-4502(i), 79-4502(j), 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked April 19, 2002.)

**92-22-23. Computation of amount of claim; rental and ownership of a homestead during the same calendar year.** (a) If a claimant owns a homestead and the claimant and the claimant's household occupy the homestead for a portion of a calendar year and for the remainder of the calendar year rent and occupy another homestead, the claim for relief granted under the homestead property tax refund act shall be computed by adding together the following:

(1) The property taxes accrued for that portion of the calendar year the claimant and the claimant's household occupied the owned homestead; and

(2) the rent constituting property taxes accrued for that portion of the year the claimant and the claimant's household occupied the rented homestead.

(b) The sum of property taxes accrued and rent constituting property taxes accrued shall not exceed the amount allowed by K.S.A. 79-4509, and amendments thereto. (Authorized by K.S.A. 79-4510; implementing K.S.A. 79-4508; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended April 19, 2002.)

**92-22-24.** (Authorized by K.S.A. 1976 Supp. 79-4502(d), 79-4502(f), 79-4502(i), 79-4502(j), 79-4509, 79-4510; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked April 19, 2002.)

**92-22-25. Proof in support of claim.** (a) Proof of ownership of property for which a homestead property tax refund is claimed shall be provided by submitting a copy of the deed to the property to the director of taxation. If a deed has not been recorded to indicate ownership of the property by a claimant, the claimant shall complete and file with the director of taxation the following:

(1) A statement of ownership specifying the interest held in the property claimed; and

(2) a statement establishing by whom the property taxes are paid.

(b) Proof of income shall be provided by submitting a copy of the claimant's state or federal income tax return to the director of taxation. If the claimant did not file a state or federal income tax return for the period in question, the claimant shall file a signed schedule that shows the claimant's income from sources listed in K.S.A. 79-4502, and amendments thereto.

(c) Proof of a claimant's age shall be provided by submitting a copy of the claimant's birth certificate to the director of taxation. Proof of a dependent child's age shall be provided by submitting a copy of the dependent child's birth certificate to the director of taxation.

(d) Proof of household membership shall be provided by submitting a list of the following:

(1) The name of each individual residing in the household;

(2) the social security number of each individual residing in the household; and

(3) the relationship to the claimant of each individual residing in the household. (Authorized by K.S.A. 79-4510; implementing K.S.A. 79-4511; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; amended May 1, 1986; amended April 19, 2002.)

**92-22-26.** (Authorized by K.S.A. 1976 Supp. 79-4510, 79-4516; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

**92-22-27 to 92-22-29.** (Authorized by K.S.A. 1976 Supp. 79-4510, 79-4513; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

**92-22-30.** (Authorized by K.S.A. 1976 Supp. 79-4510, 79-4511(c); effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

**92-22-31.** (Authorized by K.S.A. 1976 Supp. 79-4510, 79-4514; effective, E-77-6, March 19, 1976; effective Feb. 15, 1977; revoked May 1, 1986.)

**92-22-32. Homestead; charges for services, furniture, personal property, etc.** In computing gross rent, the amount of rent which is attributable to services, furniture, personal property, etc. is the fair retail value of such item or service and not the cost of such item or service to the landlord. The fair retail value of such items or services is their cost to the landlord plus a pro-

portionate share of the overall profit earned from the rental of that homestead by the landlord. (Authorized by K.S.A. 1976 Supp. 79-4510; effective Feb. 15, 1977.)

**92-22-33. Dependent children of claimant.** A child shall be considered a dependent child if all of the following requirements are met for the calendar year for which the claim is submitted:

(a) The child was born before the beginning of the calendar year.

(b) The child is or may be claimed as a dependent by the claimant for income tax purposes.

(c) The child resided with the claimant, and solely with the claimant, for the entire calendar year.

(d) The child did not reach the age of 18 during the calendar year. (Authorized by K.S.A. 79-4510; implementing K.S.A. 2000 Supp. 79-4502; effective April 19, 2002.)

**92-22-34. Complete filing required.** (a) A refund claim shall not be considered actually filed with or in the possession of the department of revenue until the claim is complete.

(b) To be considered complete, a refund claim shall disclose all information concerning the claim and shall be accompanied by any proof required in support of the claim necessary for the department to determine if the claim should be allowed, adjusted, or disallowed.

(c) A refund claim that is not complete by the filing deadline established by K.S.A. 79-4505, and amendments thereto, shall be considered untimely and shall be denied, unless either of the following conditions is met:

(1) The claimant responds to requests for additional information from the department of revenue by furnishing the requested information within the time specified in writing by the department.

(2) The director of taxation agrees to extend the filing deadline or accept the claim after the filing deadline in accordance with K.S.A. 79-4517, and amendments thereto. (Authorized by K.S.A. 79-4510; implementing K.S.A. 79-4505 and K.S.A. 2000 Supp. 79-4517; effective April 19, 2002.)

## Article 23.— CHARITABLE GAMING

**92-23-1 to 92-23-3.** (Authorized by K.S.A. 1975 Supp. 79-4708; effective, E-76-32, June 19, 1975; effective May 1, 1976; revoked May 1, 1985.)

**92-23-5 to 92-23-8.** (Authorized by K.S.A. 1976 Supp. 79-4701, 79-4706, 79-4708; effective, E-77-49, Sept. 30, 1976; effective Feb. 15, 1977; rejected, L. 1977, ch. 318, April 21, 1977.)

**92-23-9.** (Authorized by K.S.A. 79-4708; implementing K.S.A. 79-4706, 79-4708; effective May 1, 1985; revoked Feb. 12, 2016.)

**92-23-10.** (Authorized by and implementing K.S.A. 2000 Supp. 79-4708; effective May 1, 1985; amended Feb. 22, 2002; revoked Feb. 12, 2016.)

**92-23-11.** (Authorized by and implementing K.S.A. 79-4708; effective May 1, 1985; revoked Feb. 12, 2016.)

**92-23-12.** (Authorized by and implementing K.S.A. 79-4708; effective May 1, 1985; revoked Feb. 12, 2016.)

**92-23-13.** (Authorized by and implementing K.S.A. 79-4708; effective May 1, 1985; revoked Feb. 12, 2016.)

**92-23-14.** (Authorized by K.S.A. 79-4708; implementing K.S.A. 79-4706; effective May 1, 1985; revoked Feb. 12, 2016.)

**92-23-15.** (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4706; effective May 1, 1985; amended Feb. 22, 2002; revoked Feb. 12, 2016.)

**92-23-16.** (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4706; effective May 1, 1986; amended Feb. 22, 2002; revoked Feb. 12, 2016.)

**92-23-17.** (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4704; effective Feb. 22, 2002; revoked Feb. 12, 2016.)

**92-23-18.** (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4704 and 79-4705; effective Feb. 22, 2002; revoked Feb. 12, 2016.)

**92-23-19.** (Authorized by and implementing K.S.A. 2000 Supp. 79-4708; effective Feb. 22, 2002; revoked Feb. 12, 2016.)

**92-23-20.** (Authorized by and implementing K.S.A. 2000 Supp. 79-4708; effective Feb. 22, 2002; revoked Feb. 12, 2016.)

**92-23-21.** (Authorized by and implementing K.S.A. 2000 Supp. 79-4708; effective Feb. 22, 2002; revoked Feb. 12, 2016.)

**92-23-22.** (Authorized by and implementing K.S.A. 2000 Supp. 79-4708; effective Feb. 22, 2002; revoked Feb. 12, 2016.)

**92-23-23.** (Authorized by and implementing K.S.A. 2000 Supp. 79-4708; effective Feb. 22, 2002; revoked Feb. 12, 2016.)

**92-23-25.** (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4706; effective Feb. 22, 2002; revoked Feb. 12, 2016.)

**92-23-27 and 92-23-28.** (Authorized by K.S.A. 1976 Supp. 79-4701, 79-4703, 79-4706, 79-4708; effective, E-77-49, Sept. 30, 1976; effective Feb. 15, 1977; rejected, L. 1977, ch. 318, April 21, 1977.)

**92-23-30.** (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4706; effective Feb. 22, 2002; revoked Feb. 12, 2016.)

**92-23-31.** (Authorized by and implementing K.S.A. 2000 Supp. 79-4706; effective Feb. 22, 2002; revoked Feb. 12, 2016.)

**92-23-37.** (Authorized by K.S.A. 1976 Supp. 79-4708; effective, E-77-49, Sept. 30, 1976; effective Feb. 15, 1977; revoked Feb. 12, 2016.)

**92-23-38.** (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4706; effective, E-77-49, Sept. 30, 1976; effective Feb. 15, 1977; amended, E-81-27, Sept. 10, 1980; amended May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended Feb. 22, 2002; revoked Feb. 12, 2016.)

**92-23-38a.** (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4706 and 79-4708; effective, E-81-27, Sept. 10, 1980; effective May 1, 1981; amended May 1, 1985; amended Feb. 22, 2002; revoked Feb. 12, 2016.)

**92-23-39.** (Authorized by K.S.A. 1976 Supp. 79-4708; effective, E-77-49, Sept. 30, 1976; effective Feb. 15, 1977; revoked Feb. 12, 2016.)

**92-23-40.** (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4706; effective, E-80-12, Aug. 8, 1979; effective May 1, 1980; amended Feb. 22, 2002; revoked Feb. 12, 2016.)

**92-23-41. Definitions; persons conducting games of bingo; restrictions.** (a) For purposes of K.A.R. 92-23-41 through K.A.R. 92-23-59, each of the following terms shall have the meaning specified in this subsection:

(1) "Gross bingo receipts" means the revenue received from the sale of bingo faces, reusable bingo cards, instant bingo tickets, and any charges or admission fees imposed on players for participation in games of bingo.

(2) "Licensing period" means the period of time beginning on July 1 and through the following June 30.

(b) A person engaged in the management, operation, or conduct of a game of bingo shall not participate as a player in that game of bingo.

(c) Only one employee of the lessor may assist the licensee with the session if there has been a cancellation by a licensee's volunteer to work. The lessor's employee shall not handle any money.

(d) Volunteers who are members of a licensee's nonprofit organization may assist only one licensee during the same licensing period. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5179 and 75-5181; effective Feb. 12, 2016.)

**92-23-42. Bond required for distributors.** Each distributor shall post a cash bond of \$1,000 at the time of initial registration. Any distributor may subsequently be required by the director to increase the cash bond to an amount equal to three times the average monthly tax liability based upon the distributor's sales for the previous 12 months. If the distributor does not have 12 months of tax liability history to use for this calculation, then an estimate of the tax liability may be made by the director based upon the best information available. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5176 and 75-5184; effective Feb. 12, 2016.)

**92-23-43. Bingo trust bank accounts.** Each licensee required to establish and use a bingo trust bank account pursuant to K.S.A. 2015 Supp. 75-5179, and amendments thereto, shall comply with all of the following requirements:

(a) The bingo trust bank account name shall include the word "bingo."

(b) Only revenue received from the conduct of call bingo and instant bingo shall be deposited into the bingo trust bank account. Funds from other sources shall not be deposited in the account.

(c) Cash prizes from call bingo games under \$500 and all prizes from instant bingo games may be paid from the daily gross bingo receipts before depositing these receipts in the bingo trust bank account if the licensee keeps a detailed written record of the gross bingo receipts, cash prizes paid, and net deposit made to the account for the day.

(d) All payments made from the bingo trust bank account shall be made by check.

(e) Any excess funds in the bingo trust bank account that are not needed for the payment of bingo prizes, taxes, and expenses may be removed from the account by writing a check. These excess funds may be used for any lawful purpose of the nonprofit organization pursuant to K.S.A. 2015 Supp. 75-5179, and amendments thereto. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5179; effective Feb. 12, 2016.)

**92-23-44. Schedule of games of bingo.** (a) Each applicant or licensee applying for an initial bingo license or for renewal of an existing bingo license shall furnish, at the time of the application, a schedule of the games of bingo that will be conducted. The schedule shall include the date and time of each session. If the games of bingo will be conducted only occasionally or on irregular dates that have not been determined at the time of the application, the applicant or licensee shall state this on the application form and shall furnish a schedule in accordance with subsection (b).

(b) If a licensee intends to conduct games of bingo on a date or at a time different from that previously furnished in writing to the secretary, the licensee shall submit written notice of the change to the administrator at least three days before the effective date of that change.

(c) Each licensee and lessor shall post information inside the premises and outside the premises providing the following information:

(1) Name of the nonprofit organization conducting the session; and

(2) date and time of each session. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5179; effective Feb. 12, 2016)

**92-23-45. Handling of reusable bingo cards.** (a) No person shall select or set aside any reusable bingo cards for playing by the person or another person before the time that the reusable bingo cards are made accessible to all of the players before the start of a session.

(b) No person shall set aside or reserve reusable bingo cards between games of bingo. All reusable bingo cards to be used for a particular session shall be shuffled before being sold or rented to the players so as to ensure that reusable bingo cards returned from the previous session do not remain in the order in which they were returned.

(c) At the end of each session, all reusable bingo cards used during the session shall be returned to one common area. (Authorized by and implementing K.S.A. 2015 Supp. 75-5181; effective Feb. 12, 2016.)

**92-23-46. Bingo; house rules.** Any licensee may impose restrictions on player eligibility and game procedures through the use of “house rules” if these house rules meet all of the following conditions:

(a) The house rules do not conflict with state laws and regulations and local ordinances.

(b) The house rules are conspicuously posted at the location where games of bingo are conducted.

(c) The house rules are uniformly and consistently enforced by the licensee. (Authorized by and implementing K.S.A. 2015 Supp. 75-5181; effective Feb. 12, 2016.)

**92-23-47. Display of numbered objects used in conducting games of bingo.** As each number is called during each game of bingo, the selected object upon which the number appears shall be displayed to the players present so that each player who desires to see the number can do so. (Authorized by and implementing K.S.A. 2015 Supp. 75-5181; effective Feb. 12, 2016.)

**92-23-48. Bingo; procedure for correction if wrong number called.** (a) If a caller calls a number different from what is on the ball or other object selected by chance and this fact is brought to the caller’s attention before the prize is awarded for that game of bingo, then the mistake shall be corrected by announcing that the correct number will be used rather than the incorrect number.

(1) If this correction results in one or more immediate winners, then the game of bingo shall be deemed complete at that point. If the caller can determine who would have won first if the mistake had not been made, then the prize or prizes shall be awarded to that winner or those winners. If the caller cannot determine which winner would have won first, then the prize or prizes shall be split as equally as possible among the winners.

(2) If this correction does not result in at least one winner, then the game of bingo shall be continued until there is a winner.

(b) If a caller calls a number different from what is on the ball or other object selected by chance and this fact is brought to the caller’s attention after the prize or prizes have been awarded for that game of bingo, then no correction shall be made and the winner or winners shall retain the prize or prizes. (Authorized by and implementing K.S.A. 2015 Supp. 75-5181; effective Feb. 12, 2016.)

**92-23-49. Bingo; persons selling refreshments or performing janitorial work.** A person who is only selling refreshments or providing janitorial services for games of bingo shall not be deemed to be participating in the management, conduct, or operation of games of bingo. (Authorized by and implementing K.S.A. 2015 Supp. 75-5181; effective Feb. 12, 2016.)

**92-23-50. Communication of numbers needed to win prohibited.** Each licensee shall ensure that no person communicates verbally or in any other manner the number or numbers needed by any player to win a game of bingo to any person involved in the conduct of that game of bingo. (Authorized by and implementing K.S.A. 2015 Supp. 75-5181; effective Feb. 12, 2016.)

**92-23-51. Disputed game of bingo.** (a) “Disputed game of bingo” shall mean a game of bingo at which a participant or observer registers a complaint with a licensee’s employee or volunteer who is operating, conducting, or managing games of bingo for the licensee. If the participant or observer is not satisfied with the manner in which the complaint is handled, then that individual may file a written complaint with the administrator.

(b) Each licensee shall, on the premises, post in plain view of the participants the address where bingo complaints may be filed. The address shall be provided to each licensee by the department. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5179 and 75-5181; effective Feb. 12, 2016.)

**92-23-52. Bingo; multiple winners.** (a) Before the beginning of the first call bingo game of a session, the licensee shall notify the players of how the licensee intends to pay out the prize for each game of bingo during that session if there are multiple winners.

(b) If a bingo player has a winning pattern simultaneously on two or more bingo faces or reusable bingo cards, then that player shall be treated as a separate winner for each such winning bingo face or reusable bingo card when determining the awarding of the prize or prizes for that game of bingo.

(c) If a bingo player has two or more winning patterns simultaneously on the same bingo face or reusable bingo card, then the licensee may treat the player as a separate winner for each winning pattern when determining the awarding of the prize or prizes for that game only if the licensee has published a house rule to that effect. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5179; effective Feb. 12, 2016.)

**92-23-53. Verification of winners.** The winning numbers on the bingo face or reusable bingo card of each announced winner of each call bingo game shall be verified by the following individuals:

(a) At least one other call bingo player unrelated by blood or marriage to either the winning player or the caller of that game of bingo; and

(b) one or more of the bingo workers, using one of the following methods:

(1) The bingo worker shall call back the winning numbers while the other call bingo player looks at the bingo face or reusable bingo card and verifies that the correct numbers are being called back. The winning numbers shall be called out loud so that the other players present can hear the numbers. The caller shall announce whether the bingo face or reusable bingo card is a winner. For a blackout game, the numbers not selected may be called by the bingo worker and other call bingo player to verify the winners; or

(2) the bingo worker shall call out the unique identifying number on the bingo face while the other call bingo player verifies that the correct identifying number was called. The caller shall type the identifying number into the bingo machine with an electronic verifier and announce the bingo machine's response as to whether the bingo face is a winner. (Authorized by and implementing K.S.A. 2015 Supp. 75-5181; effective Feb. 12, 2016.)

**92-23-54. Bingo; reduction in value of prizes.** Any licensee may make the value of the prize awarded to the winner of call bingo contingent upon the number of players participating, if

the exact terms of the contingency are posted or announced to all of the players before their purchase of any bingo faces or reusable bingo cards for the game. (Authorized by and implementing K.S.A. 2015 Supp. 75-5181; effective Feb. 12, 2016.)

**92-23-55. Cashing of prize checks.** Checks written by licensees for call bingo prizes of \$500 or more shall not be cashed by any licensee or member of the licensee's nonprofit organization, any lessor, any employee or agent of the lessor, or any other person located upon the premises where the licensee is conducting games of bingo. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5179; effective Feb. 12, 2016.)

**92-23-56. Bingo; instant bingo.** (a) Each licensee shall maintain and enforce written procedures to ensure that the licensee's instant bingo tickets are sold only at the times and places permitted by law.

(b) Instant bingo tickets shall be sold only by the licensee.

(c) Each prize for a winning instant bingo ticket shall be paid out to the winner only within the premises designated by the licensee for the conduct of games of bingo.

(d) Once sold, instant bingo tickets shall remain within the premises designated by the licensee for the conduct of games of bingo and shall be disposed of by placing them in receptacles provided by the licensee. The licensee shall be responsible for arranging for the removal and disposal of the instant bingo tickets. However, the licensee shall retain all winning tickets.

(e) An instant bingo game in which the prize is awarded by matching the winning number in a call bingo game shall not be carried over from one session to another. If not all of the tickets from a game have been sold before awarding a prize, then the amount of the prize may be reduced based upon a formula or schedule that has been made known to the players before the commencement of the instant bingo game. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5179; effective Feb. 12, 2016.)

**92-23-57. Bingo; records; inspection; preservation.** (a) Each licensee shall maintain records that are necessary to determine the amount of tax due and to determine that the games of bingo operated or conducted by the licensee

are operated or conducted in compliance with the Kansas charitable gaming act, K.S.A. 2015 Supp. 75-5171 through 75-5188, and amendments thereto. The records shall show the following:

(1) The date and location of each call bingo game conducted;

(2) the name of the operator or manager who conducted or operated each game of bingo;

(3) the number of call bingo games played daily;

(4) the value of all prizes awarded for each call bingo game played;

(5) the value of all other prizes awarded in connection with games of bingo;

(6) the date on which each call bingo prize was awarded;

(7) the name and address of each winner of a call bingo game in which the prize awarded was more than \$100 in value and of all winners of prizes in disputed games of bingo as defined in K.A.R. 92-23-51. A prize shall not be awarded to any individual who refuses to give the individual's name and address to a licensee in compliance with this regulation;

(8) the daily gross bingo receipts received by the licensee for admission, charges for participation, and any other charges in connection with games of bingo, with separate totals for call bingo and instant bingo;

(9) the number of players present during each session on which games of bingo are conducted;

(10) for each progressive bingo game, the winning and consolation prizes offered and the number of bingo balls required to win each of these prizes; and

(11) the occurrence of any drawing conducted during each session and, if any drawing occurred, a description of the prize awarded and its fair market value.

(b) All records required by subsection (a) shall be preserved for at least three years following the date on which the game of bingo to which the records pertain was managed, operated, or conducted.

(c) All records required by this regulation shall be available for, and subject to, inspection by the director of taxation or the director's authorized agents and employees at a location previously designated by the licensee. The records shall be subject to inspection at any reasonable time. The records for the preceding four months shall be available for inspection without advance notice at all times that the licensee is operating or conducting games of bingo.

(d) Each licensee shall provide all information, tax returns, and records regarding or related to the operation, management, or conduct of games of bingo that are requested by the department. Failure to provide all requested information shall constitute grounds for revocation of a bingo license. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5179; effective Feb. 12, 2016.)

**92-23-58. Bingo; filing of returns; notice; hearings.** (a) On or before the last day of each calendar month, each licensee that was licensed during the preceding calendar month shall submit a return and remit all enforcement taxes due for the preceding month to the department. The return shall be submitted upon a form furnished by the department.

(b) If a licensee does not operate or conduct any games of bingo during a calendar month, the licensee shall still submit a return for that month. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5176 and 75-5180; effective Feb. 12, 2016.)

**92-23-59. Due date of tax return by distributors.** Each distributor shall submit a return and remit the tax due for each month's sale of bingo faces and instant bingo tickets by the 25th day of the month following the month in which the sales were made. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5176 and 75-5177; effective Feb. 12, 2016.)

**92-23-70. Charitable raffles; definitions.** As used in K.A.R. 92-23-70 through K.A.R. 92-23-75, each of the following terms shall have the meaning specified in this regulation:

(a) "Gross receipts" means the total number of raffle tickets sold and given away multiplied by the selling price of a single raffle ticket. For the purpose of determining potential gross receipts, each raffle ticket shall be calculated at its individual selling price before the application of any discount for the purchase of two or more raffle tickets.

All charitable raffles conducted within the same licensing period shall be included when determining gross receipts.

(b) "Licensing period" means the period of time beginning on July 1 and through the following June 30. (Authorized by and implementing K.S.A. 2015 Supp. 75-5188; effective Feb. 12, 2016.)

**92-23-71. Licensing requirements; renewals.** (a) Each applicant expecting to conduct charitable raffles with annual gross receipts exceeding \$25,000 shall apply to the department for a charitable raffle license at least 30 days before any raffle tickets may be sold.

(b) Each application for a charitable raffle license or the renewal of a charitable raffle license shall be submitted on a form prescribed by the department and be accompanied by the applicable fees prescribed in K.S.A. 2015 Supp. 75-5175, and amendments thereto.

(c) In addition to information requested on the application, any applicant or licensee may be required to provide any of the following with an application or renewal:

(1) A copy of the applicant's or licensee's articles of incorporation or bylaws or, if the applicant or licensee is not a corporation, a copy of any bylaws or other documents that specify the nonprofit organization's structure and purpose;

(2) a copy of the ruling or determination letter from the internal revenue service recognizing the applicant or licensee as a nonprofit organization; and

(3) a current roster of all active members of the nonprofit organization.

(d) Each licensee shall maintain current information on its license. The licensee shall inform the department within 30 days of any changes in the information supplied in its most recent application filed with the department.

(e) Any licensee may request a hearing in accordance with the Kansas administrative procedure act before a charitable raffle license may be suspended or revoked by the secretary. The licensee shall surrender the raffle license to the department upon receipt of the final order of suspension or revocation.

(1) For each suspension, the license shall be returned to the licensee at the end of the suspension period.

(2) For each revocation, the former licensee may reapply for a charitable raffle license no earlier than six months following the date of revocation.

(f) Charitable raffle licenses shall not be transferred or assigned to another nonprofit religious organization, nonprofit charitable organization, nonprofit fraternal organization, nonprofit educational organization, or nonprofit veterans' organization.

(g) Only one nonprofit organization may be licensed for each charitable raffle.

(h) Each licensee wanting to renew its license shall submit an application for renewal at least 30 days before the date the licensee intends to begin selling charitable raffle tickets in the new licensing period. (Authorized by and implementing K.S.A. 2015 Supp. 75-5175; effective Feb. 12, 2016.)

**92-23-72. Charitable raffle ticket requirements.** (a) Except as specified in subsection (f), each raffle ticket shall contain all of the following information printed in a clear and legible manner:

(1) The name of the licensee as it appears on the raffle license;

(2) the licensee's Kansas charitable raffle license number;

(3) the word "raffle";

(4) the date, time, and location of the raffle drawing;

(5) the price of the raffle ticket;

(6) a statement specifying whether a participant must be present to win;

(7) a unique sequential identification number on the raffle ticket and ticket stub that is different from any other number found on a ticket sold for that particular raffle activity; and

(8) any other information that the administrator requests.

(b) The ticket stub portion of the raffle ticket that is given to the purchaser shall contain a sequential number corresponding to the number printed on the raffle ticket from which the stub is detached. The raffle ticket portion of the ticket that is retained by the licensee shall contain a space for the purchaser's name, address, and telephone number if a participant's presence is not required when a winner is determined.

(c) A sample raffle ticket may be requested by the department for each raffle conducted by the licensee.

(d) Each raffle ticket shall be offered for the same price as that for every other raffle ticket being sold for the same charitable raffle. Any licensee may offer a discount for the purchase of two or more raffle tickets if the discount is offered to all persons wanting to participate in the charitable raffle.

(e) Each raffle ticket to participate in a charitable raffle shall be paid for in advance by cash, check, or credit card. The extension of credit shall be prohibited. The issuance of free raffle tickets shall not be prohibited; however, the value of all free raffle tickets shall be included in the gross receipts derived from the charitable raffle.

(f) If all raffle ticket purchases and the subsequent raffle are conducted during the same event, it shall be permissible to clearly display the following information at the event in lieu of printing the information on each raffle ticket:

- (1) The name of the licensee as it appears on the raffle license;
- (2) the licensee's Kansas charitable raffle license number;
- (3) the word "raffle";
- (4) the date, time, and location of the raffle drawing;
- (5) the price of the raffle ticket;
- (6) a statement specifying whether a participant must be present to win;
- (7) a unique sequential identification number on the raffle ticket and ticket stub that is different from any other number found on a ticket sold for that particular raffle activity; and
- (8) any other information that the administrator requests. (Authorized by and implementing K.S.A. 2015 Supp. 75-5188; effective Feb. 12, 2016.)

**92-23-73. Conduct of charitable raffle.**

(a) Each licensee shall be responsible for the following:

- (1) The conduct and management of the charitable raffle;
- (2) the publishing of a promotional plan and advertising for each charitable raffle; and
- (3) the accountability of raffle ticket sales, which shall include all of the following:
  - (A) Tracking raffle tickets provided to each raffle ticket seller;
  - (B) collecting all receipts from each raffle ticket seller;
  - (C) collecting the portion of all raffle tickets sold that shall be retained by the licensee; and
  - (D) collecting all unsold raffle tickets.
- (b) All raffle tickets sold or given away shall be placed in the pool of raffle tickets from which the winners shall be drawn.
- (c) Each raffle ticket placed in the raffle container shall have an equal opportunity to win.
- (d) The order in which the winners will be determined shall be announced before the start of the drawing.
- (e) Only one raffle ticket shall be drawn at a time.
- (f) If a participant's presence is required when a winner is to be determined, statements specifying this condition shall be printed on each raffle ticket and all promotional material concerning the

charitable raffle. If a participant's presence is not required when a winner is to be determined, each participant shall complete the portion of the raffle ticket providing the participant's name, address, and telephone number.

(g) Only raffle tickets that have been sold or given to a participant shall be included in the raffle container when determining the winner.

(h) If more than one prize or opportunity to win has been offered in a particular charitable raffle and a series of drawings must be made to determine all of the winners, any raffle ticket that has been drawn may be returned to the raffle container.

(i) Prizes awarded in a charitable raffle may include cash, merchandise, and anything of value that may be legally owned. If any prize other than cash is awarded, the prize shall be valued at fair market value.

(j) Each licensee conducting a charitable raffle in which prizes of real or personal property are to be awarded shall have paid for in full or otherwise become the owner without lien or interest of others of all the real or personal property to be awarded as prizes, before the date on which the winners will be determined.

(k) The licensee shall not participate in a charitable raffle as a player. Raffle tickets shall not be purchased in the name of the licensee. Individual members of the licensee may purchase raffle tickets.

(l) If a charitable raffle is canceled, the decision to cancel the charitable raffle shall be announced publicly and shall be posted at the licensee's principal office and web site. All receipts from raffle ticket sales shall be returned to each purchaser within 30 days of cancellation of the charitable raffle.

(m) If a charitable raffle is postponed, the postponement shall be announced publicly and shall be posted at the licensee's principal office and web site. The postponed charitable raffle shall be conducted within 30 days of the original date scheduled.

Any participant may request a refund on the purchase price of a raffle ticket if that participant is not able to be present on the date of the postponed charitable raffle and the participant's presence is required. (Authorized by and implementing K.S.A. 2015 Supp. 75-5188; effective Feb. 12, 2016.)

**92-23-74. Awarding charitable raffle prizes.** (a) All charitable raffle prizes shall be awarded.

(b) Each licensee shall make a diligent effort to locate the winners of all prizes.

(c) A prize shall not be forfeited to the licensee.

(d) Each prize that is not claimed or for which the winner cannot be located within 30 days from the date of the drawing shall be awarded by conducting another drawing using the original pool of raffle tickets. (Authorized by and implementing K.S.A. 2015 Supp. 75-5188; effective Feb. 12, 2016.)

**92-23-75. Reporting requirements; recordkeeping.** (a) Each licensee shall annually report all charitable raffle winners of any prize for which the retail value is at least \$1,199. The report shall be submitted on a reconciliation form prescribed by the department.

(b) Each licensee shall annually reconcile the charitable raffle license fee paid based on the gross receipts from the previous licensing period. The licensee shall submit the reconciliation on a form prescribed by the department.

(c) Each licensee shall maintain the following information for each charitable raffle, for three years after the date the charitable raffle was conducted:

- (1) Date of charitable raffle;
- (2) total gross receipts;
- (3) total number of raffle tickets available for sale;
- (4) number of raffle tickets sold;
- (5) number of raffle tickets given away;
- (6) number of raffle tickets returned unsold to the licensee;
- (7) raffle ticket price;
- (8) value of all raffle tickets sold and given away;
- (9) name and address of all charitable raffle winners of any prize;
- (10) receipts for the purchase of prizes awarded or a statement indicating the fair market value of the prizes donated for each charitable raffle; and
- (11) deposit records indicating that the proceeds from the charitable raffle have been deposited into the licensee's bank account. (Authorized by and implementing K.S.A. 2015 Supp. 75-5188; effective Feb. 12, 2016.)

#### Article 24.— LIQUOR DRINK TAX

**92-24-1.** (Authorized by K.S.A. 1979 Supp. 79-41a01, 79-41a03; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked, T-83-30, Oct. 25, 1982; revoked May 1, 1983.)

**92-24-2 to 92-24-4.** (Authorized by K.S.A. 1979 Supp. 79-41a03; effective, E-80-26, Dec. 12,

1979; effective May 1, 1980; revoked, T-83-30, Oct. 25, 1982; revoked May 1, 1983.)

**92-24-5.** (Authorized by K.S.A. 1979 Supp. 79-41a02, 79-41a03; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked, T-83-30, Oct. 25, 1982; revoked May 1, 1983.)

**92-24-6.** (Authorized by K.S.A. 1979 Supp. 79-41a03; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked, T-83-30, Oct. 25, 1982; revoked May 1, 1983.)

**92-24-7.** (Authorized by K.S.A. 1979 Supp. 79-41a01, 79-41a03; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked, T-83-30, Oct. 25, 1982; revoked May 1, 1983.)

**92-24-8.** (Authorized by K.S.A. 1979 Supp. 79-41a03; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; revoked, T-83-30, Oct. 25, 1982; revoked May 1, 1983.)

**92-24-9. Definitions.** As used in this article, these terms shall have the following meanings. (a) "Licensee" means a holder of a class A or class B license, drinking establishment license, temporary permit holder, or caterer license issued by the director of alcoholic beverage control.

(b) "Liquor drink tax" means the tax imposed by K.S.A. 79-41a02, and amendments thereto.

(c) "Secretary" means the secretary of revenue or the secretary's authorized representative.

(d) "Source record" means any of the following:

- (1) A dated customer service check or ticket;
- (2) a dated cash register tape, if coded to reflect the required information; or
- (3) an equivalent of the check, ticket, or tape in a form approved by the secretary. (Authorized by and implementing K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988; amended March 22, 2002.)

**92-24-10. Registration certificates; application; display; revocation.** (a) (1) Application for a liquor drink tax registration certificate shall be made upon a form furnished by the secretary. The application shall state the name of the applicant as specified on the applicant's license and the address at which the applicant proposes to engage in business. For a caterer, the address shall be where the principal place of business is located.

(2) Each application for a liquor drink tax registration certificate shall be accompanied by a copy of the applicant's license. If the applicant owes any liquor drink tax, penalty, or interest at the time of making application, payment shall be made before issuance of the liquor drink tax registration certificate.

(b) A separate liquor drink tax registration certificate shall be required for each license, and the licensee shall conspicuously display the liquor drink tax registration certificate on the premises. The licensee shall immediately report any change of location, name, or form of ownership of the licensed establishment to the director.

(c) The liquor drink tax registration certificate of any licensee may be revoked by the secretary for any violation of the provisions of this article or the provisions of K.S.A. 79-41a01 *et seq.* and amendments thereto, after providing due notice and an opportunity for a hearing. (Authorized by K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14; implementing K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14, 79-41a06; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec 16, 1987; amended May 1, 1988; amended March 22, 2002.)

**92-24-11. Application of tax.** (a) The liquor drink tax shall apply to the gross receipts derived from the sale of any ingredients for drinks containing alcoholic liquor, whether mixed by the licensee or sold separately. The tax shall also apply to charges that are incidental to charges for drinks containing alcoholic liquor, which shall include the following:

(1) Service, corkage, cooling, and serving charges;

(2) fees or charges for the use of equipment owned by the licensee incidental to the serving of drinks containing alcoholic liquor; and

(3) gratuities, except gratuities that are voluntarily given by the consumer or are separately stated on a source record and are entirely distributed to employees of the licensee in a form other than wages, salaries, or other compensation.

(b) If a single fee or charge is made for alcoholic liquor provided by a licensee in connection with room rental, soft drinks, water, and ice, the entire fee or charge, less the amount normally charged for the room rental, shall be taxable. (Authorized by K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14; implementing K.S.A. 79-41a01, 79-41a02; effective, T-83-30, Oct. 25, 1982; effective

May 1, 1983; amended, T-88-58, Dec 16, 1987; amended May 1, 1988; amended March 22, 2002.)

**92-24-12. Sales tax inapplicable.** Items of tangible personal property subject to the liquor drink tax shall not be subject to retailers' sales tax. (Authorized by K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14; implementing K.S.A. 79-41a02, 79-41a03, as amended by L. 2001, Ch. 167, § 14; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended March 22, 2002.)

**92-24-13. Assumption of tax by licensee prohibited.** (a) A licensee shall not advertise, hold out, or state to the public or to any consumer, directly or indirectly, any of the following:

(1) The liquor drink tax, or any part of the tax, will be assumed or absorbed by the licensee.

(2) The tax will not be considered as an element in the price charged to the consumer.

(3) The tax, or any part of the tax, will be refunded if it is added to the price charged to the consumer.

(b) The tax may be included in the stated drink price if the licensee conspicuously posts on the premises a sign provided by the secretary stating that drink prices include the liquor drink tax. (Authorized by K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14; implementing K.S.A. 79-41a02; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988; amended March 22, 2002.)

**92-24-14. Time for returns and payment of tax; forms.** On or before the last day of each calendar month, each club, caterer, and drinking establishment licensed in this state shall submit a tax return to the secretary upon forms furnished by the secretary. The name and address of the licensee, the total amount of gross receipts from sales of alcoholic liquor sold during the preceding calendar month, and any other information that the secretary deems necessary shall be stated on the form. The amount of tax due, as shown on the return, shall be paid to the secretary at the time the return is submitted. (Authorized by K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14; implementing K.S.A. 79-41a02, 79-41a03, as amended by L. 2001, Ch. 167, § 14; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended March 22, 2002.)

**92-24-15. Records required.** (a) Each licensee shall keep records and books of all sales

subject to the liquor drink tax, together with invoices, bills of lading, sales records, copies of bills of sale, source records, daily summaries, and other pertinent papers and documents. The records shall show the following:

(1) The amount charged consumers for drinks containing alcoholic liquor and the amount charged consumers for all other items;

(2) invoices detailing the purchase of alcoholic liquor;

(3) a detailed description of breakage, spillage, and mistakes; and

(4) a detailed description of liquor removed from inventory for the following purposes:

(A) Use in preparation of food; and

(B) consumption by the licensee or the licensee's employees.

(b) Each licensee shall make the books, records, other papers and documents available for inspection by the secretary of revenue or the secretary's authorized representative for a period of three years from the last day of the calendar year or of the fiscal year of the licensee, whichever comes later, to which they pertain. The licensee shall maintain the books, records, and other documents on the licensed premises for a period of 90 days. However, the licensee may maintain the books, records, and other documents after 90 days at another location. (Authorized by and implementing K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988; amended March 22, 2002.)

**92-24-16. Source record requirements.**

(a) Each licensee shall record on a source record the following information:

(1) Each individual serving of a drink containing alcoholic liquor, or the unit of serving used if the drink is not served as an individual separate serving, and the price charged for the drink;

(2) identification of each individual separate serving or other unit served as to the kind of drink; and

(3) the date of the transaction.

The licensee shall record the information in a clear manner. The licensee may use a system of symbols or code, if the meaning is printed on the source record or on another document maintained on the licensed premises.

(b) For the purpose of subsection (a)(3), drinks containing alcoholic liquor sold after 12:00 midnight and before 2:00 a.m. shall be deemed to have been sold on the preceding day.

(c) Source records shall be maintained in sequence by date. (Authorized by K.S.A. 79-41a03, as amended by L. 1987, Ch. 182, Sec. 119; implementing K.S.A. 79-41a02, as amended by L. 1987, Ch. 182, Sec. 118, 79-41a03, as amended by L. 1987, Ch. 182, Sec. 119; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988.)

**92-24-17. Daily summary.** Each licensee shall prepare a daily summary of all information required to be recorded on source records, including the sale or service of drinks containing alcoholic liquor. The daily summary shall also show the number of servings, and the kind of drink. Proper identifying symbols or codes may be used in preparing the daily summary. (Authorized by K.S.A. 79-41a03, as amended by L. 1987, Ch. 182, Sec. 119; implementing K.S.A. 79-41a02, as amended by L. 1987, Ch. 182, Sec. 118, 79-41a03, as amended by L. 1987, Ch. 182, Sec. 119; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988.)

**92-24-18. Licensee's inventory; sales slips.** A licensee shall not possess in inventory on the licensed premises any alcoholic liquor not covered by a sales slip provided by the retailer or wholesaler. Each sales slip shall be maintained by the licensee for the period prescribed by K.A.R. 92-24-15 and shall be available and subject to inspection in accordance with the provisions of K.A.R. 92-24-15. (Authorized by K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14; implementing K.S.A. 79-41a02, 79-41a03, as amended by L. 2001, Ch. 167, § 14; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988; amended March 22, 2002.)

**92-24-19. Price listing statements.** Each licensee shall keep a price listing statement listing the current, normal retail selling price charged for each drink containing alcoholic liquor served by the licensee. The statement shall list the price for each individual serving and for any other unit of serving served by the licensee. Whenever any price listing statement is updated by the licensee, the outdated price listing statement shall have recorded on it the period of time for which it was effective. The licensee shall maintain the outdated price listing statement for the period prescribed by K.A.R. 92-24-15 and amendments thereto,

and the price listing statement shall be available and subject to inspection in accordance with the provisions of K.A.R. 92-24-15 and amendments thereto. (Authorized by K.S.A. 79-41a03, as amended by L. 1987, Ch. 182, Sec. 119; implementing K.S.A. 79-41a02, as amended by L. 1987, Ch. 182, Sec. 118, 79-41a03, as amended by L. 1987, Ch. 182, Sec. 119; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988.)

**92-24-20.** (Authorized by K.S.A. 1982 Supp. 79-41a03; implementing K.S.A. 1982 Supp. 79-41a02, 79-41a03; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; revoked, T-88-58, Dec. 16, 1987; revoked May 1, 1988.)

**92-24-21. Report of alcoholic liquor lost through theft or disaster.** Each licensee shall prepare a written report for the director setting out the number and size of containers and the brand, proof, age and category of alcoholic liquor lost through theft or disaster. A theft of alcoholic liquor shall be reported to the proper police or sheriff's department and shall be substantiated by the report of the police or sheriff's department. A disaster causing a loss of alcoholic liquor shall be reported to the director and shall be substantiated by an affidavit of an investigative employee of the department of revenue. (Authorized by K.S.A. 79-41a03, as amended by L. 1987, Ch. 182, Sec. 119; implementing K.S.A. 79-41a02, as amended by L. 1987, Ch. 182, Sec. 118, 79-41a03, as amended by L. 1987, Ch. 182, Sec. 119; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988.)

**92-24-22. Determination of tax liability; presumption of taxable disposition.** (a) The correct amount of liquor drink tax shall be determined by the secretary when examining the tax account of any licensee, on the basis of returns filed with the secretary, or any records or information that is available or is obtained from the licensee or any retailer or wholesaler who furnished alcoholic liquor to the licensee.

(b) If the secretary finds that the licensee has failed to maintain or make available adequate records required by K.A.R. 92-24-15 through K.A.R. 92-24-21, or by K.S.A. 41-2601 *et seq.* and amendments thereto, the correct amount of the tax may be determined from any available source or records. The tax liability of the licensee may be estimated by using any available record for any

period for which the licensee has failed to maintain records or file a return.

(c) In determining the tax liability of any licensee, it shall be presumed that the disposition of all alcoholic liquor purchased by the licensee is taxable unless the contrary is established. The burden of proving the contrary shall be upon the licensee and shall be established through authentic records.

(d) If the liquor drink tax is not separately specified upon the source records of the licensee, tax liability shall be determined upon the total gross receipts derived from the sale of alcoholic liquor. Deductions for tax included within stated drink prices shall not be allowed unless the licensee has posted a sign in compliance with the provisions of K.A.R. 92-24-13. (Authorized by K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14; implementing K.S.A. 79-41a02, 79-41a03, as amended by L. 2001, Ch. 167, § 14; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988; amended March 22, 2002.)

**92-24-23. Bond.** (a) Each applicant or licensee submitting an application for a new license or for renewal of an existing license shall post or have posted with the department of revenue a bond in an amount equal to three months' average liquor drink tax liability or \$1000, whichever is greater, at the time of the application. Any new applicant who has no previous tax experience may estimate that person's expected liquor drink tax liability projected over a 12-month period and submit a bond in an amount equal to 25% of the projected tax liability or \$1000, whichever is greater. A certificate of liquor drink tax registration shall not be issued until the bond requirement is satisfied.

(b) Bond requirements may be satisfied through surety bonds purchased from a corporate surety, escrow bond agreements, or the posting of cash bonds.

(c) An additional bond may be required by the secretary of revenue at any time if the existing bond is not sufficient to satisfy the three months' average liability of the licensee.

(d) The existing liquor drink tax bond requirement for any licensee may be waived by the secretary of revenue if the relief is requested in writing and the licensee has remained compliant with K.S.A. 79-41a01 *et seq.*, and amendments thereto, for at least 24 consecutive months before the date of the request for bond relief. If, after the bond is released, the licensee becomes delinquent in fil-

ing and remitting the liquor drink tax, a bond shall be required for any subsequent renewal of the license. (Authorized by and implementing K.S.A. 2009 Supp. 79-41a03; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988; amended Jan 4, 2002; amended Nov. 29, 2010.)

**92-24-24. Duty of licensees discontinuing business.** Each licensee discontinuing business shall notify the secretary, return its liquor drink tax registration certificate for cancellation, and preserve all business records within this state for three years. A receipt shall be issued by the secretary upon the payment of taxes reported. (Authorized by and implementing K.S.A. 79-41a03, as amended by L. 2001, Ch. 167, § 14; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988; amended March 22, 2002.)

#### Article 25.— TRANSIENT GUEST TAX

**92-25-1. Effective date for levy, repeal, or change in rate of transient guest tax.** The effective date for the levy, repeal, or change in the rate of a city or county transient guest tax shall be the first day of the calendar quarter that follows either of these days: (a) The 30th day after the general or city primary election in which the levy, repeal, or rate change was approved; or

(b) the 60th day after any other type of election in which the levy, repeal, or rate change was approved. (Authorized by K.S.A. 2000 Supp. 12-1694, 12-1698; implementing K.S.A. 2000 Supp. 12-1693, 12-1694, 12-1697, and 12-1698; effective, T-83-48, Dec. 22, 1982; effective May 1, 1983; amended July 27, 2001.)

#### Article 26.— AGRICULTURAL ETHYL ALCOHOL PRODUCER INCENTIVE

**92-26-1. Definitions.** As used in this article, these terms shall have the following meanings: (a) “Agricultural commodities” shall mean all materials used in the production of agricultural ethyl alcohol, including grains and other starch products, sugar-based crops, fruits and fruit products, forage crops, and crop residue.

(b) “Director” shall mean the director of taxation of the department of revenue.

(c) “Fiscal year” means a period of time consistent with the calendar periods of July 1 through the following June 30.

(d) “Principal place of facility” means a plant or still located in the state of Kansas that produces or has the capacity to produce agricultural ethyl alcohol.

(e) “Production” means the process of manufacturing agricultural ethyl alcohol. For the purposes of this article, the terms “produce” and “produced” shall be consistent with the definition of “production.”

(f) “Quarter” means a period of time consistent with the calendar periods of January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. For the purposes of this article, the term “quarterly” shall be consistent with the definition of “quarter.”

(g) “Spirits” means an inflammable liquid produced by distillation.

(h) “Wine gallon” means 231 cubic inches measured at 60 degrees Fahrenheit. (Authorized by K.S.A. 2008 Supp. 79-34,163; implementing K.S.A. 2008 Supp. 79-34,161 and 79-34,163; effective, T-88-34, Sept. 17, 1987; amended May 1, 1988; amended Feb. 27, 2009.)

**92-26-2. Applications; contents.** (a) Each person eligible to receive funds from the Kansas qualified agricultural ethyl alcohol producer incentive fund shall file an application with the director of taxation on forms furnished by the director which shall contain the following information:

(1) The name of the person, firm or corporation applying for the incentive;

(2) if the applicant is a corporation, the name and address of each officer;

(3) if the applicant is a partnership, the name and address of each partner;

(4) if the applicant is an individual owner, the name of the owner;

(5) the location and address of each plant producing ethyl alcohol;

(6) the principal mailing address of the applicant;

(7) the applicant’s alcohol, tobacco and firearms permit number;

(8) the agricultural commodities to be used in the production of agricultural ethyl alcohol; and

(9) such other information as the director shall require.

(b) Each application shall be completed and mailed to the director of taxation. The applicant shall receive a formal letter of acceptance when the application is approved. (Authorized by and

implementing L. 1987, Ch. 388, Sec. 4; effective, T-88-34, Sept. 17, 1987; amended May 1, 1988.)

**92-26-3. Alcohol blender requirements; licenses.** (a) Each person purchasing agricultural ethyl alcohol from a qualified agricultural ethyl alcohol producer for the purpose of blending alcohol in the state of Kansas shall have a valid manufacturer's license issued by the Kansas department of revenue.

(b) In order to qualify for the Kansas qualified agricultural ethyl alcohol incentive, each Kansas qualified agricultural ethyl alcohol producer exporting ethyl alcohol out-of-state shall sell agricultural ethyl alcohol only to persons authorized to blend alcohol in the state, province or country where the blender is located. (Authorized by L. 1987, Ch. 388, Sec. 4; implementing L. 1987, Ch. 388, Sec. 4, K.S.A. 79-3403; effective, T-88-34, Sept. 17, 1987; amended May 1, 1988.)

**92-26-4. Filing of quarterly reports; deadline.** (a)(1) Each ethyl alcohol producer producing agriculture ethyl alcohol in the state of Kansas shall file a Kansas qualified agricultural ethyl alcohol producer's report with the director of taxation within 30 days from the last day of each quarter. Each producer not filing a report within 30 days after the last day of any quarter in a fiscal year shall be barred from seeking one quarter of any payment due from the agricultural ethyl alcohol producer's fund for that fiscal year. Upon proof satisfactory to the secretary of extenuating circumstances preventing timely submission of the report by the producer, this penalty may be waived by the secretary.

(2) Production incentives shall be paid on a fiscal year basis from the new production account or the current production account in the agricultural ethyl alcohol producer incentive fund, whichever account is applicable. When the production incentive amount for the number of agricultural ethyl alcohol gallons sold by any producer to a qualified alcohol blender exceeds the balance in the applicable account at the time payment is to be made for that fiscal year's production, the incentive per gallon shall be reduced proportionately so that the current balance of the applicable account is not exceeded. Any amount remaining in the account following a fiscal year payment of producer incentives shall be carried forward in that account to the next fiscal year for payment of future production incentives, except when the

current production account balance is required by K.S.A. 79-34,161, and amendments thereto, to be transferred to the new production account. The quarterly reports for a fiscal year shall be for the third and fourth quarters of one calendar year and the first and second quarters of the following calendar year.

(b) Each quarterly report shall be submitted on forms furnished by the director and shall contain the following information:

- (1) The beginning inventory of denatured alcohol;
- (2) the amount of alcohol produced and denaturant added;
- (3) the amount of agricultural ethyl alcohol sold to qualified blenders;
- (4) the amount of denatured alcohol sold to other than qualified blenders;
- (5) the amount of denatured alcohol sold or used for miscellaneous purposes, including denatured alcohol that has been lost, destroyed, or stolen;
- (6) the name of the liquid fuel carrier and the liquid fuel carrier's federal employer identification number;
- (7) the mode of transportation;
- (8) the point of origin, specifying city and state;
- (9) the point of destination, specifying city and state;
- (10) the name of the company to which the product was sold;
- (11) the date the product was shipped;
- (12) the identifying number from the bill of lading or manifest;
- (13) the number of gross gallons sold; and
- (14) the product code.

Each ethyl alcohol producer filing a quarterly report shall furnish all information required by the director before receiving the funds. (Authorized by K.S.A. 2008 Supp. 79-34,163; implementing K.S.A. 2008 Supp. 79-34,161 and 79-34,163; effective, T-88-34, Sept. 17, 1987; amended May 1, 1988; amended Nov. 12, 2004; amended Feb. 27, 2009.)

**92-26-5. Record requirements, maintenance and retention.** (a) Each producer shall maintain records with respect to:

- (1) The quantity of spirits produced;
- (2) the quantity of spirits on-hand and received;
- (3) the quantities and types of materials added to render the spirits unfit for beverage use;
- (4) the quantity of fuel alcohol manufactured;

(5) records of materials used to produce ethyl alcohol;

(6) all dispositions of spirits, including fuel alcohol.

(b) The records shall contain sufficient information to allow the director to determine the quantities of spirits produced, received, stored, or processed and to verify that all spirits have been lawfully disposed of or used. The producer may use records prepared for other commercial purposes if the records reflect the information required by paragraph (a) of this rule and regulation.

(c) Each producer shall retain the required records for a period of not less than three years. The records shall be maintained at the plant where production occurs and shall be available at all times during business hours of the day and be available for and subject to examination by the director or the director's duly authorized agent or employee. (Authorized by and implementing L. 1987, Ch. 388, Sec. 4; effective, T-88-34, Sept. 17, 1987; amended May 1, 1988.)

**92-26-6. Withdrawal of spirits and fuel alcohol; records required.** (a) Before spirits may be withdrawn from the premises of an alcohol fuel plant, the producer shall render the spirits unfit for beverage use as required by 27 C.F.R. §19.996 and amendments thereto.

(b) For each shipment or other removal of fuel alcohol from the plant premises, the consignor shall prepare a commercial invoice, sales slip, or similar document. The consignor shall include in the document the date, the quantity of fuel alcohol removed, a description of the shipment, and the name and address of the consignee. The consignor shall retain a copy of the document as a record and shall also provide the consignee and the liquid fuel carrier a copy of the record. (Authorized by and implementing L. 1987, Ch. 388, Sec. 4; effective, T-88-34, Sept. 17, 1987; amended May 1, 1988.)

**92-26-7. Funds erroneously paid.** If the director of taxation determines from available reports and records that a producer has erroneously received moneys from the Kansas qualified agricultural ethyl alcohol producer incentive fund, the recipient, after receiving notification by the director, shall immediately refund to the director the amount erroneously paid. (Authorized by and implementing L. 1987, Ch. 388, Sec. 4; effective, T-88-34, Sept. 17, 1987; amended May 1, 1988.)

**Article 27.— QUALIFIED BIODIESEL FUEL PRODUCER INCENTIVE**

**92-27-1. Definition.** “Quarter” shall mean any of the following periods in a calendar year:

- (a) January 1 through March 31;
- (b) April 1 through June 30;
- (c) July 1 through September 30; or
- (d) October 1 through December 31.

For the purposes of this article, the term “quarterly” shall be consistent with the definition of “quarter” in this regulation. (Authorized by and implementing K.S.A. 2006 Supp. 79-34,158; effective Nov. 2, 2007.)

**92-27-2. Application.** (a) Each person requesting funds from the Kansas qualified biodiesel fuel producer incentive fund shall submit an application with the secretary on a form furnished by the department of revenue, which shall include the following information:

- (1) The name and address of the person, firm, or corporation applying for the incentive funds;
- (2) if the applicant is a corporation, the name, title, and address of each officer and a copy of the articles of incorporation;
- (3) if the applicant is a limited liability company, the name, title, and address of each officer and a copy of the articles of organization;
- (4) if the applicant is a partnership, the name, title, and address of each partner;
- (5) if the applicant is an individual owner, the name of the owner;
- (6) the applicant's federal employer identification number or social security number;
- (7) the applicant's principal mailing address and the street address of the location in Kansas where the applicant produces biodiesel fuel;
- (8) specification of whether the plant location is owned or leased;
- (9) the annual production capacity of the plant;
- (10) the feedstock materials to be used in the production of biodiesel fuel;
- (11) the production start date;
- (12) a copy of the applicant's “certificate of analysis” verifying that the biodiesel fuel produced meets the applicable standards of the American society for testing and materials (ASTM); and
- (13) any other relevant information that the secretary requires.

(b) Each application shall be completed and submitted to the secretary of revenue. The applicant shall receive notification when the applica-

tion is approved or denied. (Authorized by K.S.A. 2006 Supp. 79-34,158; implementing K.S.A. 2006 Supp. 79-34,155, as amended by L. 2007, ch. 180, sec. 15, and K.S.A. 2006 Supp. 79-34,158; effective Nov. 2, 2007.)

**92-27-3. Filing of quarterly reports; deadline.** (a)(1) Each Kansas qualified biodiesel fuel producer shall file a Kansas qualified biodiesel fuel producer's report with the secretary within 30 days after the last day of each quarter. Each producer not filing a report within 30 days from the last day of the quarter shall be barred from seeking payment from the biodiesel fuel producer's incentive fund for that quarter.

(2) The production incentives shall be paid on a quarterly basis. If the production incentive amount for the number of gallons of biodiesel fuel sold by Kansas qualified biodiesel fuel producers exceeds the balance in the fund, the incentive per gallon shall be reduced proportionately so that the fund balance is not exceeded. If any amount remains in the fund following a quarterly payment of Kansas qualified biodiesel fuel producer incentives, that amount shall be carried forward in the fund to the next quarter for payment of future production incentives.

(b) Each quarterly report shall be submitted on forms furnished by the department of revenue and shall include the following information:

- (1) The beginning inventory of biodiesel fuel;
- (2) the amount of biodiesel fuel produced;
- (3) the type and amount of feedstock material purchased or produced to manufacture biodiesel fuel;
- (4) the amount of biodiesel fuel sold to terminals and to licensed distributors, licensed importers, or licensed exporters;
- (5) the amount of biodiesel fuel sold to retail stations, unlicensed distributors, unlicensed importers, unlicensed exporters, or end-consumers, or any combination of these;
- (6) the total number of gallons of biodiesel fuel sold;
- (7) all inventory adjustments, which shall include adjustments for personal use, loss due to theft, inventory loss or gain, and any destroyed biodiesel fuel;
- (8) the ending inventory of biodiesel fuel;
- (9) the amount of biodiesel incentive being claimed, based on the number of gallons sold; and
- (10) any other relevant information that the secretary requires.

(c) Each Kansas qualified biodiesel fuel producer filing a quarterly report shall furnish all information required by the secretary before receiving any funds. (Authorized by and implementing K.S.A. 2006 Supp. 79-34,158; effective Nov. 2, 2007.)

**92-27-4. Record requirements, maintenance, and retention.** (a) Each Kansas qualified biodiesel fuel producer shall maintain the following records for each quarter:

- (1) The quantity of biodiesel fuel produced;
- (2) records of the type and amount of materials used to produce biodiesel fuel;
- (3) the inventory of biodiesel fuel on hand; and
- (4) the disposition of all biodiesel fuel.

(b) The records specified in subsection (a) shall contain sufficient information to allow the secretary to determine the quantities of feedstock materials and biodiesel fuel produced, received, stored, or processed. Any Kansas qualified biodiesel fuel producer may use records prepared for other commercial purposes if the records contain the information required by subsection (a).

(c) Each Kansas qualified biodiesel fuel producer shall retain the required records for at least three years. The records shall be maintained at the plant where the production of biodiesel fuel occurs, shall be available at all times during business hours, and shall be subject to examination by the secretary or the secretary's designee.

(d) For each shipment or removal of biodiesel fuel from the place of production, the Kansas qualified biodiesel fuel producer shall prepare a commercial invoice, sales slip, or similar document. The Kansas qualified biodiesel fuel producer shall include in the document the date, the quantity of biodiesel fuel removed, a description of the product or shipment, the name and address of the consignee, and the destination city and state. The Kansas qualified biodiesel fuel producer shall retain a copy of the document as a record and shall also provide the consignee and the liquid fuel carrier with a copy of the record. (Authorized by K.S.A. 2006 Supp. 79-34,158; implementing K.S.A. 2006 Supp. 79-3415, 79-3420, and 79-34,158; effective Nov. 2, 2007.)

**92-27-5. Funds erroneously paid.** If the secretary determines from available reports and records that a Kansas qualified biodiesel fuel producer has erroneously received money from the Kansas qualified biodiesel fuel producer incentive fund, the Kansas qualified biodiesel fuel produc-

er shall immediately refund to the secretary the amount erroneously paid, after receiving notification by the secretary. Any Kansas qualified biodiesel fuel producer who has refunded an amount of money to the secretary may submit a letter to the secretary or the secretary's designee requesting resolution through the informal conference process. (Authorized by and implementing K.S.A. 2006 Supp. 79-34,158; effective Nov. 2, 2007.)

#### **Article 28.—RETAIL DEALER INCENTIVE**

**92-28-1. Definition.** “Quarter” shall mean any of the following periods in each calendar year:

- (a) January 1 through March 31;
- (b) April 1 through June 30;
- (c) July 1 through September 30; or
- (d) October 1 through December 31.

For the purposes of this article, the term “quarterly” shall be consistent with the definition of “quarter” in this regulation. (Authorized by and implementing K.S.A. 2007 Supp. 79-34,174; effective Feb. 13, 2009.)

**92-28-2. Filing of quarterly reports; deadline.** (a)(1) Each Kansas retail dealer seeking a Kansas retail dealer incentive shall file a retail dealer's report with the secretary of revenue within 30 days after the last day of each quarter. Each retail dealer not filing a retail dealer's report within 30 days from the last day of the quarter shall be barred from seeking payment from the Kansas retail dealer's incentive fund for that quarter. Each retail dealer's report shall be filed in the same manner as that for the motor fuel retailers' informational return, with respect to filing for single or multiple locations.

(2) The Kansas retail dealer incentives shall be paid on a quarterly basis. If the retail dealer incentive amounts claimed, based on the number of gallons of renewable fuels or biodiesel fuel sold or dispensed by Kansas retail dealers, exceed the balance in the Kansas retail dealer incentive fund, the incentive per gallon shall be reduced proportionately so that the balance in the Kansas retail dealer incentive fund is not exceeded. If any amount remains in the Kansas retail dealer incentive fund following each quarterly payment of Kansas retail dealer incentives, that amount shall be carried forward in the Kansas retail dealer incentive fund to the next quarter for the payment of future incentives.

(b) Each Kansas retail dealer filing a quarterly retail dealer's report shall be a licensed motor fuel

retailer and shall have filed all monthly motor fuel retailers' informational returns and any other relevant information as required by the secretary of revenue before receiving any incentive funds.

(c) Each quarterly retail dealer's report shall be filed electronically with the department of revenue and shall include the following information:

(1) The total number of gallons of gasoline, gasohol, ethanol, diesel, and biodiesel sold;

(2) the total number of gallons of renewable fuel and biodiesel sold; and

(3) any other relevant information that the secretary of revenue requires in order to determine entitlement to and the amount of any incentive payment. (Authorized by and implementing K.S.A. 2007 Supp. 79-34,174; effective Feb. 13, 2009.)

**92-28-3. Record requirements.** (a) Each Kansas retail dealer shall maintain the following records for each quarter:

(1) The quantity and product type of all fuel received;

(2) the quantity and product type of all fuel sold or dispensed;

(3) the method of disbursement; and

(4) invoices and bills of lading.

(b) The records specified in subsection (a) shall contain sufficient information to allow the secretary of revenue to determine the quantity and product type of all fuel received, sold, or dispensed and the method of disbursement. Any retail dealer may use records prepared for other purposes if the records contain the information required by subsection (a).

(c) Each retail dealer shall retain the required records for at least three years. The records shall be available at all times during business hours and shall be subject to examination by the secretary of revenue or the secretary's designee. (Authorized by K.S.A. 2007 Supp. 79-34,174; implementing K.S.A. 2007 Supp. 79-34,15 and 79-34,174; effective Feb. 13, 2009.)

**92-28-4. Funds erroneously paid; informal conferences.** (a) If the secretary of revenue determines from available reports and records that a Kansas retail dealer has erroneously received money from the Kansas retail dealer incentive fund, the retail dealer shall refund to the secretary of revenue the amount erroneously paid, within 30 days after receiving notification by the secretary.

(b) Each Kansas retail dealer who has a dispute concerning an incentive payment shall request resolution from the secretary of revenue or the secretary's designee through the informal conference process. (Authorized by K.S.A. 2007 Supp. 79-34,174; implementing K.S.A. 2007 Supp. 79-3420 and 79-34,174; effective Feb. 13, 2009.)

**Article 50.— MANUFACTURE,  
DISTRIBUTION AND SALE OF MOTOR  
VEHICLES; REVIEW BOARD**

**92-50-1.** (Authorized by K.S.A. 8-190, 8-2303, 8-2314; effective, E-74-57, Sept. 30, 1974; effective May 1, 1975; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-50-2 to 92-50-21.** (Authorized by K.S.A. 8-2303, 8-2314; effective, E-74-57, Sept. 30, 1974; effective May 1, 1975; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-50-22 to 92-50-27.** (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-50-28.** (Authorized by K.S.A. 8-143i, 8-191; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-50-29.** (Authorized by K.S.A. 8-2303, 8-2304; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-50-30.** (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-50-31.** (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-50-32.** (Authorized by K.S.A. 8-191, 8-2303; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-50-33.** (Authorized by K.S.A. 8-2303, 8-2308; effective, E-77-49, Sept. 30, 1976; effective Feb. 15, 1977; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-50-34.** (Authorized by K.S.A. 8-2301, 8-2303, 8-2304; effective, E-77-49, Sept. 30, 1976; effective Feb. 15, 1977; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-50-35.** (Authorized by K.S.A. 8-135,

8-2303, 8-2308; effective, E-77-49, Sept. 30, 1976; effective Feb. 15, 1977; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-50-36 and 92-50-37.** (Authorized by K.S.A. 8-2314; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-50-38.** (Authorized by K.S.A. 8-2303, 8-2304; effective, E-77-49, Sept. 30, 1976; effective Feb. 15, 1977; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-50-39 and 92-50-40.** (Authorized by K.S.A. 8-2314; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-50-41.** (Authorized by K.S.A. 8-191, 8-2314; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-50-42. Sales prima facie evidence of engaging in business; motor vehicle dealer license required.** The sale of five (5) or more motor vehicles in any one (1) calendar year shall be prima facie evidence that a person is engaged in the business of selling motor vehicles and, unless rebutted or overcome by other evidence, shall require that person to obtain a motor vehicle dealer's license. A person shall be entitled to a hearing conducted in accordance with K.S.A. 1980 Supp. 8-2411 to rebut this evidence. (Authorized by K.S.A. 1981 Supp. 8-2423; implementing K.S.A. 1981 Supp. 8-2401, 8-2403, 8-2404; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982.)

**92-50-57.** (Authorized by K.S.A. 8-191; effective, E-78-17, July 7, 1977; effective May 1, 1978; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**Article 51.— TITLES AND REGISTRATION**

**92-51-1.** (Authorized by K.S.A. 8-134; effective, E-77-17, March 19, 1976; effective Feb. 15, 1977; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-51-2.** (Authorized by K.S.A. 8-191, 8-143 (2) (b), 74-2004; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-51-3 and 92-51-4.** (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-51-5.** (Authorized by K.S.A. 8-191, 8-135 (a), 74-2004; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-51-6 to 92-51-8.** (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-51-9.** (Authorized by K.S.A. 8-191, 74-2011, 74-2004; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-51-10.** (Authorized by K.S.A. 8-191, 74-2011, 8-135, 74-2004; effective, E-71-9, Jan. 1, 1971; effective, Jan. 1, 1972; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-51-11.** (Authorized by K.S.A. 8-191, 8-135(a), 74-2004; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-51-12 and 92-51-13.** (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-51-14.** (Authorized by K.S.A. 8-191, 8-143; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-51-15.** (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-51-16.** (Authorized by K.S.A. 8-143b, 8-143c, 8-143d, 8-191, 74-2004; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-51-17.** (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-51-18.** (Authorized by K.S.A. 8-191, 8-143, 8-143a; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-51-19.** (Authorized by K.S.A. 8-129,

8-191, 74-2011, 8-143i; effective, E-70-14, Jan. 19, 1970; effective Jan. 1, 1971; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-51-20.** (Authorized by K.S.A. 1981 Supp. 8-143; effective Jan. 1, 1971; amended May 1, 1979; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-51-21. Staggered registration system.**

(a) All motorized bicycles, motor vehicles, and recreational vehicles, other than apportioned registered vehicles, mobile homes, trailers, antique vehicles, trucks or truck tractors registered for a gross weight of greater than 12,000 pounds, and commercial motor vehicles as described in K.S.A. 8-143m and amendments thereto, shall be registered annually under a staggered registration system during one of 11 registration periods. The month of expiration of the registration shall be embossed upon the number plate issued at the time of registration or shall be represented by a decal attached to the number plate in a location designated by the director.

(b) At the time of registration, the owner shall pay a prorated registration fee equal to  $\frac{1}{12}$  of the annual registration fee multiplied by the number of months remaining in the registration period, including the month of expiration. Each registration period shall expire on the last day of the month as prescribed for the alpha letter designation on the plate or decal affixed to the plate, as determined by the first letter of the owner's surname in accordance with the following table:

**ALPHABETICAL DESIGNATION FOR MONTHLY STAGGERED REGISTRATION**

Alpha Letter Designation	Month	First Letter of Surname
A	February	A
B	March	B
C	April	C, D
E	May	E, F, G
H	June	H, I
J	July	J, K, L
M	August	M, N, O
R	September	P, Q, R
S	October	S
V	November	T, V, W
X	December	U, X, Y, Z

(Authorized by and implementing K.S.A. 2013 Supp. 8-134, K.S.A. 8-134a; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; amended Jan. 3, 2003; amended Nov. 22, 2013.)

**92-51-22. Registration period beginning date; fee due.** The date of the assignment or re-assignment of a manufacturer's certificate of origin or certificate of title shall be the beginning date of a registration period. The registration fee shall be due on that date, but may be paid at any time during a period of not to exceed 30 days, inclusive of weekends and holidays, after the assignment or re-assignment. If the registration fee is not paid within the period of time prescribed by this regulation, the penalty for the late payment of the fee shall be computed from the date of the assignment or re-assignment. (Authorized by K.S.A. 74-2011, K.S.A. 1984 Supp. 8-134; implementing K.S.A. 8-127, as amended by L. 1985, Ch. 43, Sec. 3; K.S.A. 1984 Supp. 8-143, as amended by L. 1985, Ch. 43, Sec. 8; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; amended, T-85-40, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986.)

**92-51-23. Transfer of license plates; rebates and refunds disallowed.** Neither rebates nor refunds for license plate transfers shall be made if license plates are transferred to a vehicle of a lesser weight or a lesser carrying capacity. (Authorized by K.S.A. 74-2011, K.S.A. 8-134; implementing K.S.A. 8-135 as amended by L. 2002, Ch. 134, § 2; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; amended Jan. 3, 2003.)

**92-51-24. Mailing of titles.** (a) Each title without a lien or security interest processed by the division of vehicles shall be mailed directly to the owner unless the division is otherwise instructed by the owner.

(b) Each title with a lien or security interest held in electronic format shall be mailed to the owner once the lien or security interest is satisfied, unless the division is otherwise instructed by a person who satisfies the lien or security interest but who is not the owner. (Authorized by K.S.A. 74-2011, K.S.A. 8-134, as amended by 2003 HB 2189, § 1, and K.S.A. 2002 Supp. 8-135d; implementing K.S.A. 2002 Supp. 8-135, as amended by 2003 HB 2193, § 1, and K.S.A. 2002 Supp. 8-135d; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; amended Jan. 3, 2003; amended Jan. 23, 2004.)

**92-51-25. Applications for title on used, foreign vehicles.** (a) To secure a certificate of title on a used, foreign vehicle, the applicant shall provide the following documentation to the county treasurer:

(1) A form evidencing that the vehicle identification number has been verified by the Kansas highway patrol; and

(2) (A) The foreign title in the applicant's name and an affidavit of date of entry into Kansas;

(B) a foreign title that has been properly assigned to the applicant; or

(C) a foreign title that has been properly assigned to a registered dealer of the state in which the title was issued and that has been properly reassigned by the dealer of that state to the Kansas resident.

(b) If the foreign state does not have a title law, the applicant shall present a bill of sale from the seller of the vehicle and a foreign registration receipt. The foreign registration receipt shall meet one of the following requirements:

(1) Be in the applicant's name;

(2) be properly assigned to the applicant; or

(3) be reassigned by a registered dealer of the issuing state.

The foreign registration receipt and the bill of sale shall be surrendered to the county treasurer.

(c) If a foreign title is held by an out-of-state lienholder, a title shall not be issued by the division unless the out-of-state lienholder forwards the foreign title to the division. A faxed copy of the foreign title may be used for inspection and registration purposes pending receipt of the foreign title. (Authorized by K.S.A. 74-2011, K.S.A. 2002 Supp. 8-116a, K.S.A. 8-134, as amended by 2003 HB 2189, § 1, and K.S.A. 2002 Supp. 8-135d; implementing K.S.A. 2002 Supp. 8-116a and 8-135, as amended by 2003 HB 2193, § 1; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; amended, T-85-40, Dec. 19, 1984; amended May 1, 1985; amended Jan. 23, 2004.)

**92-51-25a. Proof of valid license required for foreign vehicle dealers.** (a) For purposes of this regulation, the following terms shall have the meanings specified in this subsection:

(1) "Foreign vehicle dealer" shall mean a person holding a license to sell vehicles at retail or wholesale issued by a jurisdiction outside of the territorial limits of the United States. For purposes of this regulation, all states, protectorates, and trust territories administered by the federal government of the United States shall be considered part of the United States and shall be excluded from the definition of "foreign vehicle dealer."

(2) "Agent of a foreign vehicle dealer" shall mean a person who is authorized by a foreign vehicle dealer to purchase vehicles for import and

resale by the foreign vehicle dealer at the foreign vehicle dealer's authorized place of business in the foreign country.

(3) "Vehicle dealer" has the meaning specified in K.S.A. 8-2401, and amendments thereto.

(b) Before permitting a foreign vehicle dealer to purchase a vehicle, each vehicle dealer shall require proof that the foreign vehicle dealer holds a foreign dealer license and shall retain a copy of the dealer license from the foreign dealer's country of origin.

(c) Each vehicle dealer who sells a vehicle to a foreign vehicle dealer shall stamp in red ink on the back of the title in all unused dealer reassignment spaces the words "For Export Out of Country Only" and the vehicle dealer's state-assigned vehicle dealer number. The stamp shall also be placed on the front of the title in a manner that does not obscure any names, dates, or mileage statements. The stamp shall be at least two inches wide, and all words shall be clearly legible.

(d) If the purchaser is a foreign vehicle dealer, the vehicle dealer shall obtain the following documents before the sale and shall maintain these documents in the vehicle dealer's sales file for each vehicle:

(1) A copy of the foreign vehicle dealer's license issued by the appropriate governmental entity of the foreign government to the foreign vehicle dealer;

(2) a copy of any identification documentation issued by the appropriate foreign governmental entity indicating that the person claiming to be a foreign vehicle dealer is, in fact, a resident of the foreign country. These documents shall include a driver's license, passport, voter registration documents, or any official identification card if the card contains a picture of the person and lists a residential or business address;

(3) a completed "Kansas motor vehicle sales tax exemption certificate for vehicles taken out of the state" for each vehicle sold to the foreign vehicle dealer, indicating that the vehicle has been purchased for export;

(4) a copy of the front and back of the title to the vehicle, showing the "For Export Out of Country Only" stamp and the seller's assigned vehicle dealer number used by the auction or dealership; and

(5) for any agent of a foreign vehicle dealer, a copy of documentation supporting the person's claim to be acting as an agent for the foreign vehicle dealer. (Authorized by K.S.A. 8-2423; implementing K.S.A. 8-2402 and K.S.A. 8-2403; effective Sept. 10, 2010.)

**92-51-26. Corrections of titles and registration receipts.** In the case of a clerical error on the title or registration receipt including the transposition of engine or serial numbers, misspelling of the name of owner, or a mistake in the year, model or make of car, or the omission of some necessary information on the application, correction of the error or submission of the omitted information shall be made through the Kansas department of revenue, division of vehicles, state office building, Topeka, Kansas 66626, or the department's designee. (Authorized by K.S.A. 74-2011, K.S.A. 1984 Supp. 8-134; implementing K.S.A. 1984 Supp. 8-135, as amended by L. 1985, Ch. 43, Sec. 6; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; amended May 1, 1986.)

**92-51-27. Nonnegotiable titles.** (a) A nonnegotiable title may be issued if the owner or lessee operates in more than one state and it is necessary to secure Kansas registration. This provision shall apply only to trucks and trailers.

(b) A nonnegotiable title shall not be used to transfer title of the vehicle. (Authorized by K.S.A. 74-2011, K.S.A. 8-134; implementing K.S.A. 8-1,111; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; amended Jan. 3, 2003.)

**92-51-28. Printing of electronic titles.**(a) Any title with a security interest that is held in an electronic format may be printed if the owner is not currently a Kansas resident and if all the following conditions are met:

(1) The owner moved from the state of Kansas and notified the lienholder of the owner's change of address.

(2) The lienholder provides the division with written or electronic permission to print the title.

(3) The titling authority of the owner's new jurisdiction requests that the title be printed and mailed directly to the titling authority and provides mailing instructions.

(b) Any title with a security interest held in electronic format may be printed if the owner, as defined by K.S.A. 8-1,100(h) and amendments thereto, is a Kansas resident and all of the following conditions are met:

(1) The owner is a motor carrier that has entered into a lease agreement for the vehicle for more than 28 days with a foreign state motor carrier.

(2) The foreign state will not accept an electronic title receipt for purposes of registration under the international registration plan.

(3) The titling authority of the foreign state requests that the title be printed and mailed directly to the titling authority. (Authorized by K.S.A. 8-134, as amended by 2003 HB 2189, § 1, K.S.A. 2002 Supp. 8-135d and 58-4204a; implementing K.S.A. 2002 Supp. 8-135, as amended by 2003 HB 2193, § 1, K.S.A. 2002 Supp. 8-135d and 58-4204a; effective Jan. 23, 2004.)

**92-51-29. Eliminating title for manufactured or mobile home; fee required.** A certificate of title shall be eliminated by the division upon receipt of the following:

(a) The owner's affidavit stating that the manufactured or mobile home has been permanently affixed to a foundation; and

(b) payment of a \$10.00 fee. (Authorized by K.S.A. 2002 Supp. 58-4215; implementing K.S.A. 2002 Supp. 58-4214; effective Jan. 23, 2004.)

**92-51-30. Application for refund of registration fee.** Any owner of a motor vehicle eligible for a refund of the registration fee shall file an application for the refund with the Kansas department of revenue, division of vehicles, state office building, Topeka, Kansas 66626, or the department's designee. At the same time, the applicant shall relinquish to the division of vehicles the registration plate and any attachment issued in connection with the registration, unless the plate has been relinquished to the county treasurer pursuant to K.A.R. 92-55-3. Application for refund shall be in the form prescribed by the division. (Authorized by K.S.A. 74-2011, K.S.A. 1983 Supp. 8-134; implementing K.S.A. 1984 Supp. 8-143; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; amended, T-85-40, Dec. 19, 1984; amended May 1, 1985.)

**92-51-31. Sale of 30-day license and certain 72-hour temporary registrations.** (a) The motor carrier inspection bureau is hereby designated agent for the secretary of revenue to issue the 30-day licenses authorized by K.S.A. 1980 Supp. 8-143b and the 72-hour temporary registrations authorized by K.S.A. 1980 Supp. 8-143c.

(b) The motor carrier inspection bureau shall keep an accounting of all 30-day licenses and 72-hour temporary registrations issued and shall remit daily to the division of vehicles the amount collected in connection with the issuance of those licenses and registrations. (Authorized by K.S.A. 74-2011, K.S.A. 1981 Supp. 8-143c, 8-134; implementing K.S.A. 1981 Supp. 8-143b, 8-143c, 8-143d; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982.)

**92-51-32. Six thousand (6,000) mile registration requirements.** The speedometer or odometer which records the number of miles traveled by a vehicle having a 6,000-mile registration shall be kept in working condition at all times during the registration period. The highway patrol, motor carrier inspection bureau, or any law enforcement officer shall have authority to inspect the readings of the speedometer or odometer and to inspect the vehicle to ensure that the speedometer or odometer is properly connected and in good working condition. The operator of this vehicle shall keep at all times in the vehicle a log reciting the date, the towns traveled in, and the distance operated on each trip. Anyone securing a 6,000-mile registration and not having the speedometer or odometer connected and in good working condition or not having the log in the vehicle shall have the vehicle registration suspended and the registration shall not be reinstated until the difference between the 6,000-mile and the regular registration fee on the vehicle is paid. (Authorized by K.S.A. 74-2011, K.S.A. 1981 Supp. 8-134; implementing K.S.A. 1981 Supp. 8-143; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982.)

**92-51-33.** (Authorized by K.S.A. 74-2011, K.S.A. 1981 Supp. 8-143; implementing K.S.A. 1981 Supp. 8-143; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; revoked July 27, 2001.)

**92-51-34.** (Authorized by and implementing K.S.A. 1990 Supp. 8-132; effective, T-84-15, July 1, 1983; effective May 1, 1984; amended May 1, 1984; amended May 1, 1986; amended June 1, 1992; revoked Jan. 3, 2003.)

**92-51-34a. License plates; new issuance.** During calendar year 2021 and thereafter, one decal shall be furnished for the license plate issued for each new registration of a vehicle, pursuant to K.S.A. 8-132 and 8-134 and amendments thereto, and for each renewal registration of a vehicle. New license plates shall be issued during calendar year 2022 and during every fifth calendar year after 2022, for each new registration of a vehicle and for each renewal registration of a vehicle. (Authorized by and implementing K.S.A. 2020 Supp. 8-132; effective Jan. 23, 2004; amended April 22, 2005; amended Nov. 13, 2017; amended Aug. 20, 2021.)

**92-51-35. Prisoner of war number plates; application requirements.** Each applicant for a

distinctive number plate designating that person as a former prisoner of war shall submit proof in the form of documentation from the veteran's administration or from a branch of the armed services or in the form of a newspaper clipping verifying the applicant's former prisoner of war status. If no such documentation is available, two notarized statements from acquaintances of the applicant verifying the applicant's former prisoner of war status shall be submitted as proof. (Authorized by and implementing K.S.A. 1983 Supp. 8-177c; effective, T-84-35, Dec. 7, 1983; effective, T-85-12, May 3, 1984; effective May 1, 1985.)

**92-51-36. Farm truck and farm truck tractor registrations; vehicle lettering requirements.** Each farm truck and farm truck tractor registered for a gross weight of more than 54,000 pounds shall have painted or permanently affixed on both sides of the motor vehicle the words "farm vehicle—not for hire". The words shall have letters not less than two inches in height and not less than one-fourth inch in stroke. (Authorized by K.S.A. 74-2011; implementing K.S.A. 1984 Supp. 8-143; effective, T-85-40, Dec. 19, 1984; effective May 1, 1985.)

**92-51-37. Lost or stolen personalized license plates; reissuance of different combination plates.** If one or both of the personalized plates are lost or stolen, the vehicle owner shall make application for new plates with a different combination of numbers or letters. If only one plate is lost or stolen, the remaining plate shall be surrendered to the division of vehicles. (Authorized by and implementing K.S.A. 1984 Supp. 8-132; effective, T-85-40, Dec. 19, 1984; effective May 1, 1985.)

**92-51-38. Unclaimed personalized, educational institution, and shriners' license plates.** (a) The county treasurer shall retain all unclaimed personalized, educational institution, and shriners' license plates for 12 months after receipt from the manufacturer. At the end of the 12 months, the county treasurer shall destroy these personalized, educational institution, and shriners' plates and notify the division of vehicles of the plate combinations destroyed.

(b) The \$40 fee for the issuance of a personalized, educational institution, or shriners' license plate that is not claimed by the applicant shall not be refunded to the applicant. (Authorized by and implementing K.S.A. 8-132, as amended by L.

2002, Ch. 100, § 1; effective May 1, 1986; amended Jan. 3, 2003.)

**92-51-39. Title and registration fees; refunds.** Title and registration fees owed to the division of vehicles or to the applicant shall be processed with the payment of the annual registration fee. (Authorized by and implementing K.S.A. 8-134; effective May 1, 1986; amended Jan. 3, 2003.)

**92-51-40.** (Authorized by and implementing L. 1986, Ch. 36, Sec. 2; effective, T-87-25, Oct. 1, 1986; effective May 1, 1987; revoked, T-92-9-27-01, Sept. 27, 2001; revoked Jan. 4, 2002.)

**92-51-41. Permanent registration of city, county, community college, and technical college vehicles.** (a) The fee for permanent registration of the following vehicles shall be \$7.00:

(1) Each motor vehicle, trailer, or semitrailer that meets the following conditions:

(A) Is owned or leased by any city, county, township, or school district, or by any agency or instrumentality of a city, county, or township;

(B) is used exclusively for governmental or school district purposes; and

(C) is not otherwise exempt from registration; and

(2) each truck tractor, trailer, or semitrailer that meets the following conditions:

(A) Is leased by a community college or technical college;

(B) is used exclusively for a truck driver training program; and

(C) is not otherwise exempt from registration.

(b) Each annual report filed with the division that identifies vehicles required to be permanently registered shall be submitted on a form approved by the director. (Authorized by and implementing K.S.A. 2004 Supp. 8-1,134, as amended by L. 2005, Ch. 62, § 1; effective, T-88-63, Dec. 30, 1987; amended May 1, 1988; amended Jan. 3, 2003; amended March 24, 2006.)

**92-51-41a. Vehicles used as unmarked law enforcement vehicles; registration.** (a)

Each vehicle that is owned or leased by a governmental entity and that is used as an unmarked law enforcement vehicle shall be registered annually in accordance with K.S.A. 8-134, and amendments thereto, for property tax exemption purposes, as a vehicle of a political or taxing subdivision. The governmental entity that owns or leases that

vehicle shall pay the registration fees for the alphanumeric plates issued for the vehicle.

(b) For purposes of this regulation, “governmental entity” means any of the following:

- (1) The state of Kansas;
- (2) any city, county, agency, or instrumentality of the state of Kansas; or
- (3) any federal agency. (Authorized by and implementing K.S.A. 2004 Supp. 8-134; effective March 24, 2006.)

**92-51-42. Odometer disclosure statement.** When any person transfers a vehicle pursuant to K.S.A. 8-135 as amended by L. 1989, Ch. 36, Sec. 1 and amendments, and the existing certificate of title does not have a space for acknowledging the odometer certification, both the transferor and the transferee shall complete an odometer disclosure statement. (Authorized by K.S.A. 74-2011; implementing K.S.A. 8-135 as amended by L. 1989, Ch. 36, Sec. 1; effective Feb. 26, 1990.)

**92-51-50.** (Authorized by K.S.A. 8-149a; uniform vehicle registration proration and reciprocity agreement; Kansas-Oklahoma proration and reciprocity agreement; effective Jan. 1, 1966; revoked July 27, 2001.)

**92-51-51.** (Authorized by K.S.A. 8-149a; uniform vehicle registration proration and reciprocity agreement; Kansas-Oklahoma proration and reciprocity agreement; effective Jan. 1, 1966; revoked July 27, 2001.)

**92-51-52.** (Authorized by K.S.A. 8-149a; uniform vehicle registration proration and reciprocity agreement; Kansas-Oklahoma proration and reciprocity agreement; effective Jan. 1, 1966; revoked July 27, 2001.)

**92-51-53. Vehicles exempt from apportioned registration.** (a) Vehicles that are based in a state with which Kansas has an agreement for apportioned registration and that are owned by an individual engaged in farming and used by the owner to transport agricultural products produced by the owner or commodities purchased by the owner for farm use shall be exempt from apportioned registration.

(b) Motor vehicles based in Missouri that bear “local” Missouri registration shall be exempt from apportioned registration in Kansas if the vehicles are operated not more than 25 miles from the vehicle’s base point in Missouri. Kansas 72-hour truck

registration, 30-day truck registration, local registration, and regular registration shall not be applicable for the operation of the vehicle beyond the 25-mile radius. If the owner of the Missouri-based locally registered vehicle desires to operate beyond the 25-mile radius of the vehicle’s base point, Missouri “beyond local,” which is also known as commercial, registration shall be secured.

(c) A commercial motor vehicle based in Missouri that bears Missouri “beyond local,” which is also known as commercial, registration shall be exempt from apportioned registration if the vehicle operation is restricted to any of the following:

(1) The corporate limits and a radius of four miles beyond the corporate limits of Elwood, Kansas, and to and from St. Joseph, Missouri to the St. Joseph municipal airport on U.S. highway 36, with the return trip to Missouri over the same highway;

(2) the corporate limits of Atchison, Kansas on U.S. highway 59, with the return trip to Missouri over the same highway;

(3) the corporate limits of Leavenworth, Kansas, Fort Leavenworth, Kansas, and the federal penitentiary by entry on Kansas highway 92 and U.S. highway 73, with the return trip to Missouri over the same highways; and

(4) the commercial zone of greater Kansas City as defined by the federal highway administration. (Authorized by K.S.A. 8-1,121; implementing K.S.A. 8-1,101; effective Jan. 1, 1966; amended Jan. 3, 2003.)

**92-51-54.** (Authorized by K.S.A. 8-149a; uniform vehicle registration proration and reciprocity agreement; Kansas-Oklahoma proration and reciprocity agreement; effective Jan. 1, 1966; revoked July 27, 2001.)

**92-51-55.** (Authorized by K.S.A. 8-149a; uniform vehicle registration proration and reciprocity agreement; Kansas-Oklahoma proration and reciprocity agreement; effective Jan. 1, 1966; revoked July 27, 2001.)

**92-51-56. Leasing rules applicable to apportioned registration.** (a) The definitions in this subsection shall apply to the leasing of vehicles by a carrier who is subject to apportioned registration. The terms “trip lease” and “lease” shall have the following meanings:

(1) “Trip lease” shall mean a one-way trip from one point to another point or from one point to another point and return.

(2) "Lease" shall mean a lease of 30 days or more. A lessee shall be considered the owner of the vehicle for the purpose of apportioned registration if continuous trip leases or rentals are issued on a day-by-day basis or week-by-week basis for a period totaling 30 days or more.

(b) If each of two separate carriers has a fleet of vehicles currently registered on an apportioned basis in Kansas, both carriers are conducting trailer interchange operations under rules of the federal highway administration, and the trailers interchanged are part of the fleets currently apportioned in Kansas by the separate carriers, no further registration shall be required for the trip-leased trailer.

(c) Household-goods carriers in which the agent is the lessor and the company is the lessee shall file and register as dual applicants. The agent shall have a fleet of vehicles. Application for apportioned registration shall be filed solely in the name of the lessee carrier if the agent carrier does not have sufficient vehicles to constitute a fleet. The application for apportioned registration shall be based on the lessor's equipment, and the total miles the lessor operates under the lessor's name and that of the lessee.

(d) Rental equipment companies that have fleets of vehicles for short-term rentals, which is less than a 30-day lease, and that operate interstate shall be required to secure apportioned registration. The company shall maintain adequate records for completion of an apportioned application or audit. Daily rental equipment firms that do not maintain adequate records for completion of an apportioned application shall be required to fully license the daily rental vehicles if based in Kansas or shall be subject to a 72-hour truck registration fee if based in a state other than Kansas.

(e) If an apportioned fleet carrier, foreign or Kansas, trip leases a truck or truck-tractor that is apportioned with Kansas from another prorated carrier, no further registration shall be required if the truck or truck-tractor is not operated with a greater gross weight vehicle registration. If the gross weight registration secured by the lessor apportioned carrier is insufficient for the gross weight of the vehicle when trip leased, then the lessee apportioned carrier shall be subject to a 72-hour truck registration fee if the vehicle is based in a state other than Kansas. If the vehicle is based in Kansas, then the lessor apportioned carrier shall secure proper gross weight registration of the vehicle through the division of motor vehicles.

(f) If an apportioned fleet carrier, foreign or Kansas, leases or trip leases a truck or truck-tractor that bears Kansas "regular" class of registration, no further registration shall be required if the gross weight of the vehicle when trip leased by the lessee apportioned carrier is not greater than the gross weight registration secured by the lessor carrier. If the gross weight of the vehicle is greater than the gross weight registration, then the registered owner of the vehicle shall make application for proper gross weight registration through the office of the county treasurer.

(g) If an apportioned fleet carrier, foreign or Kansas, leases a foreign-based vehicle for a period of more than 30 days and the vehicle is apportioned in the name of another carrier, then the apportioned registration of the vehicle shall be in the lessee's name.

(h) If an apportioned fleet carrier, foreign or Kansas, leases a vehicle for a period of 30 days or more and the vehicle has been apportioned by a Kansas-based carrier, then apportioned registration shall be in the name of the lessee.

(i) If an apportioned fleet carrier, foreign or Kansas, leases or trip leases a truck or truck-tractor that is fully licensed in a state other than Kansas, then the vehicle shall be subject to apportioned registration in Kansas by the fleet carrier.

(j) If a Kansas-apportioned vehicle that is trip leased by a carrier who is a resident of or based in a state with which Kansas has an agreement for interstate reciprocity, no further registration shall be required. The lessee carrier shall report the mileage operated by the lessor or apportioned carrier.

(k) Each apportioned fleet owner shall place in each fleet vehicle that is subject to a lease or rental arrangement an authentic copy or a memorandum of the lease or rental agreement. The agreement or memorandum shall contain the following:

(1) The complete and full names of the lessor and lessee;

(2) a description of the leased or rented vehicle by year, make, and vehicle identification number;

(3) the effective and expiration dates of the lease or rental agreements; and

(4) the signatures of the lessee and lessor, or their duly authorized agents.

The agreement or memorandum shall be carried in the cab of the vehicle described in the agreement, or the cab of the vehicle supplying the motive power if the vehicle is a trailer.

(l) Each fleet owner that is subject to a lease, shall include the apportioned application, the ef-

fective date of the lease, and the name and address of the lessor. (Authorized by K.S.A. 8-1,121; implementing K.S.A. 8-1,101; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 3, 2003.)

**92-51-57.** (Authorized by K.S.A. 8-149a; uniform vehicle registration proration and reciprocity agreement; Kansas-Oklahoma proration and reciprocity agreement; effective Jan. 1, 1966; revoked Jan. 3, 2003.)

**92-51-58.** (Authorized by K.S.A. 8-149f; Kansas-Missouri supplemental proration and reciprocity agreement; effective Jan. 1, 1966; revoked Jan. 3, 2003.)

**92-51-59. Proportional registration fees due; transfer of certificate of title.** When the department has filed a lien upon vehicles which are part of a prorated fleet for failure to pay additional fees due Kansas, or upon failure of a prorated fleet carrier to pay a quarterly payment installment when the same is due and payable, titles to such fleet vehicles cannot be transferred or repossession titles to such vehicles be issued until the state's lien has been satisfied. (Authorized by K.S.A. 8-191, 8-149a, 8-149b; effective Jan. 1, 1966.)

**92-51-60.** (Authorized by K.S.A. 8-191, K.S.A. 1971 Supp. 8-149a, 74-2004; effective, E-71-9, Jan. 1, 1971; effective Jan. 1, 1972; revoked Jan. 3, 2003.)

**92-51-61.** (Authorized by K.S.A. 1978 Supp. 8-1,121; effective, E-71-9, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1979; revoked Jan. 3, 2003.)

**92-51-62. Proportional fleet registration; requirement of title to a fleet vehicle.** In those cases where a vehicle is to be part of a fleet subject to proportional registration, and there is an outstanding negotiable title to such vehicle in the name of the fleet owner, whether such title is a Kansas title or a title issued by another state; or, in those cases where the vehicle is subject to a lease, and the lessor of such vehicle has an outstanding negotiable title issued by this state or another state, such fleet owner shall not be required to secure Kansas certificate of title. (Authorized by K.S.A. 8-191, K.S.A. 1971 Supp. 8-149a, 74-2004; effective, E-71-9, Jan. 1, 1971; effective Jan. 1, 1972.)

## Article 52.— MOTOR VEHICLE DRIVERS' LICENSES

**92-52-1. Vision standards for drivers.** Each driver's license examiner shall use the following vision standards for driver's license applicants:

(a) Each applicant testing 20/40 or better in at least one eye with or without corrective lens at the examination station shall meet the vision requirements. The driver's license examiner shall give each applicant failing to meet this test a vision form and refer the applicant to a vision specialist of the applicant's choice.

(b) Each applicant who has received a vision report from a vision specialist shall have 20/60 or better vision in at least one eye with or without corrective lens as determined by the vision specialist to be eligible to be issued a driver's license.

(c) The driver's license examiner shall require each individual with a reading of 20/60 in at least one eye with or without corrective lens to submit to a driver's test.

(d) Any applicant failing to meet any of the above standards may request an administrative review by the director of vehicles. (Authorized by and implementing K.S.A. 8-234b; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; amended May 1, 1979; amended, E-82-26, Dec. 16, 1981; amended May 1, 1982; amended May 1, 1987; amended May 1, 1988.)

**92-52-2.** (Authorized by K.S.A. 1978 Supp. 8-234b; effective May 1, 1979; revoked Jan. 3, 2003.)

**92-52-3. Failure to apply for renewal of a driver's license.** Except as otherwise provided in K.S.A. 8-247, and amendments thereto, each person who fails to apply for renewal of a driver's license within one year after the expiration date of the license shall complete a driver's license examination and pay the fees required for that renewal. (Authorized by K.S.A. 8-234b; implementing K.S.A. 8-247, as amended by L. 2002, Ch. 60, § 2; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 3, 2003.)

**92-52-4.** (Authorized by K.S.A. 74-2011; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-52-5.** (Authorized by K.S.A. 8-191, 8-245c, 8-255, 74-2004; effective, E-71-9, Jan.

1, 1971; effective Jan. 1, 1972; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-52-6.** (Authorized by K.S.A. 8-191, 8-255a, 74-2004; effective, E-71-9, Jan. 1, 1971; effective Jan. 1, 1972; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-52-7.** (Authorized by K.S.A. 8-191, 8-255a, 74-2004; effective, E-71-9, Jan. 1, 1971; effective Jan. 1, 1972; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-52-8.** (Authorized by K.S.A. 74-2011; effective Jan. 1, 1966; revoked Jan. 3, 2003.)

**92-52-9. Definition of moving violation.**

(a) "Moving violation" means a conviction for violating any of the following:

(1) Any of the following Kansas statutes, and amendments thereto:

- (A) K.S.A. 8-235;
- (B) K.S.A. 8-237;
- (C) K.S.A. 8-244;
- (D) K.S.A. 8-262;
- (E) K.S.A. 8-287;
- (F) K.S.A. 8-291;
- (G) K.S.A. 8-296;
- (H) K.S.A. 8-1503;
- (I) K.S.A. 8-1507 through K.S.A. 8-1511;
- (J) K.S.A. 8-1514 through K.S.A. 8-1524;
- (K) K.S.A. 8-1526 through K.S.A. 8-1531a;
- (L) K.S.A. 8-1533;
- (M) K.S.A. 8-1535;
- (N) K.S.A. 8-1539 through K.S.A. 8-1540;
- (O) K.S.A. 8-1542;
- (P) K.S.A. 8-1545 through K.S.A. 8-1553;
- (Q) K.S.A. 8-1555 through K.S.A. 8-1560b;
- (R) K.S.A. 8-1561 through K.S.A. 8-1563;
- (S) K.S.A. 8-1565 through K.S.A. 8-1567;
- (T) K.S.A. 8-1568;
- (U) K.S.A. 8-1573 through K.S.A. 8-1576;
- (V) K.S.A. 8-1578 through K.S.A. 8-1578a;
- (W) K.S.A. 8-1580 through K.S.A. 8-1581;
- (X) K.S.A. 8-1584;
- (Y) K.S.A. 8-1595;
- (Z) K.S.A. 8-1599;
- (AA) K.S.A. 8-1703;
- (BB) K.S.A. 8-1725;
- (CC) K.S.A. 8-1759;
- (DD) K.S.A. 8-1910;
- (EE) K.S.A. 21-3405;
- (FF) K.S.A. 21-3442; or
- (GG) any other Kansas statute that specifical-

ly provides that conviction for a violation of such statute is a moving violation;

(2) any similar municipal ordinance or county resolution in this state; or

(3) any similar statute, municipal ordinance, or regulation in another state.

(b) Nothing in this regulation shall be construed to prevent the division of vehicles from recording on individual driving records other administrative actions or convictions relating to vehicles. (Authorized by K.S.A. 8-249; implementing K.S.A. 8-249 and 8-255; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; amended June 1, 1992; amended, T-92-7-2-01, July 2, 2001; amended Oct. 26, 2001; amended Jan. 23, 2004.)

**92-52-9a. Moving violations; suspension or restriction of driving privileges.**

(a) If a person commits one or more moving violations on three separate occasions within a 12-month period, excluding the violations specified in K.S.A. 8-254, K.S.A. 8-285, and K.S.A. 8-291, and amendments thereto, then a warning notice shall be mailed by the division to the person advising the person that an additional violation may result in restricted driving privileges.

(b) If a person commits one or more moving violations on four separate occasions within a 12-month period, excluding the violations specified in K.S.A. 8-254, K.S.A. 8-285, and K.S.A. 8-291, and amendments thereto, then the person's license shall be restricted by the division for 30 days to driving under the circumstances provided in K.S.A. 8-292, and amendments thereto. The person shall be advised by the division that an additional violation may result in suspended driving privileges.

(c) If a person commits one or more moving violations on five separate occasions within a 12-month period, excluding the violations specified in K.S.A. 8-254, K.S.A. 8-285, and K.S.A. 8-291, and amendments thereto, then the person's license shall be suspended by the division for 90 days.

(d) If a person commits one or more moving violations on six or more separate occasions within a 12-month period, excluding the violations specified in K.S.A. 8-254, K.S.A. 8-285, and K.S.A. 8-291, and amendments thereto, then an order suspending the person's license for one year shall be issued by the division. (Authorized by K.S.A. 2000 Supp. 8-234b, K.S.A. 8-249; implementing K.S.A. 2000 Supp. 8-255, as amended by L. 2001, Ch. 200, § 2; effective June 1, 1992; amended, T-92-7-2-01, July 2, 2001; amended Oct. 26, 2001.)

**92-52-10.** (Authorized by and implementing K.S.A. 8-234b; effective, T-83-48, Dec. 22, 1982, effective May 1, 1983; revoked Feb. 26, 1990.)

**92-52-11.** (Authorized by K.S.A. 8-234b; implementing K.S.A. 8-234b; 8-237, K.S.A. 1985 Supp. 8-247 as amended by L. 1986, Ch. 38, Sec. 2, K.S.A. 1985 Supp. 8-255; effective May 1, 1987; revoked Jan. 3, 2003.)

**92-52-12. Standards for vision examinations.** (a) A “good driving record” as that term is used in L. 1989, Ch. 33, Sec. 1, shall mean that a person has not been involved in a motor vehicle accident, convicted of any moving violation as defined in K.A.R. 92-52-9 and amendments, placed on diversion on a charge of a moving violation, or subject to adverse administrative action, resulting in suspension, revocation, restriction, denial, cancellation or non-renewal in Kansas or in any other jurisdiction during the immediately preceding three years.

In determining whether an individual has a “good driving record”, consideration shall not be given to any person’s previous failure to meet the 20/60 acuity standard of K.A.R. 92-52-1 and amendments. The standard for determining whether an individual has a “good driving record” shall not apply to any person who has never held a Kansas driver’s license or permit or to any person who has never unlawfully operated a vehicle in Kansas without a Kansas driver’s license or permit.

(b) Criteria to determine whether a person “can safely operate a vehicle” as that term is used in L. 1989, Ch. 33, Sec. 1 shall include:

(1) A statement by the person’s ophthalmologist or optometrist that there is no reason to believe that the person’s eyesight would preclude that person from operating a vehicle;

(2) a determination by both the director of vehicles and the Kansas medical advisory board that there is no reason to believe that the person’s eyesight would preclude that person from operating a vehicle. The director of vehicles or the medical advisory board may require the person to submit to additional tests as they may in their discretion deem necessary to make a determination; and

(3) an actual test of the person’s driving ability by an examiner employed by the division of vehicles at a time and place arranged by the director. Each test shall be performed by an examiner who has training and experience in testing a visually-impaired driver. Each person shall comply with sections (b) (1)

and (2) before a driving test will be administered. A person shall not be permitted to take a driver’s test if the examiner has cause to believe that allowing the person to drive may be potentially hazardous to the safety of themselves or others.

(c) Each person shall use the form provided by the division for the doctor’s statement required in section (b) (1). A person may be required by the division to provide the following information:

(1) Static visual acuity;

(2) visual fields;

(3) diagnosis of visual condition and prognosis;

(4) recommendation as to the extent of driving privileges to be permitted; and

(5) recommendations as to the need for and frequency of periodic reporting to the division of the status of the person’s visual condition. (Authorized by K.S.A. 8-234b (d); implementing L. 1989, Ch. 33, Sec. 1 and 2; effective Feb. 26, 1990.)

**92-52-14. Definitions.** As used in this article, these terms shall have the following meanings:

(a) “Appropriate security clearance requirements” shall mean the following:

(1) Collection of fingerprints in order to perform a criminal history record check through the federal bureau of investigation and Kansas bureau of investigation;

(2) a check for lawful status through the systematic alien verification for entitlements program, or comparable system, to verify that the individual has lawful status in the United States; and

(3) any other security criteria deemed necessary by the director of vehicles to ensure the integrity of the division of vehicle’s mission.

(b) “Covered position” means any of the following:

(1) A position within the department of revenue wherein the employee has the ability to affect identity information that appears on the driver’s license or identification card, has access to the production process, or is involved in the manufacture of drivers’ licenses and identification cards;

(2) a position with a private, third-party provider who has contracted with the department of revenue to manufacture and produce drivers’ licenses and identification cards for the state; or

(3) a position held by any person whom the director of vehicles has authorized, pursuant to the authority granted by the motor vehicle drivers’ license act, K.S.A. 8-234a et seq. and amendments thereto, to accept an application for a driver’s license and administer the examinations required for the issuance or renewal of a driver’s license.

(c) “Disqualifying offense” shall include any of the following crimes for which an applicant has been convicted or found not guilty by reason of insanity in a civilian or military jurisdiction:

- (1) Espionage;
- (2) sedition;
- (3) treason;
- (4) any crime listed in 18 U.S.C. chapter 113B or in a comparable state law;
- (5) a crime involving a transportation security incident;
- (6) improper transportation of a hazardous material under 49 U.S.C. 5124 or a comparable state law;
- (7) unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device;
- (8) murder;
- (9) conspiracy or attempt to commit any crime specified in this subsection;
- (10) any violation of the racketeer influenced and corrupt organizations act, 18 U.S.C. 1961 et seq., or a comparable state law, in which one of the predicate acts found by a jury or admitted by the defendant consists of one of the offenses listed in paragraph (c)(4) or (c)(8);
- (11) assault with intent to murder;
- (12) kidnapping or hostage taking;
- (13) rape or aggravated sexual abuse;
- (14) unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipping, transporting, delivery, import, export, or dealing in a firearm or other weapon;
- (15) extortion;
- (16) dishonesty, fraud, or misrepresentation, including identity fraud;
- (17) bribery;
- (18) smuggling;
- (19) immigration violations;
- (20) any violation of the racketeer influenced and corrupt organizations act, 18 U.S.C. 1961 et seq., or a comparable state law, other than the violations listed in paragraph (c)(10);
- (21) robbery;
- (22) distribution of, possession with intent to distribute, or importation of a controlled substance;
- (23) arson;
- (24) commission of a violent act that would not be conducive to maintaining a safe workplace; or
- (25) conspiracy or attempt to commit the crimes in this paragraph.

(d) “Disqualifying security risk” shall include the following:

- (1) An individual who has been convicted or found not guilty by reason of insanity of one or more disqualifying offenses;
- (2) an individual working within the United States who is not lawfully present in the United States; and
- (3) an individual who is otherwise shown to be untrustworthy based on information obtained through appropriate security clearance requirements. (Authorized by and implementing K.S.A. 2007 Supp. 75-5156; effective Aug. 29, 2008.)

**92-52-15. Applications for employment in a covered position.** (a) Each selected candidate for employment in a covered position shall be subjected to appropriate security clearance requirements. If the selected candidate for employment is determined to be a disqualifying security risk, the candidate shall not be eligible for the covered position.

(b) The director of vehicles shall subject all current employees, county employees, and third-party contractors working in covered positions to appropriate security clearance requirements. If an employee or contractor is determined to be a disqualifying security risk, that employee or contractor shall not be eligible to retain the covered position.

(c) Appropriate security clearance requirements shall be used only to evaluate a selected candidate for employment and contracting purposes and shall not be used to discriminate on the basis of race, color, national origin, religion, sex, disability, age, veteran’s status, or sexual orientation. (Authorized by and implementing K.S.A. 2007 Supp. 75-5156; effective Aug. 29, 2008.)

**92-52-16. Third-party relationship requirement.** Each county employee or third-party contractor contracting with the division of vehicles to provide services as described in K.A.R. 92-52-14(b)(2) and (3) shall submit to appropriate security clearance requirements and training required by law. (Authorized by and implementing K.S.A. 2007 Supp. 75-5156; effective Aug. 29, 2008.)

## Article 53.— MOTOR VEHICLE INVENTORY TAX

**92-53-1.** (Authorized by K.S.A. 1978 Supp. 79-1023; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked July 27, 2001.)

**92-53-2.** (Authorized by K.S.A. 1978 Supp. 79-1023; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked July 27, 2001.)

**92-53-3.** (Authorized by K.S.A. 1978 Supp. 79-1023; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked July 27, 2001.)

**92-53-4.** (Authorized by K.S.A. 1978 Supp. 79-1023; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked July 27, 2001.)

**92-53-5.** (Authorized by K.S.A. 1978 Supp. 79-1023; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked July 27, 2001.)

**92-53-6.** (Authorized by K.S.A. 1978 Supp. 79-1023; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked July 27, 2001.)

**92-53-7.** (Authorized by K.S.A. 1978 Supp. 79-1023; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; revoked July 27, 2001.)

**Article 54.— SIGHT CLEARANCE CERTIFICATION**

**92-54-1.** (Authorized by K.S.A. 66-1324; effective, E-81-20, July 16, 1980; effective May 1, 1981; revoked July 27, 2001.)

**92-54-2.** (Authorized by K.S.A. 66-1324; effective, E-81-20, July 16, 1980; effective May 1, 1981; revoked July 27, 2001.)

**92-54-3.** (Authorized by K.S.A. 66-1324; effective, E-81-20, July 16, 1980; effective May 1, 1981; revoked July 27, 2001.)

**92-54-4.** (Authorized by K.S.A. 66-1324; effective May 1, 1981; revoked July 27, 2001.)

**92-54-5.** (Authorized by K.S.A. 66-1324; effective, E-81-20, July 16, 1980; effective May 1, 1981; revoked July 27, 2001.)

**Article 55.— MOTOR VEHICLE TAXATION**

**92-55-1. Definitions.** Motor vehicle tax shall mean the tax imposed upon a motor vehicle pursuant to article 51 of chapter 79 of the Kansas Statutes Annotated.

Replacement motor vehicle shall mean any motor vehicle subject to motor vehicle tax which replaces a motor vehicle previously registered and subject to motor vehicle tax and to which the registration plates of the motor vehicle replaced are

transferred. (Authorized by K.S.A. 1980 Supp. 79-5115; implementing K.S.A. 1980 Supp. 79-5101 *et seq.*; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981.)

**92-55-2. Valuation of motor vehicles; classification.** (a) The January 1980 midwest edition of the NADA Official Used Car Guide, published by the National Automobile Dealers Used Car Guide Company, is hereby adopted by reference for use by the various county appraisers in determining the trade-in value of all motor vehicles listed therein subject to motor vehicle tax. The winter 1980 edition of the Old Cars Price Guide, published by Krause Publications, Inc., is hereby adopted by reference for use by the various county appraisers in determining the trade-in value of all motor vehicles listed therein subject to motor vehicle tax which are not listed in the January 1980 midwest edition of the NADA Official Used Car Guide. The January through April 1980 edition of the NADA Recreational Vehicle Appraisal Guide, published by the National Automobile Used Car Guide Company, is hereby adopted by reference for use by the various county appraisers in determining the trade-in value of all recreational vehicles listed therein subject to motor vehicle tax. County appraisers shall determine the trade-in value of all motor vehicles not listed within the publications adopted by reference by using such manuals, guides or supplemental schedules devised or prescribed by the division of property valuation of the department of revenue and furnished to the counties by such division. Trade-in value of a specially constructed motor vehicle shall be determined through conferral with the division of property valuation of the department of revenue on a case-by-case basis.

(b) Trade-in value as determined from the sources enumerated in subsection (a) shall be classed pursuant to K.S.A. 1980 Supp. 79-5104 as follows:

<i>Trade-in Value</i>	<i>Class</i>
\$ 0 - \$ 749 .....	Class 1
750 - 1,499 .....	Class 2
1,500 - 2,249 .....	Class 3
2,250 - 2,999 .....	Class 4
3,000 - 3,749 .....	Class 5
3,750 - 4,499 .....	Class 6
4,500 - 5,249 .....	Class 7
5,250 - 5,999 .....	Class 8
6,000 - 6,999 .....	Class 9
7,000 - 7,999 .....	Class 10

<i>Trade-in Value</i>	<i>Class</i>
8,000 - 8,999 .....	Class 11
9,000 - 9,999 .....	Class 12
10,000 - 10,999 .....	Class 13
11,000 - 11,999 .....	Class 14
12,000 - 12,999 .....	Class 15
13,000 - 13,999 .....	Class 16
14,000 - 15,999 .....	Class 17
16,000 - 17,999 .....	Class 18
18,000 - 19,999 .....	Class 19
20,000 and over.....	Class 20

(c) Copies of guides adopted by reference in subsection (a) are on file and available for inspection in the office of the Kansas department of revenue, division of property valuation, 5th floor, state office building, Topeka, Kansas. (Authorized by K.S.A. 1980 Supp. 79-5115; implementing K.S.A. 1980 Supp. 79-5102, 79-5103, 79-5104, 79-5108; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981.)

**92-55-2a. Valuation of motor vehicles; allowance for depreciation.** (a) When the period for which an owner is seeking to register a motor vehicle covers a portion of two calendar years, the value of a motor vehicle to be registered shall be reduced by taking into account depreciation which is equal to the product determined by multiplying 16% by a fraction, the numerator of which is the number of months in the next succeeding calendar year remaining in the owner's registration year and the denominator of which is 12. The depreciation allowed hereunder shall be in addition to the amounts allowed as reductions in the value of a vehicle pursuant to K.S.A. 79-5105(a).

(b) The method of computing depreciation set forth in subsection (a) shall be applied to all motor vehicles which are registered after January 1, 1991. (Authorized by K.S.A. 79-5115; implementing K.S.A. 79-5105; effective, T-92-10-1-90, Jan. 1, 1991; amended, T-92-4-25-91, April 25, 1991, effective June 10, 1991.)

**92-55-3. Application for refund of motor vehicle tax; county officer's duties; refund of registration fees; credit of refund against other motor vehicle tax; application form.** When the owner disposes of and transfers title to a motor vehicle on which the motor vehicle tax has been paid and replaces it with a replacement motor vehicle, and such transaction results in a refund, application for any such refund shall be made to the county in which the replacement motor vehicle is registered. When the owner disposes

of and transfers title to a motor vehicle on which the motor vehicle tax has been paid and does not replace it with a replacement motor vehicle, application for refund shall be made to the county in which the motor vehicle was registered.

It shall be the duty of the county appraiser to prepare the application for refund of motor vehicle tax paid upon a motor vehicle being replaced by the owner thereof with a replacement motor vehicle. It shall be the responsibility of the owner of such motor vehicle being replaced to present the county appraiser with proof that such motor vehicle was registered and that the motor vehicle tax was paid.

It shall be the duty of the county clerk to prepare the application for refund of the motor vehicle tax paid upon a motor vehicle, disposed of and whose title was transferred, for which the owner does not acquire a replacement motor vehicle. Except as otherwise provided herein, the claimant of any refund of the motor vehicle tax paid upon a motor vehicle, disposed of and whose title is transferred, for which no replacement vehicle is acquired, shall relinquish to the county clerk the claimant's copy of the registration receipt and the vehicle registration plate for the motor vehicle as a condition precedent to payment of the refund. Refunds of any portion of the registration fee for a motor vehicle, disposed of and whose title is transferred, for which no replacement vehicle is acquired, shall not be made except as otherwise specifically provided by K.S.A. 1980 Supp. 8-143. The registration receipt and vehicle registration plate for a motor vehicle for which a portion of the registration fee may be refunded pursuant to K.S.A. 1980 Supp. 8-143 shall be relinquished directly to the county treasurer as a condition precedent to payment of the motor vehicle tax refund. The county treasurer shall notify the county clerk that the receipt and plate were relinquished.

Whenever the owner of a motor vehicle is eligible for a refund of the motor vehicle tax from the owner's county of residence, the county, instead of making the refund, may credit the amount of the refund against the motor vehicle tax imposed against any motor vehicle being registered by the owner which does not qualify as a replacement motor vehicle solely because the registration plates cannot be transferred thereto. The claimant shall relinquish to the county appraiser the claimant's copy of the registration receipt and the vehicle registration plate for the motor vehicle on which motor vehicle tax was paid as a condition precedent to receipt of the credit.

Application for refunds of motor vehicle tax shall be made upon forms prescribed by the department of revenue signed by the refund claimant. (Authorized by K.S.A. 1980 Supp. 79-5115; implementing K.S.A. 1980 Supp. 79-5107; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981.)

**92-55-4. Refunds not authorized when motor vehicle is placed on the personal property tax rolls; personal property tax valuation.** If, for any reason, a motor vehicle which was previously subject to the motor vehicle tax is placed on the personal property tax rolls, the owner of the motor vehicle shall not be entitled to a refund of any motor vehicle tax previously paid on the motor vehicle. When any such motor vehicle is placed on the personal property tax rolls, the appraised valuation of the motor vehicle for general personal property tax purposes shall be computed in accordance with the following formula:

$$AV = MV \times (12 - MVTM)$$

where: AV = Appraised valuation of the motor vehicle

MV = Monthly value of the motor vehicle as determined under K.S.A. 1980 Supp. 79-306d

MVTM = Months in the calendar year for which motor vehicle tax has been paid.

(Authorized by K.S.A. 1980 Supp. 79-5115; implementing K.S.A. 1980 Supp. 79-306d, 79-5107; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981.)

**92-55-5. Motor vehicles of motor vehicle dealers.** For the purpose of taxation under the provisions of article 51 of chapter 79 of the Kansas Statutes Annotated, a motor vehicle of a motor vehicle dealer shall not be deemed to be included within the inventory of the motor vehicle dealer if application is made for registration of the motor vehicle. The motor vehicle tax shall be due and payable upon a motor vehicle of a motor vehicle dealer at the time application is made for registration of the motor vehicle. The motor vehicle dealer shall be entitled to a refund of the motor vehicle tax pursuant to K.S.A. 1980 Supp. 79-5107 upon the disposition of and transfer of title to the motor vehicle. (Authorized by K.S.A. 1980 Supp. 79-5115; implementing K.S.A. 1980 Supp. 79-5102, 79-5105, 79-5106, 79-5107; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981.)

**92-55-6. Insufficient or no-fund check; collection of motor vehicle tax; combined remittance for tax and registration fee.** Whenever a check, received as payment of the motor vehicle tax is returned to the county treasurer unpaid, it shall be the responsibility of the county to collect the motor vehicle tax. The registration of any motor vehicle on which the motor vehicle tax has been paid by check which subsequently is returned unpaid shall be invalid. In the event the county is unable to collect the motor vehicle tax after exhausting all of its remedies, the county treasurer shall notify the division of vehicles of the department of revenue thereof providing such information as the director of vehicles shall require.

Application for registration of a motor vehicle subject to the motor vehicle tax may be refused when the owner of the motor vehicle makes a combined remittance by personal check for payment of both the motor vehicle tax and the registration fee. (Authorized by K.S.A. 1980 Supp. 79-5115; implementing K.S.A. 1980 Supp. 79-5105, 79-5106; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981.)

**92-55-7. Distribution of tax receipts to taxing subdivisions.** Moneys allocated to tax levy units and distributed in the year 1981 pursuant to K.S.A. 1980 Supp. 79-5109 shall be distributed among the state and each taxing subdivision levying taxes against tangible property within such unit in the proportion that the general ad valorem tax levies made in the year 1980 by the state and each taxing subdivision within such unit for use and expenditure in the year 1981 bear to the sum of all such tax levies made in the year 1980 by the state and all such taxing subdivisions within the unit for use and expenditure in the year 1981. Moneys allocated to tax levy units and distributed in any year following 1981 pursuant to K.S.A. 1980 Supp. 79-5109 shall be distributed among the state and each taxing subdivision levying taxes against tangible property within such unit in the proportion that the general ad valorem tax levies made in the year immediately preceding the year in which such moneys are distributed by the state and each taxing subdivision within such unit bear to the sum of all such tax levies made in the year immediately preceding the year in which such moneys are distributed by the state and all the taxing subdivisions within the unit.

Estimates of total general ad valorem property taxes which could have been levied by new taxing

subdivisions or taxing subdivisions making no general ad valorem tax levies during a year, made for purposes of distributing moneys thereto pursuant to K.S.A. 1980 Supp. 79-5109, shall be limited to an amount that could have been levied under such taxing subdivisions' maximum levy authority or the amount of taxes that would have been required to be levied to entirely finance such taxing subdivisions' budgets in the year such moneys are being distributed, whichever amount is the lesser. (Authorized by K.S.A. 1980 Supp. 79-5115; implementing K.S.A. 1980 Supp. 79-5109; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981.)

**92-55-8. Apportionment of tax receipts among tax levy funds.** Moneys received by a taxing subdivision in the year 1981 from motor vehicle taxes shall be apportioned pursuant to K.S.A. 1980 Supp. 79-5110 to each tangible property tax fund of the taxing subdivision in the proportion that the amount levied for each such fund in the year 1980 for use and expenditure in the year 1981 bears to the total levied by such taxing subdivision for all such funds in the year 1981. Moneys received by a taxing subdivision in any year following 1981 from motor vehicle taxes shall be apportioned pursuant to K.S.A. 1980 Supp. 79-5110 to each tangible property tax fund of the taxing subdivision in the proportion that the amount levied for each such fund in the year immediately preceding the year in which such moneys are received bears to the total levied by such taxing subdivisions for all such funds in the year immediately preceding the year in which such moneys are received. (Authorized by K.S.A. 1980 Supp. 79-5115; implementing K.S.A. 1980 Supp. 79-5110; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981.)

**92-55-9. Allocation of estimated tax receipts in budget preparation.** For the purpose of preparing the 1982 budget in the year 1981, the amount estimated to be received by any taxing subdivision from motor vehicle tax receipts pursuant to K.S.A. 1980 Supp. 79-5111 shall be apportioned among the general ad valorem tax funds of such subdivision in the proportion that the amount levied for each such fund in the year 1980 for use and expenditure in the year 1981 bears to the total amount levied for all such funds in the year 1980 for use and expenditure in the year 1981. For the purpose of preparing the budget for any year following 1982, the amount es-

timated to be received by any taxing subdivision from motor vehicle tax receipts pursuant to K.S.A. 1980 Supp. 79-5111 shall be apportioned among the general ad valorem tax funds of such subdivision in the proportion that the amount levied for each such fund in the year immediately preceding the year in which such budget is being prepared bears to the total amount levied for all such funds in the year immediately preceding the year in which such budget is being prepared.

Estimated motor vehicle tax receipts shall not be apportioned to a tax levy fund of the taxing subdivision for which no taxes were levied in the year immediately preceding the year in which the budget is being prepared or to a tax levy fund being discontinued in the year for which the budget is prepared. (Authorized by K.S.A. 1980 Supp. 79-5115; implementing K.S.A. 1980 Supp. 79-5111; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981.)

**92-55-10. Motor vehicles registered in more than one (1) state.** Any motor vehicle which is required by law to be registered in this state and in another state, shall not be taxed under the provisions of article 51 of chapter 79 of the Kansas Statutes Annotated if the vehicle has a permanent situs in such other state and such vehicle is, in fact, being subjected to ad valorem property taxation in that state. Upon making application for registration in this state, the owner of the motor vehicle shall present to the county treasurer proof that the motor vehicle is being assessed in such other state for ad valorem property taxation and an affidavit which shall contain the following information: A statement that the person is the owner of the motor vehicle for which application for registration is being made; the residence of such person; the name of the other state in which the motor vehicle is required to be registered; a statement that the vehicle has a permanent situs in such other state; and a statement that the vehicle is subject to ad valorem taxation in such other state. The motor vehicle tax shall not be imposed upon any motor vehicle registered in this state for which the affidavit and proof of assessment have been submitted to the county treasurer of the county in which the vehicle is being registered. (Authorized by K.S.A. 1980 Supp. 79-5115; implementing K.S.A. 1980 Supp. 79-5102, 79-5106; effective, E-81-40, Dec. 17, 1980; effective May 1, 1981.)

**Article 56.—IGNITION  
INTERLOCK DEVICES**

**92-56-1. Ignition interlock device; definitions.** As used in this article, each of the following terms shall have the meaning specified in this regulation: (a) “Device” means “ignition interlock device,” as defined in K.S.A. 8-1013 and amendments thereto. This device uses microcomputer logic and internal memory and has a breath alcohol analyzer as a major component that interconnects with the ignition and other control systems of a motor vehicle. This device measures the breath alcohol concentration (BrAC) of an intended driver to prevent the motor vehicle from being started if the BrAC exceeds a preset limit and to deter and record any instances of circumvention or tampering.

(b) “Alcohol setpoint” means the breath alcohol concentration at which the ignition interlock device is set to lock the ignition. The alcohol setpoint is the normal lockpoint at which the ignition interlock device is set at the time of calibration. The alcohol setpoint shall be .03. The alcohol setpoint for retests shall be .03.

(c) “BrAC” means the breath alcohol concentration expressed as weight divided by volume, based upon grams of alcohol per 210 liters of breath.

(d) “BrAC fail” means the condition in which the ignition interlock device registers a BrAC value equal to or greater than the alcohol setpoint when the intended driver conducts an initial test or retest. This condition is recorded as a violation.

(e) “Breath sample” means the sample of alveolar or end-expiratory breath that is analyzed for the analysis of alcohol content after the expiration of at least 1.2 liters of air.

(f) “Circumvention” means an overt, conscious attempt to bypass the ignition interlock device by any of the following:

(1) Providing samples other than the natural, unfiltered breath of the driver;

(2) starting the vehicle without using the ignition switch; or

(3) performing any other act intended to start the vehicle without first taking and passing a breath test.

(g) “Director” means director of vehicles, division of vehicles of the department of revenue.

(h) “Emergency bypass procedure” means the procedure that allows the driver to travel to a service provider and avoid a lockout. If used, the event shall be recorded in the event log, and the device shall be put into early service status. The

emergency bypass procedure shall require the driver to provide a breath sample with a test result below the alcohol setpoint.

(i) “Fail-safe” means a condition in which the ignition interlock device cannot operate properly due to a problem, including improper voltage and a dead sensor. In fail-safe, the ignition interlock device will not permit the vehicle to be started.

(j) “Fixed site” means the building in which a service provider operates. The building shall have a separate waiting room, a bathroom, and a work area. The work area shall be accessible to only the service provider and the service provider’s employees while performing services.

(k) “High BrAC” means a BrAC fail result for an initial test or retest that registers an alcohol setpoint of .08 or greater.

(l) “Lockout” means an instance in which the ignition interlock device will prevent the vehicle from starting. The vehicle cannot be operated until serviced by the service provider. A lockout occurs if any of the following events occurs:

(1) A driver incurs five or more violations between scheduled inspections with the service provider.

(2) A driver fails to submit to calibration and inspection as required by K.A.R. 92-56-4(b)(5), and the seven-day grace period has expired.

(3) A driver engages in circumvention or tampering.

(m) “Manufacturer” means the person, company, or corporation that produces an ignition interlock device and certifies to the division that the manufacturer’s representative and the manufacturer’s service providers are qualified to service and provide information on the manufacturer’s state-approved ignition interlock device. To be a manufacturer, the division shall approve and certify the manufacturer’s device for use in the state, and the approval and certification shall remain in effect.

(n) “Manufacturer’s representative” means a single individual based in Kansas and designated by a manufacturer to act on behalf of or represent the manufacturer in matters relating to this article and K.S.A. 8-1001 et seq., and amendments thereto.

(o) “Rolling retest” means a breath test that is required after the initial engine start-up breath test and while the engine is running. This term is also known as a retest or a running retest. The device shall require the driver of the vehicle to submit to a retest within 10 minutes of starting the vehicle. A rolling retest shall continue at randomized, variable

intervals ranging from 10 to 45 minutes after the previous retest for the duration of the travel.

(p) "Service provider" means an ignition interlock device technician that is authorized by a manufacturer to service a certified device on behalf of the manufacturer or the manufacturer's representative. The ignition interlock device technician shall have a written agreement or authorization from a division-approved manufacturer or its manufacturer's representative to service the manufacturer's devices within Kansas.

(q) "Services" means the installation, inspection, monitoring, calibration, maintenance, removal, replacement, and repair of division-approved ignition interlock devices within Kansas.

(r) "Tampering" means an overt, conscious attempt to physically disable, bypass, adjust, or otherwise disconnect an ignition interlock device from its power source.

(s) "Violation" means any of the following:

(1) The driver has blown a BrAC fail when attempting to start the vehicle.

(2) The driver has blown a BrAC fail when attempting a required rolling retest.

(3) The driver fails to execute a valid rolling retest after a five-minute period.

(4) The driver fails to submit to a requested rolling retest by turning the vehicle off to avoid submitting to the rolling retest.

(5) The driver has blown a high BrAC during an initial breath test or rolling retest. (Authorized by and implementing K.S.A. 8-1016; effective Oct. 23, 1989; amended July 5, 2002; amended May 2, 2014; amended Nov. 6, 2015.)

**92-56-2. Ignition interlock device; certification and standards.** (a) Each manufacturer of an ignition interlock device wanting to market the device in Kansas shall apply to the division of vehicles for certification of the device and submit the following information and equipment:

(1) The name and address of the manufacturer;

(2) the name and model number of the device;

(3) certification that the device meets the following criteria:

(A) Offers safe operation of the vehicle in which installed, works reliably and accurately in an unsupervised environment, and, when in fail-safe, prevents the vehicle from starting;

(B) offers protection against tampering and is able to detect and be resistant to circumvention;

(C) allows for a free restart of the vehicle's ignition within two minutes after the ignition has

been turned off without requiring another breath test if the driver has not registered a BrAC fail or is not in the process of completing a retest;

(D) allows for a rolling retest of a subsequent breath test after the vehicle has been in operation;

(E) disables the ignition system if the BrAC of the person using the device equals or exceeds the alcohol setpoint of .03;

(F) incorporates an emergency bypass procedure;

(G) records each time the vehicle is started, the duration of the vehicle's operation, and any instances of tampering;

(H) encodes the corresponding time and date the breath sample was provided, a digital image of the individual who provided the sample, and BrAC of the individual who provided the breath sample into the device;

(I) displays to the driver all of the following:

(i) When the device is on;

(ii) when the device has enabled the ignition system; and

(iii) the date on which a lockout will occur; and

(J) alerts the driver with a five-minute warning light or tone that a rolling retest is required;

(4) a map and list of service providers and the address where the device can be obtained, repaired, replaced, or serviced 24 hours a day by calling a toll-free phone number;

(5) the name of any insurance carrier authorized to do business in this state that has committed to issue a liability insurance policy for the manufacturer;

(6) the name and address of the manufacturer's representative designated by the manufacturer to manage the manufacturer's statewide operations;

(7) not more than two ignition interlock devices for testing and review to the division upon the director's request; and

(8) a declaration on a form prescribed by the division that requires the following:

(A) The manufacturer, manufacturer's representative, and the manufacturer's service providers shall cooperate with the division, law enforcement, and court staff at all times, including the inspection of the manufacturer's installation, service, repair, calibration, use, removal, or performance of each ignition interlock device;

(B) all digital images and the associated data shall be retained in the device until the digital images and associated data are downloaded and stored by a manufacturer. The manufacturer shall store the downloaded digital images and

associated data for three years after capture by the device;

(C) the manufacturer shall provide all downloaded ignition interlock device data, reports, and information related to the ignition interlock device to the division, upon the director's request, in a division-approved electronic format;

(D) the manufacturer shall provide the alcohol reference value and type of calibration device used to check the ignition interlock device;

(E) the manufacturer shall provide the division with inquiry access to the manufacturer's ignition interlock device system management software for the management of state drivers; and

(F) the manufacturer or the manufacturer's representative shall provide a map of Kansas showing the area covered by each service provider's fixed site.

(b) Each certification issued by the division shall continue in effect for three years unless either of the following occurs:

(1) The manufacturer requests in writing that the certification be discontinued.

(2) The division informs the manufacturer and the manufacturer's representative in writing that the certification is suspended or revoked.

(c) If a manufacturer modifies a certified device, the manufacturer shall notify the division of the exact nature of the modification. A device may be required by the division to be recertified at any time. A modification shall mean a material change affecting the functionality, installation, communication, precision, or accuracy of a certified device.

(d) Each manufacturer of a certified device shall notify the division of the failure of any device to function as designed. The manufacturer and the manufacturer's representative shall provide an explanation for the failure and shall identify the actions taken by the manufacturer or the manufacturer's representative to correct the malfunctions.

(e) The manufacturer's device shall meet or exceed the model specifications for ignition interlock devices, as specified by the national highway traffic safety administration. The provisions of 78 fed. reg. 26862-26867 (2013), beginning with the text titled "B. Terms" on page 26862, are hereby adopted by reference for purposes of this subsection. If state specifications vary from the federal specifications, the state specifications shall control.

(f) Each manufacturer of a certified device shall accumulate a credit of at least two percent of the

gross revenues attributed to services provided in Kansas or to out-of-state services provided to Kansas residents. All existing credit shall be made available to drivers who are restricted to operating a vehicle with a device and who are indigent as evidenced by eligibility for the federal food stamp program. The amount of the credit available shall be limited to the amount of the existing credit balance. The manufacturer and its service providers shall notify the manufacturer's customers of the existence of this indigent program by utilizing division notices and forms.

(g) Each manufacturer of a certified device shall submit a report to the division on or before January 31 of each year with the following information for the previous calendar year's activities:

(1) The number of ignition interlock devices initially installed on vehicles for Kansas drivers who were restricted to driving only with an ignition interlock device;

(2) the number of vehicles that had devices removed due to a failure in the device, a malfunction of the device, or a defect in the device and, for each vehicle, the driver's name, the driver's license number, the specific failure or operational problem that occurred during the period installed, and the resolution of each situation;

(3) the total number of devices in operation in Kansas on December 31 of the previous calendar year;

(4) the total number of devices removed;

(5) the total number of instances of circumvention;

(6) the total number of instances of tampering; and

(7) a summary of the following information:

(A) The number of indigent drivers that qualified for reduced fees;

(B) the number of drivers that applied for indigent classification and reduced fees but were denied;

(C) amounts credited to indigent drivers; and

(D) the ending credit balance.

(h) Each manufacturer and manufacturer's representative of a certified device shall make sales brochures and other informational materials available at no cost to the state's community corrections and court services officers, the district courts, magistrate courts, municipal courts, and the division for distribution to potential drivers. These brochures and informational materials may be provided through electronic means if approved by the director.

(i) Each manufacturer shall provide to the division, on or before January 31 of each year for that calendar year, documentation indicating the normal prices and fees charged to a driver that are associated with the manufacturer's Kansas installation of devices. If the documentation regarding normal prices and fees charged changes during the course of that calendar year, the manufacturer and manufacturer's representative shall provide amended documentation to the division within seven days of the change.

(j) Each manufacturer shall have a service provider with a fixed site within each state judicial district, unless the following conditions are met:

(1) At least two manufacturers have a service provider located in the same judicial district.

(2) The director determines that a competitive market exists for ignition interlock services in the state judicial district and the absence of a manufacturer's service provider in the state judicial district specified in paragraph (j)(1) does not create a competitive advantage for that manufacturer.

(3) The director approves the manufacturer to be absent from that state judicial district.

(k) Each device shall be capable of uniquely identifying and recording all of the following:

(1) Each time the vehicle is attempted to be started;

(2) each time the vehicle is started;

(3) a digital image in accordance with the following:

(A) The digital image can identify the individual providing the breath sample in all lighting conditions;

(B) the capture of the digital image does not distract or impede the driver in any manner from the safe and legal operation of the vehicle; and

(C) the digital image is associated with the date, the time, and the individual's BrAC for each attempted use;

(4) the results of all tests, retests, or failures as being a malfunction of the device or a result of the driver not meeting the requirements;

(5) the length of time the vehicle was operated; and

(6) any indication of tampering.

The features required of the manufacturer's installed device shall be enabled to capture the information required by this subsection.

(l) The requirements of this regulation shall take effect for all device installations beginning 90 days after publication of this regulation in the Kansas register. Each manufacturer shall replace

any currently installed device that does not meet the requirements of this regulation with a device that is compliant upon the first calibration following the date this regulation takes effect. (Authorized by and implementing K.S.A. 8-1016; effective Oct. 23, 1989; amended July 5, 2002; amended May 2, 2014; amended Nov. 6, 2015; amended Jan. 8, 2020.)

**92-56-3. Insurance; policy limits.** (a) Each manufacturer submitting an application for certification of an ignition interlock device shall obtain a policy of product liability insurance from a carrier authorized to do business in the state of Kansas. The insurance policy shall contain minimum liability limits of \$1,000,000 per occurrence with an aggregate coverage of \$3,000,000. The insurance policy shall cover all liability arising from defects in design and materials, including the manufacture of the device, its calibration, maintenance, installation, and removal.

(b) Each insurance carrier shall provide 30-day notice to the division before canceling any insurance policy.

(c) The cancelation of insurance coverage by a carrier shall be a basis for revoking the certification for the device. (Authorized by and implementing K.S.A. 8-1016; effective Oct. 23, 1989; amended July 5, 2002.)

**92-56-4. Installation, inspection, and calibration standards.** (a) Each ignition interlock device installed at the direction of the division shall be done at the driver's own expense, except as allowed by K.A.R. 92-56-2.

(b) A manufacturer shall ensure that each service provider meets the following requirements:

(1) Install each device in accordance with the manufacturer's instructions. Each service provider shall, within two weeks of installation, inform the division each time a device has been installed;

(2) install each device so that the device will be deactivated if the driver has a BrAC of .03 or higher until a successful retest occurs;

(3) set each device so that if the driver fails the initial ignition interlock device test, a retest cannot be done for 15 minutes;

(4) set each device so that a rolling retest will be required of the driver of the vehicle within 10 minutes of starting the vehicle. Subsequent rolling retests shall occur as described in K.A.R. 92-56-1. The driver shall have five minutes to complete the retest. The free restart shall not be

operative when the device is waiting for a rolling retest sample;

(5) calibrate each device at least every 30 days at the driver's own expense and maintain an inspection and calibration record with the following information:

(A) The name of the person performing the calibration;

(B) the date of the inspection and calibration;

(C) the method by which the calibration was performed;

(D) the name and model number of the device calibrated;

(E) a description of the vehicle in which the device is installed, including the license plate number, make, model, year, and color; and

(F) a statement by the service provider indicating whether there is any evidence of circumvention or tampering; and

(6) set each device so that a lockout will occur no later than seven days after any of the following events occurs:

(A) The 30-day calibration and service requirement has been reached;

(B) five or more violations are recorded;

(C) the emergency bypass procedure has been used;

(D) a hardware failure or evidence of tampering is recorded; or

(E) the events log has exceeded 90 percent of capacity.

(c) Each driver restricted to driving a vehicle equipped with an ignition interlock device shall keep a copy of the inspection and calibration records in the vehicle at all times. The manufacturer shall retain the original record for each current driver for one year after the device is removed. The manufacturer shall notify the division within seven days after a device has been serviced due to a lockout that occurred for any of the reasons specified in paragraph (b)(6)(D).

(d) The service provider shall enable each device's anticircumvention features when installing a device and keep the features enabled during the ignition interlock device period. Within two business days, a service provider shall notify the division of any evidence of tampering or circumvention. The evidence shall be preserved by the manufacturer or the manufacturer's representative until otherwise notified by the division.

(e) The division may conduct or have conducted independent checks on any of the approved ignition interlock devices to determine whether the

devices are operating in a manner consistent with the manufacturer's specifications, manufacturer's certifications, or these regulations. The director may require the manufacturer or the manufacturer's representative to correct any abnormality found in the installation, calibration, maintenance checks, or usage records of the device. The manufacturer and the manufacturer's representative shall report in writing to the division within 30 days after receiving notification of any abnormality. In conducting these checks, the manufacturer shall install the device in a vehicle chosen by the division, and the manufacturer shall waive any costs to the division for the installation, calibration, or testing of the device.

(f) Each manufacturer shall ensure that its service providers meet all of the following requirements:

(1) Follow certified manufacturer's standards and specifications for service associated with the manufacturer's state-approved ignition interlock device;

(2) have the skills, equipment, and facilities necessary to comply with all of the certification and operational requirements specified in this article;

(3) comply with any division reporting requirements; and

(4) have a fixed site to provide each driver with access to an enclosed building that is open for business and has a separate waiting area.

(g) Each manufacturer shall provide the division with written evidence of that manufacturer's statewide network of service providers within seven days of a request by the division. Written evidence shall include lease and ownership documents associated with each manufacturer's service providers in the required state judicial districts.

(h) A manufacturer, manufacturer's representative, or service provider shall not compel any driver to travel out of Kansas to receive services.

(i) A manufacturer shall not permit its service provider to install any device in that service provider's vehicle for the purpose of satisfying K.S.A. 8-1014, and amendments thereto. (Authorized by and implementing K.S.A. 8-1016; effective Oct. 23, 1989; amended July 5, 2002; amended May 2, 2014; amended Jan. 15, 2016.)

**92-56-5. Revocation of certification; penalties.** (a) A certification for any ignition interlock device may be revoked for any of the following reasons:

(1) The device fails to comply with specifications or requirements provided by the division.

(2) The manufacturer, the manufacturer's representative, or the manufacturer's service provider has failed to make adequate provisions for the service of the device, as required by K.A.R. 92-56-2, K.A.R. 92-56-4, and K.A.R. 92-56-6.

(3) The manufacturer has failed to provide statewide service network coverage or 24-hour, seven-day service support, as required by K.S.A. 8-1016(a)(3) and amendments thereto and K.A.R. 92-56-2(a)(4) and (j).

(4) The manufacturer is no longer in the business of manufacturing ignition interlock devices.

(5) The manufacturer or the manufacturer's representative fails to comply with the reporting and testing requirements of K.A.R. 92-56-4.

(6) The manufacturer, the manufacturer's representative, or the manufacturer's service provider fails to comply with K.A.R. 92-56-7.

(7) The manufacturer, the manufacturer's representative, or the manufacturer's service provider fails to promote, implement, and sustain the indigent program required by K.A.R. 92-56-2(f).

(8) The manufacturer, the manufacturer's representative, or the manufacturer's service provider fails to have a fixed location in every state judicial district on and after January 1, 2015, as required by K.A.R. 92-56-2(j).

(9) The manufacturer, the manufacturer's representative, or the manufacturer's service provider compels a driver to travel out of state to receive services, in violation of K.A.R. 92-56-4(h).

(b) Each manufacturer's device certification shall be subject to suspension, revocation, nonrenewal, or cancellation if the division determines that the manufacturer or its representatives have violated any requirement in this article.

(c) In lieu of revoking a manufacturer's device certification, the director may require a manufacturer to terminate its relationship with a service provider. (Authorized by and implementing K.S.A. 8-1016; effective Oct. 23, 1989; amended July 5, 2002; amended May 2, 2014.)

**92-56-6. Service provider; relocation and replacement.** (a) Each manufacturer and manufacturer's representative shall be responsible for providing uninterrupted service of the manufacturer's installed devices if one of the manufacturer's service providers moves out of the manufacturer's judicial district or goes out of business. If a service provider is moving or going out of business,

the manufacturer or the manufacturer's representative shall indicate to the division whether or not the manufacturer will replace the service provider. The manufacturer and the manufacturer's representative shall notify the division electronically or in writing of all changes in the status of any service provider and any additions, deletions, or other changes to the manufacturer's complete listing of service providers, which shall include for each service provider the name, location, phone number, contact name, and hours of operation. Notification shall occur on a quarterly basis or more frequently if required by the division.

(b) If the manufacturer or manufacturer's representative replaces a service provider, the manufacturer and manufacturer's representative shall make all reasonable efforts to obtain driver records and data from the original service provider and provide the records and data to the new service provider. If the manufacturer or manufacturer's representative does not replace the service provider, the manufacturer and manufacturer's representative shall make all reasonable efforts to obtain driver records and data from the original service provider, maintain the records and data at the main business office of the manufacturer's representative, and provide the records and data to the division as required by this regulation.

(c) Each manufacturer and manufacturer's representative shall notify all affected drivers of the change of service provider or replacement of the device as soon as possible but not later than 30 days before the change of service provider or replacement will occur. (Authorized by and implementing K.S.A. 8-1016; effective May 2, 2014.)

**92-56-7. Security; tampering prohibitions; conflict of interest.** (a) Each manufacturer and each manufacturer's representative shall be responsible for ensuring that the manufacturer's service providers comply with all of the following security requirements:

(1) Only authorized employees of a service provider may observe the installation of a device.

(2) Reasonable security measures shall be taken to prevent the driver from observing the installation of a device and from obtaining access to installation materials.

(3) Service providers shall be prohibited from assisting with, in any manner, tampering or circumvention.

(4) Manufacturer's representatives and service providers shall not install or service a device on

a vehicle owned or operated by the manufacturer's representative or service provider, or any of the service provider's employees, for division-required installations.

(b) Nothing in this regulation shall prohibit a manufacturer, manufacturer's representative, or service provider from installing a device in that entity's vehicles for demonstration and testing purposes. (Authorized by and implementing K.S.A. 8-1016; effective May 2, 2014.)

**92-56-8. Device removal.** Whenever a service provider removes a device, the following requirements shall apply:

(a) The only persons allowed to remove or observe the removal of the device shall be service providers or a manufacturer's representative associated with the manufacturer of that device.

(b) Adequate security measures shall be taken to ensure that unauthorized personnel cannot gain access to proprietary materials and to the files of drivers.

(c) Upon removal of the device, the service provider shall ensure that both of the following occur:

(1) The driver is provided with a report showing the removal of the device.

(2) The division is notified, in the form and format designated by the division.

(d) The service provider and the manufacturer shall restore the driver's vehicle to its original condition after removal of the device. (Authorized by and implementing K.S.A. 8-1016; effective May 2, 2014.)

**92-56-9. Proof of installation.** (a) If a driver is unable to provide proof of installation of the device to the division for the full restriction period required by K.S.A. 8-1014 and amendments thereto, the director shall extend the ignition interlock device restriction period until the driver provides the division with proof that the driver has had a device installed in a vehicle for a period that is equal to or greater than the initial ignition interlock device restriction period required by K.S.A. 8-1014 and K.S.A. 8-1015(d), and amendments thereto.

(b) Any device may deviate from the breath sample requirement by accepting a breath sample of less than 1.2 liters of air if the deviation is approved in advance by the division to address valid accommodation requests under the Americans with disabilities act of 1990. Each request for accommodation shall be submitted on a form

provided by the division. Each form shall require a certification by a licensed pulmonologist that the driver has a lung condition that will render the driver incapable of blowing a normal breath sample, 1.2 liters of air or more, into an ignition interlock device.

(c) If an accommodation that is requested pursuant to subsection (b) cannot be made for a driver that is a qualified individual with a disability as defined by 42 U.S.C. 12131(2), and amendments thereto, the director, upon the driver's request, may reinstate the driver's license after the initial ignition interlock device restriction period if the records maintained by the division have no indication of the occurrence of any of the following offenses during the entire initial ignition interlock device restriction period:

(1) Conviction pursuant to K.S.A. 8-1599, and amendments thereto;

(2) conviction pursuant to K.S.A. 41-727, and amendments thereto;

(3) conviction of any violation listed in K.S.A. 8-285(a), and amendments thereto;

(4) conviction of three or more moving traffic violations committed on separate occasions within a 12-month period; or

(5) revocation, suspension, cancellation, or withdrawal of the person's driving privileges due to an unrelated event.

If the driver that is requesting accommodation has any offenses during the initial ignition interlock device restriction period, the director shall not reinstate the driver's full driving privileges until the driver has no such offenses for the year before the driver's request for reinstatement of full driving privileges. This subsection shall not serve as a defense to allegations that the driver has violated K.S.A. 8-1017, and amendments thereto, during any required ignition interlock device restriction period.

(d) The director may waive the requirement for proof of ignition interlock device installation, upon a driver's request, if the director determines that all of the following conditions are met:

(1) The driver's ignition interlock device restriction period has been extended at least two years beyond the initial ignition interlock device restriction period due to the driver's failure to provide the division with proof of installation as required by subsection (a).

(2) The driver has not had an "alcohol or drug-related conviction" or "occurrence," as those terms are defined by K.S.A. 8-1013 and amendments

thereto, a conviction pursuant to K.S.A. 8-1017 and amendments thereto, or a conviction of a violation of a law of another state that would constitute a violation similar to any violation specified in K.S.A. 8-1017 and amendments thereto, during the ignition interlock device restriction period.

(3) The driver has not had any violations specified in paragraphs (c)(1) through (c)(5) during the ignition interlock device restriction period.

(4) The driver has never held a driver's license issued by the state of Kansas.

(5) The driver provides the director with clear and compelling evidence that the driver does not reside in Kansas and did not reside in Kansas during the ignition interlock device restriction period. (Authorized by K.S.A. 8-1016; implementing K.S.A. 2013 Supp. 8-1015 and K.S.A. 8-1016; effective May 2, 2014.)

#### **Article 57.—TAX ON CONSUMABLE MATERIAL**

**92-57-1. Definitions.** For purposes of K.S.A. 79-3399 and amendments thereto and this article of the department's regulations, each of the following terms shall have the meaning specified in this regulation:

(a) "Consumer" means a person purchasing or receiving consumable material for final use.

(b) "Dealing" means engaging in the sale or manufacture of consumable material in Kansas.

(c) "Director" means director of taxation in the Kansas department of revenue.

(d) "Distributor" means any of the following:

(1) Any person in Kansas engaged in the business of selling or dealing in consumable material who brings, or causes to be brought, into Kansas consumable material for sale, unless that person is a retail dealer who has purchased the consumable material on a tax-paid basis from a distributor;

(2) any person who makes, manufactures, or fabricates consumable material for sale in Kansas;

(3) any person outside of Kansas engaged in the business of selling or dealing in consumable material who ships or transports consumable material to any person in the business of selling or dealing in electronic cigarettes or consumable material in Kansas; or

(4) any person who has one or more retail dealer establishments that do either of the following:

(A) Bring or cause to be brought into Kansas consumable material for sale by any of those retail dealer establishments; or

(B) make, manufacture, or fabricate consumable material in Kansas for sale in Kansas. However, each person who has a retail dealer establishment from which the consumable material is sold to the consumer shall be deemed a retail dealer.

(e) "Electronic cigarette" means a battery-powered device, whether or not the device is shaped like a cigarette, that can provide inhaled doses of nicotine by delivering a vaporized solution by means of cartridges or other chemical delivery systems.

(f) "Person" means any individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity whether appointed by a court or otherwise, and any combination of these individuals.

(g) "Retail dealer" means a person engaged in the business of selling or dealing in consumable material to the consumer in Kansas.

(h) "Sale" means any transfer of title or possession or both, exchange, barter, or distribution of consumable material, with or without consideration.

(i) "Secretary" means secretary of the Kansas department of revenue or the secretary's designee. (Authorized by and implementing K.S.A. 2016 Supp. 79-3399, as amended by 2017 Sub for HB 2230, sec. 25; effective July 21, 2017.)

**92-57-2. Certificate of registration.** Each distributor shall obtain a certificate of registration issued by the director before engaging in the business of selling consumable material in Kansas. The distributor shall submit an application to the department on a form provided by the department.

The certificate of registration shall be displayed in a conspicuous location at the registered location. (Authorized by and implementing K.S.A. 2016 Supp. 79-3399; effective July 21, 2017.)

**92-57-3. Imposition of tax.** (a) Each distributor who first performs any of the following shall pay the tax imposed by K.S.A. 79-3399, and amendments thereto:

(1) Brings or causes to be brought into Kansas consumable material for sale in Kansas;

(2) makes, manufactures, or fabricates consumable material in Kansas for sale in Kansas;

(3) ships or transports consumable material to retail dealers in Kansas to be sold by those retail dealers; or

(4) causes consumable material for which the tax has not been paid to be brought into Kansas.

(b) Liability for the tax on consumable material shall accrue when either of the following conditions is met:

(1) The consumable material is first brought into the Kansas for sale within Kansas.

(2) The consumable material is first made, manufactured, or fabricated in Kansas for sale within Kansas.

(c) A transfer of consumable material from one distributor to another distributor shall not relieve the distributor who first brought or caused the consumable material to be brought into Kansas from the tax liability.

(d) Each retail dealer shall purchase consumable material only from a registered distributor. (Authorized by and implementing K.S.A. 2016 Supp. 79-3399; effective July 21, 2017.)

**92-57-4. Books, records, and other documents required of distributor or retail dealer; access to premises.** (a) Each distributor and each retail dealer shall keep in each place of business complete and accurate books, records, and other documents for that place of business, including itemized invoices of the following:

(1) All consumable material held, purchased, made, manufactured, fabricated, or brought or caused to be brought into Kansas or shipped or transported to retail dealers in Kansas; and

(2) all sales of consumable material.

Each distributor shall show the name and address of each purchaser, registration number if applicable, and any other documents relating to the purchase and the sale of or dealing in consumable material. Itemized invoices shall be made for all consumable material transferred to other retail dealer establishments owned or controlled by that distributor. All books, records, and other documents required shall be retained and maintained for at least three years after the date of the entries appearing in the books, records, and other documents, unless the director, in writing, authorizes the destruction or disposal of these books, records, and other documents at an earlier date. These books, records, and other documents may be maintained in an electronic format.

(b) At any time during regular business hours, any authorized agents or employees of the director may enter any place of business of a distributor or retail dealer and inspect the premises, the books, records, or other documents and the con-

sumable material contained there, to determine whether the distributor or retail dealer is in compliance with all the provisions of the act and this article of the department's regulations. Refusal to permit an inspection by an authorized agent or employee of the director shall be grounds for revocation of any registration held by the distributor or retail dealer.

(c) Each person who sells consumable material to any person other than a consumer shall create with each sale an itemized invoice showing the seller's name and address, the purchaser's name and address, the purchaser's registration number if applicable, the date of the sale, the number of milliliters of consumable material, and all prices and discounts. The person selling or dealing in the consumable material shall retain and maintain a legible copy of each invoice for three years after the date of sale. These records may be maintained in an electronic format.

(d) Each distributor and each retail dealer shall obtain and maintain itemized invoices of all consumable material purchased. The distributor or retail dealer shall retain and maintain a legible copy of each invoice for three years after the date of purchase. Invoices shall be available for inspection by authorized agents or employees of the director at the distributor's or retail dealer's place of business. These records may be maintained in an electronic format. (Authorized by and implementing K.S.A. 2016 Supp. 79-3399; effective July 21, 2017.)

**92-57-5. Monthly tax returns; remittance of tax; deficiencies.** (a) On or before the twentieth day of each month, each distributor shall file a tax return with the director, showing the following:

(1) The number of milliliters of consumable material brought, or caused to be brought, into Kansas for sale; and

(2) the number of milliliters of consumable material made, manufactured, or fabricated in Kansas for sale in Kansas during the preceding month.

(b) Each registered distributor outside Kansas shall file a tax return showing the number of milliliters of consumable material shipped or transported to retail dealers in Kansas to be sold by those retail dealers, during the preceding month.

(c) Each tax return shall be submitted upon forms prescribed by the director. Each tax return shall be accompanied by a remittance for the distributor's full tax liability.

(d) As soon as practicable after any tax return is filed, the director shall examine the return. If the director finds that the tax return is incorrect and any amount of tax due from the distributor is unpaid, the director shall notify the distributor of the deficiency. If a deficiency disclosed by the director's examination cannot be allocated to a particular month or months, the director may notify the distributor that a deficiency exists and state the amount of tax due. (Authorized by and implementing K.S.A. 2016 Supp. 79-3399; effective July 21, 2017.)



## Agency 93

# Kansas Department of Revenue— Division of Property Valuation

### Articles

- 93-1. *HEARINGS BY DIRECTOR.* (Not in active use.)
- 93-2. *INSTITUTE OF CERTIFIED KANSAS ASSESSORS.* (Not in active use.)
- 93-3. *CERTIFICATES OF VALUE.* (Not in active use.)
- 93-4. REAL ESTATE RATIO STUDY.
- 93-5. PROPERTY VALUATION NOTICES.
- 93-6. REGISTERED MASS APPRAISER.
- 93-7. MACHINERY AND EQUIPMENT EXEMPTION.
- 93-8. TELECOMMUNICATIONS MACHINERY AND EQUIPMENT AND RAILROAD  
MACHINERY AND EQUIPMENT EXEMPTION.
- 93-9. COMPLEX INDUSTRIAL PROPERTY.

### Article 1.—HEARINGS BY DIRECTOR

**93-1-1.** (Authorized by K.S.A. 74-2437, 74-2438, 79-1404; effective, E-71-14, March 5, 1971; effective Jan. 1, 1972; revoked April 20, 2001.)

**93-1-2.** (Authorized by K.S.A. 74-2437, 74-2438, 79-1404, 79-1412b; effective, E-71-14, March 5, 1971; effective Jan. 1, 1972; revoked April 20, 2001.)

**93-1-3 to 93-1-4.** (Authorized by K.S.A. 74-2437, 74-2438, 79-1404; effective, E-71-14, March 5, 1971; effective Jan. 1, 1972; revoked April 20, 2001.)

### Article 2.—INSTITUTE OF CERTIFIED KANSAS ASSESSORS

**93-2-1, 93-2-2.** (Authorized by K.S.A. 74-2437, 79-1401, 79-1404, K.S.A. 1971 Supp. 19-421, 19-423; effective Jan. 1, 1972; revoked May 1, 1983.)

**93-2-3.** (Authorized by K.S.A. 74-2437, 79-1401, K.S.A. 1971 Supp. 19-421, 19-423; effective Jan. 1, 1972; revoked May 1, 1983.)

**93-2-4, 93-2-5.** (Authorized by K.S.A. 79-1401, 79-1404, K.S.A. 1971 Supp. 19-421, 19-423; effective Jan. 1, 1972; revoked May 1, 1983.)

### Article 3.—CERTIFICATES OF VALUE

**93-3-1 to 93-3-4.** (Authorized by K.S.A. 1973 Supp. 79-1435, 79-1436, 79-1437, 79-1441,

79-1442 as amended; K.S.A. 1973 Supp. 58-2223a, 58-2223b, 58-2223c, 58-2223d, 58-2223e; effective, E-74-48, Sept. 1, 1974; effective May 1, 1975; revoked June 26, 1998.)

### Article 4.—REAL ESTATE RATIO STUDY

**93-4-1.** (Authorized by K.S.A. 79-1441; implementing K.S.A. 79-1437; effective, T-85-13, May 3, 1984; effective May 1, 1985; revoked June 26, 1998.)

**93-4-2. Annotation and disposition of real estate sales validation questionnaires; duties of county officials.** (a) Not later than three business days after the receipt of a three-part real estate sales validation questionnaire, the register of deeds shall annotate each copy with the following information:

(1) The volume and page entry from the general index, indicating where the deed, instrument, or affidavit of equitable interest that accompanies it is recorded;

(2) the county official validation number;

(3) the type of instrument; and

(4) the recording date.

The register of deeds shall retain the original copy and forward the county appraiser's copy and the director of property valuation's copy to the county appraiser. Not later than three business days after the receipt of the county appraiser's and the director's copies, the county appraiser shall enter the parcel identification number on both

paper copies of each real estate sales validation questionnaire received from the register of deeds.

(b) The register of deeds may accept a one-part real estate sales validation questionnaire when authorized by the director of property valuation to process real estate sales validation questionnaires by electronic imaging. An electronic copy may be accepted by the register of deeds if questionnaires are received by means of digital media transmission and retained in an electronic document management system. (Authorized by K.S.A. 79-1491; implementing K.S.A. 79-1487 and 79-1488; effective June 26, 1998; amended Oct. 3, 2014.)

**93-4-3. Split and combined real estate parcel sales; duties of county officials.** Not later than 10 business days after the receipt of a real estate sales validation questionnaire concerning the sale of a split parcel or a parcel to be combined with one or more parcels, the county appraiser shall perform one of the following: (a) On or after January 1 of the current appraisal year and before the creation of working files for the next appraisal year, enter the sales information on the parent parcel record in the county's computer-assisted mass appraisal system; or

(b) on or after the creation of working files for the next appraisal year and before January 1 of the next appraisal year, enter the sales information on the split or combined parcel record in the county's computer-assisted mass appraisal system. (Authorized by K.S.A. 79-1491; implementing K.S.A. 79-1487; effective June 26, 1998; amended Oct. 3, 2014.)

**93-4-4. Assemblage and entering of sales data; accounting for real estate sales validation questionnaires; duties of county officials.**

(a) Not later than the 10th day of each month, the county appraiser shall assemble and enter into the county's computer-assisted mass appraisal system the sales data pertaining to property transfers that were recorded on or before the last day of the preceding month, as obtained from the real estate sales validation questionnaires received from the register of deeds.

(b) The county appraiser shall meet the following requirements:

(1) Account for all real estate sales validation questionnaires by entering sales information from all questionnaires into the database fields in the county's computer-assisted mass appraisal system;

(2) maintain in a void file those questionnaires that cannot be matched with a parcel of real es-

tate, those that contain information that cannot be entered in the county's computer-assisted mass appraisal system, and those that were not required by K.S.A. 79-1437e and amendments thereto;

(3) electronically upload the recorded monthly sales data from the county's computer-assisted mass appraisal system to the current year's ratio study database at the division of property valuation, not later than the 15th day of the following month; and

(4) perform one of the following, not later than the 15th day of the following month:

(A) Submit the complete set of sales validation questionnaire documents recorded in the previous month to the director of property valuation or the director's agents; or

(B) electronically upload the complete set of recorded monthly sales as digital image files that meet specified file-naming conventions, resolution, and format standards to the sales validation questionnaire database at the division of property valuation. (Authorized by K.S.A. 79-1491; implementing K.S.A. 79-1487 and 79-1488; effective June 26, 1998; amended Oct. 3, 2014.)

**93-4-5. Access to county records by the director of property valuation; duties of county officials.**

(a) The county shall make its computer-assisted mass appraisal system available to the director of property valuation and the director's agents, to generate and print reports and to prepare data files to enable the electronic extraction of sale information on a monthly basis.

(b) The county appraiser shall prepare and transmit the electronic assessment administration file of all appraised values to the director not later than three business days after the mailing of the annual valuation notices pursuant to K.S.A. 79-1460, and amendments thereto. (Authorized by K.S.A. 79-1491; implementing K.S.A. 79-1487; effective June 26, 1998; amended Oct. 3, 2014.)

**93-4-6. Performance standards.** Table 2-3 of the "standard on ratio studies," adopted by the executive board of the international association of assessing officers in April 2013, is hereby adopted by reference and shall constitute the performance standards used to evaluate the appraisal of residential and commercial and industrial real estate. However, the coefficient of dispersion shall have a range of 5.0 to 20.0, with a level of confidence of 95 percent. (Authorized by K.S.A. 79-1491; implementing K.S.A. 79-1485, 79-1486, 79-1487, and 79-1488, K.S.A. 2013

Supp. 79-1489, K.S.A. 79-1490, 79-1492, and 79-1493; effective June 26, 1998; amended April 20, 2001; amended Oct. 3, 2014.)

**Article 5.—PROPERTY VALUATION NOTICES**

**93-5-1. Valuation notices; physical inspection of property.** (a) “Physical inspection” as used in K.S.A. 79-1460, as amended by L. 1991, Chapter 279, §1 means viewing a parcel of real property, including any improvements thereto, for the purpose of verifying salient characteristics, information on the valuation documents and the comparable sales sheet in order to make a final correlation of value. “Physical inspection” does not require additional data collection or personal contact with the owner of such property.

(b) A record of the physical inspection shall be maintained by notation of the date, time and identification of the appraiser making the final valuation on the KSCAMA property record prior to printing the valuation notice required by K.S.A. 79-1460, as amended by L. 1991, Chapter 279, §1. (Authorized by and implementing K.S.A. 79-1460, as amended by L. 1991, Chapter 279, §1; effective June 1, 1992.)

**Article 6.—REGISTERED MASS APPRAISER**

**93-6-1. Prerequisites.** Each candidate for the registered mass appraisal (RMA) designation shall complete all requirements necessary to be eligible to hold the office of Kansas appraiser pursuant to K.S.A. 19-430 and 19-432, and amendments thereto, before the issuance of the RMA designation. (Authorized by and implementing K.S.A. 1999 Supp. 19-430; effective, T-93-8-29-97, Aug. 29, 1997; effective Dec. 5, 1997; amended April 20, 2001.)

**93-6-2. Education requirements.** (a) Each candidate for the registered mass appraiser (RMA) designation shall complete 200 hours of courses, which shall include those courses specified in subsection (b). Each course shall require the successful completion of a written exam. “Hour,” as used in this regulation, shall mean one clock-hour of at least 50 minutes.

(b) Mandatory courses shall consist of the following:

International association of assessing officers (IAAO) course 101 or equivalent course approved by the secretary of revenue .....	30 hours
IAAO course 102 or equivalent course approved by the secretary of revenue .....	30 hours
IAAO course 151 or equivalent course approved by the secretary of revenue .....	15 hours
IAAO course 300, 311, 312, or 331 or equivalent course approved by the secretary of revenue .....	30 hours
IAAO course 400 or equivalent course approved by the secretary of revenue .....	30 hours
Kansas property tax law course approved by the secretary of revenue	20 hours
Personal property course approved by the secretary of revenue .....	15 hours
Total mandatory course hours.....	170 hours

Any candidate may substitute successfully completed appraisal courses with an emphasis on mass appraisal approved by the real estate appraisal board appointed by the governor pursuant to K.S.A. 58-4104, and amendments thereto. However, no course substitution shall be permitted for the Kansas property tax law course and the personal property course. Course substitution shall be subject to the approval of the secretary of revenue upon finding that the course approved by the real estate appraisal board is substantially equivalent to the corresponding course required by this regulation.

(c) The remaining 30 course hours may be selected from courses offered or approved by the secretary of revenue. To obtain course approval, the candidate shall demonstrate that the content of the course is directly related to the appraisal of real or personal property for ad valorem taxation purposes. (Authorized by and implementing K.S.A. 2013 Supp. 19-430; effective, T-93-8-29-97, Aug. 29, 1997; effective Dec. 5, 1997; amended April 20, 2001; amended Dec. 20, 2013.)

**93-6-3. Continuing education requirements.** (a)(1) Each individual who has obtained the registered mass appraiser (RMA) designation shall successfully complete at least 120 hours of continuing education every four years in order

to retain the designation. “Hour,” as used in this regulation, shall mean one clock-hour of at least 50 minutes. The four-year period shall correspond with the four-year appointment period for county appraisers pursuant to K.S.A. 19-430, and amendments thereto. Each individual who first obtains the RMA designation during any of the six-month periods of the appointment period specified in this paragraph shall successfully complete course hours during the remainder of the appointment period as follows:

First six months.....	120 hours
Second six months .....	105 hours
Third six months .....	90 hours
Fourth six months.....	75 hours
Fifth six months .....	60 hours
Sixth six months .....	45 hours
Seventh six months .....	30 hours

An individual who obtains the RMA designation during the final six months of the appointment period shall not be required to complete any course hours.

No more than half of the course hours shall be obtained from workshops or seminars.

(2)(A)(i) At least 60 hours of continuing education shall be accumulated through appraisal courses, each of which shall require the successful completion of a written exam. No more than 21 of these 60 hours may be accumulated through online courses, each of which shall include a non-proctored exam.

(ii) The remaining 60 hours of continuing education may be seminar hours.

(B) At least 90 hours of continuing education shall be completed during each four-year period. No more than 30 hours may be carried forward from one four-year period to the next four-year period.

(b) The continuing education courses shall include those established by the director of property valuation for an eligible Kansas appraiser pursuant to K.S.A. 19-432, and amendments thereto. In addition, each individual with the RMA designation shall complete the following courses during each four-year period:

(1) IAAO (international association of assessing officers) course 151, IAAO course 181, or IAAO course 191 or equivalent course approved by the secretary of revenue; and

(2) the Kansas property tax law course or the Kansas property tax law update course. (Authorized by and implementing K.S.A. 2015 Supp. 19-430; effective, T-93-8-29-97, Aug. 29, 1997;

effective Dec. 5, 1997; amended April 20, 2001; amended Dec. 20, 2013; amended May 6, 2016.)

**93-6-4. Experience requirements.** (a)

Each candidate for the RMA designation shall document a minimum of 6,000 hours of mass appraisal experience, including not less than 2,000 hours of experience in establishing values for property taxation purposes. No more than 600 hours of mass appraisal experience shall come from establishing values on personal property. “Hour,” as used in this regulation, shall mean 60 minutes.

(b) Any candidate may petition the secretary of revenue to approve more than the 600 hours of mass appraisal experience in establishing values on personal property specified in subsection (a). The candidate shall demonstrate to the secretary that the experience entailed determining the fair market value of personal property in a manner comparable in complexity and documented market research and analysis to the valuation of real property. The candidate shall further demonstrate to the secretary that the personal property valued comprised a predominate portion of the tax base of the county in which the values were determined.

(c) The required 6,000 hours of mass appraisal experience may include map maintenance, sales validation, income validation, and quality control. The required 2,000 hours of experience in establishing values on property for ad valorem taxation purposes may include neighborhood analysis, land valuation, model building and testing, and final review. (Authorized by and implementing K.S.A. 2001 Supp. 19-430; effective, T-93-8-29-97, Aug. 29, 1997; effective Dec. 5, 1997; amended April 20, 2001; amended May 16, 2003.)

**93-6-5. Case study requirements.** A candidate for the RMA designation shall successfully complete both a residential case study and a commercial case study, each of which shall have a four-hour time limit. A candidate may attempt to successfully complete each case study twice within a six-month time period. If a candidate fails in two attempts to complete either or both case studies, the candidate shall wait six months after the date of each failed retake before attempting to complete each failed case study again. (Authorized by and implementing K.S.A. 19-430, as amended by L. 1997, Ch. 126, § 33; effective, T-93-8-29-97, Aug. 29, 1997; effective Dec. 5, 1997.)

**93-6-6. Reciprocity.** Any candidate for the registered mass appraiser (RMA) designation who

has completed one or more case studies as a prerequisite for obtaining a professional designation from the international association of assessing officers may file an application with the secretary of revenue to waive either or both of the case study requirements of K.A.R. 93-6-5. Either or both of the case study requirements of K.A.R. 93-6-5 may be waived by the secretary of revenue upon finding that the candidate has completed a case study that is comparable to the case study sought to be waived. (Authorized by and implementing K.S.A. 2012 Supp. 19-430; effective, T-93-8-29-97, Aug. 29, 1997; effective Dec. 5, 1997; amended Dec. 20, 2013.)

**93-6-7. Reinstatement.** Each applicant for reinstatement of the RMA designation shall complete the continuing education requirements specified in K.A.R. 93-6-3. No reinstatement shall be allowed after June 30 of the second year after the expiration of the four-year continuing education period specified in K.A.R. 93-6-3. (Authorized by and implementing K.S.A. 2001 Supp. 19-430; effective May 16, 2003.)

#### **Article 7.—MACHINERY AND EQUIPMENT EXEMPTION**

**93-7-1. Definitions.** (a) “Bona fide transaction” shall mean a purchase, sale, or lease of commercial and industrial machinery and equipment that is made in good faith and without fraud or deceit.

(b) “Fair and valuable consideration” shall mean an amount of consideration that is not disproportionately small in comparison with the value of the commercial and industrial machinery and equipment acquired. This term shall not be considered synonymous with “fair market value,” as defined in K.S.A. 79-503a and amendments thereto, but shall mean an amount that is more than nominal consideration. (Authorized by and implementing L. 2006, Ch. 205, §1; effective Jan. 19, 2007.)

**93-7-2. Transfer of title presumption.** If commercial and industrial machinery and equipment were physically transferred to a taxpayer before July 1, 2006, the presumption shall be that the title was transferred to the taxpayer before July 1, 2006. This presumption may be rebutted by clear and convincing evidence that the title was passed to the taxpayer after June 30, 2006. (Authorized by and implementing L. 2006, Ch. 205, §1; effective Jan. 19, 2007.)

**93-7-3. Possession and use presumption.** If commercial and industrial machinery and equipment were physically transferred by a lease agreement to a taxpayer before July 1, 2006, the presumption shall be that the right to use the machinery and equipment was transferred to the taxpayer before July 1, 2006. This presumption may be rebutted by clear and convincing evidence that the right to use the commercial and industrial machinery and equipment was passed to the taxpayer after June 30, 2006. (Authorized by and implementing L. 2006, Ch. 205, §1; effective Jan. 19, 2007.)

#### **Article 8.—TELECOMMUNICATIONS MACHINERY AND EQUIPMENT AND RAILROAD MACHINERY AND EQUIPMENT EXEMPTION**

**93-8-1. Definitions.** (a) “Bona fide transaction” shall mean a purchase, sale, or lease of telecommunications machinery and equipment or railroad machinery and equipment that is made in good faith and without fraud or deceit.

(b) “Fair and valuable consideration” shall mean an amount of consideration that is not disproportionately small in comparison with the value of the telecommunications machinery and equipment or railroad machinery and equipment acquired. This term shall not be considered synonymous with “fair market value,” as defined in K.S.A. 79-503a and amendments thereto, but shall mean an amount that is more than nominal consideration. (Authorized by and implementing L. 2006, Ch. 205, §3; effective Jan. 19, 2007.)

**93-8-2. Transfer of title presumption.** If telecommunications machinery and equipment or railroad machinery and equipment were physically transferred to a taxpayer before July 1, 2006, the presumption shall be that the title was transferred to the taxpayer before July 1, 2006. This presumption may be rebutted by clear and convincing evidence that the title was passed to the taxpayer after June 30, 2006. (Authorized by and implementing L. 2006, Ch. 205, §3; effective Jan. 19, 2007.)

**93-8-3. Possession and use presumption.** If telecommunications machinery and equipment or railroad machinery and equipment were physically transferred by a lease agreement to a taxpayer before July 1, 2006, the presumption shall be that the right to use the machinery and

equipment was transferred to the taxpayer before July 1, 2006. This presumption may be rebutted by clear and convincing evidence that the right to use the machinery and equipment was passed to the taxpayer after June 30, 2006. (Authorized by and implementing L. 2006, Ch. 205, §3; effective Jan. 19, 2007.)

**Article 9.—COMPLEX  
INDUSTRIAL PROPERTY**

**93-9-1. Appraiser qualifications; appraisal reports.** (a) Each appraiser of any complex industrial property who is included on the list of qualified appraisers required to be maintained by the director of property valuation pursuant to K.S.A. 2014 Supp. 79-5b01, and amendments thereto, shall be certified or licensed pursuant to the state certified and licensed real property appraisers act, K.S.A. 58-4101 et seq. and amendments thereto.

(b) Each request for an appraisal of any complex industrial property shall be submitted on a form prescribed by the director of property valuation.

(c) Each appraisal report shall meet the following requirements:

(1) Be developed and reported in compliance with the 2014-2015 edition of the uniform standards of professional appraisal practice or later versions as established in regulations adopted by the Kansas real estate appraisal board pursuant to K.S.A. 58-4121 and amendments thereto, Kansas statutes and regulations pertaining to the valuation and classification of property for ad valorem taxation purposes, and the personal property appraisal guide promulgated by the director of property valuation pursuant to K.S.A. 75-5105a and amendments thereto; and

(2) include a determination of whether commercial and industrial machinery and equipment should be classified as real property or as personal property.

(d) Any appraiser may be required to defend that appraiser's classification and valuation determinations pursuant to the property tax hearings and appeals processes prescribed by K.S.A. 79-1448, 79-1606, 79-1609, and 79-2005, and amendments thereto. (Authorized by K.S.A. 2014 Supp. 79-5b04; implementing K.S.A. 2014 Supp. 79-5b01; effective April 17, 2015.)

# Agency 94

## State Board of Tax Appeals

### Editor's Note:

The State Court of Tax Appeals was renamed the State Board of Tax Appeals. See L. 2014, Ch. 141.

### Editor's Note:

The State Court of Tax Appeals was created pursuant to 2008 Substitute for House Bill 2018, which became effective July 1, 2008. The State Court of Tax Appeals is the successor in authority to the State Board of Tax Appeals, which was abolished.

### Articles

- 94-1. *HEARING PROCEDURES. (Not in active use.)*
- 94-2. *PROCEEDINGS BEFORE THE COURT. (Not in active use.)*
- 94-3. ECONOMIC DEVELOPMENT REVENUE BONDS.
- 94-4. COURT MEMBER CONTINUED EDUCATION.
- 94-5. PROCEEDINGS BEFORE THE COURT.

### Article 1.—HEARING PROCEDURES

**94-1-1 to 94-1-3.** (Authorized by K.S.A. 74-2437, 74-2439; effective Jan. 1, 1966; revoked May 1, 1981.)

**94-1-4.** (Authorized by K.S.A. 74-2437, 74-2439; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked May 1, 1981.)

**94-1-5.** (Authorized by K.S.A. 74-2437, 74-2439; effective Jan. 1, 1966; revoked May 1, 1981.)

**94-1-6.** (Authorized by K.S.A. 74-2426, 74-2437, 74-2439; effective Jan. 1, 1966; revoked Jan. 1, 1970.)

**94-1-7 to 94-1-9.** (Authorized by K.S.A. 74-2437; effective Jan. 1, 1970; revoked May 1, 1981.)

### Article 2.—PROCEEDINGS BEFORE THE COURT

**94-2-1 through 94-2-3.** (Authorized by and implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective May 1, 1981; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

**94-2-4.** (Authorized by and implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective May 1, 1981; amended May 1,

1987; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-8-28-03, Aug. 28, 2003; amended Dec. 5, 2003; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

**94-2-5.** (Authorized by and implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective May 1, 1981; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

**94-2-6 and 94-2-7.** (Authorized by and implementing K.S.A. 74-2437; effective May 1, 1981; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; revoked Oct. 29, 2010.)

**94-2-8.** (Authorized by and implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective May 1, 1981; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

**94-2-9.** (Authorized by K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13, and 74-2437a, as amended by 2008 HB 2018, sec. 14; effective May 1, 1981; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

**94-2-10.** (Authorized by and implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective May 1, 1981; amended May 1, 1987; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

**94-2-11.** (Authorized by and implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective May 1, 1981; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

**94-2-12.** (Authorized by K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; implementing K.S.A. 74-2426, as amended by 2008 HB 2018, sec. 1, and K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective May 1, 1981; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

**94-2-13 through 94-2-16.** (Authorized by and implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

**94-2-17.** (Authorized by K.S.A. 74-2437; implementing K.S.A. 74-2437, K.S.A. 2000 Supp. 79-213, K.S.A. 79-213a, K.S.A. 79-1409, K.S.A. 2000 Supp. 79-1609, K.S.A. 2000 Supp. 79-1702, K.S.A. 2000 Supp. 79-2005; effective Aug. 15, 1997; amended May 24, 2002; revoked Oct. 29, 2010.)

**94-2-18.** (Authorized by K.S.A. 74-2437; implementing K.S.A. 79-1426, K.S.A. 79-1409; effective Aug. 15, 1997; amended May 24, 2002; revoked Oct. 29, 2010.)

**94-2-19 and 94-2-20.** (Authorized by and implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective May 24, 2002; amended, T-94-8-28-03, Aug. 28, 2003; amended Dec. 5, 2003; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

**94-2-21.** (Authorized by and implementing K.S.A. 2007 Supp. 74-2438a, as amended by 2008 HB 2018, sec. 17; effective, T-94-8-28-03, Aug.

28, 2003; effective Dec. 5, 2003; amended, T-94-5-27-04, May 27, 2004; amended Oct. 1, 2004; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

### Article 3.—ECONOMIC DEVELOPMENT REVENUE BONDS

**94-3-1. Definition of terms.** As used in this article, the following meanings shall apply, to the extent that they are not inconsistent with K.S.A. 12-1744a through K.S.A. 12-1744d, and amendments thereto, or unless the context clearly indicates otherwise. (a) “The act” means K.S.A. 12-1740 *et seq.*, and amendments thereto, which relate to the issuance of certain revenue bonds for the promotion of economic development by cities or counties and prescribe certain powers and impose certain duties upon the chief judge of the court of tax appeals.

(b) “Bonds” means economic development revenue bonds issued by any city, county, or qualified improvement district under the authority of K.S.A. 12-1740 *et seq.*, and amendments thereto.

(c) “Chief judge” means the chief judge of the court of tax appeals appointed pursuant to K.S.A. 74-2433, and amendments thereto.

(d) “Informational statement” means the form, including all amendments, papers, documents, and exhibits incidental to the form, prescribed by the chief judge for the filing of notice pursuant to the act. (Authorized by K.S.A. 12-1744b, as amended by L. 2008, ch. 109, sec. 30, and K.S.A. 74-2437, as amended by L. 2008, ch. 109, sec. 13; implementing K.S.A. 12-1744b, as amended by L. 2008, ch. 109, sec. 30; effective May 1, 1983; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008.)

**94-3-2. Filing, fees, and forms.** Each informational statement required to be filed pursuant to the act shall be governed by the following procedures: (a) Filing procedures.

(1) The informational statement, together with the fees required in paragraph (b)(1), shall be deemed filed and the requisite seven-day filing period shall commence upon the date the informational statement and fees are received in the office of the court. Each applicant shall address or deliver all communications, documents, information, and inquiries to the office of the secretary, court of tax appeals.

(2) Each applicant shall file one informational statement for each proposed issuance of bonds.

(3) If the informational statement is not complete as originally filed, the applicant shall be notified of the incomplete filing. The applicant shall correct the deficiency in writing within 14 days.

(4) If the chief judge finds, following a review of the informational statement, that all information and documents required to be filed are complete and, based upon the proposed date of issuance of the bonds, that the statement has been filed in a timely manner, an order or letter indicating that finding shall be rendered by the chief judge to the appropriate government officials and bond counsel.

(5) The following disclaimer shall appear in boldface type upon the second page of each preliminary offering document:

“THE CHIEF JUDGE OF THE KANSAS COURT OF TAX APPEALS HAS NOT REVIEWED ANY INFORMATION OR DOCUMENT FILED PURSUANT TO THIS INFORMATIONAL FILING FOR THE ADEQUACY OR ACCURACY OF THE DISCLOSURE THEREIN. THIS INFORMATIONAL FILING DOES NOT CONSTITUTE A RECOMMENDATION OR AN ENDORSEMENT BY THE CHIEF JUDGE OR THE COURT.”

Evidence that this disclaimer appears in boldface type upon the second page of each preliminary offering document shall be filed contemporaneously with the certificate of issuance required by K.S.A. 12-1744c, and amendments thereto.

(6) The certificate of issuance required to be filed by K.S.A. 12-1744c, and amendments thereto, shall include the court of tax appeals’ filing number.

(b) Fees.

(1) All fees shall accompany the application and shall be paid by check or money order made payable to the court of tax appeals. A cash remittance shall not be accepted. If the chief judge receives notice of refusal of payment of the check or money order presented in payment of these fees, the application shall be deemed to be incomplete and not timely filed as required by the act.

(2) Copies of documents filed and recorded in the office of the court of tax appeals shall be available upon request. Postage and copy fees shall be paid in advance and in conformity with K.S.A. 45-219, and amendments thereto.

(c) Forms. The informational statement shall be submitted on forms approved by the chief

judge. (Authorized by K.S.A. 2010 Supp. 12-1744a, K.S.A. 2010 Supp. 12-1744b, and K.S.A. 2010 Supp. 74-2437; implementing K.S.A. 2010 Supp. 12-1744a and K.S.A. 2010 Supp. 74-2437; effective May 1, 1983; amended, T-85-38, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; amended Sept. 16, 2011.)

**Article 4.—COURT MEMBER CONTINUED EDUCATION**

**94-4-1. Court judge continued education.**

(a) Each judge of the court shall complete the education and training courses required by K.S.A. 74-2433, and amendments thereto, within either of the following, whichever is shorter:

(1) 24 months immediately following the date of the judge’s confirmation of appointment to the court; or

(2) the term to which the judge is appointed.

(b) The time period specified in paragraph (a) (1) may be extended by the executive director depending on the availability of the required courses and the workload of the court. (Authorized by and implementing K.S.A. 2007 Supp. 74-2433, as amended by 2008 HB 2018, sec. 2; effective May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008.)

**94-4-2. Administration of judge continued education.** The judge education and training program shall be administered by the executive director. All records of completed courses shall be maintained in the personnel office of the court of tax appeals and shall be open for inspection at any time during normal business hours. (Authorized by and implementing K.S.A. 2007 Supp. 74-2433, as amended by 2008 HB 2018, sec. 2; effective May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008.)

**Article 5.—PROCEEDINGS BEFORE THE COURT**

**94-5-1. Court regulations and procedures.**

(a) To the extent that the Kansas administrative procedure act or procedures prescribed by other statutes do not specifically apply, the Kansas code of civil procedure, and amendments thereto, shall apply in all proceedings before the regular division of the court.

(b) Directives guiding the court's internal affairs, access to litigants, and practice before the court may be issued by the court if the directives do not conflict with this article or other applicable provisions of Kansas law.

(c) The regulations, policies, procedures, and directives of the court shall be construed to secure expeditious determinations of all issues presented to the court. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-2. Definitions.** (a) "Counsel" means legal counsel admitted to practice before the supreme court of the state of Kansas or legal counsel duly licensed and admitted to practice law in another state, if counsel has complied with the Kansas supreme court rules governing admissions *pro hac vice*.

(b) "Court" means the court of tax appeals of the state of Kansas.

(c) "Judge" means any tax law judges or the chief hearing officer serving as a judge pro tempore pursuant to K.S.A. 74-2433, and amendments thereto.

(d) "Party" means any of the following:

(1) A taxpayer, appellant, or applicant bringing or defending an action;

(2) a governmental unit bringing or defending an action;

(3) an intervenor permitted to intervene by the court; or

(4) a necessary person or entity joined by the court.

(e) "Party's attorney" means the counsel who signed the initial pleading, application, or appeal form, or has filed an entry of appearance, on behalf of a party.

(f) "Presiding officer" means any of the following:

(1) A panel of judges;

(2) the judge assigned pursuant to K.S.A. 77-514, and amendments thereto, to conduct a status conference, prehearing conference, oral arguments, hearing, or any similar proceeding; or

(3) a court staff attorney conducting a status conference or prehearing conference to which the staff attorney has been assigned.

(g) "Secretary" means the person serving as secretary of the court pursuant to K.S.A. 74-2435, and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-3. Service.** (a) All court filings, including pleadings, motions, briefs, orders, decisions, notices, appearances, and any other similar documents relating to a case, shall be served on each of the parties. Service may be made by mail, facsimile, or electronic mail, unless a specific statute requires another manner of service. Postage or cost of service shall be borne by the person effecting service.

(b) Service on an attorney of record shall be deemed to be service on the party represented by that attorney. Service by mail shall be deemed complete upon mailing.

(c) The party responsible for effecting service shall endorse a certificate of mailing or service showing proof of compliance with these regulations. In the absence of this proof of compliance, a filing may be disregarded and deemed null and void.

(d) The court shall be notified within seven days of a change of mailing address of any party, any party's attorney, or any party's duly authorized representative. A separate notice of address change shall be filed for each case affected by the address change. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-4. Commencement of action; pleadings.** (a) Each action shall be initiated through the filing of a notice of appeal or other pleading with the court.

(b) Except as provided in subsection (c), all notices of appeal and other pleadings shall be prepared on forms approved by the court, signed by the party or the party's attorney, and filed with all information and supporting documentation requested in the forms. If a pleading is filed with insufficient information or is otherwise deficient, the pleading may be rejected by the court or may be accepted by the court, with supplementation by the parties required by the court.

(c) Each pleading initiating an appeal from a final action of the secretary of the Kansas department of revenue or the secretary's designee may be prepared on forms approved by the court or may be typewritten on 8½ × 11-inch white paper, with at least one-inch margins on all sides and with type appearing on only one side of the paper. Each typewritten pleading prepared pursuant to this subsection shall contain at least the following:

(1) The heading "BEFORE THE COURT OF TAX APPEALS OF THE STATE OF KANSAS" centered at the top of the page;

(2) the court docket number, if one has been assigned;

(3) a brief description of the nature of the action and citation to the specific statute under which the action is authorized;

(4) pertinent allegations of fact and law in concise and direct terms set forth in numbered paragraphs;

(5) a concise and complete statement of all relief sought;

(6) the signature of the party filing the pleading or the party's attorney; and

(7) the address and telephone number of the party and, if the party is represented by counsel, the party's attorney. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-5. Signatures of parties or counsel.**

The signature of a party or the party's attorney on any pleading shall constitute a certification by the signer of all of the following: (a) The signer has reviewed the pleading.

(b) To the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the pleading is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(c) The pleading is not for any improper purpose, including to harass or cause unnecessary delay or needless increase in costs. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-6. Authorized representation.**

(a) In the regular division of the court, counsel may enter an appearance either by signing the pleading or by filing an entry of appearance.

(b) In the absence of an entry of appearance by counsel, a party shall be deemed to appear on the party's own behalf. Any individual may represent that person and participate fully in matters before the court. Any corporation or other artificial entity may participate by and through a duly authorized representative, including an authorized officer of the corporation, an authorized member or partner of the entity, or an authorized employee of the corporation or entity. Any estate or trust may participate by a fiduciary of the estate or trust. Any county, city, or other taxing district may participate by an elected or appointed official or a designee of the official.

(c) All persons authorized to represent entities as specified in this regulation shall be identified in writing.

(d) A duly authorized representative of an individual or an artificial entity who is not a lawyer shall not engage in the unauthorized practice of law. The participation of any duly authorized representative other than a lawyer shall be limited to providing fact and opinion testimony or other evidence deemed competent by the court.

(e) Any corporation, county, or other artificial entity may be required by the court to participate by counsel. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-7. Information and assistance to self-represented litigants.**

(a) Information concerning the court's rules of practice and procedures shall be made available by the court to litigants. Court staff shall be available to assist self-represented litigants concerning general matters of court procedure and access to court services. Court staff shall observe the rules prohibiting ex parte communications.

(b) All communications and filings with the court shall be directed to the offices of the court in Topeka and shall meet the requirements in these regulations and the Kansas supreme court rules of judicial conduct. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-8. Filing fees.**

(a) Subject to subsections (f) and (g), the following fees shall apply to applications and appeals filed with the regular division of the court:

(1) Economic development exemption applications filed pursuant to Kansas constitution article 11, §13 for property with a total valuation in excess of \$1,000,000.....	\$1,000.00
(2) Economic development exemption applications filed pursuant to Kansas constitution article 11, §13 for property with a total valuation of \$1,000,000 or less.....	\$500.00
(3) Industrial revenue bond exemption applications filed pursuant to K.S.A. 79-201a Second, and amendments thereto, for property with a total valuation in excess of \$1,000,000.....	\$1,000.00
(4) Industrial revenue bond exemption applications filed pursuant to K.S.A. 79-201a Second, and amendments thereto, for property with a total valuation of \$1,000,000 or less .....	\$500.00

(5) Industrial revenue bond information statements filed pursuant to K.S.A. 12-1744a, and amendments thereto .....	\$500.00	\$1,000 or less .....	\$100.00
(6) Tax exemption applications for real property and tax exemption applications for oil leases filed pursuant to K.S.A. 79-201t, and amendments thereto .....	\$400.00	\$1,001 through \$10,000 .....	\$150.00
(7) Tax exemption applications for personal property except tax exemption applications for oil leases filed pursuant to K.S.A. 79-201t, and amendments thereto .....	\$100.00	\$10,001 through \$100,000 .....	\$300.00
(8) Tax grievance applications filed pursuant to K.S.A. 79-332a, 79-1422, 79-1427a, or 79-1702, and amendments thereto .....	\$25.00	more than \$100,000.....	\$500.00
(9) Equalization appeals filed pursuant to K.S.A. 79-1609, and amendments thereto, and payment-under-protest appeals filed pursuant to K.S.A. 79-2005, and amendments thereto, involving real estate other than single-family residential properties and farmsteads for the following valuations:		(15) No-fund warrants, temporary notes or bond applications, requests to exceed the adopted budget, and mill levy disagreements filed pursuant to K.S.A. 79-2938, 79-2939, 79-2941, 79-2951, 79-5023, 12-110a, 12-1662 et seq., or 19-2752a, and amendments thereto, or any other related statute...	\$150.00
\$250,000 or less .....	\$125.00 per parcel	(16) Applications by school districts to levy an ad valorem tax pursuant to K.S.A. 72-6441 or 72-6451, and amendments thereto..	No fee
\$250,001 through \$1,000,000 .....	\$200.00 per parcel	(17) Requests for reappraisal and complaints filed pursuant to K.S.A. 79-1413a, 79-1479, or 79-1481, and amendments thereto.....	\$2,000.00
\$1,000,001 through \$5,000,000 .....	\$300.00 per parcel	(18) Appeals by board of county commissioners of any county of the final ratios determined for the county by the director, or the director's designee, of the Kansas department of revenue, division of property valuation, filed pursuant to K.S.A. 79-1489, and amendments thereto .....	\$2,000.00
\$5,000,001 through \$10,000,000 .....	\$400.00 per parcel		
more than \$10,000,000.....	\$500.00 per parcel	(b) Subject to subsections (f) and (g), the following fees shall apply to applications and appeals filed with the small claims and expedited hearings division of the court:	
(10) Equalization appeals filed in the regular division of the court pursuant to K.S.A. 79-1609, and amendments thereto, and payment-under-protest appeals filed in the regular division of the court pursuant to K.S.A. 79-2005, and amendments thereto, involving single-family residential properties and farmsteads.....	\$25.00 per parcel	(1) Equalization appeals filed pursuant to K.S.A. 79-1609, and amendments thereto, and payment-under-protest appeals filed pursuant to K.S.A. 79-2005, and amendments thereto, involving appeals of the valuation or classification of single-family residential properties and farmsteads.....	No fee
(11) Equalization appeals filed pursuant to K.S.A. 79-1609, and amendments thereto, and payment-under-protest appeals filed pursuant to K.S.A. 79-2005, and amendments thereto, involving personal property ..	\$150.00	(2) All other equalization appeals filed pursuant to K.S.A. 79-1609, and amendments thereto, and payment-under-protest appeals filed pursuant to K.S.A. 79-2005, and amendments thereto, for the following valuations:	
(12) Appeals of mortgage registration fees filed pursuant to K.S.A. 79-3107c, and amendments thereto .....	\$25.00	\$250,000 or less .....	\$100.00 per parcel
(13) Appeals from final decisions of the director, or the director's designee, of the Kansas department of revenue, division of property valuation, involving real estate other than single-family residential properties and farmsteads for the following valuations:		\$250,001 through \$1,000,000 .....	\$150.00 per parcel
\$250,000 or less .....	\$125.00 per parcel	\$1,000,001 through \$1,999,999 .....	\$200.00 per parcel
\$250,001 through \$1,000,000 .....	\$200.00 per parcel	(3) Appeals from final decisions of the secretary, or the secretary's designee, of the Kansas department of revenue, excluding those final decisions addressed in paragraph (b)(5), for the following amounts in controversy:	
\$1,000,001 through \$5,000,000 .....	\$300.00 per parcel	Less than \$500 .....	No fee
\$5,000,001 through \$10,000,000 .....	\$400.00 per parcel	at least \$500 but less than \$10,001 .....	\$50.00
more than \$10,000,000.....	\$500.00 per parcel	\$10,001 through \$14,999 .....	\$150.00
(14) Appeals from final decisions of the secretary, or the secretary's designee, of the Kansas department of revenue, excluding homestead property tax refund appeals under K.S.A. 79-4501 et seq., and amendments thereto, and food sales tax refund appeals under K.S.A. 79-3632 et seq., and amendments thereto, for the following amounts in controversy:		(4) Appeals from final decisions of the director, or the director's designee, of the Kansas department of revenue, division of property valuation, involving real estate other than single-family residential properties and farmsteads for the following valuations:	

Less than \$500.....	No fee
at least \$500 but less than \$250,001 .....	\$100.00 per parcel
\$250,001 through \$1,000,000 .....	\$150.00 per parcel
\$1,000,001 through \$1,999,999 .....	\$200.00 per parcel

(5) Appeals from final decisions of the secretary, or the secretary’s designee, of the Kansas department of revenue involving homestead property tax refund appeals under K.S.A. 79-4501 et seq., and amendments thereto, and food sales tax refund appeals under K.S.A. 79-3632 et seq., and amendments thereto .....

No fee

(c) For purposes of this regulation, the following definitions shall apply:

(1) “Single-family residential property” means any parcel containing a residential structure or any portion of the structure that is designed for occupancy by no more than one family, regardless of whether the boundary of the parcel is ground, shared walls, or other structural elements. A parcel containing a structure designed to accommodate more than one family, including an apartment building, is not single-family residential property.

(2) “Valuation” means the value shown on the county notice of valuation or the value at the time of the filing of the appeal if the value has been reduced by the county appraiser at the informal hearing, by a local hearing officer panel, or by the small claims division of the court.

(d) Except as specified in this subsection, each application and appeal listed in subsections (a) and (b) shall be accompanied by the applicable filing fee in the form of a check or money order made payable to the “Court of Tax Appeals.” If the fee does not accompany the filed application or appeal, the fee shall be received by the court within seven business days of the receipt of the application or appeal. If the fee is not received within this time period, the application or appeal shall be considered not properly filed with the court, and the application or appeal shall be dismissed.

(e)(1) A filing fee may be waived by the court if an applicant or taxpayer by reason of financial hardship is unable to pay the fee and has filed an affidavit stating this reason, with any accompanying supporting documentation that may be deemed appropriate by the court.

(2) Filing fees may be abated by the court as prescribed in this paragraph upon written motion demonstrating that multiple appeals or applications involving multiple properties filed by a taxpayer or applicant should be consolidated into a single matter. For multiple applications or ap-

peals involving contiguous parcels owned by the same person or entity that together comprise a single economic unit, the consolidated filing fee shall be the fee for the parcel with the highest valuation plus \$25.00 for each additional parcel within the economic unit. If multiple applications or appeals do not involve contiguous parcels but involve substantially similar issues that, in the interest of administrative economy, should be heard and decided together, the filing fee may be abated by the court to reflect the administrative cost savings anticipated from consolidating the multiple filings for decision. If, after a filing fee has been remitted, the court determines that abatement is appropriate under this paragraph, the abated portion of the fee shall be refunded by the court.

(f) Public school districts .....

No fee  
 (g) Each not-for-profit organization shall be charged a fee of \$10 for any appeal if the valuation of the property that is the subject of the controversy does not exceed \$100,000, excluding all governmental entities except as provided in subsection (f). There shall be no filing fee reduction under this subsection (g) for property owned by a not-for-profit organization with a valuation exceeding \$100,000. (Authorized by and implementing K.S.A. 2010 Supp. 74-2438a; effective Oct. 29, 2010; amended Sept. 16, 2011.)

**94-5-9. Filing procedures; time limita-**

**tions.** (a) Each party filing any action with the court shall file the application or appeal and shall pay any applicable fees required by K.A.R. 94-5-8. Each pleading or other document filed with the court shall be deemed to have been filed when actually received and file-stamped by the secretary or the secretary’s designee, and the action shall commence on that date, if the document is in a form prescribed by these regulations or by statute.

(b) In computing any period of time prescribed by the Kansas administrative procedure act, the computation shall be made pursuant to K.S.A. 77-503(c), and amendments thereto. In computing any period of time not prescribed by the Kansas administrative procedure act, the computation shall be made pursuant to K.S.A. 60-206, and amendments thereto.

(c) When by these regulations or by notice given by the court, an act is required to be completed within a specified time, the time for completing the act may be extended by the court if a motion is filed before the expiration of the specified time. A motion for extension of time filed after the time

limit has expired may be granted only if failure to act within the time limit was the result of excusable neglect.

(d) Any individual or entity may file documents at the court's office between the hours of 8:00 a.m. and 5:00 p.m. on any business day. Each document, whether mailed, hand-delivered, or sent by facsimile machine or electronically, shall be received by 5:00 p.m. in order to be file-stamped and considered filed on that date. The time of receipt shall be that time shown by the court's time clock, the time printed by the court's facsimile machine on the final page of the facsimile-received document, or the time shown as received by the court's electronic mail system or other electronic docketing system. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-10. Electronic mail filings.** (a) Each document filed through electronic mail shall be sent to the court's central electronic mail address in order to be considered filed with the court. Electronic mail sent to any electronic mail address other than the court's central electronic mail address shall be ignored and shall not be considered filed with the court.

(b) All pleadings filed by electronic mail shall be followed by any applicable filing fees.

(c) Each electronic mail filing shall include a return electronic mail address along with the name and telephone number of the individual sending the electronic mail.

(d) Each document filed with the court by electronic mail and in accordance with these regulations shall have the same effect as if the document had been filed by any other means and in accordance with these regulations. All requirements for pleadings and other filings with the court shall apply to pleadings and other filings transmitted by electronic mail. Only one copy of the pleading or document shall be transmitted. An electronic signature or the symbol "/s/" on the signature line in place of a signature shall have the same effect as that of an original signature.

(e) Electronic mail received in the court's office at the central electronic mail address on or before 5:00 p.m. shall be deemed filed on that date. Electronic mail received after 5:00 p.m. shall be deemed to be filed on the following regular workday of the court. The time of receipt shall be the time shown by the court's electronic mail system. Electronic mail received on a Saturday, Sunday, or

legal holiday shall be deemed filed on the following regular workday of the court.

(f) If an electronic mail message indicates that there is an attachment but an attachment is not included or the attachment cannot be opened, the sender shall be notified by the court of the deficiency, with the court's request that the electronic mail be re-sent and the deficiency corrected. The date and time of the filing shall be the date and time the electronic mail is re-sent without deficiency. Each attachment shall be sent in a format that meets the court's specifications.

(g) The sender of an electronic mail filing may petition the court for an order filing the document *nunc pro tunc* if the electronic mail document is not filed with the court because of either of the following reasons:

(1) An error in the transmission of the document, the occurrence of which was unknown to the sender at the time of transmission; or

(2) a failure to process the electronic mail document when received by the court.

(h) Each petition filed pursuant to subsection (g) shall be accompanied by the transmission record, a copy of any document included in the transmission, and an affidavit of transmission by electronic mail as prescribed by Kansas supreme court rule 119, appendix B.

(i) Each party who files a document by electronic mail shall retain a copy of that document in the party's possession or control during the pendency of the action and shall produce the document upon request pursuant to K.S.A. 60-234, and amendments thereto, by the court or any party to the action. Failure to produce the document may result in the document being stricken from the record and may result in sanctions pursuant to K.S.A. 60-211, and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-11. Facsimile filing.** (a) The court's facsimile machine shall be available on a 24-hour basis, seven days each week. This requirement shall not prevent the court from sending documents by fax or from making repairs to and maintaining the facsimile machine.

(b) Each complete facsimile filing received in the court's office at or before 5:00 p.m. on a regular workday shall be deemed filed on that day. Each filing received after 5:00 p.m. shall be filed as if received on the next regular court workday. The time of receipt shall be the time printed by

the court's facsimile machine on the final page of the facsimile-received document. Each filing received on a Saturday, Sunday, or legal holiday shall be filed as if received on the next regular court workday. Each pleading filed by facsimile shall be followed by any applicable filing fees.

(c) Each pleading or other document filed by facsimile transmission shall have the same effect as that of any pleading or other document filed with the court by other means. A facsimile signature shall have the same effect as that of an original signature. Only one copy of the pleading or other document shall be transmitted.

(d) Each certificate of service shall state the date of service and the facsimile telephone numbers of both the sender and the receiver.

(e) The sender may petition the court for an order filing a document *nunc pro tunc* if a facsimile filing is not filed with the court because of either of the following:

(1) An error in transmission of the document, the occurrence of which was unknown to the sender at the time of transmission; or

(2) a failure to process the facsimile filing when received by the court.

(f) The petition specified in subsection (e) shall be accompanied by the transmission record, a copy of the document transmitted, and an affidavit of transmission by fax as specified in Kansas supreme court rule 119 relating to district courts, appendix B. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-12. Confidentiality.** (a) Each document filed and all evidence received by the court shall be a public record, unless a protective order is issued by the court designating all or portions of the record confidential.

(b) Any party may file a motion for a protective order, or a motion and agreed order may be jointly submitted by the parties, showing cause why specifically identified information in the record or information likely to become part of the record should be kept confidential. The motion shall state a legally valid basis for the protective order and shall include sworn statements or affidavits supporting the motion.

(c) If a motion for protective order is granted, any measures permitted by law may be taken by the court to protect the confidential information. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-13. Intervention; joinder.** Each petition or request to intervene shall be governed by K.S.A. 77-521, and amendments thereto. Each joinder of any party needed for just adjudication shall be governed by K.S.A. 60-219, and amendments thereto. Each permissive joinder of any party shall be governed by K.S.A. 60-220, and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-14. Consolidation.** If two or more cases involve the same or substantially similar issues or if joint presentation of the evidence or legal arguments would be economical, a written order of consolidation may be issued by the court either on its own motion or on a motion by one or more parties. If cases are consolidated, orders may be issued by the court in a consolidated format. In the absence of a formal written order of consolidation, individual cases shall be deemed separate, unconsolidated matters. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-15. Motion practice.** (a) Each motion shall include the heading information required of court pleadings, as well as the following information:

(1) Reference to the provision of statute, regulation, or other procedural authority upon which the motion is based;

(2) a concise statement of the pertinent facts and legal authorities;

(3) a concise statement of the relief sought;

(4) a request for oral argument, if desired; and

(5) a proposed form of order to be adopted by the court if the motion is granted.

(b) Each response to a motion shall be filed not later than 10 days from the date of service of the motion, or within any shorter or longer period that the court may allow. Each reply, if any, shall be filed within seven days of service of the response or within any shorter or longer period that the court may allow.

(c) Regular times for hearings on motions shall be established by the court at intervals sufficiently frequent for the prompt dispatch of business.

(d) Notwithstanding subsections (a), (b) and (c), all motions for summary judgment shall be governed by the court rules governing motions for summary judgment in state district court actions, including K.S.A. 60-256 and amendments thereto, and Kansas supreme court rule 141, as

amended. Motion for summary judgment shall be specially set by the court for oral argument. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-16. Discovery.** (a) All discovery matters, including disputes and requests for sanctions, shall be governed by the Kansas administrative procedure act and the Kansas code of civil procedure.

(b) Discovery shall be completed expeditiously. The parties and counsel shall conduct orderly discovery and shall freely exchange discoverable information and documents.

(c) The parties and counsel shall make all reasonable efforts to resolve discovery disputes before involving the court in these matters. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-17. Subpoenas.** (a) Any party may issue a subpoena or subpoena *duces tecum* in a court proceeding. Each subpoena shall be prepared by the requesting party and shall be in substantial compliance with this regulation and any published court forms.

(b) Each subpoena shall state the following information:

- (1) The name of the witness;
- (2) the address where the witness can be served;
- (3) the location where the witness is required to appear and the date and time of the appearance;
- (4) the matter in which the witness is required to testify; and
- (5) for a subpoena *duces tecum*, a detailed listing of the documents or other material to be produced.

(c) A subpoena may be used for the purpose of discovery or for the purpose of securing evidence for a hearing. The duties of the person responding to a subpoena shall be those specified in K.S.A. 60-245(d), and amendments thereto.

(d) Each subpoena issued under the authority of the court shall be signed by the secretary or a judge under the seal of the court. Upon request, the secretary shall issue a blank subpoena bearing the seal of the court with the secretary's signature or a facsimile of the signature. The party to whom a blank subpoena has been issued shall be solely responsible for preparing the substance of the subpoena. Subpoenas shall not be prepared by the court.

(e) Service of each subpoena shall be the responsibility and at the cost of the party requesting

the subpoena and shall be made in accordance with K.S.A. 77-522, and amendments thereto. Witness fees and mileage shall be allowed pursuant to K.S.A. 28-125, and amendments thereto.

(f) Any person subject to a subpoena issued by the court may seek appropriate protection as provided under K.S.A. 60-245(c), and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-18. Stipulations.** (a) The parties and counsel shall to the fullest extent possible stipulate to facts, issues, and other matters that are not the subject of reasonable dispute.

(b) Any stipulation may be made either by written stipulation or by oral statement shown upon the hearing record. All stipulations shall be binding upon all parties so stipulating and may be regarded by the court as conclusive evidence of the fact stipulated.

(c) Each stipulation that finally and conclusively settles an appeal involving the valuation of county-assessed property shall be made by means of a fully executed order of stipulation and dismissal. Each order shall be filed within 30 days from the date the parties notify the court of the pending stipulation. All stipulations executed by county officials shall be presumed by the court to have been made in keeping with the legal duties and obligations of those county officials.

(d) Each settlement negotiation shall be confidential, unless all participants to the negotiation agree otherwise in writing. Facts disclosed, offers made, and all other aspects of negotiation shall not be part of the record. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-19. Prehearing conferences.** A prehearing conference may be held by the court for purposes of narrowing the issues and facts in dispute, simplifying the presentation of evidence, and otherwise assisting the parties and counsel in their preparation for trial. Each prehearing conference shall be conducted in accordance with K.S.A. 77-516 and K.S.A. 77-517, and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-20. Continuances.** (a) Any hearing scheduled on the court's calendar may be continued by the court upon a written motion filed at least 30 days before the date of the scheduled hearing. This requirement may be waived by the

court at its discretion upon a showing of good cause. Before requesting a continuance, the moving party shall consult with all other parties and shall state in the motion the position of the other parties with respect to the continuance request. Each motion for continuance shall clearly state the reason for the requested continuance. Parties and counsel shall not contact court staff in an attempt to reschedule a matter before the court. These requests shall be filed in writing as specified in this subsection. All necessary rescheduling shall be initiated by the court after a motion has been received.

(b) A motion to continue a hearing shall be granted only in exceptional and unforeseen circumstances. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-21. Exchange of evidence and witness lists.** Unless otherwise ordered by the court, the following deadlines for the exchange of evidence and witness lists shall apply: (a) At least 10 calendar days before a scheduled hearing involving single-family residential property, each party shall have exchanged copies of each document, photograph, or other evidence that the party intends to present at the hearing.

(b) At least 20 calendar days before a scheduled hearing except a hearing involving single-family residential property as specified in subsection (a), each party shall have exchanged copies of each document, photograph, or other evidence that the party intends to present at the hearing, along with a listing of all witnesses expected to be called at the hearing. At least 10 calendar days before the scheduled hearing, each party shall have exchanged copies of any rebuttal evidence, along with a listing of any rebuttal witnesses.

(c) In computing the time periods specified in subsections (a) and (b), the day of the scheduled hearing shall not be included. If the 10th or 20th calendar day before the hearing falls on a Saturday, Sunday, or legal holiday, the last business day before the day shall be the deadline for the exchange of evidence.

(d) If the parties fail to comply with the deadlines specified in this regulation or with any modified deadline ordered by the court, the presiding officer may take appropriate measures in the interest of preserving a fair hearing, which may include barring or limiting the presentation of evidence. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-22. Hearings.** (a) Each hearing shall be open to the public and shall be conducted in accordance with the Kansas administrative procedure act. Each hearing shall be recorded by a certified shorthand reporter selected by the court or by audio or video recording systems. The court's record shall be the only official record of the proceedings.

(b) The use of recording, photographic, or television devices during any hearing shall be permitted only if the use of these devices is not disruptive.

(c) The cost of obtaining a transcript of any hearing shall be borne by the person requesting the transcript. A certified shorthand reporter shall be selected by the court to transcribe the official record of the proceedings. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-23. Evidence.** (a) Unless otherwise limited by a specific statutory or regulatory provision, the presentation of evidence shall be governed by K.S.A. 60-401 et seq., and amendments thereto, and by K.S.A. 77-524, and amendments thereto.

(b) Evidence may be received in writing instead of through oral presentation, in accordance with K.S.A. 77-524(d) and amendments thereto. However, the filing of a document shall not signify its receipt into evidence. Only those documents that have been received into evidence shall be considered as evidence in the official record.

(c) Whenever an evidentiary objection is made, the grounds relied upon shall be stated briefly when the evidence is offered. Any evidentiary objection may be ruled upon by the court, or the objection may be taken under advisement by the court. Evidence may be received by the court, subject to a motion to strike at the conclusion of the hearing.

(d) The discontinuation of the presentation of evidence may be ordered by the court upon its own motion if the evidence is cumulative, irrelevant, or otherwise objectionable. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-24. Failure to appear.** (a) Failure of any party to appear at the time and place appointed by the court may result in dismissal or a default judgment.

(b) Within 10 days after service of an order of dismissal or default, the party against whom the order

was entered may file a written objection requesting that the order be vacated and stating the specific grounds relied upon. The written objection shall be served on all parties in accordance with these regulations. An entry of dismissal or default may be set aside by the court, for good cause.

(c) If all parties agree to waive the right to a hearing and submit stipulated facts and written arguments, a hearing may be waived. However, the parties' waiver may be rejected by the court at its discretion, and the parties may be required by the court at its discretion to appear for hearing if the court deems the action necessary or proper

under the circumstances. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-25. Petitions for reconsideration.**

Each petition for reconsideration of a final order of the court shall be filed pursuant to K.S.A. 77-529, and amendments thereto. Each response to a petition for reconsideration shall be filed with the court within 11 calendar days after the petition for reconsideration is filed with the court. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

# Agency 95

## Crop Improvement Association

**Editor's Note:**

K.A.R. 95-1-1 through 95-30-11 were revoked by L. 1982, Ch. 459.

*Articles*

- 95-1. *GENERAL CERTIFICATION STANDARDS. (Not in active use.)*
- 95-2. *GENERAL CERTIFICATION STANDARDS. (Not in active use.)*
- 95-3. *CERTIFICATION STANDARDS FOR BARLEY SEED. (Not in active use.)*
- 95-4. *CERTIFICATION STANDARDS FOR RED CLOVER SEED. (Not in active use.)*
- 95-5. *CERTIFICATION STANDARDS FOR SWEET CLOVER. (Not in active use.)*
- 95-6. *CERTIFICATION STANDARDS FOR OPEN POLLINATED CORN. (Not in active use.)*
- 95-7. *CERTIFICATION STANDARDS FOR CORN SEED; COMMERCIAL HYBRIDS. (Not in active use.)*
- 95-8. *CERTIFICATION STANDARDS FOR CORN SEED; FOUNDATION SINGLE-CROSSES. (Not in active use.)*
- 95-9. *CERTIFICATION STANDARDS FOR CORN SEED; INBRED LINES. (Not in active use.)*
- 95-11. *CERTIFICATION STANDARDS FOR FLAX. (Not in active use.)*
- 95-14. *CERTIFICATION STANDARDS FOR SUDAN GRASS. (Not in active use.)*
- 95-15. *CERTIFICATION STANDARDS FOR OATS SEED. (Not in active use.)*
- 95-16. *CERTIFICATION STANDARDS FOR RYE SEED. (Not in active use.)*
- 95-17. *CERTIFICATION STANDARDS FOR SORGHUM VARIETY SEED. (Not in active use.)*
- 95-18. *CERTIFICATION STANDARDS FOR SOYBEAN SEED. (Not in active use.)*
- 95-19. *CERTIFICATION STANDARDS FOR WHEAT SEED. (Not in active use.)*
- 95-20. *CERTIFICATION STANDARDS FOR VEGETATIVELY PROPAGATED GRASSES. (Not in active use.)*
- 95-21. *CERTIFICATIONS STANDARDS FOR GRASS SEED. (Not in active use.)*
- 95-22. *CERTIFICATION STANDARDS FOR FOUNDATION SORGHUM SEED; STOCK SEED. (Not in active use.)*
- 95-23. *CERTIFICATION STANDARDS FOR COMMERCIAL SORGHUM HYBRID SEED. (Not in active use.)*
- 95-24. *CERTIFICATION STANDARDS FOR LESPEDEZA SEED. (Not in active use.)*
- 95-25. *CERTIFICATION STANDARDS FOR WATERMELON SEED. (Not in active use.)*
- 95-26. *CERTIFICATION STANDARDS FOR NON-HYBRID MILLET SEED. (Not in active use.)*
- 95-27. *CERTIFICATION STANDARDS FOR FORBS (WILDFLOWERS.) (Not in active use.)*
- 95-28. *CERTIFICATION STANDARDS FOR AGROTITICUM. (Not in active use.)*
- 95-29. *CERTIFICATION STANDARDS FOR TRITICALE SEED. (Not in active use.)*
- 95-30. *STANDARDS FOR APPROVED CERTIFIED SEED PROCESSORS IN KANSAS. (Not in active use.)*

**Article 1.—GENERAL  
CERTIFICATION STANDARDS**

**95-1-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-1-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-1-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-1-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-1-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-1-6.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-1-7.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

tive Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-1-8.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-1-9.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-1-10.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-1-11.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-1-12.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-1-13.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-1-14.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-1-15.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-1-16.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-1-17.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-1-18.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

#### Article 2.—GENERAL CERTIFICATION STANDARDS

**95-2-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-2-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-2-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-2-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-2-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-2-6.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-2-7.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

#### Article 3.—CERTIFICATION STANDARDS FOR BARLEY SEED

**95-3-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-3-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-3-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-3-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-3-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-3-6.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

#### Article 4.—CERTIFICATION STANDARDS FOR RED CLOVER SEED

**95-4-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-4-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-4-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-4-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-4-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-4-6.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**Article 5.—CERTIFICATION  
STANDARDS FOR SWEET CLOVER**

**95-5-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-5-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-5-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-5-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-5-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-5-6.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-5-7.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-5-8.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**Article 6.—CERTIFICATION STANDARDS  
FOR OPEN POLLINATED CORN**

**95-6-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-6-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-6-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-6-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-6-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-6-6.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-6-7.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**Article 7.—CERTIFICATION  
STANDARDS FOR CORN SEED;  
COMMERCIAL HYBRIDS**

**95-7-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-7-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-7-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-7-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**Article 8.—CERTIFICATION  
STANDARDS FOR CORN SEED;  
FOUNDATION SINGLE-CROSSES**

**95-8-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-8-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-8-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

tive Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-8-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-8-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

#### **Article 9.—CERTIFICATION STANDARDS FOR CORN SEED; INBRED LINES**

**95-9-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-9-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-9-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-9-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-9-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

#### **Article 11.—CERTIFICATION STANDARDS FOR FLAX**

**95-11-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-11-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-11-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-11-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-11-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-11-6.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-11-7.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

#### **Article 14.—CERTIFICATION STANDARDS FOR SUDAN GRASS**

**95-14-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-14-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-14-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-14-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-14-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-14-6.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-14-7.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

#### **Article 15.—CERTIFICATION STANDARDS FOR OATS SEED**

**95-15-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-15-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-15-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-15-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-15-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-15-6.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

#### **Article 16.—CERTIFICATION STANDARDS FOR RYE SEED**

**95-16-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-16-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-16-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-16-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-16-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-16-6.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

#### **Article 17.—CERTIFICATION STANDARDS FOR SORGHUM VARIETY SEED**

**95-17-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-17-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-17-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-17-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-17-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-17-6.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-17-7.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

#### **Article 18.—CERTIFICATION STANDARDS FOR SOYBEAN SEED**

**95-18-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-18-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-18-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-18-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-18-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-18-6.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-18-7.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

#### **Article 19.—CERTIFICATION STANDARDS FOR WHEAT SEED**

**95-19-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-19-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-19-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-19-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-19-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-19-6.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-19-7.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**Article 20.—CERTIFICATION  
STANDARDS FOR VEGETATIVELY  
PROPAGATED GRASSES**

**95-20-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-20-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-20-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-20-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-20-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-20-6.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**Article 21.—CERTIFICATION  
STANDARDS FOR GRASS SEED**

**95-21-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-21-2.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-21-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-21-4.** (Authorized by K.S.A. 2-1440; ef-

fective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-21-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-21-6.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-21-7.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**Article 22.—CERTIFICATION  
STANDARDS FOR FOUNDATION  
SORGHUM SEED; STOCK SEED**

**95-22-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-22-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-22-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-22-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-22-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**Article 23.—CERTIFICATION  
STANDARDS FOR COMMERCIAL  
SORGHUM HYBRID SEED**

**95-23-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-23-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-23-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-23-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-23-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; amended May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**Article 24.—CERTIFICATION  
STANDARDS FOR LESPEDEZA SEED**

**95-24-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-24-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-24-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-24-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-24-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-24-6.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**Article 25.—CERTIFICATION  
STANDARDS FOR WATERMELON SEED**

**95-25-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-25-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-25-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-25-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-25-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-25-6.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**Article 26.—CERTIFICATION  
STANDARDS FOR NON-HYBRID  
MILLET SEED**

**95-26-1.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-26-2.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-26-3.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-26-4.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-26-5.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-26-6.** (Authorized by K.S.A. 2-1440; effective Jan. 1, 1966; revoked, L. 1982, ch. 459, May 1, 1982.)

**Article 27.—CERTIFICATION  
STANDARDS FOR FORBS  
(WILDFLOWERS)**

**95-27-1.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-27-2.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-27-3.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-27-4.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-27-5.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-27-6.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-27-7.** (Authorized by K.S.A. 2-1440; ef-

fective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**Article 28.—CERTIFICATION  
STANDARDS FOR AGROTRITICUM**

**95-28-1.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-28-2.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-28-3.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-28-4.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-28-5.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-28-6.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-28-7.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**Article 29.—CERTIFICATION  
STANDARDS FOR TRITICALE SEED**

**95-29-1.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-29-2.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-29-3.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-29-4.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-29-5.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-29-6.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-29-7.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**Article 30.—STANDARDS FOR  
APPROVED CERTIFIED SEED  
PROCESSORS IN KANSAS**

**95-30-1.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-30-2.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-30-3.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-30-4.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-30-5.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-30-6.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-30-7.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-30-8.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-30-9.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-30-10.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

**95-30-11.** (Authorized by K.S.A. 2-1440; effective May 1, 1978; revoked, L. 1982, ch. 459, May 1, 1982.)

## Agency 97

# Kansas Commission on Veterans Affairs Office

### Editor's Note:

Effective July 1, 2014, the Kansas Commission on Veterans' Affairs was abolished and powers, duties and functions were transferred to the Kansas Commission on Veterans Affairs Office. See L. 2014, Ch. 83.

### Articles

- 97-1. SOLDIERS' HOME; MEMBERSHIP.
- 97-2. RULES GOVERNING MEMBERS.
- 97-3. DISCHARGES; TERMINATION OF MEMBERSHIP.
- 97-4. VETERAN MEMORIAL DONATIONS TO THE KANSAS COMMISSION ON VETERANS' AFFAIRS FOR THE CONSTRUCTION AND MAINTENANCE OF CAPITAL IMPROVEMENT PROJECTS.
- 97-5. FINANCIAL BENEFITS TO DEPENDENTS OF PRISONERS OF WAR, PERSONS MISSING IN ACTION, OR WHO DIED AS A RESULT OF INJURIES SUFFERED IN THE LINE OF DUTY.
- 97-6. VETERANS CLAIMS ASSISTANCE PROGRAM AND THE SERVICE GRANT PROGRAM.
- 97-7. VIETNAM WAR ERA MEDALLION PROGRAM.

### Article 1.—SOLDIERS' HOME; MEMBERSHIP

**97-1-1.** (Authorized by K.S.A. 76-1908; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-1-1a. Definitions.** As used in these regulations, the following terms shall have the meanings specified in this regulation: (a) "Applicant" means a person who has submitted to the Kansas commission on veterans' affairs a completed application packet and military discharge papers.

(b) "Commission" means the body of commissioners appointed by the governor to oversee the Kansas commission on veterans' affairs (KCVA).

(c) "Discharge" means the permanent removal by the commission of a member from a KCVA home.

(d) "Executive director" means the person who serves as executive director of the KCVA.

(e) "Furlough" means the temporary eviction of a member by the respective superintendent or designee, for any infraction of these regulations.

(f) "KSH" means Kansas soldiers' home at Fort Dodge, Kansas.

(g) "KVH" means Kansas veterans' home in Winfield, Kansas.

(h) "Licensed medical authority" means a per-

son who is authorized by law to diagnose mental diseases or disorders.

(i) "Pass" means a superintendent's prior written permission for the voluntary, temporary absence of the veteran or nonveteran member from the home for a period in excess of 23 hours, as specified in K.A.R. 97-3-3a. An approved pass shall not affect the eligibility status of the member.

(j) "Release" means a voluntary separation granted by a superintendent upon request of a veteran or nonveteran member. The member leaves the home in good standing, and this departure does not affect the member's standing or subsequent KCVA or United States department of veterans affairs benefits.

(k) "Residence hall" means a domiciliary, including cottages, or long-term health care facility.

(l) "State" means the state of Kansas.

(m) "Superintendent" means the person appointed by the KCVA as superintendent for the KSH or KVH.

(n) "USDVA" means United States department of veterans affairs.

(o) "Weapon" means any of the following:

(1) Bludgeon, sand club, metal knuckles, throwing star, dagger, dirk, billy, or blackjack;

(2) any firearm; or

(3) (A) Any knife that is more than four inches long or opens automatically by hand pressure

applied to a button, spring, or other device in the handle of the knife; or

(B) any knife having a blade that opens, falls, or is ejected into position by the force of gravity or by outward, downward, or centrifugal thrust or movement. (Authorized by and implementing K.S.A. 76-1904, 76-1927, 76-1951, and 76-1955; effective May 1, 2009.)

**97-1-2.** (Authorized by K.S.A. 76-1908; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-1-2a. Administrative oversight.** These regulations shall apply to the Kansas soldiers' home and the Kansas veterans' home, which are administered by the commission. (Authorized by K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-1904, 76-1927, 76-1951, and 76-1955; effective May 1, 2009.)

**97-1-3.** (Authorized by K.S.A. 76-1908; effective Jan. 1, 1966; amended Jan. 1, 1969; amended May 1, 1980; revoked May 1, 2009.)

**97-1-3a. Eligibility.** (a) General. Eligibility for admission shall be based upon K.S.A. 76-1908 and K.S.A. 76-1954, and amendments thereto.

(b) Mental illness, legal incompetence, alcohol abuse, and drug abuse.

(1) Mental illness. No person who has been diagnosed by a licensed medical authority as being mentally ill shall be admitted to the KSH or KVH unless the illness is managed by medication prescribed by a licensed medical authority and that medical authority certifies both of the following:

(A) With the prescribed medication, the individual will not be a threat to that person, any other person, or the property of others.

(B) The individual can be cared for and medicated by KSH or KVH staff with medication that is reasonably available through the KSH or KVH.

(2) Legal incompetence. No person who meets any of the following conditions and has not been restored to competency by the court pursuant to the applicable act shall be admitted unless the person's guardian or conservator, or both, or curator is available to make the legal, financial, and medical decisions on behalf of the person:

(A) Has been adjudged in need of a guardian or conservator, or both, by a court in this state pursuant to the act for obtaining a guardian or a conservator, or both, K.S.A. 59-3050 et seq. and amendments thereto;

(B) has been adjudged in need of a curator pursuant to the curators for veterans act, K.S.A. 73-501 et seq. and amendments thereto; or

(C) has been adjudged by a court of competent jurisdiction in another state or the District of Columbia pursuant to an act similar to either of the acts specified in paragraphs (b)(2)(A) and (B).

(3) "Abuse" shall mean a person's lack of self-control in the use or ingestion of alcohol or drugs or a person's use or ingestion of alcohol or drugs to the extent that the person's health is substantially impaired or endangered or the person's social or economic functioning is substantially disrupted.

(4) Alcohol abuse. No person who is abusing alcohol and not participating in a program conducted, managed, or operated by an alcohol treatment facility licensed under the alcoholism and intoxication treatment act, K.S.A. 65-4001 et seq. and amendments thereto, shall be admitted to the KSH or KVH. A member who abuses alcohol may be furloughed and may be considered for discharge by the commission.

(5) Drug abuse. No person who is abusing drugs and not participating in a program conducted, managed, or operated by a drug treatment facility licensed under the drug abuse treatment facilities act, K.S.A. 65-4601 et seq. and amendments thereto, shall be admitted to the KSH or KVH unless the abuse is the result of the use of a legally prescribed medication. A member who abuses drugs, prescription or illegal, may be furloughed and may be considered for discharge by the commission.

(6) Removal from the KSH or KVH. Any member who becomes mentally ill or legally incompetent or who becomes addicted to or abuses alcohol or drugs as specified in this regulation may be subject to furlough or discharge.

(c) Children. Only minor children shall be eligible for admission to the KSH and the KVH. No minor child shall be eligible for admission unless accompanied by a member parent or member guardian. No child who is 16 years of age or older shall be admitted to or reside in the KSH or KVH unless the child is incapable of self-support and the superintendent makes such a declaration. Determination of eligibility of dependent children shall be in accordance with federal laws and USDVA regulations applicable to state veterans' homes.

(d) Dependents. No person shall be admitted as the spouse of the applicant unless the marriage is valid under the laws of the state of Kan-

sas. (Authorized by K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-1904, 76-1908, 76-1928, 76-1931, 76-1951, 76-1954, and 76-1955; effective May 1, 2009.)

**97-1-4.** (Authorized by K.S.A. 76-1908; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-1-4a. Application for membership.** (a) Processing and approval. No application for membership shall be considered until the person has submitted a complete application packet on forms furnished by the KSH or KVH.

(1) Application packets may be obtained at and returned to any KCVA field office or service organizational office. The application packet shall be submitted by the office to the superintendent at the KSH or KVH, as applicable, for review of completeness. If the application packet is not complete, the application packet shall be returned to the applicant, with an indication of the portions that are incomplete. Upon determination of completeness, the superintendent shall forward the application packet to the executive director.

(2) Except for applications submitted by individuals with felony convictions, each complete application shall be required to be approved by the executive director before the applicant may be admitted to the KSH or KVH.

(3) For each applicant with a felony conviction, that applicant's completed application shall be evaluated by the commission regarding the rehabilitation of the applicant and current degree of dangerousness to the applicant, other persons, and the property of others before the applicant may be admitted to the KSH or KVH.

(4) Each spouse or dependent who desires membership in the KSH or KVH shall complete the appropriate forms in the application packet.

(5) Each applicant shall include a certification of inability to provide self-support without additional aid.

(b) Investigation of applicants. The information on each application shall be verified by a staff member, as directed by the superintendent.

(c) False applications; procedure. An applicant may be denied admission or a member may be discharged if the commission ascertains that the applicant or member has committed either of the following:

(1) Has misrepresented the age of a minor child. The veteran or veteran's spouse, or both, shall be

responsible for ensuring the accuracy of the information in the application of a minor child; or

(2) has misrepresented any other material matter for the purpose of obtaining admission, continuing membership, or obtaining any other benefits of either home. (Authorized by K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-1908 and 76-1954; effective May 1, 2009.)

**97-1-5.** (Authorized by K.S.A. 76-1908; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-1-5a. Priority for admission.** (a) Priority criteria. Admission shall be granted pursuant to K.S.A. 76-1908(g) and K.S.A. 76-1954(g)(1), and amendments thereto.

(1) The first priority for admission shall be given to veterans who have no adequate means of support. Within this group, priority shall be based on the severity of medical care required and the ability to pay for health care.

(2) The second priority for admission shall be given to a veteran's spouse or surviving spouse, parents, or children who have no adequate means of support, with priority based on the criteria specified in paragraph (a)(1) of this regulation.

(3) The third priority shall be given to veterans who have a means of support.

(4) The fourth priority shall be given to a veteran's spouse or surviving spouse, parents, or children who have a means of support.

(b) Residence halls. The superintendent of the KSH or KVH shall consult with that person's medical staff to assist in the prioritization of members.

(c) Cottages.

(1) Cottages, which are located only at the KSH, shall be available to eligible members, including those in need of domiciliary care.

(A) If domiciliary care is needed, the veteran member shall show that the care will be provided by that member's spouse, parent, or child. If a family member can not provide domiciliary care, the KSH superintendent shall be so notified, and the veteran member shall be directed to undergo a medical evaluation to determine whether that person can reside alone.

(B) If the KSH superintendent suspects that an applicant or a veteran member needs domiciliary care, the superintendent may direct that applicant or veteran member to undergo a medical evaluation to determine whether that person can reside alone.

(C) If the medical staff determines that the veteran member needs domiciliary care and resides alone, the KSH superintendent may direct that the veteran member be placed in the domiciliary unit for care until a permanent arrangement is made.

(2) No cottage shall be initially assigned to the spouse, parent, or child of a deceased veteran member. If the veteran member dies, the surviving spouse, parent, or child shall have 180 days to vacate the premises. Before the end of the 180-day period, any surviving nonveteran spouse may move to a domiciliary unit or a one-bedroom cottage, if available, at the rental rate established for nonveterans. If a one-bedroom cottage is not available, the superintendent may allow the nonveteran spouse to remain by exception in the two-bedroom cottage past the 180-day period, contingent upon pending admissions. (Authorized by K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-1908 and 76-1954; effective May 1, 2009.)

**97-1-6a. Approval or denial of application, notification to applicant, and right of reconsideration; right of hearing; final decision.**

(a) Approval of application. If an applicant qualifies for admission, the application shall be approved if there is space available in the KSH or KVH or shall be conditionally approved until space is available. Each applicant shall be notified in writing by the appropriate superintendent or by the executive director, whether the application is approved or denied.

(b) Denial of application.

(1) If an applicant is denied admission, written notification shall be sent to the last known address of the applicant by the appropriate superintendent, the executive director, or the commission. The notification shall state the reason or reasons for the denial.

(2) Within 30 days of the date of the decision, the applicant may file at the office of the executive director a written request for reconsideration by the commission. The request shall state the reasons supporting approval of the application. If no timely request is filed, the notification of denial shall become the final decision.

(3) Unless waived by the applicant, a hearing shall be set upon receipt of a request for reconsideration. The hearing shall be scheduled at the earliest available commission docket. The applicant shall be notified by the executive director of the date, time, and place of the hearing. The notice

shall be mailed to the last known address of the applicant at least 10 days before the hearing.

(4) At the hearing, notice may be taken by the commission of its administrative records and files, and any other relevant evidence and arguments offered by the applicant, employees of the KCVA, or other interested persons may be heard by the commission. The applicant may appear in person, through telephone, by an attorney, or any combination of these.

(5) If the applicant fails to attend the hearing, the commission's decision may be made based upon the KCVA's records, files, and any other evidence that was presented at the hearing. The commission's decision shall be determined by a majority vote. A written decision shall be filed by the commission with the executive director, setting forth the facts and reasons for the commission's decision. Within 30 days after the hearing, a copy of the decision shall be sent by the executive director to the applicant at the applicant's last known address. The filed decision shall be considered the final agency action. (Authorized by K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-1908 and 76-1954; effective May 1, 2009.)

**Article 2.—RULES  
GOVERNING MEMBERS**

**97-2-1.** (Authorized by and implementing K.S.A. 76-1927; effective Jan. 1, 1966; amended May 1, 1980; amended May 1, 1984; revoked May 1, 2009.)

**97-2-1a. Charges.** Charges to each member shall be based on the member's ability to pay and shall not exceed the applicable KSH or KVH per diem cost of care for the prior year or the charges made to patients pursuant to K.S.A. 59-2006 and amendments thereto, whichever is less. Each member shall notify the superintendent, within five business days, of any increase or decrease in income or assets. The business manager shall submit an annual accounting to the superintendent, or designee, of each member's resources to determine the member's appropriate charges. (Authorized by K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-1904a and 76-1952; effective May 1, 2009.)

**97-2-2.** (Authorized by K.S.A. 76-1932; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-2-2a. Comfort money.** Comfort money shall mean a protected amount of each member's income that is not used in determining the member's charges and is held for the member's use, benefit, and burial. The amount of comfort money shall be annually determined by the commission at its November meeting and shall become effective on February 1 of the following year. Each member shall be given written notice by that member's superintendent, within 45 days after the commission's November meeting, of the amount of comfort money authorized by the commission. (Authorized by K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-1904a, 76-1935, 76-1952, and 76-1956; effective May 1, 2009.)

**97-2-3.** (Authorized by K.S.A. 76-1927; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-2-4.** (Authorized by K.S.A. 76-1927; effective Jan. 1, 1966; revoked May 1, 2009.)

**97-2-5.** (Authorized by and implementing K.S.A. 76-1927; effective Jan. 1, 1966; amended May 1, 1980; amended May 1, 1984; revoked May 1, 2009.)

**97-2-6.** (Authorized by K.S.A. 76-1906, 76-1927; effective Jan. 1, 1966; amended Jan. 1, 1969; amended May 1, 1980; revoked May 1, 2009.)

**97-2-7.** (Authorized by K.S.A. 76-1927; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-2-8.** (Authorized by and implementing K.S.A. 76-1927; effective Jan. 1, 1966; amended May 1, 1980; amended May 1, 1984; revoked May 1, 2009.)

### **Article 3.—DISCHARGES; TERMINATION OF MEMBERSHIP**

**97-3-1.** (Authorized by K.S.A. 76-1908; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-3-1a. Personal conduct; guests.** (a) Personal conduct. The following actions by any member or any member's guest while at the KSH or KVH shall be prohibited:

(1) Violating any state statute, state regulation, or lawful order of any superintendent or designee of the superintendent;

(2) brandishing a weapon;

(3) cursing, swearing, quarreling, or using violent, profane, vulgar, or threatening language or conduct that tends to arouse alarm or anger, disturbs others, or provokes an assault or other breach of the peace;

(4) intentionally or willfully damaging or destroying any property of another person or entity, the KSH or KVH, or the state;

(5) being under the influence of alcohol or illegal drugs, or both; and

(6) engaging in any activity or behavior not otherwise specified in this subsection that interferes with the orderly conduct of the KSH or KVH.

(b) Guests. Each member shall be responsible for informing that member's guest of the personal conduct prohibited by this regulation. No member of the KSH or KVH shall house any person as an overnight guest without the prior approval of the superintendent. (Authorized by K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-1904, 76-1927, 76-1951, and 76-1955; effective May 1, 2009.)

**97-3-2.** (Authorized by K.S.A. 76-1908; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-3-2a. Pets and service or therapeutic animals; hunting prohibition.** (a) No animals may be kept on the premises of the KSH or KVH by members, guests, or employees, except as specified in this regulation.

(b) As used in this regulation, "pet" shall mean a domesticated cat weighing 25 pounds or less or a domesticated dog weighing 80 pounds or less.

(c)(1) Horses may be kept on the grounds at the KSH or KVH as designated by prior written authorization from the superintendent.

(2) Any guest may have a pet on the premises of the KSH or KVH, for not more than a six-hour period between 7 a.m. and 10 p.m.

(3) Each pet at the KSH or KVH shall meet the following requirements:

(A) Have current vaccinations;

(B) be restrained with a leash and wear a collar with a tag identifying its owner while in public or open areas of the KSH or KVH;

(C) be properly maintained;

(D) not become a nuisance or threat to staff, members, or guests; and

(E) not interfere with the normal conduct and operation of the KSH or KVH.

(d)(1) Only an employee or member living in a cottage at the KSH may be allowed to maintain

more than one pet if the requirements in paragraph (c)(3) are met and prior approval for each pet has been given by the superintendent.

(2) Each employee or member living in a cottage at the KSH who utilizes a service or therapeutic animal shall notify the superintendent that the animal is maintained at that employee's or member's cottage.

(e) Only service and therapeutic animals shall be allowed to be maintained by employees or members living in residential halls other than the cottages at the KSH and KVH.

(f) Hunting shall not be allowed on the premises of the KSH or KVH. (Authorized by K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-1904, 76-1927, 76-1951, and 76-1955; effective May 1, 2009.)

**97-3-3.** (Authorized by K.S.A. 76-1927; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-3-3a. Passes.** (a) Absences.

(1) Twenty-three hours or less. Each member who desires to be absent from the KSH or KVH for 23 hours or less shall obtain the prior written approval of the superintendent or the superintendent's designee.

(2) More than 23 hours. Each member shall be required to obtain a pass from the superintendent for any absence longer than 23 hours. No pass shall exceed a total of three months in any 12-month period.

(3) Absences by members residing in cottages at the KSH. Each cottage member who is absent for more than 30 days with a pass shall pay an additional rent payment at the rate prescribed in K.A.R. 97-1-1a.

(4) Extensions. Any pass may be extended once by the superintendent for not more than 30 days.

(5) Early return. Each member who is absent with a pass or pass extension and who wants to return before the expiration of the pass or pass extension shall notify the superintendent at least 10 days before the date on which the member desires to return to the KSH or KVH.

(b) Medical pass. A veteran member shall request that the superintendent issue a medical pass for the purpose of being hospitalized or domiciled in a USDVA medical center. During the period that the veteran member is absent with a medical pass, the status of the veteran member's dependents shall remain unchanged. The veteran mem-

ber shall be readmitted by the superintendent under the same terms and conditions as those under which the veteran member was originally admitted. (Authorized by K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-1904, 76-1927, 76-1951, and 76-1955; effective May 1, 2009.)

**97-3-4.** (Authorized by K.S.A. 76-1929; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-3-5.** (Authorized by K.S.A. 76-1929; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-3-6.** (Authorized by and implementing K.S.A. 76-1927; effective Jan. 1, 1966; amended May 1, 1984; revoked May 1, 2009.)

**97-3-7.** (Authorized by K.S.A. 76-1929; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-3-8.** (Authorized by K.S.A. 76-1929; effective Jan. 1, 1966; revoked May 1, 2009.)

**97-3-9.** (Authorized by K.S.A. 76-1927; effective Jan. 1, 1966; revoked May 1, 2009.)

**Article 4.—VETERAN MEMORIAL DONATIONS TO THE KANSAS COMMISSION ON VETERANS' AFFAIRS FOR THE CONSTRUCTION AND MAINTENANCE OF CAPITAL IMPROVEMENT PROJECTS**

**97-4-1. Definitions.** As used in this article, unless the context clearly requires otherwise, the following terms shall have the meanings ascribed to them in this regulation: (a) "Advisory committee" means an advisory committee formed pursuant to K.A.R. 97-4-7.

(b)(1) "Capital improvement project" means any type of enhancement made pursuant to K.S.A. 73-1233, and amendments thereto. As used in this term, "improvement" shall mean any of the following:

- (A) Construction or reconstruction;
- (B) maintenance;
- (C) restoration or renewal;
- (D) replacement or repair;
- (E) installing any equipment that becomes a part of any memorial for veterans;
- (F) extending the size of any existing facility as a memorial for veterans; or

(G) any other type of work that provides a new facility or improves an existing facility.

This term shall include the reimprovement of a prior capital improvement project.

(2) This term shall not include any of the following:

(A) Any project with a total cost of less than \$5,000;

(B) any temporary structure;

(C) any improvement to a temporary structure; or

(D) any moveable memorial.

(c) “Commission” and “KCVA” mean the Kansas commission on veterans’ affairs.

(d) “Director” means the executive director of the Kansas commission on veterans’ affairs.

(e) “Project representative” means any of the following:

(1) A donor;

(2) any person who represents one or more donors; or

(3) any person retaining an advisory role on behalf of donors in the ongoing operation of a fund.

(f) “Suitable memorial” means a memorial for veterans that meets community standards and the program standards of the Kansas commission on veterans’ affairs in K.A.R. 97-4-2.

(g) “Undesignated donations” means donations of less than \$5,000 for capital improvement projects but not for a specific memorial for veterans. The commission shall have the authority to accept undesignated donations and assign funds to existing memorials or projects. (Authorized by and implementing K.S.A. 2005 Supp. 73-1233; effective Nov. 27, 2006.)

#### **97-4-1a. Disciplinary actions; discharge.**

(a) Complaints. Any person may make a verbal or written complaint to the superintendent alleging a violation of any statute or regulation.

(b) Investigation. Upon receipt of a complaint, the superintendent shall conduct an investigation. If the investigation reveals reasonable grounds to believe that a member has violated a statute or regulation, no warning has been given for prior offenses in the past 12 months, and the current offense did not cause property damage or bodily injury, the superintendent may advise the member of the violation and warn the member that if the conduct or activity does not cease, proceedings will be commenced to discharge the member. As an alternative, a report by the superintendent may be sent to the KCVA detailing the investiga-

tion of the complaint, identifying the regulation that was violated, and recommending discharge of the member.

(c) Notice. Upon recommendation that a member be discharged, a hearing shall be scheduled at the earliest available commission docket. The member shall be notified by the executive director of the factual allegations of the complaint, the applicable statute or regulation, and the date, time, and place of the hearing. The notice shall be mailed to the last known address of the member at least 10 days before the hearing.

(d) Proceedings. At the hearing, notice may be taken by the commission of its administrative files and records, and any other relevant evidence and arguments offered by the member, staff, employees of KCVA, or any other interested persons may be heard by the commission. The member may appear in person, through telephone, by an attorney, or any combination of these. If the member fails to attend, the decision may be made by the commission based upon its files and records and any other evidence that was presented at the hearing.

(e) Final decision. A written decision shall be filed by the commission with the executive director. The written decision shall set forth the facts and reasons for the commission’s decision. A copy of the decision shall be sent by the executive director to the member at the member’s last known address. The filed decision shall be considered the final agency action.

(f) Vacating premises. If the decision is adverse to the member, the member shall vacate the residence or cottage within 30 days of the date on which a copy of the commission’s decision was sent to the member. The member may ask the superintendent for an additional 14 days due to unusual and extenuating circumstances. As used in this subsection, “unusual and extenuating circumstances” shall mean any condition that is caused by an unexpected event that is beyond the member’s control and that is sufficiently extreme in nature to result in the inability or inadvisability to vacate the premises by the deadline specified. (Authorized by K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-1928, 76-1931, 76-1932, and 76-1955; effective May 1, 2009.)

**97-4-2. Criteria for memorials for veterans.** Each proposal for a capital improvement project shall specify a project representative, who shall consult with the director concerning the KCVA’s specific needs for memorials for veterans.

Each memorial shall meet the following requirements: (a) Each memorial shall be nondiscriminatory and nonpartisan.

(b) Each memorial shall be consistent with the architectural and historic plans and specifications of any existing facility at that location. No memorial shall be placed at the entrance to any facility.

(c) Each memorial shall be presented or displayed, or both, in accordance with these regulations.

(d) Each memorial shall be in keeping with the architectural theme of any existing facility at that location.

(e) No memorial shall interfere with the future expansion plans for any facility.

(f) Each design plan for a memorial shall designate the appropriate location, style, and size of the commemorative plaques that recognize donors. If the advisory committee determines that outside plaques are not appropriate, donations shall be recognized in a memorial book or on a memorial plaque located in the administrative building designed to recognize donors appropriately.

(g) Each memorial shall enhance awareness of veterans' sacrifices in the design. No memorial shall add any unfunded expense in upkeep of the memorial. (Authorized by and implementing K.S.A. 2005 Supp. 73-1233; effective Nov. 27, 2006.)

**97-4-3. Financing.** (a) The cost of each capital improvement project shall be totally financed with private monies. Each proposal for a capital improvement project shall include the costs of the following in the cost estimate:

- (1) The preparation of preliminary reports;
- (2) the preparation of plans and specifications;
- (3) the preparation and publication of notices of hearings, resolutions, ordinances, and other proceedings;

(4) necessary fees and expenses for consultants and any interest accrued on borrowed money during the period of construction;

(5) land, materials, labor, and other lawful expenses incurred in planning and completing any improvement; and

(6) ongoing maintenance and support.

(b)(1) Each advisory committee shall ensure that all funds raised for the construction of the capital improvement project, including funds necessary for ongoing maintenance, are deposited into the Kansas veterans memorial fund of the state treasury before the acceptance of bids or the start of construction.

(2) If, at any time before the start of construction, the commission determines that funds will not be available to complete the project, all funds shall be returned by the commission to their respective donors.

(3) Memorial funds shall not be used by the commission for any purpose other than the planning, administrative work, construction, and maintenance of the memorial for veterans designated by the donor. The final expense report shall be submitted by the director to the commission and to the advisory committee within 60 days of project completion. (Authorized by and implementing K.S.A. 2005 Supp. 73-1233; effective Nov. 27, 2006.)

**97-4-4. Proposals; use of names and references.** (a) Each project representative shall submit five copies of the proposal for a memorial for veterans to the director at least 10 days before the next scheduled commission meeting. The project representative shall be required to attend the commission meeting and to fully explain the proposal, including the location, purpose, cost estimate, design plans, and short-term and long-term funding sources. Each proposal accepted by the commission shall be assigned to an advisory committee for full review and development.

(b) Pursuant to K.S.A. 73-1233(d)(3) and amendments thereto, the project representative shall submit the form specified and provided by the KCVA to the director along with a written request before using any of the names and references specified in this statute. (Authorized by and implementing K.S.A. 2005 Supp. 73-1233; effective Nov. 27, 2006.)

**97-4-5. Fund-raising materials for proposed memorials.** All fund-raising materials for a proposed memorial shall be reviewed by the commission and shall include the following information: (a) The estimated cost of the project;

(b) the percentage of funds raised that can be used for administrative expenses;

(c) the date on which the project will be started; and

(d) the following statement: "If the project is not completed, all funds shall be returned to donors by the project representative, who shall make full restitution to donors less the administrative cost of returning the funds. This administrative cost of returning the funds shall not exceed the administrative cost outlined above." (Authorized

by and implementing K.S.A. 2005 Supp. 73-1233; effective Nov. 27, 2006.)

**97-4-6. Financial reporting.** (a) Each project representative shall, within 30 days after each of the quarters ending in March, June, September, and December of each year beginning when the project is approved and continuing until a project completion certificate is signed, submit to the commission a statement showing the total amount received into each fund for the approved project and the total amount expended from each fund for overhead, specifying all program expenses, administration expenses, and fund-raising expenses. Each quarterly statement for a project shall also include line items for key personnel salaries, expenses charged against the project, and the cash balances of each fund at the beginning and close of each quarter.

(b) Each quarterly statement shall become part of the official KCVA meeting minutes. (Authorized by and implementing K.S.A. 2005 Supp. 73-1233; effective Nov. 27, 2006.)

**97-4-7. Procedures for appointment of the advisory committee; dissolution of the advisory committee.** (a) When a project is accepted by the commission, an advisory committee shall be appointed by the commission during a scheduled commission meeting, to further develop and refine the project.

(b) The scope and cost of each capital improvement project shall dictate the size of the advisory committee. Each advisory committee shall consist of at least the following:

(1) One or more state legislators representing the area where the memorial for veterans will be located;

(2) the commissioner representing the area where the memorial for veterans will be located;

(3) the director or the superintendent responsible for the property where the memorial for veterans will be located; and

(4) the project representative.

(c) The advisory committee shall remain active until the project is completed and the final report is submitted to the commission. The advisory committee shall be dissolved within 30 days after the final report has been accepted by the commission. (Authorized by and implementing K.S.A. 2005 Supp. 73-1233; effective Nov. 27, 2006.)

**97-4-8. Procedures following advisory committee submission of a final project plan.** Within 30 days of the director's receipt of

a final project plan from an advisory committee, the following shall be submitted by the director to the secretary of administration for review: (a) The minutes from the commission meeting showing the commission's discussion and approval of the proposal;

(b) three copies of the proposal, including funding sources for the memorial, a financing budget for ongoing maintenance that includes the source of funds for maintaining the memorial, and the design plan and specifications. The design plan and specifications shall be required to be approved by the secretary of administration before submission to the joint committee on state building construction;

(c) the names of the advisory committee members; and

(d) a cover letter indicating the commission's approval of the project and a statement of assurance that the memorial meets the requirements of the KCVA. (Authorized by and implementing K.S.A. 2005 Supp. 73-1233; effective Nov. 27, 2006.)

## **Article 5.—FINANCIAL BENEFITS TO DEPENDENTS OF PRISONERS OF WAR, PERSONS MISSING IN ACTION, OR WHO DIED AS A RESULT OF INJURIES SUFFERED IN THE LINE OF DUTY**

**97-5-1. Application for benefits.** Persons interested in applying for benefits provided by this chapter shall initiate a formal application to the executive director, Kansas veterans' commission, 701 Jackson Street, Topeka, Kansas 66603. The application must be complete and documented to establish legal relationship between applicant and parent, formal military evidence to establish prisoner of war, missing in action, or line of duty death during Viet Nam conflict while serving in the U.S. armed forces in the geographical area of the Viet Nam conflict of applicants parents', the name and address of the school, the anticipated date of enrollment, and evidence that the school has agreed to accept the applicant as a student. (Authorized by K.S.A. 73-1216, K.S.A. 1976 Supp. 73-1217, 73-1218; effective, E-72-19, July 17, 1972; effective Jan. 1, 1973; amended Feb. 15, 1977.)

**97-5-2. Determinations of eligibility.** Determinations as to eligibility based on parents' residency at the time of entry into military service will be made by the Kansas veterans' commission based on all evidence available at the time of appli-

cation. Determinations of prisoner of war, missing in action, or line of duty death, or injury causing death while serving in the U.S. armed forces in the geographical area of the Viet Nam conflict, will be made by the Kansas veterans' commission based on all available evidence at the time of application.

Determinations of semester equivalency will be made by the Kansas veterans' commission based on all facts obtainable where an eligible dependent enrolls in any course not on a semester basis. (Authorized by K.S.A. 73-1216, K.S.A. 1976 Supp. 73-1217, 73-1218; effective, E-72-19, July 17, 1972; effective Jan. 1, 1973; amended Feb. 15, 1977.)

### **Article 6.—VETERANS CLAIMS ASSISTANCE PROGRAM AND THE SERVICE GRANT PROGRAM**

**97-6-1. Definitions.** As used in this article, unless the context clearly requires otherwise, the following terms shall have the meanings specified in this regulation: (a) "Accrediting" means certifying either of the following to act as an agent in or to have a power of attorney for the preparation, presentation, or prosecution of any claim under laws administered by the secretary of the United States department of veterans affairs (USDVA):

(1) Any individual who represents a congressionally chartered veterans service organization recognized by the secretary of the United States department of veterans affairs (USDVA); or

(2) any veterans service representative employed by the Kansas commission on veterans' affairs, which is recognized by the secretary of the United States department of veterans affairs (USDVA).

(b) "Claim" means any veterans claims management activity.

(c) "Claims program officer" means the employee of a VSO participating in the service grant program who is the primary point of contact for KCVA quality assurance staff and KCVA field office staff in veterans claims assistance matters.

(d) "Commission" and "KCVA" mean the Kansas commission on veterans' affairs.

(e) "Cross-accredit" means to accredit based on the status of a veterans service representative as an accredited and functioning veterans service representative of another veterans service organization.

(f) "Director" means the director of the veterans claims assistance program.

(g) "Executive director" means the executive director of the Kansas commission on veterans' affairs.

(h) "In-kind contribution" means any noncash input that can be given a cash value.

(i) "Interested party" means any of the following if authorized under applicable law to act or to receive information on behalf of a veteran or the veteran's spouse, dependents, or survivors:

(1) An individual;

(2) a judicial or other type of body; or

(3) a legally authorized representative.

(j) "Monetary support" means an in-kind contribution, a service, or cash.

(k) "One-stop service center" means a location where service grant program participants provide services to veterans and their spouses, dependents, and survivors, using a client-centered, one-stop approach that meets conditions that include the following:

(1) Individual needs are identified, and the best way to provide assistance is determined, internally or through the coordination of departmental and community resources.

(2) An advocacy partnership is established between the client, veterans service organization, and the KCVA to insure maximum participation in all aspects of case-planning decisions.

(3) The staff members work with veterans service organizations to meet the widest array of client needs and to determine each client's eligibility for departmental services and benefits.

(4) The uniform delivery of services and the improvement of benefits are paramount.

(l) "Power of attorney" and "POA" mean a legal document granting a veterans service organization (VSO) and the service officers accredited by that VSO the legal capacity to represent a veteran in matters with the USDVA.

(m) "State headquarters" means the permanent location within Kansas that serves as the administrative center of a chartered service organization.

(n) "USDVA" means the United States department of veterans affairs.

(o) "VARO" means United States department of veterans affairs regional office in Wichita, Kansas.

(p) "Veterans service organization" and "VSO" mean an organization whose representatives provide veterans and their spouses, dependents, and survivors with information, advice, and assistance regarding the availability and acquisition of veterans' benefits under laws administered by the USDVA and other agencies. The VSO also assists in the preparation of claims and represents the veterans and their spouses, dependents, and survivors during the appeals process, if this action is neces-

sary. A VSO is a congressionally chartered veterans service organization recognized or approved by the secretary of the USDVA for purposes of preparation, presentation, and prosecution of claims under laws administered by the USDVA. Synonyms for this term shall include “chartered service organization” and “participating veterans’ organization.”

(q) “Veterans service representative” and “VSR” mean a person who assists veterans in obtaining information, including military service history and medical records, necessary to obtain benefits from the USDVA. Synonyms for this term shall include “service representative,” “veterans service officer,” “service officer,” “SO,” “veterans service advocacy officer,” and “veterans claims consultant.” (Authorized by and implementing L. 2006, ch. 153, sec. 1; effective April 27, 2007.)

**97-6-2. Intent to participate; review.** (a) The KCVA forms necessary to establish intent to participate in the service grant program shall be sent by the KCVA, on or before July 10 each year, to each VSO located in the VARO. Each VSO wanting to participate in the service grant program shall submit its signed intent to participate forms on or before August 1 that year.

(b) The veterans claims assistance advisory board shall review each VSO’s submitted forms to determine that VSO’s eligibility pursuant to L. 2006, ch. 153 and amendments thereto. The board’s chairperson shall use the forms to develop the budget for the service grant program for the upcoming budget year. Upon approval of grant fund appropriations, the veterans claims assistance advisory board shall review the budget of each approved VSO. The veterans claims assistance advisory board shall recommend to the commission the distribution of grant funds based on the number of eligible recipients, the state appropriations, and each approved VSO’s budget, workload, and staffing. (Authorized by and implementing L. 2006, ch. 153, sec. 1; effective April 27, 2007.)

**97-6-4. VSO services, staff, training, and other support.** To retain accreditation, each VSR shall be required to be certified each year by the KCVA. To receive KCVA certification, each VSR shall attend annual training and successfully complete a written examination on all parties’ duties and responsibilities and on the types of assistance available to each veteran and the veteran’s spouse, dependents, and survivors. (a) All VSOs partici-

pating in the service grant program, in coordination with the director, shall develop an annual training program. Each KCVA VSR shall be required to attend annual training. Each VSR whose employer is participating in the service grant program shall attend training required by the VSOs participating in the service grant program or the annual KCVA training to retain accreditation by the VSO or KCVA, or both. This training shall include the following:

(1) Accreditation training for each individual who has been a VSR for less than 18 months, which shall include the following:

(A) An introduction to veteran advocacy designed to teach the basics of service-connected compensation, pensions, death benefits, and other USDVA programs;

(B) information about each of the USDVA programs;

(C) the necessary forms to be completed;

(D) subject matter relating to the development and submission of claims for pensions, compensation, and other veterans’ entitlements; and

(E) any other subject matter determined by the veterans claims advisory board as necessary for an individual who wishes to become an accredited representative as outlined in 38 U.S.C. 5902 and for any other individual wishing to improve that individual’s knowledge of the USDVA claims process;

(2) continuing education training for each individual who has been a VSR for at least 18 months or has completed the accreditation training. This continuing education shall include the following:

(A) A review of the accreditation training;

(B) claims adjudication;

(C) the appellate process and development of complicated claims; and

(D) any other subject matter determined by the veterans claims advisory board to meet the requirements of continuing education to maintain accreditation; and

(3) the training, responsibility, involvement, and preparation of claims training program (TRIP), which is a course of study devised by the USDVA to certify all accredited representatives in USDVA claims procedures.

(b) Each VSO participating in the service grant program shall require each VSR employed by the VSO to attend training provided by the employing VSO or the KCVA annual training, or both. Each VSO cross-accrediting VSRs shall honor the training provided by the hiring VSO.

(c) Each KCVA claims review staff member lo-

cated in the VARO shall be accredited as a veterans service representative and shall attend annual training provided by the KCVA or training provided by a VSO participating in the service grant program, or both. The expenses associated with the training provided to KCVA staff by VSOs shall be paid for by the KCVA.

(d) Each VSO shall ensure that each accredited veterans service representative within the organization has read and understands 38 CFR Part 14 as in effect on March 21, 2007, which is adopted by reference.

(e) Each VSO shall designate, in writing, one staff member of the VSO's state service director's office in the VARO to perform duties and functions as the VSO's claims program officer. (Authorized by and implementing K.S.A. 2006 Supp. 73-1234; effective April 27, 2007.)

#### **97-6-5. Claims processing requirements.**

Each VSO shall perform the following in processing each initial claim: (a) Receiving the claim form, which a veteran can submit to the veterans claims assistance program staff in person, through a KCVA field office, or through the mail;

(b) date-stamping the claim upon receipt;

(c) establishing the claim by entering basic information about the veteran and the claim into a computer system and setting up a claim file folder;

(d) checking the claim to ensure that all information needed as part of a claim for USDVA benefits is included and that all forms are completed as required;

(e) developing the claim by reviewing the claim file folder for military service and medical information, requesting and obtaining any missing information, and reviewing all pertinent information to determine eligibility;

(f) completing any additional claim improvement actions, as necessary; and

(g) submitting the claim to the VARO for processing. (Authorized by and implementing L. 2006, ch. 153, sec. 1; effective April 27, 2007.)

#### **97-6-6. Grant agreement requirements.**

The director shall ensure that each grant agreement developed for the service grant program meets the following requirements: (a) Incorporates or includes, as an attachment, the standard contractual terms and conditions prescribed by the secretary of administration;

(b) identifies the parties participating in the grant agreement;

(c) identifies the scope of activities that the VSO is required to perform or to assist in the performance of;

(d) outlines the permitted and required uses and types of disclosure of protected health information;

(e) identifies the claims program officer;

(f) provides for authority for veterans claims assistance staff to audit service grant program participants' records;

(g) outlines the period of performance under the grant agreement; and

(h) specifies the maximum amount of the grant award. (Authorized by and implementing L. 2006, ch. 153, sec. 1; effective April 27, 2007.)

#### **97-6-7. Responsibilities of parties to the grant agreements.**

Each party to a grant agreement shall promote the veterans claims assistance program and the service grant program by cooperatively developing outreach materials and working together. (a) Each party shall establish uniform program goals for all VSRs in support of the veterans claims assistance program. Each VSR shall accept any VSO designated in a POA by a veteran when submitting a claim. The VSR shall provide the veteran with a list of VSOs participating in the service grant program. If the veteran designates a nonparticipating VSO in the veteran's POA, the VSR shall notify the veteran in writing that the designated VSO does not participate in the veterans claims assistance program and shall inform the veteran of any limitations regarding the veteran's claim that could result.

Employees of the KCVA or service grant participant VSOs shall submit each claim through the office of the veterans claims assistance quality assurance program in the VARO.

(b) The director shall coordinate outreach efforts among participating VSOs to reach veterans in rural areas. Participating VSOs shall provide the director with an opportunity to participate in regional and state meetings to provide information on the operation of one-stop service centers.

(c) Each participating VSO shall perform the following:

(1) Meet the reporting requirements outlined in K.A.R. 97-6-9;

(2) separately account for the uses of grant funds;

(3) utilize forms and computer software for reporting service-related information to ensure that the information is accurate;

(4) accept all claims submitted by each veteran and the veteran's spouse, dependents, and survivors; and

(5) within 30 days of signing the grant agreement, submit all documentation necessary to cross-accredit VSRs. (Authorized by and implementing L. 2006, ch. 153, sec. 1; effective April 27, 2007.)

**97-6-8. Duration of grants; insurance requirements.** (a) Each grant shall be for one state fiscal year, starting July 1 and ending the following June 30. Grant payments shall be made monthly upon receipt of each approved invoice of expenditures and monthly traffic and monetary reports. The director shall review invoices based on the criteria outlined in L. 2006, ch. 153, sec. 1(d) and amendments thereto. If payment of an invoice is denied as an ineligible expenditure, the VSO may appeal the decision in writing to the commission, which may forward the appeal to the veterans claims assistance advisory board for a recommendation within the time specified by the chair of the commission. The recommendation of the veterans claims assistance advisory board shall be reviewed by the KCVA before the KCVA makes a final determination. Any unexpended funds shall be returned by the KCVA to the state of Kansas.

(b) Each VSO shall obtain and keep in force the following types of insurance coverage from any insurance company authorized to do business in Kansas, during the term of the grant contract:

(1) Commercial general liability insurance, including premises or operations coverage, contractual coverage, and, if applicable, products or completed operations coverage;

(2) professional liability insurance, which is also known as errors and omissions insurance, for errors or the failure of the insured to perform work as promised in a contract, with minimum liability limits of \$500,000 for each person and \$1,000,000 for each occurrence; and

(3) workers compensation coverage meeting all statutory requirements.

(c) Each VSO shall annually provide the director with a copy of that VSO's insurance policy or policies. (Authorized by and implementing L. 2006, ch. 153, sec. 1; effective April 27, 2007.)

**97-6-9. Format and frequency of reports.**

(a) On or before the tenth day of each month, each participating VSO shall submit the following to the director on forms provided by the director:

(1) The monthly traffic report, which shall contain the following information for the previous calendar month:

- (A) The number of contacts;
- (B) the number of pieces of correspondence;
- (C) the number of USDVA forms processed;
- (D) the number of non-USDVA forms processed;
- (E) the number of USDVA claims allowed;
- (F) the number of USDVA claims denied;
- (G) the number of USDVA board hearings; and
- (H) the number of appearances before a USDVA rating board;

(2) the monthly monetary report. This report shall contain the dollar amount of each award for which an award notice was received during the previous calendar month and the date the claim was submitted, the number of awards, the monthly compensation, and any back payments for claims allowed. This report shall also indicate the total annual compensation for each of the following types of award:

- (A) Non-service-connected pensions;
- (B) service-connected compensation;
- (C) death pensions;
- (D) dependency and indemnity compensation;
- (E) insurance compensation;
- (F) education compensation;
- (G) burial compensation;
- (H) accrued benefit compensation;
- (I) waivers approved;
- (J) awards as a result of notice of disagreement;
- (K) miscellaneous awards; and
- (L) confirmed and continued awards; and

(3) a review and verification findings report showing the following:

- (A) The specific rating decisions reviewed that month;
- (B) any corrective action required; and
- (C) the date on which any corrective action was implemented.

(b) The director shall review the reports submitted by each VSO and shall provide the following summary reports to the KCVA:

(1) A quarterly traffic and monetary report summary; and

(2) an annual traffic and monetary report summary. (Authorized by and implementing L. 2006, ch. 153, sec. 1; effective April 27, 2007.)

**97-6-10. Quality assurance.**

(a) A quality assurance program office in the VARO's one stop-service center, as specified in L. 2006, ch. 153, sec. 1(c) and amendments thereto, shall be established

by the KCVA. KCVA VSRs shall be appointed by the KCVA as quality assurance program staff, who shall review each claim for both of the following:

(1) Development of the claim. The staff shall ensure that all of the development required for each claim is completed. This development shall include notifying any claimant or representative from whom further information is needed and, if necessary, following up with any claimant or representative.

(2) Eligibility of the claimant. The staff shall review each claim for the claimant's eligibility for the benefit being sought, based on the following:

- (A) The claimant's military service record;
- (B) the character of the claimant's discharge;
- (C) any contributions made by the claimant to the veterans' benefit program, if applicable;
- (D) any qualifying disability, if applicable;
- (E) delimiting dates;
- (F) any requests for VA counseling;
- (G) any change in the veterans' benefit program; and
- (H) any processing limitations.

(b) The staff of the KCVA quality assurance program shall notify the following, in writing and as applicable, about the USDVA's claims decision or decisions:

- (1) The claimant;
- (2) any VSO designated in the claimant's POA;
- (3) a VSR in a designated field office; and
- (4) any other designee of the claimant. (Authorized by and implementing L. 2006, ch. 153, sec. 1; effective April 27, 2007.)

**97-6-11. Director's duties.** The director shall oversee the day-to-day operations of the veterans claims assistance program and the service grant program. The director shall report directly to the commission when acting as the chairperson of the veterans claims assistance advisory board, pursuant to L. 2006, ch. 153, sec. 2(a) and amendments thereto. The director's duties shall include the following: (a) Developing the budget for the veterans claims assistance program and the service grant program;

(b) collecting data and information about benefits and services and making the data and information available to veterans and their spouses, dependents, and survivors;

(c) working with and annually updating VSOs participating in the service grant program and receiving input for use by the KCVA and the legislature;

(d) reviewing invoices and requests for payment and ensuring that each VSO's requests for payment meet the statutory and regulatory requirements;

(e)(1) Collecting the annual audited financial statement from each VSO participating in the service grant program; and

(2) reviewing each statement;

(f) maintaining a record of each case handled by a VSR for the KCVA and the VSOs, which shall contain at least the following information:

(1) The name of the veteran;

(2) the claim or case number of the veteran; and

(3) the monthly benefit received by the veteran;

(g) ensuring that an adequate, trained staff is in place to provide support and information on federal and state benefits to veterans and their spouses, dependents, and survivors;

(h) increasing veterans' access to claims assistance through one-stop service centers to which veterans and their spouses, dependents, and survivors can turn for information and assistance;

(i) providing and maintaining the field offices necessary to serve the needs of veterans and their spouses, dependents, and survivors throughout the state. These offices shall provide services in cooperation with the one-stop service centers;

(j) preparing a report on the veterans claims assistance program and the service grant program and presenting the report to the legislature not later than January 31 each year; and

(k) calling a meeting of the veterans claims assistance advisory board at least quarterly. (Authorized by and implementing L. 2006, ch. 153, sec. 1; effective April 27, 2007)

#### **Article 7.—VIETNAM WAR ERA MEDALLION PROGRAM**

**97-7-1. Definitions.** As used in L. 2009, ch. 62, secs. 1 through 6 and amendments thereto and these regulations, each of the following terms shall have the meaning specified in this regulation: (a)(1) "Active service" and "active duty" shall include the following:

(A) For a member of an active component of the armed forces of the United States, the time served on active duty for which the member has received or is eligible to receive the Vietnam war era medallion for service related to the Vietnam war; and

(B) for a member of the armed forces of the United States, time served on active duty for the

support of operations in the Vietnam war whether or not that service was in the country of Vietnam.

(2) These terms shall include any time spent in a hospital as a result of service-connected wounds, diseases, or injuries sustained on active service. Proof of this service shall be the official military records of the United States or other evidence as deemed sufficient by the director of veteran services.

(3) These terms shall not include time served on active duty for annual training or schooling, except for training and schooling in preparation for active duty in the Vietnam war.

(b) "Director of veteran services" means the designated director of the veteran services program for the Kansas commission on veterans' affairs, who is appointed by the executive director of the Kansas commission on veterans' affairs.

(c) "Parent" shall include the following:

(1) The natural or adoptive parent of a veteran; and

(2) any person who, for a period of at least one year, acted in the capacity of a foster parent to a veteran immediately before the veteran attained 18 years of age.

(d) "Program" means the Vietnam war era medallion program.

(e) "Spouse or eldest living survivor of a deceased veteran" means any of those individuals listed in K.A.R. 97-7-4. (Authorized by and implementing L. 2009, ch. 62, sec. 2; effective March 12, 2010.)

**97-7-2. Veteran status.** (a) To be considered a veteran for purposes of the program, each applicant shall establish both of the following to the satisfaction of the director of veteran services:

(1) The person for whom the application under the program is submitted is a veteran.

(2) The person for whom the application under the program is submitted meets the requirements specified in L. 2009, ch. 62, sec. 1, and amendments thereto.

(b) In addition to meeting the requirements in subsection (a), the applicant shall certify that the person for whom the application under the program is submitted meets both of the following requirements:

(1) Was not, at any time during the Vietnam war, separated from the armed forces under other than honorable conditions, including a bad conduct discharge or dishonorable discharge, or an administrative discharge under other than honorable conditions; and

(2) has never renounced United States citizenship. (Authorized by L. 2009, ch. 62, sec. 2; implementing L. 2009, ch. 62, sec. 1 and sec. 2; effective March 12, 2010.)

**97-7-3. Legal resident status.** (a) Proof of residence. In addition to establishing the veteran status of the person for whom an application under the program is submitted as specified in K.A.R. 97-7-2, the applicant shall establish to the satisfaction of the director of veteran services that the person was a legal resident of Kansas during the person's active service within the period beginning February 28, 1961 and ending May 7, 1975. The proof of residence shall be the official records of the United States or other evidence deemed sufficient by the director of veteran services.

A legal resident of Kansas shall mean an individual for whom Kansas was the state of domicile while serving in the United States armed forces or a reserve component of the United States armed forces within the period specified in this subsection and who did not claim legal residence in any other state during that period of active service, without regard to the place of enlistment, commission, or induction. A service member's legal residence shall not change by virtue of military assignment to another state.

(b) Home of record in Kansas shown in official military records. Each veteran whose home of record is listed as Kansas in official military records showing qualifying active service within the period beginning February 28, 1961 and ending May 7, 1975 shall be considered a legal resident without regard to the veteran's place of enlistment, commission, or induction.

(c) Home of record in Kansas not shown in official military records. In making a determination of legal residence if official military records do not show Kansas as the veteran's home of record for the period of active service, the director of veteran services shall apply a rebuttable presumption that the veteran was not a legal resident of Kansas. The applicant may rebut this presumption by showing facts and circumstances establishing that Kansas was the veteran's legal residence because Kansas was the veteran's permanent place of abode to which the veteran intended to return.

(d) Documentation. If an applicant is unable to document the veteran's legal residence in Kansas by means of official military records showing a home of record in Kansas during the period of active service, the director of veteran services may

consider the following documentation when determining whether sufficient evidence exists to show that the veteran was a legal resident of Kansas who did not claim legal residence in any other state at that time:

(1) Voter registration records for the period beginning February 28, 1961 and ending May 7, 1975;

(2) proof of payment of state income tax as a resident for the period beginning February 28, 1961 and ending May 7, 1975;

(3) (A) Kansas driver's license or Kansas identification card; and

(B) any similar documentation for the period beginning February 28, 1961 and ending May 7, 1975;

(4) other proof of a Kansas residential address for the period beginning February 28, 1961 and ending May 7, 1975, including a high school diploma or attendance record for a Kansas high school, real estate records, utility receipts, and any other records showing residence in Kansas; and

(5) an affidavit of residence submitted by the applicant under penalty of law in which the applicant swears or affirms that the veteran on whose behalf the application under the program is submitted remained a legal resident of Kansas and did not claim legal residence in any other state for any purpose during the period of active service occurring within the period beginning February 28, 1961 and ending May 7, 1975. (Authorized by L. 2009, ch. 62, sec. 2; implementing L. 2009, ch. 62, sec. 1 and sec. 2; effective March 12, 2010.)

**97-7-4. Applicants on behalf of deceased veterans.** (a) The following individuals shall be eligible to apply under the program on behalf of eligible deceased veterans. Eligible deceased veterans shall include eligible veterans who died in performance of active service or as a result of service-connected wounds, diseases, or injuries and veterans who would, but for their death before submission of an application, be eligible to apply under the program based on active service. Applicants shall be considered in the following order:

(1) The surviving spouse of the eligible veteran, unless the surviving spouse was living separate and apart from the veteran when the veteran commenced active service. The proof of spousal status required shall be the same as the proof that would be accepted by the United States department of veterans affairs. The surviving spouse shall certi-

fy that the individual was not living separate and apart from the eligible veteran when the veteran commenced active service. If a surviving spouse qualifies under the program, the Vietnam war era medallion, medal, and certificate of appreciation shall be awarded to the surviving spouse at the time of the veteran's death;

(2) survivor, which shall mean the eldest surviving child of the eligible veteran if there is no eligible surviving spouse. The eldest surviving child shall certify that there is no eligible surviving spouse, as part of the application; and

(3) the surviving parents of the eligible veteran, if there are no eligible surviving spouse and no eligible surviving children. The surviving parents shall certify that there are no eligible surviving spouse and no eligible surviving children, as part of the application.

(b) If the eligibility of a surviving spouse, surviving child, or surviving parents is disputed, the director of veteran services shall defer awarding the Vietnam war era medallion, medal, and certificate of appreciation until the parties resolve the dispute or a court of competent jurisdiction issues an order making a determination on the issue. (Authorized by L. 2009, ch. 62, sec. 2; implementing L. 2009, ch. 62, secs. 3, 4, and 5; effective March 12, 2010.)

**97-7-5. Application procedures.** (a) Forms. Each application for benefits under the program shall be submitted on a form provided by the Kansas commission on veterans' affairs.

(b) Submission. Each application shall be submitted to the address designated by the Kansas commission on veterans' affairs on the application form.

(c) Additional documentation. Each application shall be accompanied by the required number of copies, as stated on the application, of supporting documentation from official military records of the United States armed forces or its reserve components, including DD form 214 or similar documentation showing periods of active service, and documentation of the veteran's home of record. If the application is submitted on behalf of a deceased veteran, a copy of the death certificate shall be attached.

(d) Review of applications. The director of veteran services shall conduct a review of each application for completeness. If the application is deemed complete, the director shall review the application to determine eligibility.

(e) Incomplete applications. Each incomplete

application shall be returned to the applicant. (Authorized by L. 2009, ch. 62, sec. 2, and implementing L. 2009, ch. 62, sec. 2 and sec. 5; effective March 12, 2010.)

**97-7-6. Reconsideration of denied applications.** Any applicant who is dissatisfied with the disposition of the application may ask the Kansas commission on veterans' affairs to reconsider the disposition. Each request for reconsideration shall meet the following requirements: (a) Be submit-

ted within 30 days of receipt of the initial disposition of the application;

(b) be in the form of a letter or memorandum;

(c) state why the applicant is dissatisfied with the disposition; and

(d) state the reasons, including facts and circumstances, the applicant believes the disposition should be altered. (Authorized by L. 2009, ch. 62, sec. 2; implementing L. 2009, ch. 62, sec. 5; effective March 12, 2010.)



# Agency 98

## Kansas Water Office

### Articles

- 98-1. DEFINITIONS.
- 98-2. PUBLIC HEARINGS ON THE STATE WATER PLAN.
- 98-3. *PUBLIC HEARINGS ON STATE WATER PLAN; PROPOSED CONTRACTING PROCEDURES. (Not in active use.)*
- 98-4. WEATHER MODIFICATION.
- 98-5. STATE WATER PLAN STORAGE.
- 98-6. WATER ASSURANCE PROGRAM.
- 98-7. LOWER SMOKY HILL WATER SUPPLY ACCESS PROGRAM.
- 98-8. EASEMENT AUTHORITY ON NAVIGABLE RIVERS.

### Article 1.—DEFINITIONS

**98-1-1. Definitions.** The following definitions shall apply to all regulations of the Kansas water office: (a) “Assignment” means either of the following:

(1) The transfer of any right under a water purchase contract to a third person; or

(2) the transfer to a third person of any of the duties and obligations owed by a water contract holder to the state.

(b) “Authority” means Kansas water authority.

(c) “Conservation storage water supply capacity” means the space in a reservoir that meets the following requirements:

(1) Has been purchased, contracted for purchase, or otherwise acquired by the state; and

(2) has been designated for the storage of water for any beneficial purpose or for sediment accumulation purposes in proportion to the amount of storage purchased, contracted for purchase, or otherwise acquired by the state.

(d) “Cooperating landowner” means a person requesting that the office issue an easement along a navigable river for purposes authorized in K.S.A. 2012 Supp. 82a-220, and amendments thereto.

(e) “Days” has the meaning specified in K.S.A. 60-206(a), and amendments thereto.

(f) “Designated representative” means any person designated to perform on another’s behalf.

(g) “Director” means director of the Kansas water office or the director’s designee.

(h) “Discharge” means the volume of water per unit of time passing a specific cross section of a river.

(i) “Drought having a two percent chance of occurrence in any one year” means a drought hav-

ing a statistical chance of occurring once every 50 years, on the average, using all available statistics and information.

(j) “Industrial use” means any use of water primarily for the production of goods, food, or fiber or for providing utility services. This term shall include any incidental uses.

(k) “Irrigation use” means the use of water for growing agricultural crops, watering gardens, orchards, and lawns exceeding two acres in area and for watering golf courses, parks, cemeteries, athletic fields, racetrack grounds, and similar facilities.

(l) “Municipal use” means the use of water that meets the following conditions:

(1) Is obtained from a common water supply source by a municipality, rural water district, other water supply district, or group of householders;

(2) is delivered through a common distribution system; and

(3) is for domestic, commercial, trade, industrial, and any other related incidental uses for any beneficial purposes.

(m) “Natural flow” means that portion of the flow in a natural stream that consists of precipitation on the stream and reservoir water surface, direct runoff from precipitation on the land surface, groundwater infiltration to the stream, and return flows to the natural stream from municipal uses, agricultural uses, or other uses, unless otherwise defined in an operations agreement.

(n) “Office” means Kansas water office.

(o) “Operations agreement” means a document agreed to by the director and either a water assurance district or water supply access district, describing the terms by which the coordinated system of reservoir operations is to be managed.

(p) “Participant” means a person seeking an easement on state property along a navigable river in the state for a conservation project, as defined in K.S.A. 2012 Supp. 82a-220 and amendments thereto.

(q) “Person” means any natural person, private corporation, government unit, municipality, or public corporation.

(r) “Program agency” means any state, federal, or local agency that provides oversight, services, funding, or other support for a project or group of projects for which a landowner seeks an easement on state property along a navigable river, pursuant to K.S.A. 2012 Supp. 82a-220 and amendments thereto.

(s) “Recreational use” means the use of water for activities including fishing, swimming, boating, and hunting or for entertainment, enjoyment, relaxation, and fish and wildlife benefits.

(t) “Reservoir” means a lake or other impoundment in which water is stored.

(u) “Reservoir yield” means the quantity of water that can be withdrawn from the conservation storage water supply capacity of a reservoir during a drought having a two percent chance of occurrence in any one year, as determined through the procedure specified in K.A.R. 98-5-9.

(v) “Target flow” means the discharge at specific points along a river designated within an operations agreement.

(w) “Water supply access contract” and “water assurance contract” mean a contract to provide for the development of a coordinated system of reservoir operations designed to supplement natural flows, in order to meet demands of eligible water right holders during low-flow periods, by release of water supply from state-owned or state-controlled conservation storage water supply capacity of the major reservoirs in the designated basin.

(x) “Water assurance district” means an organization of eligible water right holders established under K.S.A. 82a-1330 et seq., and amendments thereto.

(y) “Water purchase contract” means a contract for the sale of water from the conservation storage water supply capacity of a reservoir made pursuant to the state water plan storage act, K.S.A. 82a-1301 et seq. and amendments thereto.

(z) “Water reservation right” means the state’s right to divert and store waters of all streams flowing into the conservation storage water supply capacity of a reservoir. The water reservation right shall be sufficient to ensure the yield of wa-

ter throughout a drought having a two percent chance of occurrence in any one year.

(aa) “Water supply access district” means an organization of eligible water right holders established under K.S.A. 2012 Supp. 82a-2309, and amendments thereto.

(bb) “Year” means a 12-month period beginning with a specified month and day.

(cc) “Yield” means the quantity of water that can be withdrawn from storage in a reservoir for a given period of time. (Authorized by and implementing K.S.A. 2012 Supp. 82a-220, K.S.A. 82a-923, K.S.A. 82a-1319, K.S.A. 82a-1345, K.S.A. 82a-1403, K.S.A. 2012 Supp. 82a-2324; effective Jan. 1, 1966; amended Aug. 30, 2013.)

**98-1-2.** (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966; revoked Aug. 30, 2013.)

## **Article 2.—PUBLIC HEARINGS ON THE STATE WATER PLAN**

**98-2-1. Notice.** (a) Notice of public hearings on the state water plan or any section of the plan shall be given by the authority to those agencies and persons, both public and private, specified in K.S.A. 82a-905, and amendments thereto. The authority shall give notice of these hearings to any other individuals and organizations that the authority deems to have an interest in the subject of that portion of the state water plan.

(b) Notice of any hearing shall be published in the Kansas register at least twice. The first publication shall be no earlier than two months before the first public hearing. In addition to the official notice of public hearings, the authority may issue press releases and post information on the office webpage. (Authorized by K.S.A. 82a-923; implementing 82a-905; effective Jan. 1, 1966; amended Aug. 30, 2013.)

**98-2-2. Conduct of hearing.** (a) The chairperson of the authority or a member of the authority designated by the chairperson shall preside at each public hearing on the state water plan.

(b) The authority shall request those persons desiring to appear at any public hearing on the state water plan to notify the authority at least five days before the date of the hearing. Those persons who have notified the authority in advance of the hearing of their desire to be heard shall be scheduled to be heard first at any hearing. Any person who has not notified the authority may be heard if the time schedule for the hearing permits. Each

person who desires to have a statement made a part of the public record of any hearing on the state water plan shall submit two copies of the statement to the authority. An oral summary of the statement may be presented at the hearing.

(c) The chairperson, members of the authority, and members of the staff of the office may question any person who presents a statement.

(d) The person presiding at any hearing on the state water plan may set time limits on oral presentations and may establish other procedures as appropriate. Hearing procedures shall be announced at the beginning of each hearing.

(e) Any person who is unable to appear at a scheduled hearing may submit a written statement to the office. Statements submitted when the hearing record is open shall be made a part of the public record of the hearing. The hearing record shall remain open for at least 10 days following the hearing. (Authorized by K.S.A. 82a-923; implementing K.S.A. 82a-905; effective Jan. 1, 1966; amended Aug. 30, 2013.)

**98-2-3 through 98-2-20.** (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966; revoked Aug. 30, 2013.)

### Article 3.—PUBLIC HEARINGS ON STATE WATER PLAN; PROPOSED CONTRACTING PROCEDURES

**98-3-1.** (Authorized by K.S.A. 82a-917, 82a-923; effective, E-73-6, Dec. 8, 1972; effective Jan. 1, 1974; revoked May 1, 1984.)

**98-3-2 and 98-3-3.** (Authorized by K.S.A. 82a-923; effective, E-73-6, Dec. 8, 1972; effective Jan. 1, 1974; revoked May 1, 1984.)

### Article 4.—WEATHER MODIFICATION

**98-4-1. Licenses.** (a) No person may engage in any weather modification activity within the state of Kansas without a valid license issued under this regulation and a permit issued under K.A.R. 98-4-2. "Weather modification activity" shall mean any activity, operation, or experimental process that has as its objective inducing change, by artificial means, in the composition, behavior, or dynamics of the atmosphere.

(b) In order to obtain a license under the Kansas weather modification act, the applicant shall demonstrate that the applicant is qualified to conduct a weather modification project of the kind

the applicant wishes to conduct in Kansas by the applicant's knowledge of meteorology and cloud physics and that individual's field experience in weather modification. The applicant shall meet the following requirements, in addition to meeting the requirements in subsection (c):

(1) Submit an application for a license to the authority on forms provided by the director. Forms may be requested from the office and may be posted on the office web site. Forms shall be submitted at least 60 days before the start of the proposed operational period and the next authority meeting for consideration; and

(2) pay the \$100.00 license fee, unless that fee is waived by the authority because of the educational or experimental nature of the work proposed. The candidate for exemption shall file a request with the director indicating that the educational or experimental nature of the work merits exemption from fees.

(c) The license applicant shall meet one of the following professional or educational requirements:

(1) Have eight years of professional experience in weather modification or field research activities and at least three years of experience as a project director;

(2) hold a baccalaureate degree in an applicable discipline, as determined by the director, and have three seasons of experience in the application of those studies to weather modification activities; or

(3) hold a baccalaureate degree that includes 25 hours of meteorological studies and have two seasons of practical experience in weather modification research or activities.

(d) Each license shall expire at the end of the calendar year for which it is issued.

(e) Weather modification licenses may be renewed annually, effective January 1 each year. Renewal shall be granted if both of the following conditions are met:

(1) Receipt by the director of a request for renewal from the license holder no later than November 30; and

(2) receipt by the director of the \$100 annual license fee, unless this fee is waived pursuant to paragraph (b)(2). (Authorized by K.S.A. 82a-1403; implementing K.S.A. 2012 Supp. 82a-1405, K.S.A. 82a-1406, and K.S.A. 82a-1407; effective, E-74-39, July 26, 1974; effective May 1, 1976; amended Aug. 30, 2013.)

**98-4-2. Permits.** (a) A weather modification permit, which is a document issued by the direc-

tor authorizing weather modification activity in Kansas, shall be required annually, on a calendar-year basis, for each weather modification project. If a weather modification project will extend over more than one calendar year, a permit may be extended on a year-to-year basis upon payment of the annual fee, a review by the director, and the publication of a notice of intent to continue the operation. A public hearing on any renewal may be held by the director. A permit shall not be assigned or transferred by the permit holder.

(b) Each permit application shall be submitted at least 60 days before the initial date of the proposed operational period for which the permit is sought. Each permit applicant shall also provide the application at least 30 days before an applicable authority meeting to ensure timely consideration.

(c) Each applicant for a permit to conduct weather modification activities in Kansas shall meet the following requirements:

(1) Submit to the director a completed application for permit on a form provided by the director. Forms may be posted on the office web site;

(2) pay the \$100.00 permit fee, if applicable;

(3) present evidence that the applicant is, or has in its employ, a license holder;

(4) demonstrate proof of ability to meet the liability requirements of section 1411 (4) of the Kansas weather modification act. This proof may be provided in the form of an insurance policy written by a company authorized to do business in Kansas or by a statement of individual worth, including a profit-and-loss statement, that is accepted by the director;

(5) submit a complete and satisfactory operational plan for the proposed weather modification project that includes the following:

(A) A map of the proposed operating area specifying the primary target area and showing the area reasonably expected to be affected. "Primary target area" shall mean the area within which the weather modification activity is intended to have an effect;

(B) the name and address of the license holder specified in paragraph (c)(3);

(C) the nature and object of the intended weather modification activities;

(D) the meteorological criteria to be used to initiate or suspend modification activities;

(E) the person or organization on whose behalf the project is to be conducted;

(F) a statement showing any expected effect upon the environment; and

(G) the methods that will be used in determining and evaluating the proposed weather modification project;

(6) at least seven days before any required public hearing, publish a "notice of intent" to engage in weather modification activities in each county of which all or part could be within the primary target area or within the areas reasonably expected to be affected. The time and place of the public hearing shall be approved by the director. The notice of intent shall include notice published in a newspaper or newspapers of general circulation in the area. The notice shall meet the following requirements:

(A) Describe the primary target area;

(B) describe the area that might reasonably be affected;

(C) specify the period of operation, including starting and ending dates. Operational periods shall not be required to be continuous;

(D) describe the general method of operation;

(E) describe the intended effect of the operation;

(F) state the time and place of a public hearing on the application. The hearing shall be held in or near the primary target area; and

(G) state that complete details of the application for a permit will be available for examination in the office of the authority in Topeka and at a location within the project area as described in the public hearing notice;

(7) provide satisfactory evidence of publication of the notice of intent to the director before the public hearing; and

(8) provide any other relevant information as may be required by the director.

(d) At the discretion of the director, additional information may be required of the applicant. This additional information may include a comprehensive environmental impact analysis similar to the statements required for federal projects.

(e) Each permit issued for a weather modification activity shall be subject to revision, suspension, or modification of its terms and conditions by the director, if necessary to protect the health, safety, or property of any person or to protect the environment.

(f) In order to modify the boundaries of a project for which a permit has previously been obtained, a revised permit shall be required, with conditions similar to those under which the original permit was issued or as modified by the director. (Authorized by K.S.A. 82a-1403; implementing K.S.A. 82a-1406, K.S.A. 82a-1411, K.S.A. 82a-1415; ef-

fective, E-74-39, July 26, 1974; effective May 1, 1976; amended Aug. 30, 2013.)

**98-4-3. Evaluation of permit application.**

(a) Each permit application shall be evaluated based on the following considerations:

(1) The project can reasonably be expected to benefit the residents of the primary target area or an important segment of the state's population.

(2) The testimony and information presented at the public hearing are generally favorable to the proposed activity.

(3) Economic, social, or research benefits are expected.

(4) The applicant has provided adequate safeguards against potentially hazardous effects to health, property, or the environment and has outlined a program for the implementation of these safeguards.

(5) The proposed project will not have any detrimental effect on previously authorized weather modification projects.

(6) The proposed project is scientifically and technically feasible.

(7) If the application is for a scientific research and development project, it offers promise of expanding the knowledge and technology of weather modification.

(b) Each permitted project shall be under the personal direction, on a day-to-day basis, of an individual who holds a valid license issued under the Kansas weather modification act.

(c) The permit holder shall not conduct activities outside the limits stated in the operational plan specified in K.A.R. 98-4-2. All activities planned for periods of severe weather shall be listed in the permit application and identified at the public hearing. (Authorized by K.S.A. 82a-1403; implementing K.S.A. 82a-1406, K.S.A. 82a-1411, and K.S.A. 82a-1412; effective, E-74-39, July 26, 1974; effective May 1, 1976; amended Aug. 30, 2013.)

**98-4-4. Reports.** (a) Each permit holder shall maintain at that individual's project office a current log of all operations, which shall mean a log that has up-to-date information from the past 24 hours. This log shall be available for inspection by any person authorized by the director. The log shall include information at least equivalent to information required on the log forms available from the office.

(b) Each permit holder shall submit a monthly report of weather modification activities under

the permit for each calendar month for which the permit is valid. Each monthly report shall be submitted no later than the close of business on the 15th day of the following month. One copy of all entries made in the weather modification logs shall be included when making the monthly reports, unless more detailed information is required when the permit is granted by the director.

(c) Each permit holder shall submit a preliminary annual report within 30 days after the end of each calendar year or within 30 days after the end of the project, whichever comes first. The permit holder shall also submit a final annual report on the project within 90 days after the end of the project. These reports shall include the following:

(1) Monthly and project period totals for information required in the logs; and

(2) the permit holder's interpretation of project effects as compared to those anticipated in the original application for the permit. (Authorized by K.S.A. 82a-1403; implementing K.S.A. 82a-1417; effective, E-74-39, July 26, 1974; effective May 1, 1976; amended Aug. 30, 2013.)

**98-4-5. Procedure for granting emergency permits.**

(a) A permit may be granted on an emergency basis if evidence is presented to the director that clearly identifies the situation as an emergency. "Emergency" shall mean an unusual condition that could not have reasonably been expected or foreseen and in which it can be anticipated that damage can be avoided or reduced by prompt weather modification action.

(b) Upon the applicant's presentation of evidence satisfactory to the director that an emergency exists or could reasonably be expected to exist in the very near future that could be alleviated or overcome by weather modification activities, an emergency permit may be issued by the director to an individual holding a license issued under K.S.A. 82a-1401 et seq., and amendments thereto. Coincident with the issuance of the permit, the information contained in the permit shall be released by the director to the news media in the area intended to be affected.

(c) If the permit holder desires to continue the permit activities and the director grants an emergency permit, a date for the public hearing shall be set by the director within 10 days after the permit is granted. The permit holder shall be responsible for providing public notice of the hearing through the local news media in the area. At the

public hearing, the permit holder shall describe the following:

- (1) The objectives of the emergency action;
- (2) the success to date; and
- (3) any future plans under the permit.

On the basis of the information presented at the public hearing, the decision of whether to revoke the emergency permit, modify it, or allow continued operation under conditions specified by the director shall be made by the director. (Authorized by K.S.A. 82a-1403; implementing K.S.A. 82a-1414; effective, E-74-39, July 26, 1974; effective May 1, 1976; amended Aug. 30, 2013.)

**98-4-6.** (Authorized by K.S.A. 1975 Supp. 82a-1403; effective, E-74-39, July 26, 1974; effective May 1, 1976; revoked Aug. 30, 2013.)

**98-4-7.** (Authorized by K.S.A. 1975 Supp. 82a-1403; effective May 1, 1976; revoked Aug. 30, 2013.)

**98-4-8. Field operations.** As provided in K.A.R. 98-4-3 (b), the license holder or a substitute license holder approved by the director shall be on duty at the license holder's project site at all times while weather modification activities are being carried out. (Authorized by K.S.A. 82a-1403; implementing K.S.A. 82a-1412; effective May 1, 1976; amended Aug. 30, 2013.)

**98-4-9.** (Authorized by K.S.A. 1975 Supp. 82a-1403; effective May 1, 1976; revoked Aug. 30, 2013.)

**98-4-10.** (Authorized by K.S.A. 1975 Supp. 82a-1403; effective May 1, 1976; revoked Aug. 30, 2013.)

## Article 5.—STATE WATER PLAN STORAGE

**98-5-1.** (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1305; effective May 1, 1979; amended May 1, 1980; amended May 1, 1984; amended Nov. 22, 1996; revoked Aug. 30, 2013.)

**98-5-2. Applications.** (a) Each application to enter into a water purchase contract shall be submitted in writing on forms prescribed by the director and shall be signed by the person making the application or the person's chief officer or designated representative. The application shall be filed with the director.

(b) Each application shall include the following information:

- (1) The name and address of the applicant;
- (2) the reservoir from which the applicant proposes to withdraw water;
- (3) the peak daily rate at which the applicant proposes to withdraw water and the total annual quantity to be withdrawn;
- (4) the uses proposed to be made of waters withdrawn; and
- (5) the estimated date of first withdrawal of water.

(c) Each application shall be reviewed by the director or designee for compliance with statutory and regulatory requirements and for completeness.

(d) Each application that is complete and meets statutory and regulatory requirements shall be assigned an application number. Application numbers shall be assigned in chronological order according to the date and time of receipt of each application. The applicant shall be notified of the receipt of and the application number assigned to the application. Notice may be provided through any means, including electronic mail or first-class mail, to the applicant.

(e) Each application that is not complete or does not meet statutory or regulatory requirements shall be returned to the applicant for further information or resubmission in order to meet the statutory and regulatory requirements. No application number shall be assigned to incomplete or nonconforming applications.

(f) When an application to enter into a water purchase contract is accepted by the director, notice of the acceptance shall be provided to other applicants for withdrawal of water from the same reservoir and each water assurance district or water supply access district with a water assurance contract relating to the same reservoir at the last known address of each applicant or water assurance district. The notice shall specify the name of the applicant whose application has just been accepted and the annual quantity of water included in the application. Notice shall be provided by first-class mail, postage prepaid, to the last address on file for the applicant.

(g) If a water purchase contract has not been executed before 10 years from the date of the receipt of the application and if the applicant has not requested an extension of time for the application, the application shall be cancelled, according to subsection (h).

(h) Before cancellation of an application, the applicant shall be notified by the director in writ-

ing that the application shall be cancelled 30 days after date of the notice unless the applicant submits to the director a written request for an extension of time for the application. The notice shall be sent by first-class mail, postage prepaid, to the applicant's last known address. Notice may also be provided by electronic mail. The application shall be cancelled if a written request to extend the application is not received within 30 days from date of the notice.

(i) Ten years from the date of the receipt of the application, the applicant may request, in writing, that the application be extended for no more than three years. The extension shall be granted, unless the application is found to be incomplete or not in compliance with statutory or regulatory requirements.

(j) Any part of the application, except the reservoir from which the applicant proposes to withdraw water, may be amended at any time. Each applicant wanting to change the reservoir from which the applicant proposes to withdraw water shall file a new application. The new application shall be assigned a date and application number as provided in subsection (e). (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1310a, K.S.A. 82a-1311a; effective May 1, 1979; amended May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended May 1, 1987; amended April 26, 1993; amended Aug. 30, 2013.)

**98-5-3. Request to negotiate.** (a) When an applicant is ready to enter into a water purchase contract, the applicant shall provide written notice of the applicant's desire to enter into negotiations for a contract with the director.

(b) Any applicant may be required by the director to provide information in addition to that included in the application required in K.A.R. 98-5-2(b). This information shall be for the purpose of determining the following:

- (1) What is the annual quantity of water needed;
- (2) whether the proposed sale of water supply is in the public interest; and
- (3) whether the benefits to the state from approval of the contract are greater than the disadvantages to the state from rejection of the contract.

(c) When the director believes that there is sufficient information available to determine whether the proposed sale is in the interest of the people of Kansas and will advance the purposes specified in K.S.A. 82a-901 et seq. and amendments thereto, the authority shall be notified by the director

indicating that a request to enter into negotiations for a written contract has been received.

(d) The authority shall be provided by the director with the information collected or developed to show that the proposed sale is in the interest of the people of Kansas and will advance the purposes specified in K.S.A. 82a-901 et seq., and amendments thereto.

(e) The authority shall consider the request to begin negotiations for a written contract and make a finding of one of the following:

(1) The proposed sale is in the public interest and will advance the purposes specified in K.S.A. 82a-901 et seq., and amendments thereto.

(2) The proposed sale is not in the public interest and will not advance the purposes specified in K.S.A. 82a-901 et seq., and amendments thereto.

(f) If the authority finds that the proposed sale is not in the public interest or will not advance the purposes specified in K.S.A. 82a-901 et seq. and amendments thereto, the authority shall do one of the following:

(1) Reject the request to begin negotiations and advise the applicant of the reasons; or

(2) ask the applicant or the director to provide additional information that would permit the authority to find that the proposed sale is in the public interest and will advance the purposes specified in K.S.A. 82a-901 et seq., and amendments thereto.

(g) If the authority finds that the proposed sale is in the public interest and will advance the purposes specified in K.S.A. 82a-901 et seq. and amendments thereto, the authority shall authorize the director to negotiate with the applicant for the purposes of entering into a written contract for sale of water supply.

The authorization to negotiate shall be valid for a period not to exceed three years. If the parties have not concluded a contract within that period, the authority shall reconsider authorizing contract negotiations. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1305 and K.S.A. 82a-1311a; effective May 1, 1979; amended May 1, 1980; amended, E-82-7, April 10, 1981; amended May 1, 1981; amended May 1, 1984; amended May 1, 1987; amended April 26, 1993; amended Aug. 30, 2013.)

**98-5-4. Contract negotiation procedures.**

(a) Upon approval of the authority to begin negotiations, the applicant shall be notified by the director and asked to submit the following items

before the commencement of negotiations, unless the requirement is waived:

(1) The anticipated location, legal description, engineering plans, and specifications of all works, ditches, conduits, and watercourses proposed to be constructed or used for the transportation of waters;

(2) the engineering report or other evidence to support the need for the annual quantity of water requested throughout the term of the contract;

(3) a list of alternative sources of water available to the applicant;

(4) specification of whether the applicant has adopted and implemented a water conservation plan;

(5) an engineering report and specifications for metering water pumped or used under the contract;

(6) proof of any easement that is granted by the federal government for rights-of-way across, in, and upon federal government land that is required for intake, transmission of water, and necessary appurtenances;

(7) engineering plans and specifications for any pump, siphon, conduit, canal, or any other device planned to be used to withdraw water from the reservoir; and

(8) any other relevant information that the director may deem necessary, specify, or require for that specific contract request or set of negotiations.

(b) After negotiations for a water purchase contract have been authorized by the authority and if the proposed sale is not for surplus waters, all other persons with a pending application shall be notified by the director or a designee that a water purchase contract or a request to negotiate a water purchase contract relating to the same reservoir has been authorized by the authority. Notice shall be given, by first-class mail with postage prepaid, to the last address provided by each applicant. The notice shall include the name of the applicant with whom negotiations are underway and the application date, number, and annual quantity requested. Each person so notified shall, within 20 days following notification by the director, file in writing a request to begin negotiations for a written water purchase contract, water assurance contract, or water supply access contract or a request to negotiate a water purchase contract, water assurance contract, or water supply access contract on file with the director relating to the reservoir from which water is proposed to be sold.

(c) Within 30 days after the authority authorizes negotiations, a draft water purchase contract shall

be sent by the director or a designee to the applicant with whom the negotiations are authorized.

(d) When contract negotiations have been completed and a contract has been drafted, a proposed final contract shall be sent by the director to the applicant.

(e) After receipt of the proposed final contract, the applicant shall perform one of the following, within 45 days:

(1) Indicate acceptance of the contract by signing and returning it to the director or by other communication to the director;

(2) return the contract to the director with written comments;

(3) request a meeting with the director to discuss the contract; or

(4) request an extension of time for consideration of the contract.

(f) If the applicant and the director cannot agree on terms or language in the contract, the negotiations may be terminated by the director.

(g) After the applicant and the director agree to a contract, the contract shall be submitted to the authority for consideration at the next regular meeting of the authority or at a special meeting, if deemed necessary by the chairperson and the director.

(h) Before approving any contract, the authority shall find that all of the following conditions are met:

(1) The sale of water by written contract is in the interest of the people of the state of Kansas.

(2) The state has filed or will file, before initiation of water use under the contract, a water reservation right for storage of water in the reservoir designated in the contract.

(3) The state, if necessary, has signed an agreement with an agency or department of the United States for water supply storage in the named reservoir.

(4) The person has filed an application to negotiate the purchase of water from the named reservoir at an average daily rate equal to or greater than the rate specified in the contract.

(5) The quantity of water from the reservoir being negotiated does not exceed the yield capability from the conservation storage water supply capacity available to the state for use under the water marketing program through a drought having a two percent chance of occurrence in any one year.

(6) The annual withdrawal and use of the quantity of water contracted by the applicant will advance the purposes specified in K.S.A. 82a-901 et seq., and amendments thereto.

(i) If the authority finds that the proposed sale of water is not in the interest of the people of the state of Kansas or that the proposed sale will not advance the purposes in K.S.A. 82a-901 et seq. and amendments thereto, the authority shall reject the contract and perform one of the following:

(1) Terminate the contract negotiations. The application shall be removed from the list of current applications and shall be void. The applicant shall be required to reapply for any future water supply contract; or

(2) return the contract to the applicant and director with recommendations for contract changes or additional contract negotiation.

(j) If the authority approves the contract, copies shall be provided to the house of representatives and the senate and to the secretary of state, pursuant to K.S.A. 82a-1307 and amendments thereto.

(k) The application shall be terminated when a contract is signed by the applicant, the director, and the chair, or their designees, and if the contract is not disapproved by the legislature. If the contracted quantity of water is less than the quantity stated in the application, the applicant shall not retain the application number for the remaining quantity. A new application shall be filed for additional water.

(l) If the legislature has not disapproved the contract when the period for legislative review has expired, a copy of the water purchase contract shall be filed by the director with the chief engineer.

(m) Any regulatory requirements may be waived by the director in order to sell surplus waters. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1305, K.S.A. 82a-1307, K.S.A. 82a-1311a, K.S.A. 82a-1312, and K.S.A. 82a-1316; effective May 1, 1979; amended May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended Aug. 30, 2013.)

**98-5-5. Assignment.** Each water purchase contract shall have the following provisions: (a) The purchaser shall not assign, sell, convey, or transfer all or any part of the water purchase contract or interest in it, unless and until the assignment, sale, conveyance, or transfer has been approved by the director and the authority.

(b) To request permission to assign, sell, convey, or transfer all or any part of a water purchase contract, the purchaser shall provide information requested by the director to consider the request.

(c) Before approving any assignment, sale, conveyance, or transfer of all or any part of the water

purchase contract, the authority shall determine that both of the following conditions are met:

(1) The contract was negotiated and signed by the parties to the contract pursuant to K.S.A. 82a-901a et seq. and K.S.A. 82a-1301 et seq., and amendments thereto.

(2) The assignment is consistent with, and will advance, the purposes specified in K.S.A. 82a-901a et seq., and amendments thereto. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1306; effective May 1, 1984; amended May 1, 1987; amended April 26, 1993; amended Aug. 30, 2013.)

**98-5-6. Rate charged for water.** (a) The rate to be charged for water shall be fixed by the director pursuant to K.S.A. 82a-1308a, and amendments thereto. The rate fixed by the director shall be approved by the authority on or before July 15 of each calendar year. The rate shall take effect on January 1 of the following year.

(b) The fixed rate shall include amounts to cover the components required in K.S.A. 82a-1308a, and amendments thereto, and to meet the needs of the water marketing capital development and storage maintenance plan, as approved by the authority.

(c) The rate fixed for each calendar year shall apply to all water use under contracts negotiated on or after March 17, 1983.

(d) For any contract negotiated before March 17, 1983, the rate in effect on the date established by the contract for review and adjustment of the rate charged for water shall become the new rate to be charged for all water that shall be paid for under terms of the contract, up to a maximum rate not to exceed 10 cents per 1,000 gallons. The new rate shall remain in effect until the next rate established by the contract for review of the rate charged for water. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 2012 Supp. 82a-1308a; effective, T-84-29, Oct. 19, 1983; effective May 1, 1984; amended May 1, 1987; amended Aug. 30, 2013.)

**98-5-7. Rate charged for surplus water.** (a) No charges shall be made for surplus water if the water is for streamflow maintenance or reservoir pool management.

(b) The rate to be charged for surplus water shall be the rate set in K.S.A. 82a-1308a, and amendments thereto, and defined in K.A.R. 98-5-6. The purchaser shall be obligated to pay for at least 50 percent of the quantity specified in the contract.

(c) The rate charged for surplus water shall change on January 1 of each calendar year, when

the new water rate, as described in K.A.R. 98-5-6, becomes effective. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1305; effective May 1, 1984; amended May 1, 1987; amended Aug. 30, 2013.)

**98-5-8. Contract provisions.** (a) Each contract for the sale of water supply shall be on a form specified by the director. If the director determines, during the contract negotiation process, that any article or portion of any article in the standard contract format is not needed or is not applicable, the article or portion of it may be deleted from the standard contract by the director.

(b) Any special requirement not covered in the standard contract format may be added as an additional article in the contract. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1306; effective Nov. 22, 1996; amended Aug. 30, 2013.)

**98-5-9. Determination of reservoir yields through a drought with a two percent chance of occurrence in any one year.** (a) The following information shall be used by the director in determining the yield of a reservoir through a drought with a two percent chance of occurrence in any one year:

(1) The reservoir analysis as part of the basin system in which the reservoir lies, using one of the following:

(A) All available climatic and hydrologic information for the period of record; or

(B) if the climatic and hydrologic information does not include the drought period of 1952 through 1957, estimation of the climatic and hydrologic information for the drought period of 1952 through 1957; and

(2) the conservation storage water supply capacities of the reservoirs in the basin system determined by capacities anticipated to be available after accounting for sedimentation in the reservoirs.

(b) The reservoir yield may be recalculated upon the office's receipt of information that could influence the yield calculations. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1305; effective Aug. 30, 2013.)

## **Article 6.—WATER ASSURANCE PROGRAM**

**98-6-1.** (Authorized by K.S.A. 1988 Supp. 82a-1345(e); implementing K.S.A. 1988 Supp. 82a-1330 *et seq.*; effective Sept. 4, 1989; revoked Aug. 30, 2013.)

**98-6-2. Contract authority.** The director of the Kansas water office shall enter into water assurance contracts with water assurance districts. (Authorized by K.S.A. 1988 Supp. 82a-1345(e); implementing K.S.A. 1988 Supp. 82a-1330 *et seq.*; effective Sept. 4, 1989.)

**98-6-3. Contract negotiation procedures.** (a) Any water assurance district may request, in writing, to negotiate with the director for a water assurance contract. The request shall be submitted on forms provided by the office and include all information requested on those forms. Each request shall include a copy of the district's certificate of incorporation filed with the secretary of state.

(b) The request to negotiate and the information provided by the water assurance district shall be reviewed by the director to determine if the information provided is sufficient to begin negotiations for a water assurance contract. The district shall be notified by the director if there is a need for additional information or if the request submitted is sufficient to begin negotiations. The notice shall be in writing and shall be provided within 30 days of receipt of the request.

(c) If the director finds that the information provided by the assurance district is sufficient, the negotiations shall commence.

(d) Each person who has a water purchase contract or an application for a water purchase contract on file with the director, or a water assurance contract pertaining to storage in reservoirs in the designated basin, shall be notified in writing that negotiations with an assurance district have begun. The notice shall be mailed to each person's last known address. Each person so notified shall, within 20 days following notification by the director, file in writing a request to begin negotiations for a written contract, or forfeit the right to participate in current negotiations for a written contract for water purchase or for a water assurance contract.

(e) Water assurance contract negotiations shall be conducted by the director and the board members of the assurance district or their designees.

(f) If the district and the director cannot agree on terms or language in the contract, the negotiations may be terminated by either party.

(g) A water assurance contract shall be approved by the director if the director finds that all of the following conditions are met:

(1) The approval of the water assurance contract is in the best interest of the people of the state of Kansas.

(2) The water assurance contract refers to and incorporates by reference an operations agreement that includes the following:

(A) The rules of operation for designated assurance reservoirs to provide assurance water;

(B) quantities of water supply in designated assurance reservoirs;

(C) the quantities of water supply use by eligible members of the water assurance district;

(D) a provision that establishes procedures for allocating inflows in any reservoir in which a water assurance district has purchased storage;

(E) target flows along designated rivers;

(F) a provision to release water from storage from one or more reservoirs in order to meet specified instream purposes; and

(G) any other related matters to which the parties agree.

(3) The state has filed or will file, if necessary, before initiation of the operations agreement, a water reservation right for storage of water in the reservoirs designated in the contract.

(4) The state has signed or will sign, if necessary, an agreement with an agency or department of the United States for water supply storage space in reservoirs named in the operations agreement.

(5) The water assurance contract includes a statement that the water assurance storage component of the major reservoirs in the designated basin are designated for the sole use and benefit of the water assurance district in accordance with the operations agreement.

(6) The remaining water supply capacity satisfies any present water purchase contract.

(7) Before any member of the water assurance district receives benefits or water pursuant to a water assurance contract, that member has adopted a water conservation plan consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to K.S.A. 74-2608, and amendments thereto.

(8) The water assurance contract contains a provision that establishes procedures for allocating inflows in any reservoir in which a water assurance district has purchased storage.

(h) Upon completion of negotiations, a proposed final water assurance contract shall be sent by the director to the water assurance district.

(i) After receipt of the proposed final water assurance contract, the water assurance district shall perform one of the following, within 45 days:

(1) Indicate acceptance of the water assurance contract by signing and returning it to the director;

(2) return the unsigned water assurance contract to the director with written comments;

(3) request a meeting with the director to discuss the water assurance contract; or

(4) request an extension of time for consideration of the water assurance contract.

(j) Upon final agreement and signing of a water assurance contract by the president and chairperson of the district board of directors, an original of the water assurance contract shall be filed with the following persons:

(1) The director;

(2) the president of the contracting water assurance district board of directors;

(3) the chief engineer, division of water resources in the Kansas department of agriculture;

(4) the Kansas secretary of state; and

(5) the district engineer of the U.S. army corps of engineers or the regional director of the bureau of reclamation. (Authorized by K.S.A. 82a-1345; implementing K.S.A. 82a-1345 and 82a-1347; effective Sept. 4, 1989; amended Aug. 30, 2013.)

**98-6-4. Calculation of charges.** The charges to be paid by the district shall be determined by the director as provided in K.S.A. 82a-1345 and amendments thereto, which shall include the following: (a) The amount necessary to cover the amortized capital costs to the state for acquisitions of assurance storage capacity from the federal government necessary to meet the requirements of the operations agreement. The amortized capital costs to the state shall be determined on an individual reservoir basis for reservoirs in the designated basin in which the assurance district is formed as follows:

(1) One lump sum, up-front payment for principal and interest paid, or due to be paid, including any interest which has accumulated through the date of commencement of operations of storage space under the operations agreement;

(2) annual principal and interest payments on revenue bonds issued by the state pursuant to K.S.A. 82a-1360 et seq. and amendments thereto;

(3) annual principal and interest payments on revenue bonds issued under authority of the Kansas development finance authority;

(4) equal annual installments for a period not to exceed 10 years for any equity that the state may already have in conservation water supply

storage capacity with interest based on a five-year average of the published one-year investment rate for public funds of the pooled money investment board of the state of Kansas, as provided in K.S.A. 12-1675a(g) and amendments thereto, to be adjusted by the office on January 15 of each calendar year of the installment agreement; and

(5) equal annual installments for future use conservation water supply storage capacity called into service by the state under contracts with the army corps of engineers, under the same cost repayment conditions available to the state under those contracts;

(b) the amount necessary to cover 100% of the annual cost to the state for the actual operation, maintenance, major replacement, and rehabilitation costs allocated to the assurance storage capacity necessary to meet the requirements of the operations agreement;

(c) the amount necessary to cover the annual costs to the state for administration and enforcement of laws and agreements associated with ensuring the continuous operations of the water assurance district; and

(d) any additional charges agreed upon by both parties. (Authorized by and implementing K.S.A. 82a-1345; effective Sept. 4, 1989; amended Aug. 30, 2013.)

#### **Article 7.—LOWER SMOKY HILL WATER SUPPLY ACCESS PROGRAM**

**98-7-1. District formation.** (a) The application for membership to form the district shall include the following:

(1) The name and signature of each person interested in membership in the district when the application is submitted and an address to receive communication from the director;

(2) the name of one person to answer questions and receive notices from the director;

(3) the quantity of access water that each person desires to purchase if a district is formed;

(4) water right information for each person to be included as part of the district; and

(5) any other information that the applicants can provide to assist in consideration of the petition.

(b) Upon the director's receipt of an application for membership to form the district, the application shall be reviewed. Within 15 business days of the director's receipt of the application, a determination that additional information is needed may be made by the director. A letter

outlining the request for additional information shall be sent to the person indicated in the petition. The applicants shall provide the additional information within 15 business days of the date of the request.

(c) The application shall be considered by the director to determine if there is a need to form the district and provide certification of district formation or if the district should be refused formation and certification. The director's determination shall be made no more than 60 days following receipt of the application or, if requested, receipt of any additional information requested.

(d) Notice of the organizational meeting shall be mailed to all persons signing the application.

(e) A copy of all application documents shall be provided by the office to the chief engineer.

(f) The organization meeting shall be presided over by the director until the incorporating chairperson is selected. (Authorized by K.S.A. 2012 Supp. 82a-2324; implementing K.S.A. 2012 Supp. 82a-2304, K.S.A. 2012 Supp. 82a-2305; effective Aug. 30, 2013.)

**98-7-2. District membership after district formation.** (a) All persons included in the application to form the district shall become members of the district, without additional application as may be required by this regulation, if these persons are deemed eligible for membership by the director upon forming the district as provided in K.A.R. 98-7-1.

(b) After the district has been formed, each person seeking to join the district shall submit an application for membership, on forms provided by the office, to the director. Each applicant shall submit sufficient information for the director to consider whether the proposed membership in the district meets the requirements of K.S.A. 82a-2305b, and amendments thereto. Additional information may be requested by the director from the prospective member, as needed, to consider the application. Notice of the application for membership shall be given to the district by the director, which shall provide for no more than 30 business days for a response from the district about the application for membership. A determination of membership shall be made by the director no more than 180 days from the receipt of the application for membership. (Authorized by K.S.A. 2012 Supp. 82a-2324; implementing K.S.A. 2012 Supp. 82a-2305; effective Aug. 30, 2013.)

**98-7-3. Special irrigation district; organization.** (a) The petition to form the special irrigation district shall include the following:

(1) The name of each person seeking membership in the special irrigation district when the petition is submitted and an address to receive communication from the director;

(2) the name of the petitioner's designee to answer questions and receive notices from the director;

(3) the quantity of access water that each petitioner seeks to purchase if the special irrigation district is formed;

(4) water right information for each petitioner to be included as part of the special irrigation district for the purposes of the act;

(5) land ownership information sufficient to verify each petitioner's eligibility for membership in the special irrigation district; and

(6) any other information that any petitioner can provide to assist the director in consideration of the petition.

(b) Upon the director's receipt of the petition to form the special irrigation district, the petition shall be reviewed. Within 15 business days of the director's receipt of the petition to form the special irrigation district, a determination that additional information is needed may be made. A letter outlining the additional information that the director needs to consider the petition shall be sent to the petitioner's designee. Additional information shall be provided within 15 business days of the date of the request.

(c) Notice of the organizational meeting shall be published in the Kansas register and shall be mailed to all petitioners.

(d) A copy of all petition documents shall be provided by the office to the chief engineer.

(e) The organizational meeting shall be presided over by the director until the governing board is selected. (Authorized by K.S.A. 2012 Supp. 82a-2324; implementing K.S.A. 2012 Supp. 82a-2317; effective Aug. 30, 2013.)

**98-7-4. Contract negotiation procedures.**

(a) The water supply access district's governing body may request, in writing, to negotiate with the director for water supply access storage contracts. The request shall be submitted on forms provided by the office and shall include any information requested on those forms. Each request shall include a copy of the water supply access district's certificate of incorporation filed with the secretary of state.

(b) The request to negotiate and the information provided by the water supply access district shall be reviewed by the director. A determination of whether the information provided is sufficient to begin negotiations for a water supply access storage contract shall be made by the director within 30 days of receipt of the request. The water supply access district shall be notified by the director, in writing, if there is a need for additional information or if the request submitted is sufficient to begin negotiations, within 40 days of receipt of the request.

(c) If the director finds that the information provided by the water supply access district is sufficient, and upon approval by the Kansas water authority, negotiations shall commence.

(d) Each person who has a water supply purchase contract or an application for a water supply purchase contract on file with the director shall be notified in writing that negotiations with a water supply access district have been approved. The notice shall be mailed to each person's last known address. Each person so notified, within 20 days following notification by the director, shall file in writing a request to begin negotiations for a written contract or shall forfeit that person's right to participate in the current negotiations for a written contract for a water supply contract or for a water access contract.

(e) Water supply access storage contract negotiations shall be conducted by the director and the board members of the water supply access district.

(f) If the water supply access district and the director cannot agree on terms of a contract, the negotiations may be terminated by either party.

(g) A water supply access contract shall be approved by the director if the director finds that all the following conditions are met:

(1) The approval of the water supply access contract is in the best interest of the people of the state of Kansas.

(2) The water supply access contract refers to and incorporates by reference an operations agreement that includes the following:

(A) The rules of operation for Kanopolis reservoir to provide access water supply to the district;

(B) the quantity of water supply access storage in Kanopolis reservoir;

(C) the quantities of water supply access storage used by members of the water access district;

(D) a provision that establishes procedures for allocating inflows in Kanopolis reservoir;

(E) target flows along designated rivers;

(F) a provision to release water from storage from Kanopolis reservoir in order to meet specified in-stream purposes; and

(G) any other related matters to which the parties agree.

(3) The state has filed or will file, if necessary, before initiation of the operations agreement, a water reservation right for storage of water in Kanopolis reservoir.

(4) The state has signed or will sign, if necessary, an agreement with an agency or department of the United States for water supply storage space in the access reservoir named in the operations agreement.

(5) The water supply access contract includes a statement that the water access storage component of Kanopolis reservoir is designated for the sole use and benefit of the water supply access district in accordance with the operations agreement.

(6) The remaining water supply capacity satisfies the terms of any existing water purchase contracts.

(7) Before any member of the water supply access district receives benefits or water pursuant to a water supply access contract, that member has adopted a water conservation plan consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to K.S.A. 74-2608, and amendments thereto.

(h) Upon completion of negotiations, a proposed water supply access contract shall be sent by the director to the water supply access district.

(i) After receipt of the proposed water supply access contract, the water supply access district's governing body shall perform one of the following within 45 days:

(1) Indicate acceptance of the water supply access contract by signing and returning it to the director;

(2) return the unsigned water supply access contract to the director with written comments;

(3) request a meeting with the director to discuss the water supply access contract; or

(4) request an extension of time for consideration of the water supply access contract.

(j) Upon the final agreement and signing of a water supply access contract by the water supply access district's governing body, a copy of the water supply access contract shall be filed with the following persons:

(1) The director;

(2) the governing body of the water supply access district;

(3) the chief engineer, division of water resources in the Kansas department of agriculture;

(4) the Kansas secretary of state; and

(5) the district engineer of the United States army corps of engineers. (Authorized by K.S.A. 2012 Supp. 82a-2324; implementing K.S.A. 2012 Supp. 82a-2302; effective Aug. 30, 2013.)

**98-7-6. Calculation of charges by water supply access district.**

The charges to be paid by the lower smoky hill water supply access district shall be determined by the director pursuant to K.S.A. 2012 Supp. 82a-2310 and amendments thereto, which shall include the following:

(a) The amount necessary to cover the amortized capital costs to the state for acquisitions of access storage capacity from the federal government necessary to meet the requirements of the operations agreement. The amortized capital costs to the state shall be determined for Kanopolis reservoir as follows:

(1) One lump sum, up-front payment for principal and interest paid, or due to be paid, including any interest that has accumulated through the date of commencement of operations of storage space under the operations agreement;

(2) annual principal and interest payments on revenue bonds issued by the state pursuant to K.S.A. 2012 Supp. 82a-2314 and amendments thereto;

(3) annual principal and interest payments on revenue bonds issued under authority of the Kansas development finance authority; or

(4) equal annual installments for a period not to exceed 20 years for any equity that the state may already have in conservation water supply storage capacity with interest based on a five-year average of the published one-year investment rate for public funds of the pooled money investment board of the state of Kansas, pursuant to K.S.A. 12-1675a and amendments thereto, to be adjusted by the office on January 15 of each calendar year of the installment agreement;

(b) the amount necessary to cover 100 percent of the annual cost to the state for the actual operation, maintenance, and major replacement and rehabilitation costs allocated to the access storage capacity necessary to meet the requirements of the operations agreement;

(c) the amount necessary to cover the annual costs to the state for administration and enforcement of laws and agreements associated with assuring the continuous operations of the water access district; and

(d) any additional charges agreed upon by both parties. (Authorized by and implementing K.S.A. 2012 Supp. 82a-2324; effective Aug. 30, 2013.)

## Article 8.—EASEMENT AUTHORITY ON NAVIGABLE RIVERS

**98-8-1. Application for easement.** (a) Any cooperating landowner may submit an application for an easement on state property along a navigable river on forms provided by the director. The cooperating landowner shall acknowledge that the cooperating landowner will pay all applicable filing fees for any easement granted.

(b) The following shall be confirmed by the director:

(1)(A) The cooperating landowner owns the property adjacent to the state property upon which an easement is proposed; or

(B) the cooperating landowner otherwise has a legal right to complete a project on the adjacent land.

(2) The cooperating landowner is participating in a state, local, or federal program, if applicable.

(c) A notice of intent to issue easement shall be issued by the director for each project that meets the requirements of subsection (b). The notice of intent to issue easement shall include the following:

(1) The legal description of the cooperating landowner's property;

(2) information about the location on the river upon which the easement is proposed;

(3) a description of the type of projects proposed to be completed by and through the use of the easement; and

(4) a date and time by which any comments or responses to the director about the notice of intent to issue easement must be received by reviewing agencies and entities.

(d) A determination of whether any prior easement in the county or counties in which the project is proposed could conflict with the proposed easement shall be made by the director. The notice of the intent to issue easement shall be sent by the director to each person holding any prior easements that could conflict.

(e) The notice of intent to issue easement shall provide a comment period of at least 15 days and no more than 30 days. During that time, any person receiving notice may submit comments on the proposed easement to the director. The notice shall provide information on how to submit comments to the director.

(f) The notice of intent to issue easement may be sent by any means that the director specifies. (Authorized by and implementing K.S.A. 2011 Supp. 82a-220; effective Aug. 30, 2013.)

**98-8-2. Notice to county and other government agencies.** A copy of the notice of intent to grant easement shall be sent by the director to the following: (a) The register of deeds and the county commission in each county in which the easement is proposed;

(b) the program agencies;

(c) the Kansas department of agriculture;

(d) the Kansas department of health and environment;

(e) the Kansas department of wildlife, parks, and tourism; and

(f) any municipality or other governmental entity holding a riparian interest in the applicable river that the director determines should receive notice. (Authorized by and implementing K.S.A. 2011 Supp. 82a-220, as amended by L. 2012, ch. 140, sec. 133; effective Aug. 30, 2013.)

**98-8-3. Review of notice of intent to grant easement.** (a) After the comment period specified in the notice of intent to grant easement has ended, the application, any comments or responses received, and the proposed project shall be reviewed by the director.

(b) No easement shall be granted until applicable program funding for the project has preliminary approval, if the project depends on a federal, state, or local program for funding.

(c) If, after review, the director determines that the application meets the statutory requirements for an easement in K.S.A. 82a-220 and amendments thereto, notice of the approval shall be sent to the cooperating landowner and the fees necessary for filing the easement shall be collected by the director.

(d) If, after review, the director determines that the application does not meet the statutory requirements for an easement or that the comments and responses received from those receiving the notice of intent to grant easement raise questions or issues that need to be resolved before an easement should be granted, a notice of cancellation of the intent to grant easement that provides the cooperating landowner with information about the concerns raised or problems to be addressed shall be issued by the director. The notice of cancellation shall indicate that the notice of intent to

grant easement will be cancelled on a date certain, but not less than 15 business days after the date of the notice to cancel. The notice of cancellation shall be sent to all entities that received the notice of intent to grant easement.

(e) The cooperating landowner may, before the date indicated in the notice of cancellation, provide additional information or data or address concerns. If the director determines that the additional information provided adequately addresses concerns noted in the notice of cancellation,

the easement may be granted after the director provides a summary of the information to all receiving notice under this regulation. An easement may be granted by the director if no person receiving notice files an objection within 10 days. Each objection shall be reviewed by the director to determine if the objection would change the director's intent to grant the easement. (Authorized by and implementing K.S.A. 2011 Supp. 82a-220, as amended by L. 2012, ch. 140, sec. 133; effective Aug. 30, 2013.)

**Agency 99**  
**Kansas Department of Agriculture—**  
**Division of Weights and Measures**

*Articles*

- 99-1. *GENERAL CODE. (Not in active use.)*
- 99-2. *SCALES. (Not in active use.)*
- 99-3. *WEIGHTS. (Not in active use.)*
- 99-4. *LIQUEFIED PETROLEUM GAS LIQUID-MEASURING DEVICES. (Not in active use.)*
- 99-5. *LIQUID-MEASURING DEVICES. (Not in active use.)*
- 99-6. *VEHICLE TANKS USED AS MEASURES. (Not in active use.)*
- 99-7. *FARM MILK TANKS. (Not in active use.)*
- 99-8. *PACKAGE LABELING; EXEMPTIONS, MARKINGS, VARIATIONS. (Not in active use.)*
- 99-9. *MEAT, POULTRY AND SEAFOOD. (Not in active use.)*
- 99-10. *EXEMPTIONS FOR CERTAIN PACKAGES. (Not in active use.)*
- 99-11. *BELT-CONVEYOR SCALES. (Not in active use.)*
- 99-12. *VEHICLE-TANK METERS. (Not in active use.)*
- 99-13. *MEASURE-CONTAINERS. (Not in active use.)*
- 99-14. *MILK BOTTLES. (Not in active use.)*
- 99-15. *LUBRICATING OIL BOTTLES. (Not in active use.)*
- 99-16. *GRADUATES. (Not in active use.)*
- 99-17. *LINEAR MEASURES. (Not in active use.)*
- 99-18. *FABRIC MEASURING DEVICES. (Not in active use.)*
- 99-19. *WIRE AND CORDAGE-MEASURING DEVICES. (Not in active use.)*
- 99-20. *TAXIMETERS. (Not in active use.)*
- 99-21. *ODOMETERS. (Not in active use.)*
- 99-22. *DRY MEASURES. (Not in active use.)*
- 99-23. *BERRY BASKETS AND BOXES. (Not in active use.)*
- 99-24. *LIQUID MEASURES. (Not in active use.)*
- 99-25. *TECHNICAL REQUIREMENTS FOR WEIGHING AND MEASURING DEVICES.*
- 99-26. *FEES.*
- 99-27. *CIVIL PENALTY.*
- 99-30. *LARGE CAPACITY SCALES; TESTING AND SERVICE.*
- 99-31. *MOTOR-VEHICLE FUEL MEASURING DEVICES.*
- 99-32. *SMALL CAPACITY SCALES; TESTING AND SERVICE. (Not in active use.)*
- 99-40. *PETROLEUM MEASUREMENT.*

**Article 1.—GENERAL CODE**

**99-1-1.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1978; revoked May 1, 1979.)

**99-1-2.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; amended May 1, 1978; revoked May 1, 1979.)

**99-1-3 to 99-1-6.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1978; revoked May 1, 1979.)

**Article 2.—SCALES**

**99-2-1.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; amended May 1, 1978; revoked May 1, 1979.)

**99-2-2.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1978; revoked May 1, 1979.)

**99-2-3 to 99-2-6.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; amended May 1, 1978; revoked May 1, 1979.)

**99-2-7.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1978; revoked May 1, 1979.)

**99-2-8.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; amended Jan. 1, 1977; amended May 1, 1978; revoked May 1, 1979.)

### Article 3.—WEIGHTS

**99-3-1.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; revoked May 1, 1979.)

**99-3-2.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; amended Jan. 1, 1971; revoked May 1, 1979.)

**99-3-3.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; revoked May 1, 1979.)

### Article 4.—LIQUEFIED PETROLEUM GAS LIQUID-MEASURING DEVICES

**99-4-1.** (Authorized by K.S.A. 83-147; effective Jan. 1, 1966; revoked May 1, 1979.)

**99-4-2 and 99-4-3.** (Authorized by K.S.A. 83-147; effective Jan. 1, 1966; amended Jan. 1, 1971; revoked May 1, 1979.)

**99-4-4.** (Authorized by K.S.A. 83-147; effective Jan. 1, 1966; revoked May 1, 1979.)

**99-4-5.** (Authorized by K.S.A. 83-147; effective Jan. 1, 1966; amended Jan. 1, 1971; revoked May 1, 1979.)

**99-4-6.** (Authorized by K.S.A. 83-147; effective Jan. 1, 1966; revoked May 1, 1979.)

### Article 5.—LIQUID-MEASURING DEVICES

**99-5-1.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; revoked May 1, 1979.)

**99-5-2 to 99-5-5.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; amended Jan. 1, 1971; revoked May 1, 1979.)

### Article 6.—VEHICLE TANKS USED AS MEASURES

**99-6-1.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; revoked May 1, 1979.)

**99-6-2.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; amended Jan. 1, 1971; revoked May 1, 1979.)

**99-6-3 to 99-6-5.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; revoked May 1, 1979.)

### Article 7.—FARM MILK TANKS

**99-7-1 and 99-7-2.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; amended Jan. 1, 1971; revoked May 1, 1979.)

**99-7-3.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; revoked May 1, 1979.)

**99-7-4 and 99-7-5.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; amended Jan. 1, 1971; revoked May 1, 1979.)

### Article 8.—PACKAGE LABELING; EXEMPTIONS, MARKINGS, VARIATIONS

**99-8-1 to 99-8-7.** (Authorized by K.S.A. 83-150; effective Jan. 1, 1966; revoked May 1, 1982.)

**99-8-8.** (Authorized by K.S.A. 83-207; implementing K.S.A. 83-211 and 83-213; effective May 1, 1982; amended May 1, 1988; amended Oct. 21, 1991; revoked Jan. 18, 2002.)

**99-8-9.** (Authorized by K.S.A. 83-207; implementing K.S.A. 83-211 and 83-213; effective May 1, 1988; amended Oct. 21, 1991; revoked Jan. 18, 2002.)

### Article 9.—MEAT, POULTRY AND SEAFOOD

**99-9-1.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; revoked Jan. 18, 2002.)

### Article 10.—EXEMPTIONS FOR CERTAIN PACKAGES

**99-10-1.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; revoked Jan. 18, 2002.)

### Article 11.—BELT-CONVEYOR SCALES

**99-11-1 to 99-11-4.** (Authorized by K.S.A.

83-124a; effective Jan. 1, 1971; revoked May 1, 1979.)

**Article 12.—VEHICLE-TANK METERS**

**99-12-1 to 99-12-11.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1971; revoked May 1, 1979.)

**Article 13.—MEASURE-CONTAINERS**

**99-13-1 to 99-13-5.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1971; revoked May 1, 1979.)

**Article 14.—MILK BOTTLES**

**99-14-1 to 99-14-5.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1971; revoked May 1, 1979.)

**Article 15.—LUBRICATING OIL BOTTLES**

**99-15-1 to 99-15-5.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1971; revoked by L. 1978, ch. 389, May 1, 1978.)

**Article 16.—GRADUATES**

**99-16-1 to 99-16-4.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1971; revoked May 1, 1979.)

**Article 17.—LINEAR MEASURES**

**99-17-1 to 99-17-3.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1971; revoked May 1, 1979.)

**Article 18.—FABRIC MEASURING DEVICES**

**99-18-1 to 99-18-5.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1971; revoked May 1, 1979.)

**Article 19.—WIRE AND CORDAGE-MEASURING DEVICES**

**99-19-1 to 99-19-8.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1971; revoked May 1, 1979.)

**Article 20.—TAXIMETERS**

**99-20-1 to 99-20-5.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1971; revoked May 1, 1979.)

**Article 21.—ODOMETERS**

**99-21-1 to 99-21-5.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1971; revoked May 1, 1979.)

**Article 22.—DRY MEASURES**

**99-22-1 to 99-22-4.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1971; revoked May 1, 1979.)

**Article 23.—BERRY BASKETS AND BOXES**

**99-23-1 to 99-23-3.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1971; revoked May 1, 1979.)

**Article 24.—LIQUID MEASURES**

**99-24-1 to 99-24-3.** (Authorized by K.S.A. 83-124a; effective Jan. 1, 1971; revoked May 1, 1979.)

**Article 25.—TECHNICAL REQUIREMENTS FOR WEIGHING AND MEASURING DEVICES**

**99-25-1. Adoption by reference, exceptions; availability of copies.** (a) The document titled “specifications, tolerances, and other technical requirements for weighing and measuring devices, as adopted by the 96th national conference on weights and measures 2011,” published by the national institute of standards and technology (NIST), Gaithersburg, MD, as the 2012 edition of NIST handbook 44, is hereby adopted by reference, with the following exceptions:

- (1) Section 3.31.UR.2.2;
- (2) sections 5.56.(a) and 5.56.(b);
- (3) in appendix A, sections 1 and 6; and
- (4) in appendix B, sections 1 and 2.

(b) The adopted portions of NIST handbook 44 shall apply to commercial, data-gathering, and weighing and measuring devices in the state.

(c) Each vehicle-mounted metering system manufactured on or after January 1, 1995 shall be equipped with a ticket printer. A copy of the ticket issued by the vehicle-mounted metering system shall be given to the customer at the time of delivery or as otherwise specified by the customer.

(d) Copies of the handbook adopted by this regulation or pertinent portions from it shall be available from the office of weights and measures, Kansas department of agriculture, Topeka, Kan-

sas. (Authorized by K.S.A. 83-207; implementing K.S.A. 2012 Supp. 83-202; effective May 1, 1979; amended May 1, 1981; amended May 1, 1986; amended Aug. 14, 1989; amended Oct. 21, 1991; amended March 6, 1998; amended March 5, 1999; amended Jan. 18, 2002; amended Aug. 26, 2005; amended Feb. 8, 2008; amended Sept. 3, 2010; amended Aug. 23, 2013.)

**99-25-2.** (Authorized by and implementing K.S.A. 83-207; effective May 12, 1979; amended May 1, 1986; amended Oct. 21, 1991; revoked March 6, 1998.)

**99-25-3. Certificate of conformance.** (a) No person shall use a weighing or measuring device for commercial purposes within the state of Kansas unless a certificate of conformance has been obtained for the weighing or measuring device before its use for commercial purposes within the state of Kansas.

(b) For the purpose of this regulation, a “certificate of conformance” means a document issued by the national institute of standards and technology, national conference on weights and measures, or other authorized laboratory establishing that the weight or measure or weighing or measuring instrument or device meets the requirements of the national institute of standards and technology handbook 44 as adopted by reference in K.A.R. 99-25-1.

(c) Any certificate of performance issued by the national bureau of standards or other authorized laboratory establishing that the weighing or measuring device meets the requirements of the national bureau of standards handbook 44 as previously adopted by reference in K.A.R. 99-25-1 on and after May 1, 1986 may be accepted in lieu of the certificate of conformance required in subsection (b) of this regulation.

(d) This regulation shall not apply to a weighing or measuring device manufactured and installed in the state before May 1, 1986. This regulation shall not apply to a one-of-a-kind device or type of weighing and measuring device for which there are no weighing and measuring devices that are traceable to a certificate of conformance if the weighing or measuring device complies with the applicable requirements, including permanence, of the national institute of standards and technology handbook 44 as adopted by reference in K.A.R. 99-25-1. (Authorized by and implementing K.S.A. 83-207; effective May 1, 1986; amended Aug. 14, 1989; amended Oct. 21, 1991; amended Jan. 18, 2002.)

**99-25-4. Continuing education requirements for technical representatives.** (a) Before the license of a technical representative is issued or renewed by the Kansas department of agriculture, the technical representative shall complete a minimum of four clock-hours of verifiable continuing education for each category of weighing or measuring devices. The continuing education shall consist of educational seminars regarding the following topics:

(1) The installation, calibration, or repairing of a weighing or measuring device;

(2) the applicable state weights and measures laws or regulations;

(3) the applicable handbooks adopted by reference in these regulations;

(4) the information required on testing and reporting forms; and

(5) the proper method for testing weights and measures and weighing and measuring devices.

(b) All training or continuing education not conducted by the Kansas department of agriculture or representatives of the department shall be approved by the secretary before the training or continuing education is applied toward the requirements for continuing education. (Authorized by K.S.A. 83-207 and K.S.A. 2000 Supp. 55-442; implementing K.S.A. 2000 Supp. 55-442, K.S.A. 83-302, as amended by L. 2001, Ch. 5, Sec. 483, and K.S.A. 83-402, as amended by L. 2001, Ch. 5, Sec. 484; effective March 6, 1998; amended Jan. 18, 2002.)

**99-25-5. Technical representative license application and renewal.** (a) Each person applying for a technical representative license or renewal of a license shall submit an application on a form provided by the department of agriculture (“department”).

(b)(1) Each license shall be issued or renewed if the technical representative performs the following:

(A) Completes and submits the application form provided by the department;

(B) successfully completes the continuing education seminar conducted by the department for each category of weighing or measuring devices in which the technical representative is registered during the effective period of the technical representative’s license;

(C) pays the continuing education seminar fee as follows:

(i) \$82 for each continuing education seminar required for the licensure year beginning on July 1, 2018 and through June 30, 2019;

(ii) \$85 for each continuing education seminar required for the licensure year beginning on July 1, 2019 and through June 30, 2020; and

(iii) \$100 for each continuing education seminar required for each licensure year beginning on or after July 1, 2020; and

(D) obtains a score of at least 80 percent on the examination administered by the department.

(2) Each technical representative license shall expire on June 30.

(c) Each service company shall verify and maintain records documenting that each technical representative employed by the service company has satisfactorily completed the required training. (Authorized by K.S.A. 83-207; implementing K.S.A. 2016 Supp. 83-302 and K.S.A. 2016 Supp. 83-402; effective March 6, 1998; amended May 8, 2009; amended Dec. 29, 2017.)

**99-25-6. Notification of nonconforming weighing or measuring device.** (a) Each service company shall notify the weights and measures office by telephone, facsimile, mail, or e-mail within 48 hours of any attempt to calibrate, repair, or adjust a measuring or weighing device that cannot be certified as conforming with all applicable tolerances, specifications, and requirements. The notification shall contain the following information:

(1) The location of the weighing or measuring device;

(2) the weighing or measuring device's serial number, identification number, or any other identifying number;

(3) the name of the technical representative or representatives who attempted to calibrate, repair, or adjust the device;

(4) the date on which the calibration, repair, or adjustment was attempted; and

(5) a description of the factors that the technical representative determined were preventing the device from being repaired or adjusted in order to meet all applicable tolerances, specifications, and requirements.

(b) If a service company sends in a report by telephone, facsimile, or e-mail, the service company shall mail a hard copy of the same information to the weights and measures office within seven days of the date of the attempt to repair, adjust, or calibrate the weighing and measuring device.

(c) Each report mailed to the administrator shall be considered timely if it is postmarked by the second business day following the unsuccessful attempt to calibrate, repair, or adjust the weighing and measuring device described in the report. (Authorized by K.S.A. 83-207 and K.S.A. 2000 Supp. 55-442; implementing K.S.A. 2000 Supp. 55-442, K.S.A. 83-222, and K.S.A. 83-404, as amended by L. 2001, Ch. 175, Sec. 7; effective March 6, 1998; amended Jan. 18, 2002.)

cessful attempt to calibrate, repair, or adjust the weighing and measuring device described in the report. (Authorized by K.S.A. 83-207 and K.S.A. 2000 Supp. 55-442; implementing K.S.A. 2000 Supp. 55-442, K.S.A. 83-222, and K.S.A. 83-404, as amended by L. 2001, Ch. 175, Sec. 7; effective March 6, 1998; amended Jan. 18, 2002.)

**99-25-7. Reporting requirements.** The service company or the city or county department of public inspections of weights and measures shall send a copy of the appropriate report to the weights and measures office within 10 days after a test or inspection in which any of the following devices is found to be within applicable tolerances, standards, and requirements: (a) Large capacity scale;

(b) small capacity scale;

(c) vehicle tank meter; or

(d) LPG meter.

Each report shall be submitted on a form obtained from the office of weights and measures, Kansas department of agriculture. (Authorized by K.S.A. 83-207 and K.S.A. 2000 Supp. 55-442; implementing K.S.A. 2000 Supp. 55-442, K.S.A. 2000 Supp. 83-304, as amended by L. 2001, Ch. 172, Sec. 6, K.S.A. 83-215, and K.S.A. 83-404, as amended by L. 2001, Ch. 175, Sec. 7; effective March 6, 1998; amended Jan. 18, 2002.)

**99-25-8. Record retention.** Each service company and each owner of a weighing and measuring device shall keep all records as required by K.S.A. 83-304(d) and K.S.A. 83-404(d), respectively, for a period of five years. (Authorized by K.S.A. 1996 Supp. 83-207 and K.S.A. 1996 Supp. 55-442; implementing K.S.A. 1996 Supp. 83-304, as amended by L. 1997, Ch. 89, Sec. 1, and K.S.A. 1996 Supp. 83-404; effective March 6, 1998.)

**99-25-9. Adoption by reference.** Except as specified in subsection (c), the following uniform regulations published by the national institute of standards and technology (NIST), Gaithersburg, MD, in the 2012 edition of NIST handbook 130, titled "uniform laws and regulations in the areas of legal metrology and engine fuel quality, as adopted by the 96th national conference on weights and measures 2011," are hereby adopted by reference and shall apply to weighing and measuring devices in the state: (a) "Uniform packaging and labeling regulation";

(b) "uniform regulation for the method of sale of commodities"; and

(c) “uniform engine fuels and automotive lubricants regulation,” except for the following sections:

- (1) 2.1.2, which caps ethanol at 10 percent;
- (2) 2.15, which pertains to the testing standard for B100 biodiesel;
- (3) 2.16, which pertains to the testing standard for biodiesel blends; and
- (4) 3.2.6, which pertains to oxygenates.

Copies of the adopted material or the pertinent portions of it shall be available from the office of weights and measures, Kansas department of agriculture, Topeka, Kansas. (Authorized by K.S.A. 55-442 and K.S.A. 83-207; implementing K.S.A. 55-442 and K.S.A. 2012 Supp. 83-202; effective Jan. 18, 2002; amended Aug. 26, 2005; amended Feb. 8, 2008; amended Sept. 3, 2010; amended Aug. 23, 2013.)

**99-25-10. Retail dispenser labeling.** Each retail dispenser of fuel ethanol shall be labeled with the capital letter “E” followed by the percentage of denatured ethanol, by volume, and ending with the word “ethanol” if the percentage of fuel ethanol, by volume, exceeds 10 percent. (Authorized by and implementing K.S.A. 2004 Supp. 55-442; effective Aug. 26, 2005.)

**99-25-11. Motor fuel defined; testing standards.** (a) “Motor fuel” shall include the following fuel products used for the generation of power in an internal combustion engine, in addition to the fuel products specified in K.S.A. 55-422 and amendments thereto:

- (1) B100 biodiesel fuel;
- (2) biodiesel blended fuels;
- (3) gasoline-ethanol blended fuels; and
- (4) diesel-ethanol blended fuels.

(b) All B100 biodiesel fuel shall meet the requirements of ASTM D 6751-07b, “standard specification for biodiesel fuel (B100) blend stock for distillate fuels.”

(c) All blends of biodiesel and diesel fuels shall meet the following requirements:

(1) The base diesel fuel shall meet the requirements of ASTM 975-07b, “standard specification for diesel fuel oils”; and

(2) the biodiesel blend stock shall meet the requirements of ASTM 6751-07b, “standard specification for biodiesel fuel (B100) blend stock for distillate fuels.” (Authorized by and implementing K.S.A. 2007 Supp. 55-422 and K.S.A. 55-442; effective Feb. 8, 2008.)

**99-25-12. Adoption by reference.** The document titled “checking the net contents of packaged goods, as adopted by the 89th national conference on weights and measures 2004,” including the appendices, published by the national institute of standards and technology (NIST), Gaithersburg, MD in January 2005 as NIST handbook 133 is hereby adopted by reference. (Authorized by and implementing K.S.A. 83-207 and K.S.A. 2009 Supp. 83-202; effective Sept. 3, 2010.)

#### **Article 26.—FEES**

**99-26-1. Fees.** (a) The following fees and other necessary and incidental expenses incurred shall be charged for requested services rendered by the secretary or the secretary’s authorized representative in conjunction with the testing, proving, or evaluation of weights, measures, and devices, at the following rates:

(1) The testing and proving of any weights, measures, balances, and other measuring devices conducted at the place of use shall be charged at the rate of \$50.00 per hour or fraction thereof.

(2) Conducting or assisting with an evaluation for a national conference on weights and measures certificate of conformance shall be charged at a rate not to exceed \$200.00 per hour or fraction thereof as necessary to cover the expenses incurred by the department in providing these services.

(b) In addition to the hourly rates specified in subsection (a), expenses incurred by personnel, including meals, lodging, transportation, and mileage to and from their duty station to the point of testing, equipment, and other necessary and incidental expenses, may be charged. (Authorized by K.S.A. 83-207 and K.S.A. 2016 Supp. 83-214; implementing K.S.A. 2016 Supp. 83-214; effective, T-83-25, Sept. 1, 1982; effective May 1, 1983; amended, T-99-11-14-90, Nov. 14, 1990; amended Jan. 14, 1990; amended June 9, 2000; amended Jan. 18, 2002; amended May 8, 2009; amended Dec. 29, 2017.)

#### **Article 27.—CIVIL PENALTY**

**99-27-1. Civil penalty.** Civil penalties shall be assessed based on the harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, any corrective action taken, and any and all relevant circumstances. The penalty shall be based on the following chart. After the maximum penalty is

assessed for any violation, the next range of penalties may be applied for any repeat offense.

- 1 = A penalty ranging from \$1,001 to \$5,000 per violation.
- 2 = A penalty ranging from \$501 to \$1,000.
- 3 = A penalty ranging from \$100 to \$500 per violation.

Violation	Penalty		
Offering, exposing for sale, or disposing of an incorrect device, when committed by a service company	1		
Offering, exposing for sale, or disposing of an incorrect device for which a stop-use order has been issued, when committed by an individual	1		
Offering, exposing for sale, or disposing of an incorrect device for which a stop-use order has not been issued, when committed by an individual		2	
Using or possessing an incorrect weighing or measuring device after being informed that device is incorrect		2	
Unknowingly using possessing an incorrect weighing or measuring device			3
Without authorization, breaking or removing any tag, mark, or seal on devices or packages whose retail worth is less than or equal to \$1,000		2	
Without authorization, breaking or removing any tag, mark, or seal on packages whose retail worth is greater than \$1,000	1		
Selling, offering, or exposing for sale less than the represented quantity of any commodity, thing, or service that has a retail value less than or equal to \$500			3
Selling, offering, or exposing for sale, less than the represented quantity of any commodity, thing, or service that has a retail value greater than \$500		2	
Repeatedly selling, offering, or exposing for sale, less than the represented quantity of any commodity, thing, or service that has a retail value less than or equal to \$500		2	
Repeatedly selling, offering, or exposing for sale, less than the represented quantity of any commodity, thing, or service that has a retail value greater than \$500	1		
Unknowingly taking or attempting to take more of the represented quantity of any commodity, thing, or service that has a retail value less than or equal to \$500			3

Violation	Penalty		
Unknowingly taking or attempting to take more of the represented quantity of any commodity, thing, or service that has a retail value greater than \$500		2	
Repeatedly taking or attempting to take more of the represented quantity of any commodity, thing, or service that has a retail value less than or equal to \$500		2	
Repeatedly taking or attempting to take more of the represented quantity of any commodity, thing, or service that has a retail value greater than \$500	1		
Keeping for the purpose of sale or offering or exposing for sale any commodity that is labeled in a manner contrary to law			3
Using a device that is not positioned so that a customer may view its indications			3
Selling, offering for sale or use, or possessing for the purpose of selling or using any device or instrument to be used or calculated to falsify any weight or measure	1		
Disposing of any rejected weight or measure contrary to law or rules and regulations			3
Exposing or offering for sale commodities that are in misleading packaging			3
Repeatedly and after notification by the division of weights and measures, exposing or offering for sale commodities that are in misleading packaging	1		
Misrepresenting or representing in a manner tending to mislead or deceive an actual or prospective purchaser, the price of an item offered, exposed, or advertised for sale at retail			3
Misrepresenting or representing in a manner calculated to mislead or deceive an actual or prospective purchaser, the price of an item offered, exposed, or advertised for sale at retail	1		
Unknowingly using a device that does not correctly compute total price			3
Knowingly using a device that does not correctly compute total price	1		
Charging or attempting to charge a value that is more than the advertised price for an item or commodity at the time of sale			3
Charging or attempting to charge an incorrect price at the time of sale of an item when more than 24 hours have passed after being informed by the division of weights and measures that the price was incorrect		2	

Violation	Penalty		
Altering a weight certificate, or using or attempting to use such a certificate for the purpose of altering a weight or delivery, or both	1		
Hindering or obstructing the secretary or an authorized agent in the performance of official duties	1		
Failing to pay all fees and penalties	1		
Failing to keep all inspection reports		2	
Failing to make available all inspection reports	1		
Failing to have any commercial weight, measure, or weighing and measuring device tested			3
Selling or offering or exposing for sale LPG in packages or containers that are not labeled properly			3
Selling, using, removing or otherwise disposing of, or failing to remove from the premises specified, any weighing or measuring device or package or commodity contrary to the terms of any order issued by the secretary	1		
Violating any order issued by the secretary	1		
Acting as or representing such person's self to be a technical representative without having a valid license	1		
Certifying as correct an inaccurate device			3
Certifying as correct an inaccurate device and not following established test procedures		2	
Failing to complete the proper forms in their entirety			3
Filing false reports	1		
Selling a weighing and measuring device that does not have an NTEP certificate of conformance	1		
Failing to notify the secretary within 48 hours of weighing or measuring device that cannot be approved			3
Offering, selling, or exposing for sale fuel that does not conform to the applicable fuel quality standards			3
Repeatedly offering, selling, or exposing for sale fuel that does not conform to the applicable fuel quality standards		2	
Failing to take proper precautions to prevent the offering, selling, or exposing for sale of fuel that does not conform to the applicable fuel quality standards	1		

Violation	Penalty		
Knowingly offering, selling, or exposing for sale fuel that does not conform to the applicable fuel quality standards	1		

(Authorized by and implementing K.S.A. 83-502, K.S.A. 1999 Supp. 55-442, and K.S.A. 1999 Supp. 55-443; effective March 6, 1998; amended June 9, 2000.)

**99-27-2. Civil penalty; order.** Each order that assesses a civil penalty shall include the following elements: (a) A statement reciting each subsection of the act authorizing the assessment of a civil penalty;

(b) a specific reference to each provision of the act or implementing regulation that the respondent is alleged to have violated;

(c) a concise statement of the factual basis for each alleged violation;

(d) the amount of the civil penalty; and

(e) a notice of the respondent's right to request a hearing. (Authorized by K.S.A. 55-442 and K.S.A. 2007 Supp. 83-403; implementing K.S.A. 55-443, K.S.A. 2007 Supp. 83-501, and K.S.A. 2007 Supp. 83-502; effective March 6, 1998; amended Jan. 18, 2002; amended July 18, 2008.)

**99-27-3.** (Authorized by K.S.A. 83-403 and K.S.A. 2000 Supp. 55-442; implementing K.S.A. 2000 Supp. 55-443, as amended by L. 2001, Ch. 5, Sec. 195, K.S.A. 83-501, as amended by L. 2001, Ch. 5, Sec. 485 and K.S.A. 83-502, as amended by L. 2001, Ch. 5, Sec. 486; effective March 6, 1998; amended Jan. 18, 2002; revoked July 18, 2008.)

**99-27-4. Informal settlement.** (a) Any respondent may request an informal settlement conference if the respondent timely filed a written request for a hearing. The request may be contained in the respondent's request for a hearing. The request shall be made before the prehearing conference.

(b) If a settlement is reached, the parties shall reduce the settlement to writing and present the proposed written consent agreement to the secretary. The consent agreement shall state that, for the purpose of the proceeding, the following conditions are met:

(1) The respondent admits the jurisdictional allegations and admits the facts stipulated in the consent agreement.

(2) The respondent neither admits nor denies the specific violations contained in the order.

(3) The respondent consents to the assessment of a stated civil penalty, if any is assessed.

The consent agreement shall include all terms of the agreement and shall be signed by all parties or their counsel. (Authorized by K.S.A. 55-442 and K.S.A. 2007 Supp. 83-403; implementing K.S.A. 55-443, K.S.A. 2007 Supp. 83-501, and K.S.A. 2007 Supp. 83-502; effective March 6, 1998; amended Jan. 18, 2002; amended July 18, 2008.)

**99-27-5. Adjusting the amount of the civil penalty.** (a) At the informal settlement conference, each respondent shall present all evidence relating to adjustment of the civil penalty. This evidence may include mitigating factors or new evidence not previously known to the secretary when the order was issued.

(b) If the respondent presents new evidence establishing facts and circumstances that were unknown to the secretary when the order was issued, one of the following shall apply:

(1) If the new evidence relates to the gravity of the violation, an adjustment may be made to the civil penalty.

(2) If the new evidence establishes that a respondent did not commit the violation, the order shall be amended or vacated.

(c) Each respondent shall have the burden of presenting evidence of any mitigating factors to support any requested reduction in the amount of the civil penalty. The amount of the civil penalty may be reduced if the reduction serves the public interest.

(d) The amount of a civil penalty shall not be reduced to less than \$100 per offense.

(1) The decision regarding reduction of a civil penalty shall lie solely within the discretion of the secretary or the secretary's designee.

(2) A civil penalty shall not be reduced unless evidence of mitigating factors has been presented by the respondent. (Authorized by K.S.A. 55-442 and K.S.A. 2007 Supp. 83-403; implementing K.S.A. 55-443, K.S.A. 2007 Supp. 83-501, and K.S.A. 2007 Supp. 83-502; effective March 6, 1998; amended Jan. 18, 2002; amended July 18, 2008.)

### Article 30.—LARGE CAPACITY SCALES; TESTING AND SERVICE

**99-30-2. Registration form.** Each application for issuance or renewal of a scale testing and service company license shall provide the follow-

ing information: (a) The name and business address of the applicant;

(b) the name, home address, social security number, and date of birth of all technical representatives who repair, calibrate, adjust, or test scales for the applicant;

(c) the signature and title of the applicant or representative;

(d) the date of submission of the application;

(e) a certification that the applicant is fully qualified to install, service, repair, or recondition scales; and

(f) a certification that the applicant has in possession or available for use sufficient standards and equipment adequate to test scales. (Authorized by K.S.A. 83-303; implementing K.S.A. 83-302, as amended by L. 2001, Ch. 5, Sec. 483; effective May 1, 1986; amended Oct. 21, 1991; amended Jan. 18, 2002.)

**99-30-3. Conformance with handbook 44.** Each scale testing and service company shall conduct each test and make each repair to scales in conformance with the requirements of the national institute of standards and technology handbook 44 as adopted by reference in K.A.R. 99-25-1. Copies of this material or the pertinent portions of it shall be available from the office of weights and measures, Kansas department of agriculture, Topeka, Kansas. (Authorized by and implementing K.S.A. 83-303; effective May 1, 1986; amended Oct. 21, 1991; amended Jan. 18, 2002.)

**99-30-4. Minimum required equipment.** Each scale testing and service company shall have at each place of business sufficient standards and equipment to adequately test scales as specified in the notes section of the general code and in the scale code contained in the national institute of standards and technology handbook 44, as adopted by reference in K.A.R. 99-25-1. (Authorized by and implementing K.S.A. 83-303; effective May 1, 1986; amended Oct. 21, 1991; amended Jan. 18, 2002.)

**99-30-5. Removal of rejection tags.** (a) For the purpose of testing or repairing a scale, any licensed scale testing and service company may remove an official rejection tag or other mark placed on a scale by authority of the secretary.

(b) After the test is conducted and necessary repairs are completed, the scale testing and service company shall place the scale in service. If the scale is not repaired properly, the scale testing and

service company shall replace the rejection tag or other mark with a substitute rejection tag or other mark supplied by the secretary.

(c) After removing an official rejection tag for the purpose of repairing a scale, the scale testing and service company shall send a completed inspection or test report and the official rejection tag to the weights and measures office within 10 days after the date of removing the official rejection tag. The completed inspection or test report may be submitted by facsimile. The inspection or test report or other attached document shall detail all repairs made, and the testing shall be conducted to ensure that the scale is in compliance with Kansas law and K.A.R. 99-25-1.

(d) Any licensed scale testing and service company may file reports required by this regulation by means of facsimile. If the reports are sent to the weights and measures office by facsimile, the original shall be mailed to the weights and measures office within 10 days after the date of the test or inspection. Notifications mailed to the administrator shall be considered timely if they are postmarked on or before the 10th day following the calibration, repair, or adjustment described in the notification.

(e) This regulation shall apply to new and used scales. (Authorized by K.S.A. 83-207, 83-303 and K.S.A. 2000 Supp. 55-442; implementing K.S.A. 2000 Supp. 55-442, K.S.A. 83-222 and K.S.A. 83-404, as amended by L. 2001, Ch. 175, Sec. 7; effective May 1, 1986; amended Oct. 21, 1991; amended March 6, 1998; amended Jan. 18, 2002.)

**99-30-6. Placed-in-service report.** Each scale testing and service company shall submit to the secretary a placed-in-service report, also referred to as the DI-701 report, within 10 days after a scale has been restored to service or placed in service. The placed-in-service report shall be executed in triplicate. The scale testing and service company shall mail to the secretary the original report and each official rejection tag removed from the device. A duplicate copy of the report shall be delivered to the owner or operator of the device. The scale testing and service company shall retain the third copy of the report. (Authorized by and implementing K.S.A. 83-303; effective May 1, 1986; amended Oct. 21, 1991; amended March 6, 1998; amended Jan. 18, 2002.)

## **Article 31.—MOTOR-VEHICLE FUEL MEASURING DEVICES**

**99-31-1. Definition.** “Dispensing device” means any liquefied petroleum gas, motor-vehicle fuel or liquid fuel dispensing pumps, meters or other similar measuring devices and vehicle tanks used in the transportation of liquefied petroleum gas, motor-vehicle fuels or liquid fuels. (Authorized by and implementing K.S.A. 1987 Supp. 83-403; effective May 1, 1986; amended March 20, 1989.)

**99-31-2. Registration form.** Each application for issuance or renewal of a testing service company license shall provide the following information: (a) The name and business address of the applicant;

(b) the name, home address, social security number, and date of birth of all technical representatives who repair, calibrate, adjust, or test dispensing devices for the applicant;

(c) the signature and title of the applicant or representative;

(d) the date of submission of the application;

(e) a certification that the applicant is fully qualified to install, service, repair, or recondition dispensing devices; and

(f) a certification that the applicant has in its possession or available for use sufficient standards and equipment adequate to test dispensing devices. (Authorized by K.S.A. 83-403; implementing K.S.A. 83-402, as amended by L. 2001, Ch. 5, Sec. 484; effective May 1, 1986; amended Dec. 26, 1988; amended Jan. 18, 2002.)

**99-31-3. Conformance with handbook 44.** Each testing service company shall conduct each test and make each repair to dispensing devices in conformance with the requirements of the national institute of standards and technology handbook 44 as adopted by reference in K.A.R. 99-25-1. Copies of this material or the pertinent portions of it shall be available from the office of weights and measures, Kansas department of agriculture, Topeka, Kansas. (Authorized by and implementing K.S.A. 83-403; effective May 1, 1986; amended Dec. 26, 1988; amended Oct. 21, 1991; amended Jan. 18, 2002.)

**99-31-4. Minimum required equipment.** Each testing service company shall have at each place of business sufficient standards and equipment to adequately test dispensing devices as specified in the notes section of the general code,

and in the liquid-measuring device code, vehicle-tank meter code, and LPG liquid-measuring device code contained in the national institute of standards and technology handbook 44, as adopted by reference in K.A.R. 99-25-1. (Authorized by and implementing K.S.A. 83-403; effective May 1, 1986; amended Dec. 26, 1988; amended Oct. 21, 1991; amended Jan. 18, 2002.)

**99-31-5. Removal of rejection tags.** (a) For the purpose of testing or repairing a dispensing device, any licensed testing service company may remove an official rejection tag or other mark placed on a dispensing device by authority of the secretary.

(b) After the test is conducted and necessary repairs are completed, the testing service company shall place the dispensing device in service until examination by the secretary. If the dispensing device is not repaired properly, the testing service company shall replace the rejection tag or other mark with a substitute rejection tag or other mark supplied by the secretary.

(c) After removing an official rejection tag for the purpose of repairing a device, the service company shall send a completed inspection or test report and the official rejection tag to the weights and measures office within 10 days from the date of removing the official rejection tag. The completed inspection or test report may be submitted by means of facsimile. The inspection or test report or other attached document shall detail all repairs made, and the testing shall be conducted to ensure that the device is in compliance with Kansas law and K.A.R. 99-25-1.

(d) Any licensed testing service company may file notifications or reports required by this regulation by means of facsimile. Notifications or reports mailed to the administrator shall be considered timely if they are postmarked on or before the 10th day following the calibration, repair, or adjustment described in the notification or report.

(e) This regulation shall apply to new and used dispensing devices. (Authorized by K.S.A. 2000 Supp. 55-442, K.S.A. 83-207, and K.S.A. 83-403; implementing K.S.A. 2000 Supp. 55-442, K.S.A. 83-207, 83-222, 83-403, and 83-404, as amended by L. 2001, Ch. 175, Sec. 7; effective May 1, 1986; amended Dec. 26, 1988; amended March 6, 1998; amended Jan. 18, 2002.)

**99-31-6. Placed-in-service report.** Each testing service company shall submit to the secretary a placed-in-service report, also referred to as

the DI-701 report, within 10 days after a dispensing device has been restored to service or placed in service. The placed-in-service report shall be executed in triplicate. The testing service company shall mail to the secretary the original of the properly executed report, together with any official rejection tag removed from the device. A duplicate copy of the report shall be delivered to the owner or operator of the dispensing device while the third copy of the report shall be retained by the testing service company. (Authorized by and implementing K.S.A. 83-403; effective May 1, 1986; amended Dec. 26, 1988; amended March 6, 1998; amended Jan. 18, 2002.)

### Article 32.—SMALL CAPACITY SCALES; TESTING AND SERVICE

**99-32-1.** (Authorized by and implementing K.S.A. 1986 Supp. 83-207; effective May 1, 1986; amended May 1, 1988; revoked Oct. 21, 1991.)

**99-32-2.** (Authorized by K.S.A. 1986 Supp. 83-206; effective May 1, 1986; amended May 1, 1988; revoked Oct. 21, 1991.)

**99-32-3.** (Authorized by and implementing K.S.A. 1986 Supp. 83-207; effective May 1, 1986; amended May 1, 1988; revoked Oct. 21, 1991.)

**99-32-4.** (Authorized by K.S.A. 1986 Supp. 83-207; implementing K.S.A. 1986 Supp. 83-206; effective May 1, 1986; amended May 1, 1988; revoked Oct. 21, 1991.)

**99-32-5.** (Authorized by K.S.A. 1986 Supp. 83-207; implementing K.S.A. 1986 Supp. 83-206, 215 and 219; effective May 1, 1986; amended May 1, 1988; revoked Oct. 21, 1991.)

**99-32-6.** (Authorized by K.S.A. 1986 Supp. 83-207; implementing K.S.A. 1986 Supp. 83-206, 215 and 219; effective May 1, 1986; amended May 1, 1988; revoked Oct. 21, 1991.)

### Article 40.—PETROLEUM MEASUREMENT

**99-40-1.** (Authorized by K.S.A. 1989 Supp. 55-429 and K.S.A. 83-207; implementing K.S.A. 1989 Supp. 55-424 and K.S.A. 83-206; effective Jan. 14, 1991; revoked Jan. 18, 2002.)

**99-40-3. Invoice disclosure requirements for wholesalers and distributors of gasoline and diesel fuel.** (a) Each distributor or whole-

salers of gasoline and diesel fuel shall provide the following information to the purchaser at the time of delivery:

(1) The minimum octane of the product as determined by the (R+M)/2 method;

(2) for diesel fuel, the grade, minimum flash point, and American petroleum institute gravity of the product;

(3) the terminal of origin of the product;

(4) the destination of the product;

(5) the name of the wholesaler, if different from the distributor or point of origin;

(6) the quantity of each type of product delivered;

(7) the percentage of ethanol if more than one percent; and

(8) the percentage of biodiesel fuel if more than one percent.

(b) The information required in subsection (a) shall be provided to the purchaser in writing.

(c) For the purposes of this regulation, the term “purchaser” shall mean a wholesaler, distributor, or retailer. (Authorized by K.S.A. 55-442 and K.S.A. 83-207; implementing K.S.A. 55-424, K.S.A. 55-442, and K.S.A. 83-206; effective Jan. 14, 1991; amended Jan. 18, 2002; amended Aug. 23, 2013.)

**99-40-21.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-22.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-23.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-24.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-25.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-26.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-27.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-28.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-29.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-30.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-31.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-32.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-33.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-34.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-35.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-36.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-37.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-38.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-39.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-40.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-41.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-42.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-43.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-44.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-45.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-46.** (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

**99-40-47.** (Authorized by K.S.A. 1996 Supp. 83-207 and K.S.A. 1996 Supp. 55-442; implementing K.S.A. 1996 Supp. 83-304, as amended by L.

1997, Ch. 89, Sec. 1, K.S.A. 1996 Supp. 83-215, and K.S.A. 1996 Supp. 83-404; effective March 6, 1998; revoked Jan. 18, 2002.)

**99-40-100.** (Authorized by and implementing K.S.A. 1993 Supp. 55-443; effective Dec. 12, 1994; revoked Jan. 18, 2002.)

**99-40-101.** (Authorized by and implementing K.S.A. 1993 Supp. 55-443; effective Dec. 12, 1994; revoked Jan. 18, 2002.)

**99-40-104.** (Authorized by and implementing K.S.A. 1993 Supp. 55-443; effective Dec. 12, 1994; revoked Jan. 18, 2002.)

**99-40-105.** (Authorized by and implementing K.S.A. 1993 Supp. 55-443; effective Dec. 12, 1994; revoked Jan. 18, 2002.)



## Agency 100

# State Board of Healing Arts

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**Article 1.—BOARD OF HEALING ARTS**

**100-1-1. Seals.** This board shall have a common seal which shall be used to authenticate all official acts and documents of the board. (Authorized by K.S.A. 65-2865; effective Jan. 1, 1966; amended Feb. 15, 1977.)

**100-1-2.** (Authorized by K.S.A. 65-2865; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

**100-1-3.** (Authorized by K.S.A. 65-2865; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

**Article 2.—OFFICERS**

**100-2-1.** (Authorized by K.S.A. 65-2865; effective Jan. 1, 1966; revoked May 1, 1988.)

**100-2-2. Term.** The officers herein provided for shall hold office for a term of one (1) year and until their successors are elected and qualified. (Authorized by K.S.A. 65-2865; effective Jan. 1, 1966.)

**100-2-3. President; duties.** It shall be the duty of the president to preside at all meetings of the board and perform such other duties as authorized or required by law or as may be specif-

ically assigned by the board. The president shall countersign the minutes of board meetings when approved. The president is authorized to appoint such standing committees as the board may direct and may appoint special committees for special purposes. (Authorized by K.S.A. 65-2865; implementing K.S.A. 65-2818, as amended by L. 1987, Ch. 240, Sec. 6; effective Jan. 1, 1966; amended May 1, 1988.)

**100-2-4. Vice-president; duties.** In the absence or disability of the president at any regular or special meeting, the vice-president shall possess all the powers of the president during such meeting and shall countersign the minutes of such meeting when approved. (Authorized by K.S.A. 65-2865; effective Jan. 1, 1966.)

**100-2-5.** (Authorized by K.S.A. 65-2865; implementing K.S.A. 65-2818; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1979; amended, T-87-42, Dec. 19, 1986; amended May 1, 1987; revoked May 1, 1988.)

**100-2-6.** (Authorized by K.S.A. 65-2865, K.S.A. 65-2878; effective Jan. 1, 1970; amended Feb. 15, 1977; revoked May 1, 1988.)

**Article 3.—COMMITTEES**

**100-3-1. Appointment.** The president is empowered to appoint special committees for special purposes upon his or her own motion and when directed by a majority of the board. Members serving on any committee shall receive no salary or compensation for services other than the compensation provided by K.S.A. 65-2823. (Authorized by K.S.A. 65-2865; effective Jan. 1, 1966; amended Jan. 1, 1970; amended Feb. 15, 1977; amended May 1, 1979.)

**Article 4.—VACANCIES**

**100-4-1. Causes.** A vacancy shall occur in any board office herein provided for when the person holding that office resigns or is no longer a member of the board. (Authorized by K.S.A. 65-2865; effective Jan. 1, 1966; amended Feb. 15, 1977.)

**100-4-2. Filling.** Vacancies in any office other than that of president shall be filled by a temporary appointment by the president, which temporary appointment shall continue until the next regular or special meeting of the board at which time one of the members of the board shall be elected to fill such vacancy for the unexpired term. If a vacancy occurs in the office of president, the vice-president shall act as president until the next regular meeting of the board at which time one of the members of the board shall be elected to fill such vacancy for the unexpired term. (Authorized by K.S.A. 65-2865; effective Feb. 15, 1977.)

**Article 5.—MEETINGS**

**100-5-1. Meetings.** (a) The annual meeting of the board shall be its first regular meeting subsequent to July 1 of each year.

(b) Prior to January 1 of each year the board shall designate the dates, times and places of its regular meetings for the next calendar year. Any changes to the dates, times or places of such meetings may be made by the board at any regular meeting or special meeting called for that purpose. (Authorized by K.S.A. 65-2865; implementing K.S.A. 65-2819; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1988.)

**100-5-2. Special.** (a) Special meetings may be called by the president at any time.

(b) The president shall call a special meeting when a written request is made by a quorum of

the board setting forth an agenda of business to be transacted at that meeting.

(c) Notice of the date, time and place of any special meeting and an agenda of business to be transacted at that meeting shall be furnished to each member of the board at least five days prior to the meeting.

(d) No business shall be transacted at a special meeting except as set forth in the agenda furnished pursuant to subsection (c) above. (Authorized by K.S.A. 65-2865; implementing K.S.A. 65-2819; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1988.)

**100-5-3.** (Authorized by K.S.A. 65-2865, 65-2822; effective Feb. 15, 1977; revoked May 1, 1988.)

**100-5-4. Order of business.**

Roll call

Consideration of and action upon minutes of a previous meeting

Approval of agenda

Reports of employees

Reports of officers

Reports of committees

Unfinished business

New business

Adjournment

Parliamentary procedure not covered by these rules shall be governed by Roberts' Rules of Order. (Authorized by K.S.A. 65-2865; effective Feb. 15, 1977.)

**Article 6.—LICENSES**

**100-6-1. Granting.** Licenses to practice the healing arts in the state of Kansas shall be issued by examination or endorsement to qualified applicants who have complied with the requirements of the laws of the state of Kansas and the rules of this board adopted pursuant thereto. (Authorized by K.S.A. 65-2865; effective Jan. 1, 1966; amended Jan. 1, 1970; amended Jan. 1, 1973; amended Feb. 15, 1977.)

**100-6-2. Education and training requirements.** (a) Each applicant for licensure by examination in medicine and surgery or osteopathic medicine and surgery who graduates from an accredited or unaccredited school of medicine on or after January 1, 2021 shall present to the board proof of completion of at least 36 months of a postgraduate training or residency training

program. This program shall have been approved by the council on medical education of the American medical association, the American osteopathic association, or the substantial equivalent, as determined by the board, in the year in which the training took place.

(b) Each applicant for licensure by examination in medicine and surgery or osteopathic medicine and surgery who graduates from an accredited school of medicine before January 1, 2021 shall present proof of successful completion of at least 12 months of a postgraduate training or residency training program. This program shall have been approved by the council on medical education of the American medical association, the American osteopathic association, or the substantial equivalent, in the year in which the training took place.

(c) Each applicant for licensure by examination in medicine and surgery or osteopathic medicine and surgery who graduates from an unaccredited school of medicine before January 1, 2021 shall present proof of successful completion of at least 36 months of a postgraduate training program or residency training program. This program shall have been approved by the council on medical education of the American medical association, the American osteopathic association, or the substantial equivalent, as determined by the board, in the year in which the training took place.

(d) Each applicant for licensure by examination in chiropractic who matriculates in chiropractic college on or after January 1, 2000 shall present proof of having received a baccalaureate degree from an accredited school or college. If the baccalaureate degree is granted by a chiropractic school or college, at least 90 semester hours applicable to the baccalaureate degree shall be earned at an accredited school or college, with none of these hours applying to the doctor of chiropractic degree. For purposes of this subsection, an "accredited school or college" shall meet the standards, or substantially equivalent standards as determined by the board, for accreditation of the higher learning commission. (Authorized by K.S.A. 65-2865; implementing K.S.A. 65-2873 and 65-2875; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1979; amended, T-86-44, Dec. 18, 1985; amended May 1, 1986; amended May 23, 1997; amended, T-100-11-5-99, Nov. 5, 1999; amended March 10, 2000; amended May 7, 2021.)

**100-6-2a. Resident active license qualifications.** (a) Each applicant for a resident active

license in medicine and surgery or osteopathic medicine and surgery who is a graduate of an accredited school of medicine and has not completed 36 months of a postgraduate training program shall meet the following requirements:

(1) Have successfully completed 12 months of postgraduate training program;

(2) be presently engaged in and in good standing in the postgraduate training program;

(3) have passed step 3 of the United States medical licensing examination (USMLE) or equivalent;

(4) provide a written statement of the medical services to be provided beyond the parameters of the postgraduate training or residency training program, on a form provided by the board;

(5) provide the written approval of the director of postgraduate training or residency training program to provide the services described in the written statement, on a form furnished by the board; and

(6) submit documentation that the applicant will maintain a policy of professional liability insurance required pursuant to K.S.A. 40-3402, and amendments thereto, and will pay the premium surcharges as required by K.S.A. 40-3404, and amendments thereto.

(b) The license shall be cancelled upon any of the following:

(1) Resignation from the postgraduate training or residency training program;

(2) being no longer in good standing in the postgraduate training program;

(3) removal from the training program;

(4) not maintaining a policy of professional liability insurance if the policy is required pursuant to K.S.A. 40-3402, and amendments thereto, and not paying the premium surcharges as required by K.S.A. 40-3404, and amendments thereto; or

(5) withdrawal of approval from the director of postgraduate training or residency training program to provide the services listed in the written statement. (Authorized by K.S.A. 65-2865; implementing K.S.A. 65-2873b; effective March 19, 2021.)

**100-6-3. Approved school of medicine and surgery.** (a) Each school of medicine and surgery seeking approval pursuant to L. 1985, ch. 216, Sec. 3, shall on balance meet the following minimum standards:

(1) The school shall be accredited by the liaison committee on medical education of the association of American medical colleges or the council

on medical education of the American medical association, the American osteopathic association bureau of professional education and the committee on postdoctoral training or the committee on accreditation of Canadian medical schools of the association of Canadian medical colleges and the Canadian medical association.

(2) The school shall have been approved for licensure in other states or its students shall have been authorized to perform clerkships or postgraduate training in other states.

(3) The school shall have been in existence for a sufficient number of years to ensure that an adequate program has been developed;

(4) The school shall be located in a college that is legally recognized and authorized by the jurisdiction in which it is located to confer the M.D. or D.O. degree.

(5) The school shall require the applicant, upon graduation, to have completed a total medical instruction of not less than 132 weeks in duration over a time period of not less than 35 months.

(6) The school shall include instruction in at least the following:

- (A) Basic science
  - (i) Anatomy
  - (ii) Biochemistry
  - (iii) Physiology
  - (iv) Microbiology
  - (v) Pharmacology
  - (vi) Pathology
  - (vii) Physical diagnosis
- (B) Clinical process
  - (i) Obstetrics/gynecology
  - (ii) Medicine
  - (iii) Pediatrics
  - (iv) Psychiatry
  - (v) Surgery
- (7) Clinical clerkships.

(A) The school shall have a clerkship phase which the student performs in a clinical facility or facilities controlled by or affiliated with the medical college and supervised by one or more faculty members.

(B) The clerkship shall consist of a hands-on, supervised exposure to patients which is planned, supervised, and monitored by the medical college in cooperation with the clinical facility.

(C) Each clerkship shall last between four to 12 weeks with the total clerkship phase lasting at least 18 months.

(D) The students shall satisfactorily perform clerkships in at least the following areas: internal

medicine, surgery, pediatrics, obstetrics/gynecology and psychiatry.

(E) Any additional electives shall be taken in a clinical facility approved for active postgraduate training in that school.

(8) If the school allows students to take an examination in lieu of attending and completing courses or accepts transfer credit for courses, the applicant shall have taken semester courses at another institution of a similar quality.

(9) The school shall have articles of affiliation between the medical college and each clinical facility which clearly defines the rights and responsibilities of each party, including agreements regarding the role and authority of the governing bodies of both the hospital and the medical college, and if portions of the required clinical or basic science curriculum are offered at different geographical sites, the curriculum shall be planned, supervised, administered, and evaluated in concert with appropriate faculty committees, department chairpersons and administrative officers of the parent school.

(10) The school shall have a balanced faculty comprised of a sufficient number of full-time biomedical and clinical instructors to ensure that the educational obligations to the student are fulfilled and the ratio between full-time faculty and students shall be substantially equivalent to the ratio at the University of Kansas School of Medicine. The faculty shall have an M.D. degree or an equivalent degree in the area in which they teach and shall demonstrate competence in the biological, behavioral, and clinical sciences, as evidenced by membership in appropriate specialty boards, publications or similar accomplishments.

(11) Library facilities.

(A) The school shall have a well-maintained catalogue library, sufficient in size and breadth to support the educational programs offered by the institution.

(B) The library shall receive the leading biomedical and clinical periodicals and the current volumes of those periodicals shall be readily accessible.

(C) The library and other learning resource centers shall be adequately equipped to allow students to learn new methods of retrieving information, and to use self-instructional material.

(D) The library shall have a professional library staff to supervise the library, provide instruction in its use, and respond to the needs of the medical school.

(12) The substantial cost of conducting the school shall be derived from diverse sources, such as tuition, endowments, earnings by the faculty, parent university, annual gifts, grants from organizations and individuals, and government appropriations. Tuition shall not be the predominant source of income.

(13) The school's admission requirements shall require an undergraduate degree or equivalent educational experience, and shall have instituted criteria by which applicants are evaluated and accepted for admission which shall include a balance of educational experience, pre-medical examination scores, and other relevant experience.

(14) The school shall maintain permanent student records that summarize admissions, credentials, grades, and other records of performance.

(15) The school shall have laboratory facilities with a sufficient number of modern equipment and specimens to ensure that each student obtains adequate clinical and basic science training.

(b) Effect of disapproval on pending application. When the board disapproves a school of medicine and surgery, the disapproval notice shall set forth:

(1) The period of time covered by the evaluation and which of the minimum requirements in subsection (a) the program failed to satisfy; or

(2) A statement that disapproval was based on the receipt of insufficient information concerning the program. If the board determines that a school, previously approved pursuant to subsection (a), must be disapproved, the board shall set a date after which a person graduating shall be considered not to have graduated from an approved school. Any school which has been disapproved may request a hearing or other appropriate action pursuant to the Kansas administrative procedures act.

(c) Annual publication. A list of all approved schools shall be published after July 1 of each year and provided to all of the approved schools of graduate medical education within the State of Kansas, the Kansas state medical society, the Kansas hospital association, Kansas osteopathic association, and to any person or organization making written request. The list shall also contain any schools disapproved in the preceding year.

(d) Reevaluation of an approved school.

(1) Any approved school of medicine and surgery may be reevaluated whenever the board has reason to believe that the school has failed to satisfy the minimum requirements of subsection (a).

(2) If any school is disapproved after the reevaluation, written notice shall be sent to the subject

medical school, advising the administration that they may either submit written comments or request a hearing before the board within 15 days. The provisions of the Kansas administrative procedures act shall apply to any hearing under this subsection.

(3) If any school previously approved is subsequently disapproved by the board, the disapproval shall not disqualify any physician temporarily or permanently licensed in Kansas with respect to the license then held. For purposes of this regulation, any person holding a current and valid temporary permit issued by the board without disclaimer, conditions, or restriction on it, and who applies for and satisfies all requirements for full licensure shall not be disqualified if the program that served as the basis for that person's licensure is subsequently disapproved. (Authorized by K.S.A. 65-2865; implementing L. 1985, Ch. 216, sec. 3; effective Jan. 1, 1966; amended Feb. 15, 1977; amended, T-86-44, Dec. 18, 1985; amended May 1, 1986.)

**100-6-4. Applications for licensure by examination.** Applicants for licensure by examination shall submit the following requirements not later than sixty (60) days preceding the date of examination:

1. A written application, on a form prescribed by the board with the full name and address of the applicant subscribed thereto.

2. A photograph of the applicant, exactly 3 × 4 inches in size, taken within ninety (90) days prior to the making of application and a certificate of the photographer upon the reverse side showing the date and place such picture was taken. A thumb print on back of photograph shall be taken by any law enforcement agency or in the office of the board of healing arts and certified by the person taking the print.

3. An affidavit specifying in detail that the applicant has met the following minimum educational requirements:

(a) A graduate of an accredited healing arts school or college stating the name and location of such school or college and the date of graduation. This affidavit shall further state that the applicant is the identical person attending the schools and receiving the degrees claimed in such affidavit.

(b) A certified copy of accredited healing arts school or college diploma.

4. Evidence of proficiency in basic science issued by the national board of medical examiners,

the national board of examiners of osteopathic physicians and surgeons or the national board of chiropractic examiners or such other examining body as may be approved by the board or in lieu thereof pass such examination as the board may require in the basic science subjects.

5. A certificate of the applicant's good moral character signed by two (2) reputable teachers or practitioners of the healing arts licensed in some state of the United States personally acquainted with the applicant. (Authorized by K.S.A. 65-2865, K.S.A. 1976 Supp. 65-2873; effective Jan. 1, 1966; amended Feb. 15, 1977.)

**100-6-5. Application for licensure of foreign graduates by examination.** Persons graduating from healing arts schools or colleges located in a country other than the United States of America and applying for a license shall, in addition to the requirements set out in K.A.R. 100-6-2 and 100-6-4, meet the following:

(a) A certificate that the applicant has met the requirements and received a standard certificate from the educational council for foreign medical graduates, passed the visa qualifying examinations or has successfully completed a fifth pathway program approved by the board of healing arts.

(b) Proof that the healing arts school or college from which the applicant graduated meets the requirements set out in K.S.A. 65-2874, 65-2875 and 65-2876.

(1) Proof may include but not be limited to information concerning the curriculum of such school, the grading system in use, and foreign association or government accreditation.

(c) All documents and material required by K.A.R. 100-6-5 shall be translated into English and a certificate of the correctness shall be provided. These copies shall be notarized as true copies.

(d) Proof that the applicant has reasonable ability to communicate with the general public in English. (Authorized by K.S.A. 65-2865; effective Feb. 15, 1977; amended May 1, 1979.)

**100-6-7. Application for licensure pursuant to K.S.A. 48-3406.** (a) Each applicant for licensure under K.S.A. 2020 Supp. 48-3406, as amended by L. 2021, ch. 70, sec. 1, and amendments thereto, shall submit the application on a form provided by the board.

(b) Each applicant shall submit the following with the application:

(1) An application fee;

(2) a current photograph of the applicant taken within 90 days of the date the application is received by the board;

(3) verification of each license, registration, or certification issued to the applicant by any state or the District of Columbia to practice the profession for which the applicant has applied to the board; and

(4) documentation that an insurer intends to issue the applicant a policy of professional liability insurance pursuant to K.S.A. 40-3402, and amendments thereto, and certification from the applicant that the premium surcharges pursuant to K.S.A. 40-3404, and amendments thereto, will be paid.

(c) Each applicant shall sign the application under oath and have the application notarized. (Authorized by K.S.A. 2020 Supp. 48-3406, as amended by L. 2021, ch. 70, sec. 1, and K.S.A. 65-2865; implementing K.S.A. 2020 Supp. 48-3406, as amended by L. 2021, ch. 70, sec. 1; effective, T-100-8-25-21, Aug 25, 2021; effective Nov. 5, 2021.)

## Article 7.—EXAMINATIONS

**100-7-1. Designated examinations for medicine and surgery and osteopathic medicine and surgery; limitation on attempts.**

(a)(1) Each applicant for licensure by examination in medicine and surgery shall be required to successfully complete either of the following:

(A) Step 1, step 2, and step 3 of the United States medical licensing examination (USMLE); or

(B) the substantial equivalent of the examination specified in paragraph (a)(1)(A) in the year the examination was completed, as determined by the board.

(2) Each applicant who does not complete all steps of the USMLE within seven total attempts shall be deemed ineligible for licensure by examination until the applicant has submitted evidence acceptable to the board of further professional study of the subject matter tested in each USMLE step not completed by the applicant and the board determines that the further professional study is sufficient to substantially improve the applicant's likelihood of completing each USMLE step not completed by the applicant.

(b)(1) Each applicant for licensure by examination in osteopathic medicine and surgery shall be required to successfully complete either of the following:

(A)(i) Step 1, step 2, and step 3 of the USMLE; or  
 (ii) level 1, level 2, and level 3 of the comprehensive osteopathic medical licensing examination (COMLEX-USA); or

(B) the substantial equivalent of either examination specified in paragraphs (b)(1)(A)(i) and (ii) in the year the examination was completed, as determined by the board.

(2) Each applicant who does not complete all steps of the USMLE or all levels of the COMLEX-USA within seven total attempts shall be deemed ineligible for licensure by examination until the applicant has submitted evidence acceptable to the board of further professional study of the subject matter tested in each USMLE step or COMLEX-USA level not completed by the applicant and the board determines that the further professional study is sufficient to substantially improve the applicant's likelihood of completing each USMLE step or COMLEX-USA level not completed by the applicant. (Authorized by K.S.A. 65-2828 and K.S.A. 65-2865; implementing K.S.A. 65-2828, K.S.A. 65-2833, and K.S.A. 65-2873; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 7, 2000; amended Nov. 13, 2020.)

**100-7-2.** (Authorized by K.S.A. 65-2865, K.S.A. 1976 Supp. 65-2873; effective Jan. 1, 1966; amended Jan. 1, 1970; amended Jan. 1, 1973; revoked Feb. 15, 1977.)

**100-7-3.** (Authorized by K.S.A. 65-2865, 65-2874, K.S.A. 1976 Supp. 65-2875, 65-2876; effective Jan. 1, 1966; amended Jan. 1, 1973; revoked Feb. 15, 1977.)

**100-7-4.** (Authorized by K.S.A. 65-2865, K.S.A. 1976 Supp. 65-2873; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked Feb. 15, 1977.)

**100-7-5.** (Authorized by K.S.A. 65-2865, K.S.A. 1976 Supp. 65-2873; effective Jan. 1, 1966; amended Jan. 1, 1970; amended Jan. 1, 1973; revoked Feb. 15, 1977.)

## Article 8.—LICENSE BY ENDORSEMENT

**100-8-1. Issuance; requirement.** The board, without examination, may issue a license to persons who meet requirements set out in K.S.A. 65-2833. (a) All applicants for endorsement from other countries may be required to personally appear before the board.

(b) In order that the board may determine the standards established by law and rule in oth-

er countries the applicant will be responsible in furnishing to the board credible evidence such as affidavits, documents, publications and other material which will demonstrate the following:

(1) Standards of the medical school of graduation.

(A) requirements for admission

(B) content of courses

(C) number of applicants as compared to number of admissions

(D) program of specialty training available

(E) faculty-student ratio

(F) description of physical plant

(G) credentials of instructors

(H) volumes and periodicals maintained in medical library

(I) type of laboratory facilities

(J) type of X-ray and diagnostic equipment in use

(K) method through which the school is financed

(L) number and type of examinations given during the school year

(M) construction and type of organization that accredits the school and monitors the continued accreditation

(N) requirements for graduation

(2) Standards of the national examination required prior to licensure:

(A) education and practical requirements prior to applicant qualifying to take the national examination

(B) construction and type of organization that makes up the national examination

(C) type of examination—written, oral, number of questions, length of examination, how monitored

(D) pass-fail rate

(E) questions from sample or past examinations. (Authorized by K.S.A. 65-2833, 65-2834 and 65-2965; effective Jan. 1, 1970; amended Jan. 1, 1973; amended Feb. 15, 1977; amended May 1, 1979.)

**100-8-2. Applications.** All applications for endorsement registration shall be upon forms furnished by the Kansas healing arts board and these forms shall contain the following in plain, legible writing:

(a) Name in full.

(b) Post office address.

(c) Purpose of Kansas license.

(d) Date and place of birth.

(e) Certified statement in detail of professional education showing healing arts schools or colleges

attended, periods of study, degrees obtained and date of graduation.

(f) Photograph, exactly three by four (3" × 4") inches, taken within ninety (90) days prior to date of application and certificate of the photographer on the back of the photograph showing date and place of the photograph. A thumb print on back of photograph shall be taken by any law enforcement agency or in the office of the board of healing arts and certified by the person taking the print.

(g) Affidavit of the applicant that he or she is the identical person completing the education requirements as provided in K.A.R. 100-6-2 [and] the photograph and thumb print submitted is that of the applicant.

(h) A certificate signed by the president or secretary of some county, district, state or country professional healing arts society, setting forth that the applicant is a member in good standing of said society, that he or she is a qualified ethical practitioner of good moral character as provided in K.S.A. 65-2804. In lieu of such certificate, the applicant may furnish a written recommendation from two (2) licensed practitioners who are members of the healing arts society where the applicant resides.

(i) A certified document of proficiency in basic science subjects.

(j) A true copy of the state or other country license or certificate issued by the endorsing state or country over the seal of the licensing authority and certified as correct by the secretary of the board or other licensing agency of such state or country from which the applicant comes endorsed.

(k) A certificate of state endorsement signed and attested by the secretary of the state board or other licensing authority from which the applicant is licensed. (Authorized by K.S.A. 65-2833, 65-2834, 65-2865, 65-2873; effective Feb. 15, 1977; amended May 1, 1979.)

**100-8-3. Endorsement licenses; active practice requirements.**

(a) Each applicant seeking licensure by endorsement based on licensure and active practice in another state, the District of Columbia, another country, or a territory shall submit evidence showing that the applicant has been engaged in direct patient care during the 12 months immediately preceding submission of a completed application. This direct patient care shall consist of at least either of the following, or the substantial equivalent as determined by the board:

(1) At least one full day per week, or its equivalent, for at least 50 weeks; or

(2) a total of 400 hours.

(b) The totality of circumstances may be considered by the board in determining whether the applicant has been in active practice, including gaps in practice necessitated by military service or family leave taken due to the birth of a child of the applicant or the placement of a child for adoption or foster care with the applicant.

(c) The following shall not qualify as active practice:

(1) Patient care provided while the applicant is engaged in a training program, residency, or fellowship;

(2) employment that consists solely of research activities that would not otherwise be considered direct patient care; and

(3) employment that consists solely of administrative duties.

(d) An applicant's practice in any other state, the District of Columbia, another country, or a territory shall not qualify as active practice during the existence of any of the following conditions:

(1) The applicant's license is limited, suspended, or revoked in any other state, the District of Columbia, another country, or a territory or has been surrendered in any other state, the District of Columbia, another country, or a territory at the time of application.

(2) The applicant's authority to utilize controlled substances issued by any state, the District of Columbia, another country, a territory, or a federal agency has been surrendered as a result of the applicant's practice in any other state, the District of Columbia, another country, or a territory.

(3) The applicant is subject to an agreement for a limitation to or restriction of privileges at any medical care facility as a result of the applicant's practice in any other state, the District of Columbia, another country, or a territory.

(4) The applicant's membership on any professional staff or in any professional association or society has been surrendered while under investigation as a result of the applicant's practice in any other state. (Authorized by K.S.A. 65-2865; implementing K.S.A. 65-2833; effective May 7, 2021.)

**100-8-4. Endorsement from this state.**

The executive director is empowered to certify on behalf of the board all necessary certificates for persons licensed in this state desiring to obtain a

license by endorsement in any other state or country. The certificate shall state whether the license is current or not. (Authorized by K.S.A. 65-2865; implementing K.S.A. 65-2878, as amended by L. 1987, Ch. 240, Sec. 10; effective Feb. 15, 1977; amended May 1, 1988.)

#### Article 9.—TEMPORARY LICENSE

**100-9-1. Visiting professor license.** The board may issue a visiting professor temporary license upon proper application to persons who meet the requirements set out in K.S.A. 65-2898 [65-28,100] provided any prescribed fees are paid. (Authorized by K.S.A. 65-2865, K.S.A. 1976 Supp. 65-2898; effective Jan. 1, 1966; amended Feb. 15, 1977.)

**100-9-2.** (Authorized by K.S.A. 65-2865, K.S.A. 65-2895; effective Feb. 15, 1977; revoked May 1, 1988.)

#### Article 10.—TEMPORARY PERMIT

**100-10-1.** (Authorized by K.S.A. 65-2865, K.S.A. 65-2811; effective Jan. 1, 1966; amended Jan. 1, 1970; amended Jan. 1, 1973; amended Feb. 15, 1977; revoked May 1, 1988.)

#### Article 10a.—EXEMPT LICENSE

**100-10a-1. Applications.** (a) Each application for an exempt license shall be submitted upon a form furnished by the board. This form shall contain the following in plain, legible writing:

- (1) The applicant's name in full;
- (2) the applicant's post office box address if applicable;
- (3) the applicant's residence address;
- (4) the applicant's Kansas license number;
- (5) a statement that the applicant does not hold oneself out to the public as being professionally engaged in the practice of the healing arts for which the applicant holds a license;
- (6) a statement that the applicant is no longer regularly engaged in the state of Kansas in the branch of the healing arts for which the applicant holds a license;
- (7) a statement describing the professional activities relating to the healing arts in which the applicant intends to engage if issued an exempt license;
- (8) a statement acknowledging that if the applicant is issued an exempt license, the applicant

shall be subject to all provisions of the healing arts act except for complying with the requirements of continuing education; and

(9) a statement acknowledging that if the applicant is issued an exempt license, the following shall apply:

(A) The applicant will not be a health care provider, as defined by K.S.A. 40-3401 and amendments thereto.

(B) The applicant will not be required to maintain professional liability insurance in accordance with K.S.A. 40-3401 *et seq.*

(C) Any services rendered by the applicant, while the holder of an exempt license, will not be insured or covered by the health care stabilization fund.

(b) Each application for an exempt license shall be signed by the applicant. (Authorized by K.S.A. 65-2865; implementing K.S.A. 1998 Supp. 65-2809; effective, T-88-52, Dec. 16, 1987; effective May 1, 1988; amended June 20, 1994; amended March 10, 2000.)

**100-10a-2. Request for changes.** An exempt license holder shall file a written request with the board whenever the nature or extent of the professional activities relating to the healing arts are proposed to be changed from those activities divulged to the board on the application for such license or on any renewal form. The board shall review the request, determine whether the proposed changes affect the eligibility for an exempt license and either grant or deny the request. (Authorized by K.S.A. 65-2865; implementing K.S.A. 1986 Supp. 65-2809, as amended by L. 1987, Ch. 242, Sec. 2; effective, T-88-52, Dec. 16, 1987; effective May 1, 1988.)

**100-10a-3. Renewal applications.** Each application for renewal of an exempt license shall be submitted upon a form furnished by the board and shall be accompanied by the fee required by K.A.R. 100-11-1. (Authorized by K.S.A. 65-2865; implementing K.S.A. 1998 Supp. 65-2809; effective, T-88-52, Dec. 16, 1987; effective May 1, 1988; amended March 10, 2000.)

**100-10a-4. Criteria.** (a) Exempt licenses may be issued to qualified applicants if the professional activities of the applicant will be limited to the following:

- (1) Performing administrative functions, including peer review, disability determinations, utilization review and expert opinions;
- (2) providing direct patient care services gra-

tuitously or providing supervision, direction or consultation for no compensation. Nothing in this subsection shall prohibit an exempt license holder from receiving payment for subsistence allowances or actual and necessary expenses incurred in providing such services;

(3) rendering professional services as a “charitable health care provider” as defined in K.S.A. 1990 Supp. 75-6102 and amendments thereto; and

(4) providing services as a district coroner or deputy coroner.

(b) Applications describing professional activities not included in (a) shall be reviewed by the board on a case-by-case basis to determine eligibility for an exempt license. (Authorized by K.S.A. 1990 Supp. 65-2865; implementing K.S.A. 1990 Supp. 65-2809; effective, T-88-52, Dec. 16, 1987; effective May 1, 1988; amended June 24, 1991.)

**100-10a-5. Conversion.** (a) A holder of an exempt license desiring to become licensed to regularly practice the healing arts within Kansas shall submit a form provided by the board containing identical information to that required of individuals desiring to reinstate a license.

(b) Each holder of an exempt license desiring to become licensed to regularly practice the healing arts within Kansas shall submit proof of continuing education as follows:

(1) If the individual has held the exempt license for less than one year, no continuing education in addition to that which would have been necessary had the exempt licensee continued to hold an active license shall be required;

(2) if the exempt licensee has held the exempt license more than one year but less than three years, the individual must submit evidence of satisfactory completion of a program of continuing education in accordance with the requirements of K.A.R. 100-15-2; and

(3) if the exempt licensee has held the exempt license for more than three years, the applicant must complete a program recommended by the board. (Authorized by and implementing K.S.A. 1986 Supp. 65-2809, as amended by L. 1987, Ch. 242, Sec. 2; effective, T-88-52, Dec. 16, 1987; effective May 1, 1988.)

**100-10a-6. Activities not divulged.** (a) The holder of an exempt license shall not engage in any professional activities relating to the healing arts not divulged to the board on the application for exempt license, any renewal application

or on a request submitted and approved by the board pursuant to K.A.R. 100-10a-2.

(b) Any departure from subsection (a) may constitute evidence of dishonorable conduct pursuant to K.S.A. 1986 Supp. 65-2836(b) as amended by L. 1987, Ch. 176, Sec. 5 as further amended by L. 1987, Ch. 242, Sec. 3 and any amendments thereto. (Authorized by K.S.A. 65-2865; implementing K.S.A. 1986 Supp. 65-2809, as amended by L. 1987, Ch. 242, Sec. 2; effective, T-88-52, Dec. 16, 1987; effective May 1, 1988.)

**Article 11.—FEES**

**100-11-1. Amount.** The following fees shall be collected by the board:

- (a) Application for license ..... \$ 300.00
- (b)(1) Annual renewal of active or federally active license:
  - (A) Paper renewal ..... \$ 400.00
  - (B) On-line renewal ..... \$ 330.00
  - (2) Annual renewal of inactive license:
    - (A) Paper renewal ..... \$ 150.00
    - (B) On-line renewal ..... \$ 150.00
    - (3) Annual renewal of exempt license:
      - (A) Paper renewal ..... \$ 150.00
      - (B) On-line renewal ..... \$ 150.00
      - (c)(1) Conversion from inactive to active license ..... \$ 175.00
      - (2) Conversion from exempt to active license ..... \$ 175.00
      - (d)(1) Additional fee for late renewal of active or federally active license:
        - (A) Paper late renewal ..... \$ 200.00
        - (B) On-line late renewal ..... \$ 70.00
        - (2) Additional fee for late renewal of inactive license:
          - (A) Paper late renewal ..... \$ 50.00
          - (B) On-line late renewal ..... \$ 25.00
          - (3) Additional fee for late renewal of exempt license:
            - (A) Paper late renewal ..... \$ 50.00
            - (B) On-line late renewal ..... \$ 25.00
            - (e) Institutional license ..... \$ 200.00
            - (f) Biennial renewal of institutional license ..... \$ 200.00
            - (g) Visiting clinical professor license .... \$ 150.00
            - (h) Annual renewal of visiting clinical professor license ..... \$ 115.00
            - (i) Limited permit ..... \$ 30.00
            - (j) Annual renewal of limited permit .... \$ 15.00
            - (k) Reinstatement of limited permit ..... \$ 15.00
            - (l) Visiting professor license ..... \$ 25.00

- (m) Postgraduate training permit..... \$ 50.00
- (n) Reinstatement of cancelled license ..... \$ 400.00
- (o) Reinstatement of revoked license ..... \$ 1000.00
- (p) Temporary permit..... \$ 50.00
- (q) Special permit..... \$ 30.00
- (r) Certified statement of license ..... \$ 15.00
- (s) Copy of wall license..... \$ 15.00
- (t) Written verification of license or permit ..... \$ 25.00

(Authorized by K.S.A. 65-2865; implementing K.S.A. 65-2809, K.S.A. 65-2852, and K.S.A. 65-28,125; effective Jan. 1, 1966; amended Jan. 1, 1970; amended Feb. 15, 1977; amended May 1, 1979; amended May 1, 1980; amended May 1, 1981; amended, T-83-33, Nov. 10, 1982; amended May 1, 1983; amended, T-85-50, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-42, Dec. 19, 1986; amended May 1, 1987; amended, T-88-11, May 18, 1987; amended May 1, 1988; amended, T-100-4-24-89, April 24, 1989; amended Aug. 21, 1989; amended June 24, 1991; amended, T-100-7-1-92, July 1, 1992; amended Aug. 10, 1992; amended Dec. 27, 1993; amended May 1, 1998; amended Aug. 4, 2000; amended, T-100-6-27-02, Aug. 1, 2002; amended Nov. 15, 2002; amended, T-100-4-27-04, April 27, 2004; amended July 23, 2004; amended Aug. 17, 2007; amended, T-100-10-16-08, Oct. 16, 2008; amended Feb. 13, 2009; amended May 21, 2010; amended April 19, 2019.)

**100-11-2.** (Authorized by K.S.A. 65-2865; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

**100-11-3.** (Authorized by K.S.A. 65-2865, K.S.A. 1976 Supp. 65-2873; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked Feb. 15, 1977.)

**100-11-4.** (Authorized by K.S.A. 65-2865; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

**100-11-5. Exempt license.** (Authorized by K.S.A. 65-2865; implementing K.S.A. 1986 Supp. 65-2809, as amended by L. 1987, Ch. 242, Sec. 2; implementing K.S.A. 65-2852, as amended by L. 1987, Ch. 242, Sec. 4; effective, T-88-52, Dec. 16, 1987; effective May 1, 1988; revoked Sept. 10, 1999.)

**Article 12.—RECORDS**

**100-12-1. Records.** All records which are required by law to be maintained by the board

shall be open to public inspection under the following conditions:

(1) Records shall be inspected at the board office located in Topeka.

(2) Records shall be inspected during normal working hours and under the supervision of the executive director of the board.

(3) Any person who inspects the records shall sign a written request. (Authorized by K.S.A. 65-2865, implementing K.S.A. 65-2808; effective Jan. 1, 1966; amended Jan. 1, 1970; amended Jan. 1, 1973; amended, E-77-33, July 8, 1976; amended Feb. 15, 1977; amended May 1, 1988.)

**Article 13.—RECORDS**

**100-13-1 and 100-13-2.** (Authorized by K.S.A. 65-2865; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

**Article 14.—CERTIFICATE**

**100-14-1.** (Authorized by K.S.A. 65-2865; effective Jan. 1, 1966; revoked Jan. 1, 1973.)

**Article 15.—LICENSE RENEWAL; CONTINUING EDUCATION**

**100-15-1. Expiration dates.** (a) Each license to practice medicine and surgery issued by the board shall expire on June 30 of each year.

(b) Each license to practice osteopathic medicine and surgery issued by the board shall expire on September 30 of each year.

(c) Each license to practice chiropractic issued by the board shall expire on December 31 of each year. (Authorized by and implementing K.S.A. 2000 Supp. 65-2809; effective Jan. 1, 1966; amended Jan. 1, 1970; amended Jan. 1, 1973; amended Feb. 15, 1977; amended Aug. 1, 1997; amended July 20, 2001.)

**100-15-2.** (Authorized by K.S.A. 65-2809, 65-2865; effective Feb. 15, 1977; amended May 1, 1979; revoked July 22, 2005.)

**100-15-3. Continuing education; institutional licensees.** (a) Each institutional licensee shall submit, with an application for renewal of the license, evidence of satisfactory completion of a minimum of 100 hours of continuing education within the previous two-year period. Evidence of that attainment shall be submitted to the board in the same manner as licensees in the same branch of the healing arts are required to submit evi-

dence of satisfactory completion of a program of continuing education in accordance with K.A.R. 100-5-2 and amendments thereto.

(b) An extension that does not exceed six months may be granted by the board to any applicant for renewal who, during the 12-month period prior to the renewal date, suffered an illness or accident which made it impossible or extremely difficult for that applicant to reasonably obtain the required continuing education. (Authorized by and implementing K.S.A. 65-2895, as amended by L. 1987, Ch. 239, Sec. 5 and as further amended by L. 1987, Ch. 240, Sec. 11; effective May 1, 1988.)

**100-15-4. Continuing education standards; definitions.** (a) "Continuing education" shall mean an activity designed to maintain, develop, or increase the knowledge, skills, and professional performance of persons licensed to practice a branch of the healing arts. Each continuing education activity shall have significant intellectual or practical content, shall be relevant to the branch of the healing arts for which the practitioner is licensed, and shall meet at least one of the following content requirements:

(1) Have a direct bearing on patient care;  
 (2) have a direct bearing on the person's ability to deliver patient care; or  
 (3) relate to the teaching, ethical, legal, or social responsibilities of a person licensed to practice the healing arts.

(b) "Category I" continuing education shall mean a continuing education activity that meets the requirements of subsection (a) and is presented by a person qualified by practical or academic experience, using any of the following methods:

(1) Lecture, which shall mean a discourse given before an audience for instruction;

(2) panel discussion, which shall mean the presentation of a number of views by several professional individuals on a given subject, with none of the views considered a final solution;

(3) workshop, which shall mean a series of meetings designed for intensive study, work, or discussion in a specific field of interest;

(4) seminar, which shall mean a directed advanced study or discussion in a specific field of interest;

(5) symposium, which shall mean a conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and by various speakers; or

(6) any other structured, interactive, and formal learning method that the board deems to meet the requirements of subsection (a).

(c) "Category II" continuing education shall mean attendance at a lecture, panel discussion, workshop, seminar, symposium, college course, professional publication, in-service training, or professional activity that the board determines does not meet the requirements of category I, but that is in a health-related field indirectly related to healing arts skill and knowledge. Category II continuing education shall include the following:

(1) Clinical consultations with other healing arts practitioners that contribute to a practitioner's education;

(2) participation in activities to review the quality of patient care;

(3) instructing healing arts and other health care practitioners;

(4) patient-centered discussions with other health care practitioners;

(5) participating in journal clubs;

(6) using searchable electronic databases in connection with patient care activities; and

(7) using self-instructional materials.

(d) "Category III" continuing education shall mean an internet or live continuing education activity that also meets the requirements of either a category I or category II continuing education activity and meets at least one of the following content requirements:

(1) Acute or chronic pain management;

(2) the appropriate prescribing of opioids; or

(3) the use of prescription drug monitoring programs.

(e) Credit for continuing education activities shall be awarded on the basis of one credit for each 50 minutes actually spent in attendance at a continuing education activity.

(f) Each instructor of a healing arts continuing education activity shall be awarded category I continuing education credit at the rate of one credit for each three hours of the instructor's first-time preparation of the presentation of a category I continuing education activity.

(g) For successful completion of a postbaccalaureate program awarding a degree in an area related to the healing arts, 25 credits of category I continuing education shall be awarded. A copy of the transcript shall be maintained as proof of successful completion of the program.

(h) For successful completion of one year of postgraduate training, 50 credits of category I

continuing education credit shall be awarded. (Authorized by K.S.A. 65-2809 and 65-2865; implementing K.S.A. 65-2809; effective July 22, 2005; amended May 7, 2021.)

**100-15-5. Continuing education requirement.** (a)(1) Each person who is licensed to practice a branch of the healing arts and who is required to submit proof of completion of continuing education as a condition to renewing a license shall certify, on a form provided with the license renewal application, one of the following:

(A) During the 18-month period immediately preceding the license expiration date, the person completed at least 50 credits of continuing education, of which at least one credit shall be in category III, at least 20 credits shall be in category I, and the remaining credits shall be in category II.

(B) During the 30-month period immediately preceding the license expiration date, the person completed at least 100 credits of continuing education, of which at least two credits shall be in category III, at least 40 credits shall be in category I, and the remaining credits shall be in category II.

(C) During the 42-month period immediately preceding the license expiration date, the person completed at least 150 credits of continuing education, of which at least three credits shall be in category III, at least 60 credits shall be in category I, and the remaining credits shall be in category II.

(2) The requirement specified in this subsection shall not apply to any person renewing a license for the first time.

(b) Each person who applies for conversion of an inactive or exempt license to a regular license or for reinstatement of a cancelled license and whose license has been inactive, exempt, or cancelled for a period of less than the two-year period immediately preceding the application for conversion shall certify, on a form provided with the conversion or reinstatement application, that the person completed at least 50 credits of continuing education, of which at least one credit shall be in category III, at least 20 credits shall be in category I, and the remaining credits shall be in category II.

(c) Any licensee may request that the board grant an extension of the time to complete the required continuing education if, during the 12-month period immediately preceding the license expiration date, the person experienced an undue hardship resulting from illness, injury, or

other circumstance preventing the timely completion of continuing education. (Authorized by K.S.A. 65-2809 and K.S.A. 65-2865; implementing K.S.A. 65-2809; effective July 22, 2005; amended April 6, 2007; amended May 7, 2021.)

**100-15-6. Documentation of continuing education.** (a) Each person who certifies completion of continuing education shall, for at least four years following the date of certification, maintain documentation of completion that shall include either of the following:

(1) A verification of completion issued by a national, state, or local organization with standards for continuing education that are at least as stringent as the standards of the board; or

(2) a copy of the written materials provided with a category I continuing education activity, along with documentation of all of the following:

(A) The name, address, and telephone number of the activity sponsor, and the name and telephone number of a contact person for the activity sponsor;

(B) the title of the continuing education activity;

(C) the date and location of the activity;

(D) specification of whether the activity was presented in person or by video, satellite, or internet;

(E) the number of continuing education hours completed;

(F) the activity agenda;

(G) the identification and professional biographical information of the presenters;

(H) written proof of participation; and

(I) a list of category II continuing education activities, identifying the date of each activity, a description or program title, and the number of hours claimed.

(b) Within 30 days following a written request by the board to a licensee, the licensee shall provide the board with proof of completion of continuing education as specified in this regulation. (Authorized by K.S.A. 2006 Supp. 65-2809 and K.S.A. 65-2865; implementing K.S.A. 2006 Supp. 65-2809; effective July 22, 2005; amended April 6, 2007.)

**100-15-7. Category I continuing education using distance-learning media.** Each continuing education activity offered using distance-learning media shall qualify for category I continuing education credit if the activity meets the requirements in K.A.R. 100-15-4 and meets all of the following conditions:

(a) The activity has a mechanism in place for the user to be able to contact the provider regarding questions about the continuing education activity.

(b) The provider of the activity evaluates the user's knowledge of the subject matter discussed in the continuing education activity.

(c) The activity limits the amount of time within which a user can complete the activity, which shall be no more than twice the number of hours for each credit awarded for the activity.

(d) The person or organization offering the activity provides a printed verification of completion of the activity or allows the user to print verification when the activity is completed. (Authorized by K.S.A. 65-2809 and 65-2865; implementing K.S.A. 65-2865; effective July 22, 2005.)

#### Article 16.—REVOCATION

**100-16-1.** (Authorized by K.S.A. 65-2865, K.S.A. 1976 Supp. 65-2838, 65-2839, 65-2840; effective Jan. 1, 1966; amended Feb. 15, 1977; revoked, T-86-40, Dec. 11, 1985; revoked May 1, 1986.)

**100-16-2.** (Authorized by K.S.A. 65-2865; effective Jan. 1, 1966; amended Feb. 15, 1977; revoked, T-86-40, Dec. 11, 1985; revoked May 1, 1986.)

**100-16-3.** (Authorized by K.S.A. 65-2865, K.S.A. 1976 Supp. 65-2836; effective Jan. 1, 1966; amended Jan. 1, 1970; amended Feb. 15, 1977; revoked, T-86-40, Dec. 11, 1985; revoked May 1, 1986.)

**100-16-4. Grounds.** A license may be revoked, suspended, or limited when the licensee has been found to have committed any of the acts specified in K.S.A. 65-2836 and 65-2837. (Authorized by K.S.A. 65-2865; effective Jan. 1, 1966; amended Feb. 15, 1977.)

**100-16-5 and 100-16-6.** (Authorized by K.S.A. 65-2865; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

#### Article 17.—PROFESSIONAL SIGNS; LETTERHEADS

**100-17-1.** (Authorized by K.S.A. 65-2865, K.S.A. 1976 Supp. 65-2837; effective Jan. 1, 1966; amended Jan. 1, 1973; amended Feb. 15, 1977; revoked May 1, 1985.)

**100-17-2.** (Authorized by K.S.A. 65-2865; effective Jan. 1, 1966; revoked May 1, 1985.)

#### Article 18.—ADVERTISING

**100-18-1.** (Authorized by K.S.A. 65-2865; effective Jan. 1, 1966; amended Jan. 1, 1970; amended Jan. 1, 1973; amended Feb. 15, 1977; revoked May 1, 1980.)

**100-18-2.** (Authorized by K.S.A. 65-2894; effective Jan. 1, 1970; revoked Feb. 15, 1977.)

#### Article 18a.—ADVERTISING

**100-18a-1. Free offers.** Any licensee who offers to perform a free examination, service or procedure for a patient shall, during the initial visit, only perform the examination, service or procedure contained in the offer. Before any other examinations, services or procedures are performed, the licensee shall explain the nature and purpose of the examination, service or procedure and specifically disclose to the patient, to the greatest extent possible, the cost of the examination, service or procedure. (Authorized by K.S.A. 65-2865; implementing K.S.A. 1984 Supp. 65-2836, 65-2837; effective May 1, 1985.)

#### Article 19.—ADMINISTRATIVE PROCEDURES

**100-19-1. Types of hearings.** (a) Hearings and procedures of the board shall be in accordance with the hearings and procedures established by the Kansas administrative procedures act.

(b) Summary adjudicative proceedings pursuant to K.S.A. 1986 Supp. 77-538 to 77-541, inclusive, and amendments thereto may be used for the following types of action:

(1) denials of initial license, permit, registration or certificate;

(2) cancellation for failure to renew a license, permit, registration or certificate;

(3) cease and desist orders, enforcement orders based on stipulations, public or private censures, warnings, reprimands, restrictions, limitations, fines or suspensions for violations of any laws administered by the board or rules and regulations promulgated thereunder.

(c) Any party who disagrees with and is subject to a summary adjudicative action may request that the proceedings be converted to a conference adjudicative proceeding or a formal adjudicative

proceeding. Upon the request the summary proceeding shall be converted to the appropriate proceeding available under the Kansas administrative procedures act or rules and regulations promulgated thereunder.

(d) The order issued pursuant to subsection (b) of this regulation shall contain a notice informing the persons who are subject to the order that a request for review or conversion must be made within 15 days.

(e) The presiding officer for summary adjudicative proceedings may be the executive director or the executive director's designee.

(f) Conference adjudicative proceedings pursuant to K.S.A. 77-533, 77-534 and 77-535 of the Kansas administrative procedures act may be used for actions in which:

(1) there is no disputed issue of material fact; or  
 (2) the parties agree to a conference adjudicative proceeding.

(g) All other proceedings, except those which are emergency adjudicative proceedings, or which have been initiated as or converted to conference or summary adjudicative proceedings, shall be formal adjudicative proceedings. (Authorized by K.S.A. 65-2865; implementing K.S.A. 1986 Supp. 77-513, 77-533-541; effective Jan. 1, 1966; amended Feb. 15, 1977; amended, T-86-44, Dec. 18, 1985; amended May 1, 1986; amended May 1, 1988.)

## Article 20.—AMENDMENT TO RULES

**100-20-1.** (Authorized by K.S.A. 65-2865; effective Jan. 1, 1966; revoked May 1, 1979.)

## Article 21.—DISPENSING PHYSICIANS

**100-21-1. Definition of dispensing physician.** "Dispensing physician" means a person licensed to practice medicine and surgery who purchases and keeps drugs and compounds his or her own prescriptions for the purpose of supplying such drugs to his or her patients. (Authorized by K.S.A. 65-2865; effective, E-81-11, May 14, 1980; effective May 1, 1981.)

**100-21-2. Drug label.** A dispensing physician shall clearly label each drug dispensed. The label shall be typed or machine printed and shall include the following: (a) The name, address and telephone number of the dispensing physician.

(b) The full name of the patient.

(c) The identification number assigned to the prescription order by the dispensing physician.

(d) The date the prescription was filled or refilled.

(e) Adequate directions for use.

(f) The expiration date of the drug dispensed, if applicable.

(g) The brand name or corresponding generic name and manufacturer or distributors name and the strength, at the discretion of the physician. (Authorized by K.S.A. 65-2865; effective, E-81-11, May 14, 1980; effective May 1, 1981.)

**100-21-3. Packaging.** All oral medications shall be dispensed in child resistant containers in accordance with the poison prevention packaging act of 1970 and in light resistant air-tight containers as required by the United States pharmacopeia. In those cases where a bona fide circumstance exists to make it undesirable to use safety closures, medication may be dispensed in a non-child resistant container. (Authorized by K.S.A. 65-2865; effective, E-81-11, May 14, 1980; effective May 1, 1981.)

**100-21-4. Record keeping and inventories.** (a) There shall be kept in the office of every dispensing physician a suitable book or file in which shall be preserved for a period of not less than three (3) years, every prescription order filled or refilled by such dispensing physician, and said book or file of prescription orders shall at all times be open to inspection to proper authorities.

(b) Each dispensing physician shall maintain the inventories and records of controlled substances as follows:

(1) Inventories and records of all controlled substances listed in schedules I and II shall be maintained separately from all other records and prescriptions for such substances shall be maintained in a separate prescription file:

(2) Inventories and records of controlled substances listed in schedules III, IV, and V shall be maintained either separately from all other records or in such form that the information required is readily retrievable from ordinary business records and prescriptions for such substances shall be maintained either in a separate prescription file for controlled substances listed in schedules III, IV, and V only, or in such form that they are readily retrievable from the other prescription records. Prescriptions will be deemed readily retrievable if, at the time they are initially filled the face of the prescription is stamped in red ink in the lower right corner with the letter "C" no less than 1-inch

high and filed either in the prescription file for controlled substances listed in schedules I and II or in the usual consecutively numbered prescription file for non-controlled substances.

(c) Inventory requirements. An initial inventory of all controlled substances shall be taken and recorded. Every two years on May 1, a new inventory shall be taken and recorded. The records of these inventories shall be maintained for a period of three years. (Authorized by K.S.A. 65-2865; effective, E-81-11, May 14, 1980; effective May 1, 1981.)

**100-21-5. Storage and security.** (a) All dispensing physicians shall provide effective controls and procedures to guard against theft and diversion of controlled substances.

(b) All drugs shall be stored under conditions proper and suitable to maintain their integrity. (Authorized by K.S.A. 65-2865; effective, E-81-11, May 14, 1980; effective May 1, 1981.)

## Article 22.—DISHONORABLE CONDUCT

**100-22-1. Release of records.** (a) Unless otherwise prohibited by law, each licensee shall, upon receipt of a signed release from a patient, furnish a copy of the patient record to the patient, to another licensee designated by the patient, or to a patient's legally designated representative. However, if the licensee reasonably determines that the information within the patient record is detrimental to the mental or physical health of the patient, then the licensee may withhold the record from the patient and furnish the record to another licensee designated by the patient.

(b) A licensee may charge a person or entity for reasonable costs to retrieve or reproduce a patient record. A licensee shall not condition the furnishing of a patient record to another licensee upon prepayment of these costs.

(c) Any departure from this regulation shall constitute prima facie evidence of dishonorable conduct pursuant to K.S.A. 65-2836(b), and any amendments thereto. (Authorized by K.S.A. 65-2865; implementing K.S.A. 1997 Supp. 65-2836, as amended by L. 1998, Ch. 142, Sec. 12; effective May 1, 1985; amended Nov. 13, 1998.)

**100-22-2. Description of professional activities.** (a) Any person applying for an exempt license shall divulge on the application for such license a description of all professional activities related to the healing arts such person intends to perform if issued an exempt license.

(b) Any person holding an exempt license shall, at the time of renewal, divulge on the renewal application all professional activities related to the healing arts such person intends to perform during the renewal period.

(c) Any departure from subsection (a) or (b) may constitute evidence of dishonorable conduct pursuant to K.S.A. 1986 Supp. 65-2836(b) as amended by L. 1987, Ch. 176, Sec. 5 as further amended by L. 1987, Ch. 242, Sec. 2 and any amendments thereto. (Authorized by K.S.A. 65-2865; implementing K.S.A. 1986 Supp. 65-2836 as amended by L. 1987, Ch. 176, Sec. 5 as further amended by L. 1987, Ch. 242, Sec. 2; effective, T-88-52, Dec. 16, 1987; effective May 1, 1988.)

**100-22-3. Business transactions with patients.** (a) Non-health-related goods or services. A licensee shall be deemed to engage in dishonorable conduct by offering to sell a non-health-related product or service to a patient from a location at which the licensee regularly practices the healing arts unless otherwise allowed by this subsection. A licensee shall not be deemed to engage in dishonorable conduct by offering to sell a non-health-related product or service if all of the following conditions are met:

(1) The sale is for the benefit of a public service organization.

(2) The sale does not directly or indirectly result in financial gain to the licensee.

(3) No patient is unduly influenced to make a purchase.

(b) Business opportunity. A licensee shall be deemed to engage in dishonorable conduct if all of the following conditions are met:

(1) The licensee recruits or solicits a patient either to participate in a business opportunity involving a sale of a product or service, or to recruit or solicit others to participate in a business opportunity.

(2) The sale of the product or service directly or indirectly results in financial gain to the licensee.

(3) The licensee recruits or solicits the patient at any time that the patient is present in a location at which the licensee regularly practices the healing arts. (Authorized by K.S.A. 65-2865; implementing K.S.A. 1998 Supp. 65-2836; effective May 5, 2000.)

**100-22-4. Description of affiliation with specialty board.** (a) On and after January 1, 2004, each licensee who represents to the public that the licensee is credentialed by a specialty

board other than a state licensing agency, including through the use of the description “board-certified” in connection with the licensee’s name, shall, in the same medium as that in which the representation is made, identify the official name of the specialty board that has granted the credential to the licensee.

(b) Each violation of this regulation shall constitute prima facie evidence of dishonorable conduct. (Authorized by K.S.A. 65-2865; implementing K.S.A. 2001 Supp. 65-2836; effective May 23, 2003.)

**100-22-6. Notice to the public of licensure.** (a) A person licensed to practice a branch of the healing arts shall not perform direct patient care in an office, unless the notice adopted by reference in this subsection is placed in a conspicuous location where the notice is reasonably likely to be seen by persons who receive direct patient care in the office. The document titled “notice to patients: required signage for K.A.R. 100-22-6,” as prepared by the state board of healing arts and dated April 5, 2007, is hereby adopted by reference.

(b) As used in this regulation, “office” shall mean any place intended for the practice of the healing arts. This term shall not include a medical care facility, as defined by K.S.A. 65-425 and amendments thereto, which is licensed by the Kansas department of health and environment.

(c) Each violation of this regulation shall constitute prima facie evidence of dishonorable conduct. (Authorized by K.S.A. 65-2865; implementing K.S.A. 65-2836; effective Nov. 2, 2007.)

**100-22-7. Orders to dispense prescription-only medical devices.** (a) For the purpose of this regulation, “prescription-only medical device” shall mean an apparatus that meets the following conditions:

(1) May be sold or distributed only upon the authorization of a person licensed by state law to administer or use the device; and

(2) is intended either to use in diagnosing or treating a disease, injury, or deformity or to affect the structure, action, or physiologic property of any part of the human body.

(b) Each licensee who issues an order that authorizes the sale, lease, or other method of distribution of a prescription-only medical device to another person for other than self-treatment shall create a written record of the order, signed by the

licensee, and shall maintain that record for at least 10 years following the date of the order. The written record shall include, at a minimum, all of the following statements:

(1) The licensee knows or has reason to know that the person to whom the medical device is to be dispensed is professionally competent and legally authorized to use the device for other than self-treatment.

(2) The licensee acknowledges that the device is approved for acts and functions that are within the normal and customary specialty, competence, and lawful practice of the licensee.

(3) The licensee will supervise the use of the device.

(c) Each violation of this regulation shall constitute prima facie evidence of dishonorable conduct. (Authorized by K.S.A. 65-2865 and K.S.A. 2006 Supp. 65-28,127; implementing K.S.A. 65-2836 and K.S.A. 2006 Supp. 65-28,127; effective July 6, 2007.)

**100-22-8.** (Authorized by K.S.A. 65-2865; implementing K.S.A. 65-2836; effective, T-100-4-24-07, April 24, 2007; effective Sept. 14, 2007; revoked, T-100-12-10-07, Dec. 10, 2007; revoked April 4, 2008.)

**100-22-8a. Phosphatidylcholine and sodium deoxycholate.** (a) As used in this regulation, the following terms shall have the meanings specified in this subsection.

(1) “Adverse event” means any unfavorable medical occurrence experienced by a patient that reasonably could be related to the administration of PCDC.

(2) “Compounding” means combining component drug ingredients by or upon the order of a physician for the purpose of creating a drug tailored to the specialized needs of an individual patient.

(3) “Designated physician” means a physician who is professionally competent to compound or order the compounding of PCDC and who agrees to be available on the premises during the administration of PCDC whenever the physician who compounded or ordered the compounding of PCDC is not present.

(4) “Institutional review board” and “IRB” mean a board or committee designated by a public or private entity or agency to review biomedical research and to ensure protection of the rights and welfare of patients.

(5) "PCDC" means phosphatidylcholine and sodium deoxycholate prepared for administration individually or in combination.

(6) "Physician" means a person licensed in this state to practice medicine and surgery or osteopathic medicine and surgery.

(b) Except as specified in subsections (c) and (d), a physician shall not administer or authorize another person to administer PCDC by injection to a human being.

(c) This regulation shall not prohibit the administration of PCDC to a research subject during clinical research of PCDC as an investigational new drug.

(d) This regulation shall not prohibit a physician from compounding PCDC or from preparing a written prescription order directing a lawfully operating pharmacy to compound PCDC for a specific patient if all of the following conditions are met:

(1) The physician has notified the board in writing of the intent to compound or order the compounding of PCDC in the scope of the physician's practice and agrees to meet the requirements stated in subsection (e).

(2) The physician has a physician-patient relationship with the specific patient.

(3) The patient has given the physician written informed consent for the administration of PCDC that includes, at a minimum, all of the following:

(A) The patient acknowledges that PCDC is a drug and that neither the state of Kansas nor any federal agency has approved PCDC as a drug.

(B) The patient has been informed that a preponderance of competent medical literature regarding clinical research establishing whether PCDC is safe and effective has not been published.

(C) The patient has been informed that the clinical data will be submitted to an IRB for peer review.

(D) The patient has been given a description of the known and potential side effects of PCDC.

(4) Before compounding or writing an order to compound PCDC, the physician personally performs a physical examination of the patient, records the patient's medical history in the patient record, performs or orders relevant laboratory tests as indicated, and, based upon the examination, history, and test results, determines that PCDC is indicated for the patient.

(5) The physician or designated physician supervises and is personally present on the premises when the PCDC is administered.

(6) The patient record identifies each ingredient, the amount of each ingredient, and the amount of the preparation compounded by the physician, or the order to compound PCDC identifies each ingredient, the amount of each ingredient, and the amount of the preparation to be dispensed.

(e) Each physician who compounds or writes an order to compound PCDC shall meet each of the following requirements:

(1) Before compounding or writing an order to compound PCDC, the physician shall establish a written procedure that identifies each of the following:

(A) A general plan of care applicable to all patients, including indications and contraindications for administering PCDC to patients;

(B) each designated physician;

(C) each person who may administer PCDC upon the order of the physician; and

(D) each location within this state at which PCDC will be administered based upon the order of the physician.

(2)(A) A physician who has compounded or ordered PCDC to be compounded for a patient under a medical regimen that has not been completed on or before the effective date of this regulation shall, before administering or authorizing the administration of PCDC, submit a copy of the written procedure and informed consent form to the board and shall, within 60 days following the effective date of this regulation, submit evidence that an IRB has approved the written procedure and the informed consent form that the physician uses.

(B) Each physician not described in paragraph (e)(2)(A) shall obtain approval of the written procedure and informed consent form by an IRB and submit evidence of that approval and a copy of the written procedure and informed consent form to the board, before compounding or writing an order to compound PCDC.

(3) The physician shall report each adverse event resulting in medical intervention to the IRB and to the board within 24 hours of receiving notice of the adverse event. The physician shall report all other adverse events observed by or reported to the physician and all clinical results for each patient to the IRB at least monthly.

(4) At least monthly, the physician shall prepare or obtain from the compounding pharmacy and shall forward to the IRB the following information:

(A) Verification that the preparation is sterile;

(B) a description of the quantity and strength of all ingredients used as components of the preparation;

(C) documentation of adequate mixing to ensure homogeneity of the preparation; and

(D) verification of the clarity, completeness, or pH of the solution.

(f) Each departure from this regulation shall constitute prima facie evidence of dishonorable conduct. (Authorized by K.S.A. 65-2865; implementing K.S.A. 65-2836; effective, T-100-12-10-07, Dec. 10, 2007; effective April 4, 2008.)

### Article 23.—TREATMENT OF OBESITY

**100-23-1. Treatment of obesity.** A person shall not dispense or prescribe controlled substances to treat obesity, as defined by this regulation, except in conformity with the following minimal requirements. (a) Amphetamines shall not be dispensed or prescribed to treat obesity.

(b) The treating physician shall personally examine the patient. The physical examination shall include checking the blood pressure and pulse, examining the heart and lungs, recording weight and height, and administering any other appropriate diagnostic tests. The examination and patient history shall determine if controlled substances are indicated and if any co-morbidity exists. The treating physician shall enter each of these findings in the patient's record.

(c) The treating physician shall prescribe nutritional counselling, including behavior modification and appropriate exercise for weight loss, and record these parameters on the patient record.

(d) The treating physician shall not dispense or prescribe more than a 30-day supply of controlled substances, at one time, to treat obesity.

(e) Except as provided by subsection (f) of this regulation, the treating physician may continuously dispense or prescribe controlled substances to treat obesity when the physician observes and records that the patient significantly benefits from the controlled substances and has no serious adverse effects related to the drug regimen. A patient significantly benefits from the controlled substances when weight is reduced, or when weight loss is maintained and any existing co-morbidity is reduced. At the time of each return patient visit, the treating physician shall monitor progress of the patient; the treating physician or a person acting at the treating physician's order shall check the patient's weight, blood pressure,

pulse, heart, and lungs. The findings shall be entered in the patient's record.

(f) The treating physician shall not dispense or prescribe additional controlled substances to treat obesity for a patient who has not achieved a weight loss of at least 5% of the patient's initial weight, during the initial 90 days of treatment using controlled substances to treat obesity.

(g) As used in this regulation, the term "controlled substance" means any drug included in any schedule of the Kansas uniform controlled substances act.

(h) As used in this regulation, the term "obesity" means a documented diagnosis of excess adipose tissue, resulting in body mass index of 30 or higher ( $BMI \geq 30\text{kg/m}^2$ ), or a body mass index of 27 or higher in the presence of other risk factors ( $BMI \geq 27\text{kg/m}^2$ ). Body mass index is calculated by dividing measured body weight in kilograms by body height in meters squared ( $\text{kg/m}^2$ ); expected body mass index is 20-25  $\text{kg/m}^2$ . (Authorized by and implementing K.S.A. 1997 Supp. 65-2837a; effective, T-86-25, July 24, 1985; effective May 1, 1986; amended, T-100-12-16-96, Dec. 16, 1996; amended May 9, 1997; amended, T-100-7-1-97, July 1, 1997; amended, T-100-10-30-97, Oct. 30, 1997; amended March 20, 1998.)

### Article 24.—PATIENT RECORDS

**100-24-1. Adequacy; minimal requirements.** (a) Each licensee of the board shall maintain an adequate record for each patient for whom the licensee performs a professional service.

(b) Each patient record shall meet these requirements:

(1) Be legible;

(2) contain only those terms and abbreviations that are or should be comprehensible to similar licensees;

(3) contain adequate identification of the patient;

(4) indicate the dates any professional service was provided;

(5) contain pertinent and significant information concerning the patient's condition;

(6) reflect what examinations, vital signs, and tests were obtained, performed, or ordered and the findings and results of each;

(7) indicate the initial diagnosis and the patient's initial reason for seeking the licensee's services;

(8) indicate the medications prescribed, dispensed, or administered and the quantity and strength of each;

(9) reflect the treatment performed or recommended;

(10) document the patient's progress during the course of treatment provided by the licensee; and

(11) include all patient records received from other health care providers, if those records formed the basis for a treatment decision by the licensee.

(c) Each entry shall be authenticated by the person making the entry unless the entire patient record is maintained in the licensee's own handwriting.

(d) Each patient record shall include any writing intended to be a final record, but shall not require the maintenance of rough drafts, notes, other writings, or recordings once this information is converted to final form. The final form shall accurately reflect the care and services rendered to the patient.

(e) For purposes of implementing the healing arts act and this regulation, an electronic patient record shall be deemed a written patient record if the electronic record cannot be altered and if each entry in the electronic record is authenticated by the licensee. (Authorized by K.S.A. 65-2865; implementing K.S.A. 1997 Supp. 65-2837, as amended by L. 1998, ch. 142, §19 and L. 1998, ch. 170, §2; effective, T-87-42, Dec. 19, 1986; effective May 1, 1987; amended June 20, 1994; amended Nov. 13, 1998.)

**100-24-2. Patient record storage.** (a) Each licensee shall maintain the patient record for a minimum of 10 years from the date the licensee provided the professional service recorded. Any licensee may designate an entity, another licensee, or health care facility to maintain the record if the licensee requires the designee to store the record in a manner that allows lawful access and that maintains confidentiality.

(b) Patient records may be stored by an electronic data system, microfilm, or similar photographic means. A licensee may destroy original paper records stored in this manner if the stored record can be reproduced without alteration from the original.

(c) Each electronically stored record shall identify existing original documents or information not included in that electronically stored record. (Authorized by K.S.A. 65-2865; implementing K.S.A. 1997 Supp. 65-2837, as amended by L. 1998, Ch. 170, Sec. 2; effective Nov. 13, 1998.)

**100-24-3. Notice of location of records upon termination of active practice.** Each licensee of the board who terminates the active practice of the healing arts within this state shall, within 30 days after terminating the active practice, provide to the board the following information: (a) The location where patient records are stored;

(b) if the licensee designates an agent to maintain the records, the name, telephone number, and mailing address of the agent;

(c) the date on which the patient records are scheduled to be destroyed, as allowed by K.A.R. 100-24-2. (Authorized by K.S.A. 65-2865; implementing K.S.A. 1997 Supp. 65-2837, as amended by L. 1998, ch. 142, § 19 and L. 1998, ch. 170, § 2 and K.S.A. 65-2865; effective May 7, 1999.)

## Article 25.—OFFICE REQUIREMENTS

**100-25-1. Definitions.** As used in this article, the following terms shall have the meanings specified in this regulation. (a) "General anesthesia" means a drug that, when administered to a patient, results in the patient's controlled state of unconsciousness accompanied by a loss of protective reflexes, including the loss of the independent and continuous ability to maintain the airway and a regular breathing pattern, and the loss of the ability to respond purposefully to verbal commands or tactile stimulation.

(b) "Local anesthesia" means a drug that, when administered to a localized part of the human body by topical application or by local infiltration in close proximity to a nerve, produces a transient and reversible loss of sensation. This term shall include lidocaine injections not exceeding seven milligrams per kilogram of body weight and also tumescent local anesthesia.

(c) "Medical care facility" has the meaning specified in K.S.A. 65-425 and amendments thereto.

(d) "Minimal sedation" means an oral sedative or oral analgesic administered in doses appropriate for the unsupervised treatment of insomnia, anxiety, or pain.

(e) "Minor surgery" means surgery that meets both of the following conditions:

(1) Any complication from the surgery requiring hospitalization is not reasonably foreseeable.

(2) The surgery can safely and comfortably be performed either on a patient who has received no anesthesia or on a patient who has received local anesthesia or topical anesthesia.

(f) “Office” means any place intended for the practice of the healing arts in the state of Kansas. This term shall not include a medical care facility, as defined by K.S.A. 65-425 and amendments thereto, that is licensed by the Kansas department of health and environment.

(g) “Office-based surgery” means any surgery that requires any anesthesia, parenteral analgesia, or sedation and that is performed by or upon the order of a physician in an office. Office-based surgery shall not include minor surgery.

(h) “Physician” means a person licensed to practice medicine and surgery or osteopathic medicine and surgery in the state of Kansas.

(i) “Reportable incident” means any act by a licensee or a person performing professional services under the licensee’s supervision, order, or direction that meets either of the following criteria:

(1) Could be below the applicable standard of care and has a reasonable probability of causing injury to a patient; or

(2) could be grounds for disciplinary action by the board.

(j) “Sedation” means a depressed level of consciousness in which the patient retains the independent and continuous ability to perform the following:

(1) Maintain adequate cardiorespiratory functioning;

(2) maintain an open airway;

(3) maintain a regular breathing pattern;

(4) maintain the protective reflexes; and

(5) respond purposefully and rationally to tactile stimulation and verbal commands.

(k) “Special procedure” means any patient care service that involves any potentially painful contact with the human body, with or without instruments, for the purpose of diagnosis or therapy and for which the applicable standard of care necessitates any anesthesia to prevent or reduce pain. This term shall include a diagnostic or therapeutic endoscopy, invasive radiology, manipulation under anesthesia, and an endoscopic examination. This term shall include the conduct of pain management when performed using anesthesia levels exceeding local anesthesia.

(l) “Surgery” means a manual or operative method that involves the partial or complete excision or resection, destruction, incision, or other structural alteration of human tissue by any means, including the use of lasers, performed upon the human body for the purpose of preserving health, diagnosing or treating disease, repairing injury, correcting

deformity or defects, prolonging life, terminating pregnancy, or relieving suffering, or for aesthetic, reconstructive, or cosmetic purposes.

(m) “Topical anesthesia” means a drug applied to the skin or mucous membranes for the purpose of producing a transient and reversible loss of sensation to a circumscribed area.

(n) “Tumescent local anesthesia” means local anesthesia administered in large volumes of highly diluted lidocaine not exceeding 55 milligrams per kilogram of body weight, epinephrine not exceeding 1.5 milligrams per liter of solution, and sodium bicarbonate not exceeding 15 milliequivalents per liter of solution in a sterile saline solution by slow infiltration into subcutaneous fat. Tumescent local anesthesia shall not include the concomitant administration of any sedatives, analgesics, or hypnotic drugs, or any combination of these, at any dosage that poses a significant risk of impairing the patient’s independent and continuous ability to maintain adequate cardiorespiratory functioning, an open airway, a regular breathing pattern, and protective reflexes and to respond purposefully to tactile stimulation and verbal commands. (Authorized by K.S.A. 65-2865; implementing K.S.A. 65-2837; effective, T-100-8-22-05, Aug. 22, 2005; effective, T-100-12-20-05, Dec. 20, 2005; effective March 17, 2006.)

**100-25-2. General requirements.** (a) Except in an emergency, a person licensed to practice a branch of the healing arts shall not perform direct patient care in an office unless all of the following conditions are met:

(1) The office at which the direct patient care is performed is sanitary and safe.

(2) Smoking is prohibited in all patient care areas and all areas where any hazardous material is present.

(3) Medical services waste is segregated, stored, collected, processed, and disposed of in accordance with K.A.R. 28-29-27.

(b) On and after July 1, 2006, each person licensed to practice a branch of the healing arts who maintains an office within this state shall adopt and follow a written procedure for sanitation and safety that includes at least the following:

(1) Standards for maintaining the cleanliness of the office. The standards shall specify the following:

(A) The methods for and the frequency of cleaning and decontaminating the walls, ceilings, floors, working surfaces, furniture, and fixtures.

The written procedure shall identify the types of disinfectants and cleaning materials to be used; and

(B) the methods to prevent the infestation of insects and rodents and, if necessary, to remove insects and rodents;

(2) standards for infection control and the disposal of biological waste. The standards shall be at least as stringent as the standards in all applicable laws pertaining to the disposal of medical and hazardous waste and shall specify the following:

(A) The procedures to limit the spread of infection among patients and personnel through universal precautions, hand hygiene, and the proper handling and disposal of sharp objects;

(B) the methods to decontaminate infected items with germicidal, virucidal, bactericidal, tuberculocidal, and fungicidal products; and

(C) the procedures to sterilize reusable medical instruments and devices;

(3) standards for maintaining drugs, supplies, and medical equipment. The standards shall be at least as stringent as the standards in all applicable laws pertaining to the supply, storage, security, and administration of controlled drugs and shall specify the following:

(A) The manner of storing drugs and supplies to guard against tampering and theft;

(B) the procedures for disposal of expired drugs and supplies; and

(C) the procedures for maintaining, testing, and inspecting medical equipment;

(4) standards for maintaining the safety of physical facilities. The standards shall require that all of the following conditions are met:

(A) The office is properly equipped and maintained in good repair as necessary to prevent reasonably foreseeable harm to patients, personnel, and the public;

(B) the lighting, ventilation, filtration, and temperature control are adequate for the direct patient care to be performed;

(C) the floors, walls, and ceilings have surfaces that can be cleaned, disinfected, sterilized, or replaced as appropriate for the direct patient care to be performed;

(D) adequate measures are in place to deter any unauthorized individuals from entering the treatment rooms; and

(E) all passageways are free of clutter; and

(5) a plan for reporting each reportable incident pursuant to K.S.A. 65-28,122 and K.S.A. 65-4923 and amendments thereto. (Authorized by K.S.A.

65-2865; implementing K.S.A. 65-2837; effective, T-100-8-22-05, Aug. 22, 2005; effective, T-100-12-20-05, Dec. 20, 2005; effective March 17, 2006.)

**100-25-3. Requirements for office-based surgery and special procedures.** A physician shall not perform any office-based surgery or special procedure unless the office meets the requirements of K.A.R. 100-25-2. Except in an emergency, a physician shall not perform any office-based surgery or special procedure on and after January 1, 2006 unless all of the following requirements are met: (a) Personnel.

(1) All health care personnel shall be qualified by training, experience, and licensure as required by law.

(2) At least one person shall have training in advanced resuscitative techniques and shall be in the patient's immediate presence at all times until the patient is discharged from anesthesia care.

(b) Office-based surgery and special procedures.

(1) Each office-based surgery and special procedure shall be within the scope of practice of the physician.

(2) Each office-based surgery and special procedure shall be of a duration and complexity that can be undertaken safely and that can reasonably be expected to be completed, with the patient discharged, during normal operational hours.

(3) Before the office-based surgery or special procedure, the physician shall evaluate and record the condition of the patient, any specific morbidities that complicate operative and anesthesia management, the intrinsic risks involved, and the invasiveness of the planned office-based surgery or special procedure or any combination of these.

(4) The physician or a registered nurse anesthetist administering anesthesia shall be physically present during the intraoperative period and shall be available until the patient has been discharged from anesthesia care.

(5) Each patient shall be discharged only after meeting clinically appropriate criteria. These criteria shall include, at a minimum, the patient's vital signs, the patient's responsiveness and orientation, the patient's ability to move voluntarily, and the ability to reasonably control the patient's pain, nausea, or vomiting, or any combination of these.

(c) Equipment.

(1) All operating equipment and materials shall be sterile, to the extent necessary to meet the applicable standard of care.

(2) Each office at which office-based surgery or special procedures are performed shall have a defibrillator, a positive-pressure ventilation device, a reliable source of oxygen, a suction device, resuscitation equipment, appropriate emergency drugs, appropriate anesthesia devices and equipment for proper monitoring, and emergency airway equipment including appropriately sized oral airways, endotracheal tubes, laryngoscopes, and masks.

(3) Each office shall have sufficient space to accommodate all necessary equipment and personnel and to allow for expeditious access to the patient, anesthesia machine, and all monitoring equipment.

(4) All equipment shall be maintained and functional to ensure patient safety.

(5) A backup energy source shall be in place to ensure patient protection if an emergency occurs.

(d) Administration of anesthesia. In an emergency, appropriate life-support measures shall take precedence over the requirements of this subsection. If the execution of life-support measures requires the temporary suspension of monitoring otherwise required by this subsection, monitoring shall resume as soon as possible and practical. The physician shall identify the emergency in the patient's medical record and state the time when monitoring resumed. All of the following requirements shall apply:

(1) A preoperative anesthetic risk evaluation shall be performed and documented in the patient's record in each case. In an emergency during which an evaluation cannot be documented preoperatively without endangering the safety of the patient, the anesthetic risk evaluation shall be documented as soon as feasible.

(2) Each patient receiving intravenous anesthesia shall have the blood pressure and heart rate measured and recorded at least every five minutes.

(3) Continuous electrocardiography monitoring shall be used for each patient receiving intravenous anesthesia.

(4) During any anesthesia other than local anesthesia and minimal sedation, patient oxygenation shall be continuously monitored with a pulse oximeter. Whenever an endotracheal tube or laryngeal mask airway is inserted, the correct functioning and positioning in the trachea shall be monitored throughout the duration of placement.

(5) Additional monitoring for ventilation shall include palpation or observation of the reservoir breathing bag and auscultation of breath sounds.

(6) Additional monitoring of blood circulation shall include at least one of the following:

(A) Palpation of the pulse;

(B) auscultation of heart sounds;

(C) monitoring of a tracing of intra-arterial pressure;

(D) pulse plethysmography; or

(E) ultrasound peripheral pulse monitoring.

(7) When ventilation is controlled by an automatic mechanical ventilator, the functioning of the ventilator shall be monitored continuously with a device having an audible alarm to warn of disconnection of any component of the breathing system.

(8) During any anesthesia using an anesthesia machine, the concentration of oxygen in the patient's breathing system shall be measured by an oxygen analyzer with an audible alarm to warn of low oxygen concentration.

(e) Administrative policies and procedures.

(1) Each office shall have written protocols in place for the timely and safe transfer of the patients to a prespecified medical care facility within a reasonable proximity if extended or emergency services are needed. The protocols shall include one of the following:

(A) A plan for patient transfer to the specified medical care facility;

(B) a transfer agreement with the specified medical care facility; or

(C) a requirement that all physicians performing any office-based surgery or special procedure at the office have admitting privileges at the specified medical care facility.

(2) Each physician who performs any office-based surgery or special procedure that results in any of the following quality indicators shall notify the board in writing within 15 calendar days following discovery of the event:

(A) The death of a patient during any office-based surgery or special procedure, or within 72 hours thereafter;

(B) the transport of a patient to a hospital emergency department;

(C) the unscheduled admission of a patient to a hospital within 72 hours of discharge, if the admission is related to the office-based surgery or special procedure;

(D) the unplanned extension of the office-based surgery or special procedure more than four hours beyond the planned duration of the surgery or procedure being performed;

(E) the discovery of a foreign object erroneous-

ly remaining in a patient from an office-based surgery or special procedure at that office; or

(F) the performance of the wrong surgical procedure, surgery on the wrong site, or surgery on the wrong patient. (Authorized by K.S.A. 65-2865; implementing K.S.A. 65-2837; effective, T-100-8-22-05, Aug. 22, 2005; effective, T-100-12-20-05, Dec. 20, 2005; effective March 17, 2006.)

**100-25-4. Office-based surgery and special procedures using general anesthesia or a spinal or epidural block.**

(a) In addition to meeting the requirements stated in K.A.R. 100-25-2 and 100-25-3, a physician shall not perform any office-based surgery or special procedure using general anesthesia or a spinal or epidural block unless the office is equipped with the following:

(1) Medications and equipment available to treat malignant hyperthermia when triggering agents are used. At a minimum, the office shall have a supply of dantrolene sodium adequate to treat each patient until the patient is transferred to an emergency facility;

(2) tracheotomy and chest tube kits;

(3) an electrocardiogram that is continuously displayed from the induction and during the maintenance of general anesthesia or the spinal or epidural block;

(4) a means readily available to measure the patient's temperature; and

(5) qualified, trained personnel available and dedicated solely to patient monitoring.

(b) On and after July 1, 2006, each physician who performs any office-based surgery or special procedure using general anesthesia or a spinal or epidural block shall perform the office-based surgery or special procedure only in an office that meets at least one of the following sets of standards, all of which are hereby adopted by reference except as specified:

(1) Sections 110-010 through 1031-02 in the "standards and checklist for accreditation of ambulatory surgery facilities" by the American association for accreditation of ambulatory surgery facilities, inc., revised in 2005;

(2) "section two: accreditation" and the glossary, except the definition of "physician," in "accreditation requirements for ambulatory care/surgery facilities" by the healthcare facilities accreditation program of the American osteopathic association, 2001-2002 edition;

(3) section 1 and section 2 in "accreditation manual for office-based surgery practices" by the

joint commission on accreditation of healthcare organizations, second edition, dated 2005;

(4) "accreditation standards for ambulatory facilities" by the institute for medical quality, 2003 edition. The appendices are not adopted; or

(5) chapters 1 through 6, 8 through 10, 15, 16, 19, 22, and 24 and appendices A and I in the "accreditation handbook for ambulatory health care" by the accreditation association for ambulatory health care, inc., 2005 edition.

(c) A physician who maintains an office shall not permit any office-based surgery or special procedure involving general anesthesia or a spinal or epidural block to be performed in that office unless the office meets at least one of the five sets of standards adopted in subsection (b).

(d) Accreditation of an office by an organization whose standards are adopted in subsection (b) shall be prima facie evidence that those standards are currently being met.

(e) This regulation shall not apply to any professional service performed in an emergency. (Authorized by K.S.A. 65-2865; implementing K.S.A. 65-2837; effective, T-100-8-22-05, Aug. 22, 2005; effective, T-100-12-20-05, Dec. 20, 2005; effective March 17, 2006.)

**100-25-5. Standard of care.** Each person licensed to practice a branch of the healing arts who performs direct patient care in an office or who performs any office-based surgery or special procedures in an office shall meet the standard of care established by the regulations in this article. (Authorized by K.S.A. 65-2865; implementing K.S.A. 65-2837; effective, T-100-8-22-05, Aug. 22, 2005; effective, T-100-12-20-05, Dec. 20, 2005; effective March 17, 2006.)

**Article 26.—SERVICES RENDERED TO INDIVIDUALS LOCATED IN THIS STATE; OUT-OF-STATE PRACTITIONERS**

**100-26-1. Services rendered to individuals located in this state.**

(a) Except as authorized by K.S.A. 65-2872 and amendments thereto and this article, each person, regardless of location, who performs any act specified in K.S.A. 65-2802(a) and amendments thereto or who issues an order for any service that constitutes the practice of the healing arts on an individual located in this state shall be deemed to be engaged in the practice of the healing arts in this state.

(b) Nothing in this article shall be construed to

prohibit an out-of-state practitioner, as defined by K.A.R. 100-26-2, from providing verbal, written, or electronic communication that is incidental to the services lawfully provided by the out-of-state practitioner and that is conveyed to any of the following individuals located in this state:

- (1) Any health professional;
- (2) any patient; or
- (3) any individual authorized to act on behalf of a patient. (Authorized by K.S.A. 65-2865 and 65-2872, as amended by L. 2005, Ch. 117, §1; implementing K.S.A. 65-2872, as amended by L. 2005, Ch. 117, §1; effective June 20, 1994; amended, T-100-8-22-05, Aug. 22, 2005; amended, T-100-12-20-05, Dec. 20, 2005; amended March 17, 2006.)

**100-26-2. Definitions.** As used in this article, the following definitions shall apply: (a) “Diagnostic professional service” means the testing of a human being for the detection or evaluation of a disease, ailment, deformity, or injury within this state pursuant to the valid order of an out-of-state practitioner.

(b) “Health care facility” means an entity licensed by the secretary of the Kansas department of health and environment or by the secretary of the department of social and rehabilitation services of the state of Kansas to provide any service that constitutes the practice of the healing arts. This term shall include any persons who are employed by the health care facility to implement the orders issued by licensees of the board.

(c) “Health professional” means an individual who is licensed, registered, or certified by a Kansas regulatory agency and who renders services, directly or indirectly, for the purpose of any of the following:

- (1) Preventing physical, mental, or emotional illness;
- (2) detecting, diagnosing, and treating illness;
- (3) facilitating recovery from illness; or
- (4) providing rehabilitative or continuing care following illness.

(d) “Licensee” means a person licensed by the board to practice the healing arts.

(e) “Out-of-state practitioner” means an individual who is licensed in another state to practice a branch of the healing arts without suspension or disciplinary limitation to issue a valid order, if that individual does not maintain an office or appoint a place to regularly meet patients or receive calls within the state of Kansas.

(f) “Therapeutic professional service” means any treatment for the cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, or injury.

(g) “Valid order” means an order by an out-of-state practitioner for a diagnostic professional service or therapeutic professional service that is transmitted orally, electronically, or in writing, if all of the following conditions are met:

(1) The order is within the lawful scope of authority of the out-of-state practitioner.

(2) The order may be lawfully ordered or provided by a licensee in this state who practices the same branch of the healing arts as that of the out-of-state practitioner.

(3) The order is issued by an out-of-state practitioner who is not any of the following:

- (A) A licensee whose license is suspended;
- (B) an individual who previously was a licensee whose license is revoked under K.S.A. 65-2836 and amendments thereto; or

(C) a licensee whose license has a limitation by the board that prohibits the order. (Authorized by and implementing K.S.A. 65-2872, as amended by L. 2005, Ch. 117, § 1; effective, T-100-8-22-05, Aug. 22, 2005; effective, T-100-12-20-05, Dec. 20, 2005; effective March 17, 2006.)

**100-26-3. Orders for diagnostic professional services and therapeutic professional services.**

(a) Any health care facility may perform a diagnostic professional service or therapeutic professional service pursuant to the valid order of an out-of-state practitioner.

(b) Any health professional may perform a diagnostic professional service outside of a health care facility pursuant to the valid order of an out-of-state practitioner. (Authorized by and implementing K.S.A. 65-2872, as amended by L. 2005, Ch. 117, § 1; effective, T-100-8-22-05, Aug. 22, 2005; effective, T-100-12-20-05, Dec. 20, 2005; effective March 17, 2006.)

**Article 27.—LIGHT-BASED  
MEDICAL TREATMENT**

**100-27-1. Supervision of light-based medical treatment.** (a)(1) The phrase “class III or class IV device” shall mean a medical instrument that meets either of the following conditions:

- (A) Is a class IIIa, class IIIb, or class IV laser product as defined by 21 C.F.R. § 1040.10, as in effect on March 31, 2000; or

(B) emits radiation in a continuous wave of more than one milliwatt or at a pulsed rate of more than five milliwatts.

(2) The phrase “immediately available” shall mean that the licensee either is physically present in the same building or can be present at the location where the service is performed within five minutes.

(3) “Licensee” shall mean a person licensed to practice medicine and surgery or osteopathic medicine and surgery in this state.

(4) The phrase “light-based medical device” shall mean any instrument that produces or amplifies electromagnetic radiation at wavelengths equal to or greater than 180 nanometers, but less than or equal to  $1.0 \times 10^6$  nanometers, for the purpose of affecting the structure or function of any part of the living human body.

(5) The phrase “physically present” shall mean that the licensee is capable of constant, direct communication and is in the same office within the building where the service is performed throughout the entire time during which the service is performed.

(b) A licensee shall not authorize another person to perform a professional service using a light-based medical device unless either the licensee is immediately available or, except as limited by subsection (c), there is a written practice protocol signed by the licensee and the person performing the treatment that requires all of the following:

(1) The person performing the treatment will not provide any service for which the person is not competent by training, education, and experience.

(2) The person receiving the treatment is required to give consent to the treatment, after being informed of the nature and purpose of the treatment, risks, and expected consequences of treatment, alternatives to light-based medical treatment, and identification of the treatment as a medical and surgical procedure.

(3) The person performing the treatment is required to inform the person receiving the treatment of the licensee’s identity, emergency telephone number, and practice location, if different from the location at which the treatment is performed.

(4) Each treatment is required to be performed only at a location that the licensee maintains for the practice of the branch of the healing arts for which the licensee is licensed.

(5) Each treatment provided while the licensee is not physically present is required to be performed within written operating parameters.

(6) Creation of an adequate patient record is required.

(7) The licensee is required to review the patient record and authenticate this review within 14 days following the treatment.

(8) The person performing the treatment is prohibited from delegating the use of the light-based medical device to another person.

(c) A licensee shall not authorize another person to perform a professional service using a class III or class IV device or an intense pulsed-light device substantially equivalent to a laser surgical device as defined by 21 C.F.R. § 878.4810, as in effect on January 16, 1996, unless either of the following conditions is met:

(1) The licensee is physically present.

(2) The licensee is immediately available, and there is a written protocol signed by the licensee and the person performing the treatment that meets the requirements of paragraphs (b)(1) through (b)(8).

(d) This regulation shall not apply to an order by a licensee to any appropriate person for the application of light-based medical devices for phototherapy in the treatment of hyperbilirubinemia in neonates.

(e) This regulation shall not apply to any of the following:

(1) Any person licensed under the healing arts act to practice chiropractic who engages in light-based physiotherapy;

(2) any licensed physical therapist who provides treatments as authorized by law; or

(3) any licensed occupational therapist who provides treatments as authorized by law. (Authorized by K.S.A. 65-2865; implementing K.S.A. 2005 Supp. 65-28,127; effective June 1, 2001; amended March 22, 2002; amended Sept. 15, 2006.)

## Article 28a.—PHYSICIAN ASSISTANTS

**100-28a-1. Fees.** The following fees shall be collected by the board:

- |                                      |          |
|--------------------------------------|----------|
| (a) Application for license .....    | \$200.00 |
| (b) Annual renewal of license:       |          |
| (1) Paper renewal.....               | \$150.00 |
| (2) On-line renewal.....             | \$150.00 |
| (c) Late renewal of license:         |          |
| (1) Paper late renewal.....          | \$215.00 |
| (2) On-line late renewal.....        | \$208.00 |
| (d) License reinstatement .....      | \$250.00 |
| (e) Copy of license certificate..... | \$15.00  |

- (f) Certified statement of licensure..... \$15.00
- (g) Temporary license..... \$30.00

(Authorized by and implementing K.S.A. 2007 Supp. 65-28a03; effective, T-100-2-13-01, Feb. 13, 2001; effective June 1, 2001; amended Nov. 15, 2002; amended Nov. 19, 2004; amended Nov. 26, 2007; amended, T-100-10-16-08, Oct. 16, 2008; amended Feb. 13, 2009.)

**100-28a-1a. Definitions.** As used in this article, each of the following terms shall have the meaning specified in this regulation:

(a) "Active practice request form" means the board-provided form that each physician assistant is required to submit to the board pursuant to K.S.A. 65-28a03, and amendments thereto, as a condition of engaging in active practice and that is signed by the physician assistant, supervising physician, and each substitute supervising physician. Each active practice request form contains a section called the written agreement.

(b) "Different practice location" means a practice location at which a supervising physician is physically present less than 20 percent of the time that the practice location provides medical services to patients. This term shall not include a medical care facility, as defined in K.S.A. 65-425 and amendments thereto.

(c) "Direct supervision" means a type of supervision in which the supervising physician or substitute supervising physician is physically present at the site of patient care and capable of immediately providing direction or taking over care of the patient.

(d) "Emergency medical condition" means the sudden and, at the time, unexpected onset of a person's health condition that requires immediate medical attention, for which the failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part or would place the person's health in serious jeopardy.

(e) "Indirect supervision" means a type of supervision in which the supervising physician or substitute supervising physician can be physically present at the site of patient care within 15 minutes to provide direct supervision.

(f) "Off-site supervision" means a type of supervision in which the supervising physician or substitute supervising physician is not physically present at the site of patient care but is immediately available by means of telephonic or electronic communication.

(g) "Practice location" means any location at which a physician assistant is authorized to practice, including a medical care facility as defined in K.S.A. 65-425 and amendments thereto.

(h) "Substitute supervising physician" means each physician designated by prior arrangement pursuant to K.S.A. 65-28a09, and amendments thereto, to provide supervision to the physician assistant if the supervising physician is temporarily unavailable.

(i) "Supervision" means oversight by a supervising physician or a substitute supervising physician of delegated medical services that may be performed by a physician assistant. The types of supervision shall include direct supervision, indirect supervision, and off-site supervision.

(j) "Written agreement" means the section of the active practice request form that specifies the agreed scope of authorized medical services and procedures and prescription-only drug authority for each physician assistant. (Authorized by K.S.A. 2015 Supp. 65-28a02 and 65-28a08; implementing K.S.A. 2015 Supp. 65-28a03, 65-28a08, and 65-28a09; effective, T-100-12-10-15, Jan. 11, 2016; effective May 6, 2016.)

**100-28a-2. Application.** (a) Each application for licensure as a physician assistant shall be submitted on a form provided by the board. The form shall contain the following information:

- (1) The applicant's full name;
- (2) the applicant's home address and, if different, the applicant's mailing address;
- (3) the applicant's date and place of birth;
- (4) the applicant's social security number, individual tax identification number, or nondriver identification number, if the applicant is advised that providing a social security number is voluntary pursuant to K.S.A. 74-139 and 74-148, and amendments thereto, and that if the social security number is provided, the agency may provide this number to the Kansas department of social and rehabilitation services for child support enforcement purposes and to the Kansas department of revenue's director of taxation;
- (5) the issue date; state, territory, the District of Columbia, or other country of issuance; and the identifying number on any license, registration, or certification issued to the applicant to practice any health care profession;
- (6) documentation of any prior acts constituting unprofessional conduct as defined in K.A.R. 100-28a-8;

- (7) the applicant's daytime telephone number;
- (8) the names of all educational programs recognized under K.A.R. 100-28a-3 that the applicant attended, including the program from which the applicant graduated, the degree awarded to the applicant, and the date of graduation;
- (9) notarized certification that the applicant has completed a physician assistant program from a postsecondary school recognized under K.A.R. 100-28a-3;
- (10) a list of all attempts to gain board certification recognized under K.A.R. 100-28a-4 and an official copy of the applicant's board certification; and
- (11) a notarized release authorizing the board to receive any relevant information, files, or records requested by the board in connection with the application.

(b) Each applicant shall submit the following with the application:

- (1) The fee required by K.A.R. 100-28a-1;
- (2) an official transcript from an educational program approved by the board as provided in K.A.R. 100-28a-3 that specifies the degree awarded to the applicant;
- (3) a verification from each state, country, territory, or the District of Columbia where the applicant has been issued any license, registration, or certification to practice any health care profession;
- (4) a photograph of the applicant measuring two inches by three inches and showing the head and shoulder areas only. The photograph shall be taken within 90 days before the date of application; and
- (5) evidence provided directly to the board from the national commission on certification of physician assistants that the applicant has passed the physician assistant national certifying examination.

(c) The applicant shall sign the application under oath and shall have the application notarized. (Authorized by and implementing K.S.A. 2008 Supp. 65-28a03; implementing K.S.A. 65-28a04; effective, T-100-2-13-01, Feb. 13, 2001; effective June 1, 2001; amended Jan. 4, 2010.)

**100-28a-3. Education and training.** (a) Each educational program for physician assistants accredited by the accreditation review committee on education for the physician assistant, inc., or by a predecessor agency, and all other educational programs that are determined by the board to have a standard of education substantially equivalent to the accreditation criteria of the committee shall be approved by the board.

(b) Each applicant who has acquired experience as a physician assistant while serving in the armed forces of the United States shall provide proof that the applicant is competent to perform all of the following:

- (1) Screen patients to determine need for medical attention;
- (2) review patient records to determine health status;
- (3) take a patient history;
- (4) perform a physical examination;
- (5) perform a developmental screening examination on children;
- (6) record pertinent patient data;
- (7) make decisions regarding data gathering and appropriate management and treatment of patients being seen for the initial evaluation of a problem or the follow-up evaluation of a previously diagnosed and stabilized condition;
- (8) prepare patient summaries;
- (9) initiate requests for commonly performed initial laboratory studies;
- (10) collect specimens for and carry out commonly performed blood, urine, and stool analyses and cultures;
- (11) identify normal and abnormal findings on history, physical examination and commonly performed laboratory studies;
- (12) initiate appropriate evaluation and emergency management for emergency situations, including cardiac arrest, respiratory distress, injuries, burns and hemorrhage;
- (13) counsel and instruct patients; and
- (14) administer commonly performed clinical procedures that shall include all of the following:
  - (A) Venipuncture;
  - (B) intradermal tests;
  - (C) electrocardiogram;
  - (D) care and suturing of minor lacerations;
  - (E) casting and splinting;
  - (F) control of external hemorrhage;
  - (G) application of dressings and bandages;
  - (H) administration of medications and intravenous fluids, and transfusion of blood or blood components;
  - (I) removal of superficial foreign bodies;
  - (J) cardiopulmonary resuscitation;
  - (K) audiometry screening;
  - (L) visual screening; and
  - (M) aseptic and isolation techniques. (Authorized by K.S.A. 2000 Supp. 65-28a03; implementing K.S.A. 2000 Supp. 65-28a04; effective, T-100-2-13-01, Feb. 13, 2001; effective June 1, 2001.)

**100-28a-4. Examination.** (a) The examination approved by the board for licensure as a physician assistant shall be the physician assistant national certifying examination prepared and administered by the national commission on certification of physician assistants.

(b) To pass the approved examination, each applicant shall achieve at least the minimum passing score of 350.

(c) Each applicant who has passed the approved examination for a license and has not been in active practice as a physician assistant for more than one year, but less than five years from the date the application was submitted, shall provide one of the following:

(1) Evidence of completion of a minimum of 50 continuing education credit hours; or

(2) proof that the applicant has passed an examination approved by the board within 12 months before the date the application was submitted, or has successfully completed a continuing education program, or other individually tailored program approved by the board.

(d) Each applicant who has passed the examination for a license and has not been in active practice as a physician assistant for five years or more from the date the application was submitted shall provide proof that the applicant has passed an examination approved by the board within 12 months before the date the application was submitted, or has successfully completed a continuing education program or other individually tailored program approved by the board. (Authorized by K.S.A. 2000 Supp. 65-28a03; implementing K.S.A. 2000 Supp. 65-28a03 and 65-28a04; effective, T-100-2-13-01, Feb. 13, 2001; effective June 1, 2001.)

**100-28a-5. Continuing education.** (a) Each physician assistant shall submit with the renewal application one of the following:

(1) Evidence of satisfactory completion of at least 50 continuing education credit hours during the preceding year. At least 20 continuing education credit hours shall be acquired from category I and at least one continuing education credit hour shall be acquired from category III, if 50 continuing education credit hours are submitted with the renewal application;

(2) evidence of satisfactory completion of at least 100 continuing education credit hours during the preceding two-year period. At least 40 continuing education credit hours shall be acquired from

category I and at least two continuing education credit hours shall be acquired from category III, if 100 continuing education credit hours are submitted with the renewal application; or

(3) evidence verifying satisfactory completion of continuing education credit hours equivalent, in number and category, to those hours required by paragraph (a)(1) or (2), issued by a national, state, or local organization with continuing education standards that are at least as stringent as the board's standards.

(b) A continuing education credit hour shall be 50 minutes of instruction or its equivalent. Meals and exhibit breaks shall not be included in the calculation of continuing education credit hours.

(c) Any applicant that does not meet the requirements for license renewal in subsection (a) may request an extension from the board. The request shall include a plan for completion of the continuing education requirements within the requested extension period. An extension of up to six months may be granted by the board if documented circumstances make it impossible or extremely difficult for the individual to reasonably obtain the required continuing education hours.

(d) Each physician assistant initially licensed within one year of a renewal registration date shall be exempt from the continuing education required by subsection (a) for that first renewal period.

(e) The categories of continuing education credit shall be the following:

(1) Category I: attendance at an educational presentation that is approved by the board;

(2) category II: participating in or attending an educational activity that is approved by the board. Category II continuing education may include self-study or group activities; and

(3) category III: participating in or attending an internet or live educational activity that meets the requirements of either a category I or a category II continuing education activity and meets at least one of the following content requirements:

(A) Acute or chronic pain management;

(B) the appropriate prescribing of opioids; or

(C) the use of prescription drug monitoring programs.

(f) Evidence of satisfactory completion of continuing education shall be submitted to the board as follows:

(1) Documented evidence of attendance at or participation in category I, II, and III activities; or

(2) verification, on a form provided by the board, of self-study from reading professional lit-

erature or other self-study activities. (Authorized by K.S.A. 65-28a03; implementing K.S.A. 65-28a04; effective, T-100-2-13-01, Feb. 13, 2001; effective June 1, 2001; amended March 30, 2012; amended July 9, 2021.)

**100-28a-6. Scope of practice.** Any physician assistant may perform acts that constitute the practice of medicine and surgery as follows:

(a) When directly ordered, authorized, and coordinated by the supervising physician or substitute supervising physician through that individual's physical presence;

(b) when directly ordered, authorized, and coordinated by the supervising physician or substitute supervising physician through verbal or electronic communication;

(c) when authorized by the active practice request form submitted to the board by the physician assistant and the supervising physician as required by K.A.R. 100-28a-9; or

(d) if required to treat a patient with an emergency medical condition. (Authorized by K.S.A. 2015 Supp. 65-28a03; implementing K.S.A. 2015 Supp. 65-28a08; effective, T-100-2-13-01, Feb. 13, 2001; effective June 1, 2001; amended, T-100-12-10-15, Jan. 11, 2016; amended May 6, 2016.)

**100-28a-7. Professional incompetency: defined.** "Professional incompetency" means any of the following: (a) One or more instances involving failure to adhere to the applicable standard of care to a degree that constitutes gross negligence, as determined by the board;

(b) repeated instances involving failure to adhere to the applicable standard of care to a degree that constitutes ordinary negligence, as determined by the board; or

(c) a pattern of practice or other behavior that demonstrates a manifest incapacity or incompetence to perform professional services as a physician assistant. (Authorized by K.S.A. 2000 Supp. 65-28a03; implementing K.S.A. 2000 Supp. 65-28a05; effective, T-100-2-13-01, Feb. 13, 2001; effective June 1, 2001.)

**100-28a-8. Unprofessional conduct: defined.** "Unprofessional conduct" means any of the following: (a) Being convicted of a class A misdemeanor, whether or not related to the practice as a physician assistant;

(b) committing fraud or misrepresentation in applying for or securing an original, renewal, or reinstated license;

(c) cheating on or attempting to subvert the validity of the examination for a license;

(d) soliciting professional services through the use of fraudulent or false advertisements;

(e) willfully or repeatedly violating the physician assistant licensure act, the pharmacy act of the state of Kansas, or the uniform controlled substances act, or any regulations adopted pursuant to these acts;

(f) engaging in the practice as a physician assistant under a false or assumed name, or impersonating another practitioner;

(g) practicing as a physician assistant without reasonable skill and safety to patients because of any of the following:

(1) Illness;

(2) alcoholism;

(3) excessive use of alcohol, drugs, controlled substances, chemicals, or any other type of material; or

(4) any mental or physical condition;

(h) having a license, certification, or registration revoked, suspended, limited, censured, or having any other disciplinary action taken, or an application for a license denied by the proper licensing authority of another state, territory, the District of Columbia, or other country;

(i) prescribing, selling, administering, distributing, or giving a controlled substance to any person for other than a medically accepted or lawful purpose;

(j) prescribing, dispensing, administering, or distributing a prescription drug or substance, including a controlled substance, in an excessive, improper, or inappropriate manner or quantity, or not in the course of the licensee's professional practice;

(k) prescribing, dispensing, administering, or distributing an anabolic steroid or human growth hormone for other than a valid medical purpose;

(l) prescribing, ordering, dispensing, administering, selling, supplying, or giving any amphetamines or sympathomimetic amines, except as authorized by K.S.A. 2000 Supp. 65-2837a, and amendments thereto;

(m) failing to furnish the board, or its investigators or representatives, with any information legally requested by the board;

(n) knowingly submitting any misleading, deceptive, untrue, or fraudulent representation on a claim form, bill, or statement;

(o) representing to a patient that a manifestly incurable disease, condition, or injury can be permanently cured;

(p) assisting in the care or treatment of a patient without the consent of the patient, the attending physician, or the patient's legal representative;

(q) willfully betraying confidential information;

(r) committing conduct likely to deceive, defraud, or harm the public;

(s) allowing another person or organization to use the physician assistant's license to perform professional services;

(t) committing any act of sexual abuse, misconduct, or exploitation related to the licensee's professional practice;

(u) failing to keep written medical records that accurately describe the services rendered to the patient;

(v) using any false, fraudulent, or deceptive statement in any document connected with the practice of the healing arts, including the intentional falsifying or fraudulent altering of a patient or medical care facility record;

(w) performing unnecessary tests, examinations, or services that have no legitimate medical purpose; or

(x) delegating professional responsibilities to a person if the physician assistant knows or has reason to know that the person is not qualified by education, training, or experience to perform them. (Authorized by K.S.A. 2000 Supp. 65-28a03; implementing K.S.A. 2000 Supp. 65-28a05; effective, T-100-2-13-01, Feb. 13, 2001; effective June 1, 2001.)

**100-28a-9. Active practice request form; content.** The active practice request form submitted by each physician assistant shall contain the following:

(a) The name and license number of the physician assistant;

(b) the name and license number of the supervising physician;

(c) the name and license number of each substitute supervising physician;

(d) information about each practice location, including hospitals and other facilities, which shall include the following:

(1) The street address and telephone number;

(2) a description of the type of medical services provided to patients;

(3) specification of whether the location is a different practice location and, if so, whether the physician assistant has spent at least 80 hours since being licensed under the direct supervision of a physician licensed in this state; and

(4) the name of each substitute supervising physician who shall provide supervision to the physician assistant at the practice location if the supervising physician is temporarily unavailable;

(e) the written agreement, which shall contain the following information:

(1) A description of the medical services and procedures that the physician assistant may perform at each practice location;

(2) a list of any medical services and procedures that the physician assistant is prohibited from performing;

(3) any types of supervision required for specified medical services and procedures;

(4) the prescription-only drugs, including controlled substances and professional samples, that the physician assistant is authorized to prescribe, administer, dispense, or distribute;

(5) any specific exceptions to the physician assistant's authority to prescribe, administer, dispense, or distribute prescription-only drugs, including controlled substances and professional samples;

(6) a description of the procedure for communication between the supervising physician and the physician assistant if the physician assistant is at a different practice location; and

(7) a description of the procedure for notifying a substitute supervising physician if the supervising physician is unavailable;

(f) an acknowledgment that the supervising physician or a substitute supervising physician shall be available for communication with the physician assistant at all times during which the physician assistant could reasonably be expected to provide professional services;

(g) an acknowledgment that a current copy of the active practice request form shall be maintained at each practice location and that any amendments to the active practice request form shall be provided to the board within 10 days of being made;

(h) confirmation that the supervising physician has established and implemented a method for the initial, periodic, and annual evaluation of the professional competency of the physician assistant required by K.A.R. 100-28a-10;

(i) confirmation that the medical services and procedures that the physician assistant is authorized to perform are within the clinical competence and customary practice of the supervising physician and all substitute supervising physicians; and

(j) the dated signatures of the physician assistant, supervising physician, and all substitute

supervising physicians. (Authorized by and implementing K.S.A. 2015 Supp. 65-28a03 and 65-28a08; effective, T-100-2-13-01, Feb. 13, 2001; effective June 1, 2001; amended, T-100-12-10-15, Jan. 11, 2016; amended May 6, 2016.)

**100-28a-9a. Active practice request form; requirements.** (a) Each physician assistant who requests to engage in active practice on or after January 11, 2016 shall submit to the board an active practice request form that contains the information required by K.A.R. 100-28a-9.

(b) Each physician assistant actively practicing before January 11, 2016 shall submit to the board on or before July 1, 2016 an active practice request form that contains the information required by K.A.R. 100-28a-9.

(c) Each physician assistant shall submit to the board, on a board-provided form, any subsequent amendments to the information on that individual's active practice request form within 10 days of the amendment being made.

(d) Each physician assistant shall maintain a current copy of the active practice request form at each practice location. (Authorized by and implementing K.S.A. 2015 Supp. 65-28a03 and 65-28a08; effective, T-100-12-10-15, Jan. 11, 2016; effective May 6, 2016.)

**100-28a-10. Supervising physician.** (a) Each supervising physician shall meet all of the following requirements:

(1) Engage in the practice of medicine and surgery in Kansas;

(2) verify that the physician assistant has a current license issued by the board;

(3) at least annually, review, evaluate, and determine whether the physician assistant has performed patient services constituting the practice of medicine and surgery with professional competence and with reasonable skill and safety;

(4) at least annually, review the active practice request form required by K.A.R. 100-28a-9 and determine if any amendments are necessary. Each amendment shall be conveyed to the physician assistant, specified in all copies of the active practice request form, and provided to the board within 10 days of being made;

(5) report to the board any knowledge of disciplinary hearings, formal hearings, public or private censure, or other disciplinary action taken against the physician assistant by any state's licensure or registration authority or any professional

association. The supervising physician shall report this information to the board within 10 days of receiving notice of the information;

(6) report to the board the termination of responsibility by the supervising physician or any litigation alleging conduct by the physician assistant that would constitute grounds for disciplinary action under the physician assistant licensure act. The supervising physician shall report this information to the board within 10 days of receiving notice of the information;

(7) arrange for a substitute supervising physician to provide supervision on each occasion when the supervising physician is temporarily absent, is unable to be immediately contacted by telecommunication, or is otherwise unavailable at any time the physician assistant could reasonably be expected to provide professional services; and

(8) delegate to the physician assistant only those acts that constitute the practice of medicine and surgery and meet the following conditions:

(A) The supervising physician believes or has reason to believe that the acts can be competently performed by the physician assistant, based upon the physician assistant's background, training, capabilities, skill, and experience; and

(B) the acts are within the supervising physician's clinical competence and customary practice.

(b) The supervising physician shall develop and implement a written method for evaluating whether the physician assistant has performed patient services constituting the practice of medicine and surgery with professional competence and with reasonable skill and safety.

(1) During the first 30 days of the supervising physician-physician assistant supervisory relationship, the supervising physician shall review and authenticate all medical records of each patient evaluated or treated by the physician assistant within seven days of the date the physician assistant evaluated or treated the patient. The supervising physician shall authenticate each record by original signature or initials and shall record the date of the review. Electronically generated signatures shall be acceptable if reasonable measures have been taken to prevent unauthorized use of the electronically generated signature.

(2) After the first 30 days of the supervising physician-physician assistant supervisory relationship, the supervising physician shall document the periodic review and evaluation of the physician assistant's performance required by paragraph (a)(3), which may include the review of patient

records. The supervising physician and the physician assistant shall sign the written review and evaluation and maintain a copy at each practice location, which shall be made available to the board upon request.

(c) Except as otherwise required by K.A.R. 100-28a-13, a supervising physician shall not be required to cosign orders or prescriptions written in a patient's medical record by a physician assistant to whom the supervising physician has delegated the performance of services constituting the practice of medicine and surgery. (Authorized by K.S.A. 2015 Supp. 65-28a03 and 65-28a08; implementing K.S.A. 2015 Supp. 65-28a02, 65-28a08, and 65-28a09; effective, T-100-2-13-01, Feb. 13, 2001; effective June 1, 2001; amended May 15, 2009; amended March 30, 2012; amended, T-100-12-10-15, Jan. 11, 2016; amended May 6, 2016.)

**100-28a-11. Duty to communicate; emergency medical conditions.** (a) Except as specified in subsection (b), each physician assistant shall communicate with the supervising physician or substitute supervising physician concerning a patient's condition if the physician assistant believes that the patient's condition may require either of the following:

(1) Any treatment that the physician assistant has not been authorized to perform; or

(2) any treatment that exceeds the physician assistant's competence.

(b) If a patient has an emergency medical condition requiring immediate treatment that the physician assistant has not been authorized to perform, the physician assistant shall communicate with the supervising physician or substitute supervising physician concerning the patient's emergency medical condition as soon as is clinically feasible. The physician assistant shall document that individual's communication with the supervising physician or substitute supervising physician in the patient's medical record. (Authorized by K.S.A. 2015 Supp. 65-28a03; implementing K.S.A. 2015 Supp. 65-28a08; effective, T-100-2-13-01, Feb. 13, 2001; effective June 1, 2001; amended, T-100-12-10-15, Jan. 11, 2016; amended May 6, 2016.)

**100-28a-12. Substitute supervising physician.** If a substitute supervising physician supervises a physician assistant, the substitute supervising physician shall meet the same requirements as those of the supervising physician. (Authorized by K.S.A. 2015 Supp. 65-28a02 and 65-28a03; im-

plementing K.S.A. 2015 Supp. 65-28a02 and 65-28a09; effective, T-100-2-13-01, Feb. 13, 2001; effective June 1, 2001; amended, T-100-12-10-15, Jan. 11, 2016; amended May 6, 2016.)

**100-28a-13. Prescription-only drugs.** (a) Any physician assistant may administer, prescribe, distribute, or dispense a prescription-only drug pursuant to K.S.A. 65-28a08, and amendments thereto, as authorized by the written agreement required by K.A.R. 100-28a-9 and as authorized by this regulation.

(b) As used in this regulation, "emergency situation" shall have the meaning specified in K.A.R. 68-20-19.

(c) Any physician assistant may directly administer a prescription-only drug as follows:

(1) If directly ordered or authorized by the supervising physician or substitute supervising physician;

(2) if authorized by a written agreement between the supervising physician and the physician assistant; or

(3) if an emergency situation exists.

(d)(1) Any physician assistant may prescribe a schedule II controlled substance in the same manner as that in which the physician assistant may perform acts that constitute the practice of medicine and surgery as specified in K.A.R. 100-28a-6. Except as specified in paragraph (d)(2), each prescription for a schedule II controlled substance shall be in writing.

(2) Any physician assistant may, by oral or telephonic communication, authorize a schedule II controlled substance in an emergency situation. Within seven days after authorizing an emergency prescription order, the physician assistant shall cause a written prescription, completed in accordance with appropriate federal and state laws, to be delivered to the dispenser of the drug.

(e) Any physician assistant may orally, telephonically, electronically, or in writing prescribe a controlled substance listed in schedule III, IV, or V, or a prescription-only drug not listed in any schedule as a controlled substance in the same manner as that in which the physician assistant may perform acts that constitute the practice of medicine and surgery as specified in K.A.R. 100-28a-6.

(f) Each written prescription order by a physician assistant shall meet the following requirements:

(1) Contain the name, address, and telephone number of the supervising physician;

(2) contain the name, address, and telephone number of the physician assistant;

(3) be signed by the physician assistant with the letters "P.A." following the signature; and

(4) contain any DEA registration number issued to the physician assistant if a controlled substance is prescribed.

(g) Any physician assistant may distribute a prescription-only drug to a patient only if all of the following conditions are met:

(1) The drug is distributed under the same conditions as those in which a physician assistant may directly administer a prescription-only drug, as described in subsection (b).

(2) The drug has been provided to the physician assistant or the physician assistant's supervising physician or employer at no cost.

(3) The drug is commercially labeled and is distributed to the patient in the original prepackaged unit-dose container.

(4) The drug is distributed to the patient at no cost.

(h) Any physician assistant may dispense a prescription-only drug to a patient under the limited circumstances specified in K.S.A. 65-28a08, and amendments thereto, in the same manner as that in which the physician assistant may perform acts that constitute the practice of medicine and surgery specified in K.A.R. 100-28a-6.

(i) A physician assistant shall not administer, prescribe, distribute, or dispense a prescription-only drug for any quantity or strength in excess of the normal and customary practice of the supervising physician. (Authorized by K.S.A. 2015 Supp. 65-28a03 and 65-28a08; implementing K.S.A. 2015 Supp. 65-28a08; effective, T-100-2-13-01, Feb. 13, 2001; effective June 1, 2001; amended, T-100-12-10-15, Jan. 11, 2016; amended May 6, 2016.)

#### **100-28a-14. Different practice location.**

Any physician assistant may perform acts that constitute the practice of medicine and surgery at a different practice location if all of the following requirements are met:

(a) Before providing any services at the different practice location, the physician assistant shall have spent at least 80 hours since being licensed under the direct supervision of a physician licensed in this state.

(b) The supervising physician or substitute supervising physician shall remain available to provide guidance, direction, and coordination of the activities of the physician assistant. This availability may be provided by electronic means.

(c) The different practice location shall be listed on the active practice request form required by K.A.R. 100-28a-9.

(d) Written notice that the different practice location is staffed primarily by a physician assistant shall be posted in a location where the notice is likely to be seen by patients. (Authorized by K.S.A. 65-28a03 and 65-28a08; implementing K.S.A. 65-28a08; effective, T-100-2-13-01, Feb. 13, 2001; effective June 1, 2001; amended July 22, 2005; amended, T-100-12-10-15, Jan. 11, 2016; amended May 6, 2016; amended March 8, 2019.)

#### **100-28a-15. Licensure; cancellation.**

(a) Except as specified in subsection (b), each physician assistant license issued by the board shall be cancelled on December 31 of each year.

(b) Each license issued or reinstated from October 1 through December 31 shall be cancelled on December 31 of the following year. (Authorized by and implementing K.S.A. 2015 Supp. 65-28a03; effective, T-100-2-13-01, Feb. 13, 2001; effective June 1, 2001; amended, T-100-12-10-15, Jan. 11, 2016; amended May 6, 2016.)

#### **100-28a-16. Reinstatement; lapsed and revoked licenses.**

(a) Each applicant who has not been in active practice as a physician assistant in another state or jurisdiction and who wants to reinstate a license that has been lapsed for failure to renew shall submit proof of continuing medical education as follows:

(1) If the time since the license lapsed has been one year or less, no continuing medical education shall be required in addition to that which would have been necessary had the license been renewed before expiration.

(2) If the time since the license lapsed has been more than one year but less than five years, the applicant shall provide one of the following:

(A) Evidence of completion of at least 50 hours of continuing education credit, including at least one hour from category III, within 12 months before the date the application for reinstatement was submitted; or

(B) proof that the applicant has passed an examination approved by the board within 12 months before the date the application for reinstatement was submitted, or has successfully completed a continuing education program or other individual program approved by the board.

(3) If the time since the license lapsed has been five years or more, the applicant shall provide

proof of passage of an examination approved by the board within 12 months before the date the application for reinstatement was submitted, or proof of successful completion of a continuing education program or other individual program approved by the board.

(b) Each applicant who has been in active practice as a physician assistant in another state or jurisdiction that requires a license, registration, or certification to practice and who wants to reinstate a license that has been lapsed for failure to renew shall submit proof of the current license, registration, or certification and proof of compliance with the continuing medical education requirements of that state or jurisdiction.

(c) Each applicant seeking reinstatement of a revoked license shall be required to successfully complete an individual program approved by the board. (Authorized by K.S.A. 65-2865 and 65-28a03; implementing K.S.A. 65-2844 and 65-28a03; effective, T-100-2-13-01, Feb. 13, 2001; effective June 1, 2001; amended July 9, 2021.)

**100-28a-17. Number of physician assistants supervised; limitation for different practice location.** (a) Except as otherwise specified in subsection (b), each supervising physician shall determine the number of physician assistants under the supervising physician's supervision. The supervising physician shall use professional judgment regarding that individual's ability to adequately supervise each physician assistant based upon the following factors:

(1) The supervising physician's ability to meet the requirements for supervision specified in K.A.R. 100-28a-10 for each physician assistant;

(2) the supervising physician's ability to provide the types of supervision that may be specified in the written agreement with each physician assistant;

(3) the specialty and setting of each practice location at which each physician assistant will provide services;

(4) the complexity of the patient population that each physician assistant will be treating; and

(5) the clinical experience and competency of each physician assistant.

(b)(1) A supervising physician shall not supervise more than a total of three physician assistants who provide services at a different practice location under K.A.R. 100-28a-14, regardless of the number of different practice locations, without the prior approval of the board. A supervising

physician shall not under any circumstances supervise more than five physician assistants who provide services at a different practice location.

(2) The approval to supervise more than a total of three physician assistants who will provide services at a different practice location may be granted by the board if the supervising physician submits a signed request on a board-provided form that meets the following requirements:

(A) Verifies that the combined number of work hours of all the physician assistants who will provide services at a different practice location will not exceed 200 hours per week; and

(B) demonstrates that the supervising physician is able to adequately supervise each physician assistant under the supervising physician's supervision based on the factors specified in subsection (a). (Authorized by K.S.A. 2015 Supp. 65-28a03; implementing K.S.A. 2015 Supp. 65-28a08; effective July 22, 2005; amended, T-100-12-10-15, Jan. 11, 2016; amended May 6, 2016.)

**100-28a-18. Physician assistant; ownership of corporation or company.** (a) Licensed physician assistants shall not hold more than 49 percent of the total number of shares issued by a professional corporation that is organized to render the professional services of a physician, surgeon or doctor of medicine, or osteopathic physician or surgeon.

(b) Licensed physician assistants shall not contribute more than 49 percent of the total amount of capital to a professional liability company that is organized to render the professional services of a physician, surgeon or doctor of medicine, or osteopathic physician or surgeon. (Authorized by K.S.A. 17-2716 and K.S.A. 2004 Supp. 65-28a13; implementing K.S.A. 2004 Supp. 65-28a13; effective July 22, 2005.)

#### **Article 28b.—INDEPENDENT PRACTICE OF MIDWIFERY**

**100-28b-1. Definitions.** As used in this article of the board's regulations, each of the following terms shall have the meaning specified in this regulation:

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

(b) "Antepartum" means occurring in the period that commences when a pregnant woman presents herself to a licensee during pregnancy and ends at the onset of labor.

(c) “Approved national certification” means certification as a certified nurse-midwife by the American midwifery certification board.

(d) “Birthing center” means a facility that provides delivery services for normal, uncomplicated pregnancies. This term shall not include a medical care facility as defined by K.S.A. 65-425, and amendments thereto.

(e) “Family planning services” means the provision of contraceptive methods, preconception health services, and sexually transmitted infection screening and treatment to patients.

(f) “Formal consult” means the process whereby a licensee formally requests a physician’s written recommendations for the care and treatment of a patient’s identifiable risks.

(g) “Home birth” means an attended birth at a private residence or a location other than a birthing center or hospital.

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

(i) “Identifiable risk” means medical history or clinical signs or symptoms that could require clinical services other than those associated with a normal, uncomplicated pregnancy and a normal, uncomplicated delivery.

(j) “Informal consult” means the process whereby a licensee who maintains management responsibility for the patient’s care informally requests the advice or opinion of a physician.

(k) “Initial care of a normal newborn” means the clinical services provided to a normal newborn during the first 28 days of life. This term shall include lactation services.

(l) “Intrapartum” means occurring in the period commencing with the onset of labor and ending after the delivery of the placenta.

(m) “Licensee” means an individual licensed by the board to engage in the independent practice of midwifery as defined in K.S.A. 65-28b02, and amendments thereto.

(n) “Minor vaginal laceration” means a tear that extends beyond the fourchette, perineal skin, and vaginal mucosa to perineal muscles and fascia, but not the anal sphincter.

(o) “Newborn” means an infant during the first 28 days of life after birth.

(p) “Normal newborn” means a newborn who has been clinically determined to have no complications or to be at low risk of developing complications.

(q) “Normal, uncomplicated delivery” means delivery of a singleton cephalic vaginal birth that

has been clinically determined to be at low risk for complications.

(r) “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.

(s) “Patient” means a woman to whom an independent certified nurse-midwife provides clinical services.

(t) “Physician” means an individual licensed to actively practice medicine and surgery or osteopathic medicine and surgery in Kansas.

(u) “Poor pregnancy outcome” means any outcome other than a live, healthy patient.

(v) “Postpartum” means occurring in the period commencing with the delivery of the placenta and ending six weeks after birth.

(w) “Referral” means the process whereby a licensee requests a physician to assume management responsibility for a patient’s care.

(x) “Transfer” means the process whereby a licensee or physician accepts management responsibility for a patient’s care.

(y) “Transport” means the process whereby a patient is moved from one location to another. (Authorized by K.S.A. 65-28b07(d); implementing K.S.A. 65-28b02 and 65-28b07(d); effective Jan. 10, 2020.)

**100-28b-5. License expiration and cancellation.** (a) Each license to engage in the independent practice of midwifery issued within the seven-month period beginning June 1 and ending December 31 shall expire on September 30 of the following year and shall be cancelled on October 30 of that year, unless renewed.

(b) Each license to engage in the independent practice of midwifery issued within the five-month period beginning January 1 and ending May 31 shall expire on September 30 and shall be cancelled on October 30 of the same year, unless renewed. (Authorized by K.S.A. 65-28b04 and 65-28b07(d); implementing K.S.A. 65-28b04; effective Jan. 10, 2020.)

**100-28b-15. Transport and transfer protocol requirements.** (a) Each licensee shall have a written protocol in place for each patient for the timely and safe transport to a hospital with an obstetrical unit and physician within a reasonable proximity of the planned location of labor and delivery. Each written protocol shall include the following:

(1) A plan for transporting the patient by emergency medical services;

(2) a plan for notification of the hospital and physician;

(3) a plan for communication of the patient's medical history and present condition; and

(4) at least one of the following:

(A) A plan for transferring the patient to the hospital and a physician;

(B) evidence of a transfer agreement with the hospital and physician; or

(C) evidence that the licensee has admitting privileges at the specified hospital.

(b) Each licensee shall ensure that all staff members attending the patient's labor and delivery have immediate access to a working telephone or another communication device and to all necessary information for transporting and transferring a patient in case of an emergency. (Authorized by K.S.A. 65-28b07; implementing K.S.A. 65-28b02, 65-28b07; effective Jan. 10, 2020.)

**100-28b-16. Duty to consult, refer, transfer, and transport.** (a) A licensee shall immediately informally consult, formally consult, refer, or transfer care of a patient to a physician, or transport the patient to a hospital if the patient's medical history or condition presents identifiable risks to the course of pregnancy, labor, delivery, or health of the patient.

(b) Any licensee may continue or resume providing clinical services to the patient if a physician has determined that the patient's medical history or condition has been resolved, or that the identifiable risks presented by the patient's medical history or condition are not likely to affect the course of pregnancy, labor, delivery, or health of the patient or newborn.

(c) A licensee shall immediately informally consult, formally consult, refer, or transfer care of a newborn to a physician, or transport the newborn to a hospital if at any time the newborn's condition presents identifiable risks to the health of the newborn.

(d) Any licensee may continue or resume providing clinical services to the newborn if a physician has determined that the newborn's condition has been resolved or that the identifiable risks presented by the newborn's condition are not likely to affect the health of the newborn. (Authorized by K.S.A. 65-28b07; implementing K.S.A. 65-28b02, 65-28b07; effective Jan. 10, 2020.)

**100-28b-17. Identifiable risks requiring immediate referral and transport of patient.**

Identifiable risks requiring the immediate referral and transport of a patient shall include the following:

(a) Maternal fever of more than 100.4 degrees Fahrenheit during labor, in the absence of environmental factors;

(b) suggestion of fetal jeopardy, including clinically significant frank bleeding before delivery, abnormal bleeding with or without abdominal pain, evidence of placental abruption, or detection of abnormal fetal heart tones;

(c) current spontaneous preterm labor;

(d) current preterm premature rupture of membranes;

(e) current preeclampsia;

(f) current hypertensive disease of pregnancy;

(g) continuous uncontrolled bleeding;

(h) postpartum bleeding that does not subside with the administration of oxytocin or other anti-hemorrhagic agent;

(i) delivery injuries to the bladder or bowel;

(j) grand mal seizure;

(k) uncontrolled vomiting;

(l) coughing or vomiting blood;

(m) severe chest pain; and

(n) sudden onset of shortness of breath and labored breathing. (Authorized by K.S.A. 65-28b07; implementing K.S.A. 65-28b02, 65-28b07; effective Jan. 10, 2020.)

**100-28b-18. Identifiable risks requiring immediate referral and transport of newborn.**

Identifiable risks requiring the immediate referral and transport of a newborn shall include the following:

(a) Respiratory rate greater than 80 or grunting, flaring, or retracting following delivery with meconium-stained fluid;

(b) central cyanosis or pallor for more than 10 minutes;

(c) Apgar score of six or less at five minutes of age;

(d) abnormal bleeding;

(e) more than eight hours of continuous postpartum evaluation;

(f) vesicular skin lesions;

(g) seizure-like activity;

(h) poor feeding effort due to lethargy or lack of interest for more than two hours immediately following birth;

(i) temperature less than 96.8 degrees Fahr-

enheit or greater than 100.4 degrees Fahrenheit documented more than 15 minutes apart;

(j) heart murmur lasting more than 24 hours immediately following birth;

(k) cardiac arrhythmia;

(l) congenital anomalies;

(m) failed critical congenital heart disease screening;

(n) birth injury;

(o) clinical evidence of prematurity, including low birth weight of less than 2,500 grams, smooth soles of feet, or immature genitalia;

(p) jaundice in the first 24 hours after birth or significant jaundice at any time;

(q) no stool for more than 24 hours immediately following birth;

(r) no urine output for more than 24 hours; and

(s) development of persistent poor feeding effort at any time. (Authorized by K.S.A. 65-28b07; implementing K.S.A. 65-28b02, 65-28b07; effective Jan. 10, 2020.)

## Article 29.—PHYSICAL THERAPY

**100-29-1. Applications.** (a) Each applicant for licensure as a physical therapist or certification as a physical therapist assistant shall submit a completed application on a form provided by the board. The application shall include the following information in legible writing:

(1) The applicant's full name;

(2) the applicant's social security number, driver's license number, nondriver identification number, or individual tax identification number if the applicant is advised that providing a social security number is voluntary pursuant to K.S.A. 74-139 and 74-148, and amendments thereto, and that if the social security number is provided, the agency may provide this number to the Kansas department of social and rehabilitation services for child support enforcement purposes and to the Kansas department of revenue's director of taxation;

(3) the applicant's mailing address. If the applicant's mailing address is different from the applicant's residential address, the applicant shall also provide the residential address;

(4) the applicant's daytime telephone number;

(5) the applicant's date and place of birth;

(6) the names of all educational programs recognized under K.A.R. 100-29-2 that the applicant attended, including the program from which the applicant graduated, the degree awarded to the applicant, and the date of graduation;

(7) information regarding any licenses, registrations, or certifications issued to the applicant to practice any healthcare profession;

(8) information regarding any prior acts specified in K.S.A. 65-2912, and amendments thereto, that could constitute grounds for denial of the application;

(9) a notarized release authorizing the board to receive any relevant information, files, or records requested by the board in connection with the application; and

(10) the number of times the applicant has taken the examination required by the board for licensure or certification and the date that the applicant passed the examination.

(b) Each applicant shall submit the following with the application:

(1) The fee required by K.A.R. 100-29-7;

(2) an official transcript that specifies the degree awarded from an educational program recognized by the board under K.A.R. 100-29-2;

(3) a verification on a form provided by the board of each license, registration, or certification issued to the applicant by any state or the District of Columbia relating to any healthcare profession;

(4) a current photograph, three by four inches in size, of the applicant's head and shoulders taken within 90 days before the date the application is received by the board; and

(5) evidence provided directly to the board from the testing entity recognized and approved under K.A.R. 100-29-4 that the applicant has passed the examination.

(c) The applicant shall sign the application under oath and have the application notarized.

(d) The physical therapy advisory council shall consider the application from each person who has not been engaged in an educational program recognized by the board and has not engaged in the practice of physical therapy during the five years preceding the date of the application. The council shall then submit its written recommendation to the board. (Authorized by K.S.A. 2009 Supp. 65-2911; implementing K.S.A. 2009 Supp. 65-2903, 65-2906, and 65-2912; effective March 21, 1997; amended May 26, 2006; amended May 14, 2010.)

**100-29-2. Approval of physical therapy programs.** (a) An educational program for licensure as a physical therapist shall be recognized by the board if the program meets the "evaluative criteria for accreditation of education programs for the preparation of physical therapists," revised

April 2005 by the commission on accreditation in physical therapy education and hereby adopted by reference.

(b) An educational program for certification as a physical therapist assistant shall be recognized by the board if the program meets the “evaluative criteria for accreditation of education programs for the preparation of physical therapy assistants,” adopted November 1, 2000 by the commission on accreditation in physical therapy education and hereby adopted by reference. (Authorized by K.S.A. 2005 Supp. 65-2911; implementing K.S.A. 2005 Supp. 65-2906; effective March 21, 1997; amended July 14, 2006.)

**100-29-3. Requirements for physical therapists and physical therapist assistants from nonapproved schools.** (a) Each person who received training from a nonapproved school and who applies for licensure as a physical therapist or certification as a physical therapist assistant shall submit with the application an evaluation prepared for the state of Kansas by a board-approved credentialing agency.

(b) If the evaluation shows that the applicant’s educational program did not meet the criteria that a school is required to satisfy to be approved by the board, the applicant may be required by the board, with the advice of the physical therapy advisory council, to perform one of the following:

(1) Complete college courses in the areas that did not meet the required criteria with a grade average of at least “B” or its equivalent; or

(2) apply college-level examination program scores towards semester credit hours for the courses specified by the board. (Authorized by K.S.A. 2004 Supp. 65-2911; implementing K.S.A. 2004 Supp. 65-2906; effective March 21, 1997; amended May 26, 2006.)

**100-29-3a. Examination of written and oral English communication.** (a) For each applicant who received training in a school at which English was not the language of instruction, the examinations required and approved by the board to demonstrate the ability to communicate in written and oral English shall be the test of English as a foreign language (TOEFL), the test of written English (TWE), and the test of spoken English (TSE), as developed and administered by the educational testing service (ETS).

(b) To successfully pass the test of English as a foreign language, each applicant who is required

to take this examination shall attain a score of at least 24 in writing, 26 in speaking, 21 in reading, and 18 in listening.

(c) To successfully pass the test of spoken English, each applicant who is required to take this examination shall attain a score of at least 5.0.

(d) To successfully pass the test of written English, each applicant who is required to take this examination shall attain a score of at least 4.5. (Authorized by K.S.A. 2008 Supp. 65-2911; implementing K.S.A. 2008 Supp. 65-2906 and 65-2909; effective Sept. 11, 1998; amended Jan. 4, 2010.)

**100-29-4. Examination.** (a) The examination required and approved by the board for licensure as a physical therapist shall be the physical therapist examination developed by the federation of state boards of physical therapy (FSBPT).

(b) The examination required and approved by the board for certification as a physical therapist assistant shall be the physical therapist assistant examination developed by the FSBPT.

(c) Each applicant shall be required to successfully complete the applicable examination required by this regulation within six attempts. (Authorized by K.S.A. 65-2911; implementing K.S.A. 65-2906; effective March 21, 1997; amended July 14, 2006; amended Jan. 10, 2020.)

**100-29-5.** (Authorized by and implementing K.S.A. 65-2911; effective March 21, 1997; revoked May 26, 2006.)

**100-29-6. Lost or destroyed certificates; change of name; new certificates.** (a) If a certificate of licensure or certification is lost or destroyed, the licensed or certified person may request a duplicate certificate. Each request shall be submitted in writing, shall include the number of the original certificate, and shall be accompanied by the fee specified in K.A.R. 100-29-7.

(b) If the name of a licensed or certified person is changed, the licensed or certified person shall send the name change to the board within 30 days of the change. This notification shall be submitted in writing, shall be accompanied by an attested document of the change of name, shall include the number of the original certificate, and shall be accompanied by the fee required for a duplicate certificate specified in K.A.R. 100-29-7. The licensed or certified person shall surrender the original certificate to the board. (Authorized by and implementing K.S.A. 2004 Supp. 65-2911; effective March 21, 1997; amended May 26, 2006.)

**100-29-7. Fees.** The following fees shall be collected by the board:

- (a) Application based upon certificate of prior examination..... \$80.00
- (b) Application based on examination..... \$80.00
- (c) Annual renewal:
  - (1) Paper renewal..... \$70.00
  - (2) On-line renewal..... \$67.00
- (d) Late renewal:
  - (1) Paper late renewal..... \$5.00
  - (2) On-line late renewal..... \$5.00
- (e) Reinstatement ..... \$80.00
- (f) Certified copy..... \$15.00
- (g) Duplicate certificate..... \$15.00
- (h) Temporary permit..... \$25.00

(Authorized by K.S.A. 2006 Supp. 65-2911; implementing K.S.A. 2006 Supp. 65-2910 and K.S.A. 2006 Supp. 65-2911; effective March 21, 1997; amended May 1, 1998; amended Sept. 29, 2000; amended Nov. 15, 2002; amended Nov. 19, 2004; amended March 7, 2008.)

**100-29-8. License and certificate renewal; expiration date; notification of supervision.** (a) The license of each physical therapist and the certificate of each physical therapist assistant shall expire on December 31 of each year.

(b) At the time of license renewal, the physical therapist shall provide the name and certificate number of each physical therapist assistant who is working under the direction of the physical therapist on a form provided by the board.

(c) At the time of a renewal of certification, the physical therapist assistant shall provide, on a form furnished by the board, the name and license number of the physical therapist who is supervising the assistant. (Authorized by K.S.A. 2004 Supp. 65-2911; implementing K.S.A. 2004 Supp. 65-2910; effective March 21, 1997; amended May 26, 2006.)

**100-29-9. License and certificate renewal; continuing education.** (a)(1)(A) As a condition of renewal for each odd-numbered year, each licensed physical therapist or certified physical therapist assistant shall submit, in addition to the annual application for renewal of licensure or certification, evidence of satisfactory completion within the preceding two-year period of at least 40 contact hours of continuing education for a licensed physical therapist and at least 20 contact hours of continuing education for a certified phys-

ical therapist assistant. As a component of the required contact hours, each licensed physical therapist shall be required to successfully complete the physical therapy jurisprudence assessment module specified in paragraph (f)(15) during each continuing education cycle.

(B) Evidence of satisfactory completion of a program of continuing education shall not be required to be submitted with the application for renewal of licensure or certification in even-numbered years.

(2) A contact hour shall consist of 60 minutes of activity pertaining to the practice of physical therapy.

(3) Meals and breaks shall not be included in the contact hour calculation.

(b) Any applicant for renewal who cannot meet the requirements of paragraph (a)(1)(A) may request an extension from the board to submit evidence of continuing education. The request shall include a plan for completion of the continuing education requirements within the requested extension period. An extension of up to six months may be granted by the board for a substantiated medical condition, natural disaster, death of a spouse or an immediate family member, or any other compelling reason that in the judgment of the board renders the licensee incapable of meeting the requirements of paragraph (a)(1)(A).

(c) A physical therapist initially licensed or physical therapist assistant initially certified within one year of a renewal date in an odd-numbered year shall not be required to submit evidence of satisfactory completion of a program of continuing education required by paragraph (a)(1)(A) for that first renewal period. Each physical therapist or physical therapist assistant initially licensed or certified or whose license or certificate has been reinstated for more than one year but less than two years from a renewal date in an odd-numbered year shall be required to submit evidence of satisfactory completion of at least half of the contact hours of continuing education required by paragraph (a)(1)(A).

(d) All continuing education activities shall be related to the practice of physical therapy.

(e) All continuing education activities shall pertain to any of the following:

- (1) Clinical skills;
- (2) administration and management techniques;
- (3) educational principles when providing service to patients, families, health professionals, health professional students, or the community;

(4) research projects with peer-reviewed, published results;

(5) legislative issues involving the profession;

(6) health care and the health care delivery system;

(7) documentation, reimbursement, cost-effectiveness, and regulatory compliance; or

(8) problem solving, critical thinking, and ethics.

(f) The following shall qualify as continuing education activities:

(1) Lecture. "Lecture" shall mean a live discourse for the purpose of instruction given before an audience. One contact hour shall be awarded for each hour of instruction.

(2) Panel. "Panel" shall mean the presentation of multiple views by several professional individuals on a given subject, with none of the views considered a final solution.

(3) Workshop. "Workshop" shall mean a series of meetings designed for intensive study, work, or discussion in a specific field of interest.

(4) Seminar. "Seminar" shall mean directed advanced study or discussion in a specific field of interest.

(5) Symposium. "Symposium" shall mean a conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and by various speakers.

(6) In-service training. "In-service training" shall mean an educational presentation given to employees during the course of employment that pertains solely to the enhancement of physical therapy skills in the evaluation, assessment, or treatment of patients.

(7) College or university courses. "College or university course" shall mean a course at the college or university level directly related to the practice of physical therapy. Ten contact hours shall be given for each semester credit hour for which the student received a grade of at least C or its equivalent or a "pass" in a pass/fail course that is documented in an official transcript.

(8) Administrative training. "Administrative training" shall mean a presentation that enhances the knowledge of a physical therapist or physical therapist assistant on the topic of quality assurance, risk management, reimbursement, hospital and statutory requirements, or claim procedures.

(9) Self-instruction. "Self-instruction" shall mean the following:

(A) Reading professional literature directly related to the practice of physical therapy. A maximum of two contact hours shall be awarded for reading professional literature;

(B) completion of a correspondence, audio, video, or internet course for which a printed verification of successful completion is provided by the person or organization offering the course. A maximum of 10 contact hours shall be awarded for each course; and

(C) passage of a specialty certification examination approved by the board. Forty contact hours shall be awarded for passage of a specialty certification examination.

(10) Professional publications. Contact hours for writing a professional publication shall be allotted as follows:

(A) Original paper	single author	20
	senior author	15
	coauthor	8
(B) Review paper or case report		
	single author	15
	coauthor	8
(C) Abstract or book review		8
(D) Publication of a book		20

(11) Physical therapy residency or fellowship program. "Physical therapy residency or fellowship program" shall mean a post-professional program that is directly related to the practice of physical therapy and requires at least 1,000 combined hours of instruction and clinical practice for completion. Forty contact hours shall be awarded for successful completion of a physical therapy residency or fellowship program.

(12) Elected delegate. "Elected delegate" shall mean an elected delegate in a national assembly of delegates with the objective to create policy related to the practice of physical therapy. Ten contact hours shall be awarded for serving one term as an elected delegate.

(13) Supervision of a student. "Supervision of a student" shall mean clinical instruction and evaluation of a physical therapist student or physical therapist assistant student in a clinical setting. One contact hour shall be awarded for each documented 40 hours of providing supervision of a student. A maximum of three contact hours shall be awarded in each two-year continuing education period.

(14) Continuing education program presentation. "Continuing education program presentation"

shall mean the preparation and presentation of a continuing education program that meets the requirements of subsection (e). Three contact hours shall be awarded for each hour spent presenting.

(15) Physical therapy jurisprudence assessment module. “Physical therapy jurisprudence assessment module” shall mean the Kansas jurisprudence examination developed by the board and the FSBPT and administered by the FSBPT. One contact hour shall be awarded for successful completion of the physical therapy jurisprudence assessment module.

(g) No contact hours shall be awarded for any continuing education activity that is repeated within the applicable continuing education period specified in subsection (a) or (b).

(h) To provide evidence of satisfactory completion of continuing education activities, each licensed physical therapist and each certified physical therapist assistant shall submit the following to the board:

(1) Documented evidence of any attendance at or successful completion of continuing education activities;

(2) personal verification of any self-instruction from reading professional literature; and

(3) one copy of any peer-reviewed professional publication. (Authorized by K.S.A. 65-2910 and 65-2911; implementing K.S.A. 65-2910; effective March 21, 1997; amended Nov. 14, 2003; amended May 26, 2006; amended May 13, 2016; amended Jan. 10, 2020.)

**100-29-10. Canceled licenses and certificates; reinstatement.** (a) Each physical therapist and physical therapist assistant desiring to reinstate a canceled license or certificate shall meet the following requirements:

(1) Submit a completed written application on a form prescribed by the board;

(2) pay the reinstatement fee established by the board, no part of which shall be refunded; and

(3) submit proof of satisfactory completion of a program of continuing education as specified in subsection (b).

(b)(1) If the license of a physical therapist has been canceled for less than five years, the applicant shall complete the continuing education that was required at the time the license was canceled and a minimum of an additional 10 contact hours for each six months since the date the license was canceled.

(2) If the certification of a physical therapist assistant has been canceled for less than five years,

the applicant shall complete the continuing education that was required at the time the certification was canceled and a minimum of an additional five contact hours for each six months since the date the certification was canceled.

(3) If the license or certificate has been canceled for five years or more, the applicant shall be required to complete an individually tailored continuing education program approved by the board.

(4) If the applicant has been in active practice in another state or the District of Columbia since the date on which the Kansas license or certificate was canceled, the applicant shall submit proof of a current license, registration, or certification, and proof of compliance with the continuing education requirements of that jurisdiction. (Authorized by K.S.A. 2004 Supp. 65-2910 and K.S.A. 2004 Supp. 65-2911; implementing K.S.A. 2004 Supp. 65-2910; effective March 21, 1997; amended Nov. 14, 2003; amended May 26, 2006.)

**100-29-11.** (Authorized by K.S.A. 65-2903 and 65-2911; implementing K.S.A. 65-2912; effective March 21, 1997; revoked Nov. 27, 2006.)

**100-29-12. Unprofessional conduct.** (a) “Unprofessional conduct” means any of the following:

(1) Engaging in physical therapy using either of the following means:

(A) A false or assumed name; or

(B) impersonating another person licensed as a physical therapist or certified as a physical therapist assistant;

(2) practicing physical therapy without reasonable skill and safety because of any of the following:

(A) Illness;

(B) alcoholism;

(C) use of drugs, controlled substances, chemicals, or any other type of material; or

(D) any mental or physical condition that impairs judgment or ability to provide care;

(3) having a physical therapist or physical therapist assistant license, registration, or certification revoked, suspended, or limited by the proper regulatory authority of another state, territory, or country, or the District of Columbia for acts or conduct that would constitute grounds for disciplinary action under K.S.A. 65-2912 and amendments thereto;

(4) having a physical therapist or physical therapist assistant application denied by the proper

regulatory authority of another state, territory, or country, or the District of Columbia for acts or conduct that would constitute grounds for disciplinary action under K.S.A. 65-2912 and amendments thereto;

(5) cheating or attempting to subvert the validity of the examination required for licensure or certification;

(6) failing to provide adequate supervision to a physical therapist assistant or other person who performs services pursuant to delegation by a physical therapist;

(7) failing to furnish to the board, its investigators, or representatives any information legally requested by the board;

(8) being sanctioned or disciplined by a peer review committee or medical care facility for acts or conduct that would constitute unprofessional conduct under this regulation;

(9) surrendering a license, registration, or certification to practice physical therapy in another state while disciplinary proceedings are pending for acts or conduct that would constitute grounds for denial, refusal to renew, suspension, or revocation under K.S.A. 65-2912 and amendments thereto;

(10) committing one or more instances involving failure to adhere to the applicable standard of care to a degree that constitutes gross negligence, as determined by the board;

(11) committing repeated instances involving failure to adhere to the applicable standard of care to a degree that constitutes ordinary negligence, as determined by the board;

(12) engaging in a pattern of practice or other conduct that demonstrates a manifest incapacity or incompetence to practice physical therapy;

(13) representing to a patient or client that a manifestly incurable disease, condition, or injury can be permanently cured;

(14) providing physical therapy to a patient or client without the consent of the patient or client or the patient's or client's legal representative;

(15) willfully betraying confidential information provided by the patient or client;

(16) advertising a guarantee of any professional service relating to physical therapy;

(17) using any advertisement that is false, misleading, or deceptive in any material respect;

(18) committing conduct likely to deceive, defraud, or harm the public;

(19) making a false or misleading statement regarding the license or certificate holder's skill;

(20) committing any act of sexual abuse, misconduct, or exploitation relating to the professional practice of physical therapy;

(21) obtaining any fee by fraud, deceit, or misrepresentation;

(22) failing to maintain adequate written records detailing the course of treatment of the patient or client;

(23) delegating physical therapy to a person who the license or certificate holder knows or has reason to know is not qualified by training or experience to perform the physical therapy;

(24) referring a patient or client to a health care entity for services if the license or certificate holder has a significant investment interest in the health care entity, unless the patient or client is informed of the following in writing:

(A) The significant investment interest; and

(B) the fact that the patient or client can obtain the services elsewhere;

(25) performing tests, examinations, or services that have no legitimate purpose;

(26) violating any regulations adopted by the board relating to the practice of physical therapy;

(27) directly or indirectly giving or receiving any fee, commission, rebate, or other compensation for professional services not actually and personally rendered, other than through the legal functioning of a professional partnership, professional corporation, limited liability company, or similar business entity;

(28) practicing or offering to practice beyond the scope of the legal practice of physical therapy;

(29) charging excessive fees for services performed;

(30) aiding and abetting a person who is not licensed or certified in the performance of activities requiring a license or certificate; or

(31) providing treatment unwarranted by the condition of the patient or continuing treatment beyond the merit of reasonable benefit.

(b) Each physical therapist and physical therapist assistant shall maintain an adequate record for each patient or client for whom the physical therapist or physical therapist assistant performs a professional service. Each record shall meet the following criteria:

(1) Be legible;

(2) identify the patient or client; and

(3) contain an evaluation, a diagnosis, a plan of care, and a treatment and discharge plan.

(c) As used in this regulation, "health care entity" and "significant investment interest" shall have

the meanings ascribed to them in K.S.A. 65-2837 and amendments thereto. (Authorized by K.S.A. 2004 Supp. 65-2911; implementing K.S.A. 2004 Supp. 65-2912; effective March 21, 1997; amended May 26, 2006.)

**100-29-13. Notification to board.** (a) Before a physical therapist allows a physical therapist assistant to work under the physical therapist's direction, the physical therapist shall inform the board of the following:

(1) The name of each physical therapist assistant who intends to work under the direction of that physical therapist; and

(2) the physical therapist assistant's practice address.

(b) Each physical therapist and each physical therapist assistant shall inform the board in writing within 30 days of any changes in the mailing, residence, or practice address. (Authorized by K.S.A. 2004 Supp. 65-2911; implementing K.S.A. 2004 Supp. 65-2901; effective March 21, 1997; amended May 26, 2006.)

**100-29-14.** (Authorized by K.S.A. 65-2911; implementing K.S.A. 1996 Supp. 65-2906; effective March 21, 1997; revoked July 14, 2006.)

**100-29-15. Professional liability insurance.** (a) Each person licensed by the board as a physical therapist shall, before rendering professional services within the state, submit to the board evidence that the person is maintaining the professional liability insurance coverage required by K.S.A. 65-2920 and amendments thereto, for which the limit of the insurer's liability shall be not less than \$100,000 per claim, subject to an annual aggregate of not less than \$300,000 for all claims made during the period of coverage.

(b) Each person licensed by the board as a physical therapist and rendering professional services in this state shall submit, with the annual application for renewal of the license, evidence that the person is maintaining the professional liability insurance coverage specified in subsection (a). (Authorized by K.S.A. 2004 Supp. 65-2911; implementing K.S.A. 2004 Supp. 65-2920; effective May 26, 2006.)

**100-29-16. Supervision of physical therapist assistants and support personnel.** (a) Each physical therapist shall be responsible for the following:

(1) The physical therapy services provided to a patient or client by any physical therapist assistant

working under the direction of the physical therapist; and

(2) the tasks relating to the physical therapy services provided to a patient or client by any support personnel working under the personal supervision of the physical therapist or by the physical therapist assistant acting under the direction of the physical therapist.

(b) Each physical therapist and each physical therapist assistant acting under the direction of a physical therapist shall provide personal supervision of the support personnel during any session in which support personnel are utilized to carry out a task.

(1) "Personal supervision" shall mean oversight by a physical therapist or by a physical therapist assistant acting under the direction of the physical therapist who is on-site and immediately available to the support personnel.

(2) "Support personnel" shall mean any person other than a physical therapist or physical therapist assistant. Support personnel may be designated as or describe themselves as physical therapy aides, physical therapy technicians, physical therapy paraprofessionals, rehabilitation aides, or rehabilitation technicians.

(3) "Task" shall mean an activity that does not require the formal education or training of a physical therapist or a physical therapist assistant.

(c) The determination by the physical therapist to utilize a physical therapist assistant for selected components of physical therapy interventions shall require the education, expertise, and professional judgment of the physical therapist. Before delegating an intervention by a physical therapist to a physical therapist assistant and before delegating a designated task to support personnel, the physical therapist shall consider the following:

(1) The education, training, experience, and skill level of the physical therapist assistant;

(2) the complexity and acuteness of the patient's or client's condition or health status;

(3) the predictability of the consequences;

(4) the setting in which the care is being delivered to the patient or client; and

(5) the frequency of reexamination of the patient or client.

(d) Pursuant to K.S.A. 65-2914 and amendments thereto, if patient care is initiated by a physical therapist assistant in a hospital setting because the physical therapist is not immediately available, "minimum weekly review" shall mean that the physical therapist shall evaluate the patient and determine a plan of treatment within

seven days of the initiation of treatment by the physical therapist assistant.

(e) Only a physical therapist may perform any of the following:

- (1) Interpretation of a referral;
- (2) performance and documentation of an initial examination, testing, evaluation, diagnosis, and prognosis;
- (3) development or modification of a plan of care that is based on a reexamination of the patient or client that includes the physical therapy goals for intervention;
- (4) determination of the qualifications of support personnel performing an assigned task;
- (5) delegation of and instruction about the service to be rendered by the physical therapist assistant;
- (6) timely review of documentation, reexamination of the patient or client, and revision of the plan of care when indicated;
- (7) establishment and documentation of the discharge plan and discharge summary; and
- (8) oversight of all documentation for services, including documents for billing, rendered to each patient or client under the care of the physical therapist.

(f) In all practice settings, the performance of selected interventions by the physical therapist assistant and the delegation of designated tasks to support personnel shall be consistent with the safe and legal practice of physical therapy and shall be based on the following factors:

- (1) The complexity and acuteness of the patient's or client's condition or health status;
- (2) the physical therapist's proximity and accessibility to the patient or client;
- (3) the supervision available for all emergencies or critical events;
- (4) the type of setting in which the physical therapy intervention is provided;
- (5) the ability of the physical therapist assistant to perform the selected interventions or the support personnel to perform designated tasks; and
- (6) an assessment by the physical therapist of the ability of the support personnel to perform designated tasks.

(g) Except as specified in this subsection, a physical therapist shall not have more than four physical therapist assistants working concurrently under the direction of that physical therapist. A request by a physical therapist to supervise additional physical therapist assistants may be granted by the board if it finds that significant

hardship to the health and welfare of the community will occur if the physical therapist's request to supervise more than four physical therapist assistants is not granted.

(h) Each physical therapist wishing to provide personal supervision to more than four physical therapist assistants in a clinic or hospital setting shall provide a written and signed request to the physical therapy advisory council with the following information:

- (1) The name of each physical therapist assistant to whom the physical therapist proposes to provide personal supervision;
- (2) the reason for the request; and
- (3) a written statement from the clinic or hospital director documenting the hardship and the plan for alleviating future staffing shortages of physical therapists.

(i) The physical therapy advisory council shall review each request granted by the board pursuant to subsection (g) at least every six months to determine whether a significant hardship to the health and welfare of the community will exist if the request is no longer granted. The physical therapy advisory council shall prepare and submit a written recommendation of each review to the board. A determination of whether the exemption should be renewed for another six-month period shall be made by the board at the recommendation of the physical therapy advisory council.

(j) Failure to meet the requirements of this regulation shall constitute unprofessional conduct. (Authorized by K.S.A. 2015 Supp. 65-2905 and 65-2911; implementing K.S.A. 2015 Supp. 65-2912 and 65-2914; effective July 14, 2006; amended July 17, 2009; amended May 13, 2016.)

**100-29-18. Dry needling; education and practice requirements.** (a) Dry needling shall be performed only by a physical therapist who is competent by education and training to perform dry needling as specified in this regulation. Online study and self-study for dry needling instruction shall not be considered appropriate training.

(b) Each physical therapist who does not obtain dry needling education and training as part of that individual's graduate or postgraduate education shall be required to successfully complete a dry needling course approved by the board in order to perform dry needling. Each dry needling course shall include a practical examination and a written examination.

(c) Each dry needling course shall include the following components:

- (1) Anatomical review for safety and effectiveness;
- (2) indications and contraindications for dry needling;
- (3) evidence-based instruction on the theory of dry needling practice;
- (4) sterile needle procedures, which shall include the standards of one of the following:
  - (A) The U.S. centers for disease control and prevention; or
  - (B) the U.S. occupational safety and health administration;
- (5) blood-borne pathogens;
- (6) postintervention care, including an adverse response or emergency; and
- (7) an assessment of the physical therapist's dry needling technique and psychomotor skills.

(d) Each dry needling course shall be taught by a licensed healthcare provider who meets the following requirements:

- (1) Has a scope of practice that includes dry needling;
- (2) meets the regulatory minimum educational standard in that individual's respective state or jurisdiction;
- (3) has not been disciplined by any state or jurisdictional licensing agency for any act that would be a violation of the physical therapy practice act or the healing arts act; and
- (4) has performed dry needling for at least two years.

(e) Each physical therapist taking a dry needling course shall be required to obtain a passing score on all written and practical examinations given in the dry needling course. Each physical therapist shall obtain a certificate or other documentation from the provider of the dry needling course specifying what anatomical regions were covered in the dry needling course and that the physical therapist passed all examinations.

(f) Each dry needling course shall provide sufficient instruction to ensure that each student is able to demonstrate minimum adequate competency in the following:

- (1) Current dry needling techniques;
- (2) management of dry needling equipment and supplies;
- (3) accurate point selection;
- (4) accurate positioning of the patient and the education of the patient regarding the amount of movement allowed while needles are inserted;

(5) supervision and monitoring of the patient during treatment;

(6) communication with the patient, including informed consent; and

(7) clinically appropriate patient selection, including consideration of the following:

- (A) The patient's contraindications for dry needling;
- (B) the patient's ability to understand the treatment and the expected outcome; and
- (C) the patient's ability to comply with treatment requirements.

(g) After completion of a board-approved dry needling course, each physical therapist shall be required to complete 200 patient treatment sessions of dry needling before taking each successive course in dry needling. Each physical therapist shall complete all foundation-level courses before proceeding to an advanced-level course.

(h) Dry needling shall be performed solely for conditions that fall under the physical therapy scope of practice pursuant to K.S.A. 65-2901, and amendments thereto. Each physical therapist performing dry needling shall perform dry needling only in the anatomical region of training completed by the physical therapist. Each physical therapist who performs dry needling shall do so in a manner consistent with generally acceptable standards of practice.

(i) A physical therapist shall not delegate dry needling. (Authorized by K.S.A. 2016 Supp. 65-2911 and 65-2923; implementing K.S.A. 2016 Supp. 65-2901; effective May 12, 2017.)

**100-29-19. Dry needling; informed consent.** (a) Each physical therapist who performs dry needling shall obtain written informed consent from each patient before performing dry needling on the patient. A separate informed consent shall be required for each anatomical region treated by the physical therapist.

(b) The informed consent shall include the following:

- (1) The patient's signature;
- (2) the risks and benefits of dry needling;
- (3) the diagnosis for which the physical therapist is performing dry needling;
- (4) each anatomical region of training completed by the physical therapist; and
- (5) a statement that the procedure being performed is dry needling as defined by the physical therapy practice act, K.S.A. 65-2901 and amendments thereto.

(c) The informed consent shall be maintained

in the patient's treatment record. (Authorized by K.S.A. 2016 Supp. 65-2911; implementing K.S.A. 2016 Supp. 65-2901; effective May 12, 2017.)

**100-29-20. Dry needling; recordkeeping.** Each physical therapist who performs dry needling shall maintain a specific procedure note in each patient's record for each dry needling session. The procedure note shall include the following for each session:

- (a) The anatomical region treated;
- (b) the manner in which the patient tolerated the treatment; and
- (c) the clinical outcome of the treatment. (Authorized by K.S.A. 2016 Supp. 65-2911; implementing K.S.A. 2016 Supp. 65-2901 and 65-2912; effective May 12, 2017.)

**100-29-21. Dry needling; board requests for documentation.** Each physical therapist who performs dry needling shall be required to produce documentation demonstrating that the individual meets the requirements of K.A.R. 100-29-18, upon request by the board or a designee of the board. Failure of any physical therapist to provide this documentation shall be deemed prima facie evidence that the physical therapist has engaged in unprofessional conduct. (Authorized by K.S.A. 2016 Supp. 65-2911; implementing K.S.A. 2016 Supp. 65-2901 and 65-2912; effective May 12, 2017.)

#### **Article 30.—PHYSICAL THERAPY EXAMINING COMMITTEE**

**100-30-1 and 100-30-2.** (Authorized by K.S.A. 65-2911; effective Jan. 1, 1966; revoked May 1, 1975.)

#### **Article 31.—OFFICERS**

**100-31-1 and 100-31-2.** (Authorized by K.S.A. 65-2911; effective Jan. 1, 1966; revoked May 1, 1975.)

**100-31-3 and 100-31-4.** (Authorized by K.S.A. 65-2911; effective Jan. 1, 1966; revoked May 1, 1984.)

**100-31-5.** (Authorized by K.S.A. 65-2911; effective Jan. 1, 1966; revoked May 1, 1975.)

#### **Article 32.—COMPENSATION**

**100-32-1.** (Authorized by K.S.A. 65-2911; effective Jan. 1, 1966; revoked May 1, 1975.)

#### **Article 33.—MEETINGS**

**100-33-1 and 100-33-2.** (Authorized by K.S.A. 65-2911; effective Jan. 1, 1966; revoked May 1, 1984.)

**100-33-3.** (Authorized by K.S.A. 65-2911; effective Jan. 1, 1966; revoked May 1, 1975.)

#### **Article 34.—PHYSICAL THERAPY—DEFINITIONS**

**100-34-1 and 100-34-2.** (Authorized by K.S.A. 65-2911; effective Jan. 1, 1966; revoked May 1, 1975.)

**100-34-3.** (Authorized by K.S.A. 65-2911; effective Jan. 1, 1966; revoked March 21, 1997.)

**100-34-4.** (Authorized by K.S.A. 65-2911; effective Jan. 1, 1966; revoked March 21, 1997.)

#### **Article 35.—PHYSICAL THERAPY—REGISTRATION**

**100-35-1.** (Authorized by K.S.A. 1983 Supp. 65-2911; implementing K.S.A. 1983 Supp. 65-2906; effective Jan. 1, 1966; amended May 1, 1984; revoked March 21, 1997.)

**100-35-2.** (Authorized by K.S.A. 65-2911; effective Jan. 1, 1966; revoked May 1, 1975.)

**100-35-3.** (Authorized by K.S.A. 1983 Supp. 65-2911; implementing K.S.A. 1983 Supp. 65-2906; effective Jan. 1, 1966; amended May 1, 1975; amended May 1, 1984; revoked March 21, 1997.)

**100-35-4 and 100-35-5.** (Authorized by K.S.A. 65-2911; effective Jan. 1, 1966; revoked May 1, 1975.)

**100-35-6.** (Authorized by K.S.A. 1983 Supp. 65-2911; implementing K.S.A. 1983 Supp. 65-2906, 65-2909; effective Jan. 1, 1973; amended May 1, 1984; revoked March 21, 1997.)

**100-35-7.** (Authorized by K.S.A. 65-2911; implementing K.S.A. 65-2906; effective May 1, 1978; amended May 1, 1984; amended June 20, 1994; revoked March 21, 1997.)

#### **Article 36.—PHYSICAL THERAPY— TEMPORARY PERMITS**

**100-36-1.** (Authorized by and implementing

K.S.A. 65-2911; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1978; amended May 1, 1987; revoked March 21, 1997.)

**Article 37.—PHYSICAL THERAPY—  
PROFESSIONAL CONDUCT**

**100-37-1.** (Authorized by K.S.A. 1983 Supp. 65-2911; implementing K.S.A. 1983 Supp. 65-2906, 65-2912; effective Jan. 1, 1966; amended May 1, 1984; revoked March 21, 1997.)

**100-37-2.** (Authorized by K.S.A. 1983 Supp. 65-2911; implementing K.S.A. 1983 Supp. 65-2906; effective May 1, 1984; revoked March 21, 1997.)

**Article 38.—PHYSICAL THERAPY—FEES**

**100-38-1.** (Authorized by K.S.A. 65-2911; implementing K.S.A. 65-2910; effective Jan. 1, 1966; amended Jan. 1, 1973; amended May 1, 1975; amended May 1, 1986; amended, T-100-10-17-89, Oct. 17, 1989; amended Feb. 5, 1990; amended Dec. 27, 1993; amended June 26, 1995; revoked March 21, 1997.)

**Article 39.—PHYSICAL  
THERAPY—CERTIFICATES**

**100-39-1.** (Authorized by K.S.A. 1983 Supp. 65-2911; implementing K.S.A. 1983 Supp. 65-2908; effective Jan. 1, 1966; amended May 1, 1975; amended May 1, 1984; revoked March 21, 1997.)

**Article 40.—PHYSICAL THERAPY—  
TEMPORARY PERMIT RENEWAL FEE**

**100-40-1.** (Authorized by K.S.A. 65-2911; effective Jan. 1, 1966; amended Jan. 1, 1973; revoked May 1, 1975.)

**100-40-2.** (Authorized by and implementing K.S.A. 65-2911; effective Jan. 1, 1973; amended May 1, 1975; amended May 1, 1987; revoked March 21, 1997.)

**Article 41.—LIST OF REGISTERED  
PHYSICAL THERAPISTS**

**100-41-1.** (Authorized by K.S.A. 65-2911; effective Jan. 1, 1966; amended May 1, 1975; amended May 1, 1979; revoked May 1, 1984.)

**Article 42.—PHYSICAL THERAPY—  
REVOCAION OR SUSPENSION  
OF CERTIFICATION (PHYSICAL  
THERAPISTS)**

**100-42-1.** (Authorized by K.S.A. 65-2911; implementing K.S.A. 65-2912; effective Jan. 1, 1966; amended May 1, 1975; amended May 1, 1979; amended May 1, 1984; revoked May 1, 1988.)

**100-42-2.** (Authorized by K.S.A. 65-2911, as amended by L. 1987, Ch. 240, Sec. 18; implementing K.S.A. 1986 Supp. 65-2912; effective Jan. 1, 1966; amended May 1, 1975; amended May 1, 1979; modified, L. 1983, Ch. 355; amended May 1, 1984; amended May 1, 1988; revoked March 21, 1997.)

**100-42-3.** (Authorized by K.S.A. 65-2911; effective Jan. 1, 1966; revoked May 1, 1975.)

**Article 43.—PROFESSIONAL  
SIGNS AND LETTERHEADS**

**100-43-1.** (Authorized by K.S.A. 65-2911; effective Jan. 1, 1966; revoked, L. 1983, ch. 355; revoked May 1, 1984.)

**Article 44.—AMENDMENTS TO  
RULES (PHYSICAL THERAPISTS)**

**100-44-1.** (Authorized by K.S.A. 65-2911; effective Jan. 1, 1966; revoked May 1, 1979.)

**Article 45.—APPROVED SCHOOLS OF  
PHYSICAL THERAPY ASSISTANTS**

**100-45-1.** (Authorized by K.S.A. 65-2911; effective May 1, 1975; revoked May 1, 1984.)

**Article 46.—PHYSICAL THERAPY—  
EXTENSION OF REGISTRATION;  
ASSISTANTS**

**100-46-1.** (Authorized by and implementing K.S.A. 1983 Supp. 65-2911; effective May 1, 1975; amended May 1, 1984; revoked March 21, 1997.)

**100-46-2.** (Authorized by K.S.A. 1983 Supp. 65-2911; implementing K.S.A. 1983 Supp. 65-2906; effective May 1, 1975; amended May 1, 1984; revoked March 21, 1997.)

**100-46-3.** (Authorized by K.S.A. 65-2911; implementing K.S.A. 65-2906; effective May 1, 1975; amended May 1, 1984; amended June 20, 1994; revoked March 21, 1997.)

**100-46-4.** (Authorized by K.S.A. 65-2906; effective May 1, 1978; amended May 1, 1979; revoked May 1, 1984.)

**100-46-5.** (Authorized by and implementing K.S.A. 65-2910 and K.S.A. 65-2911; effective May 1, 1987; amended May 1, 1988; amended Feb. 4, 1991; amended June 20, 1994; revoked March 21, 1997.)

**100-46-6.** (Authorized by and implementing K.S.A. 65-2910; effective June 14, 1993; revoked March 21, 1997.)

**Article 47.—PHYSICAL THERAPY—  
REGISTRATION RENEWAL;  
CONTINUING EDUCATION**

**100-47-1.** (Authorized by K.S.A. 65-2911; implementing K.S.A. 65-2910; effective May 1, 1978; amended May 1, 1980; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended Feb. 4, 1991; amended June 14, 1993; revoked March 21, 1997.)

**Article 48.—PODIATRY**

**100-48-1 to 100-48-13.** (Authorized by K.S.A. 74-2801 *et seq.*; effective Jan. 1, 1966; revoked May 1, 1980.)

**Article 49.—PODIATRY**

**100-49-1. Approved schools of podiatry.** A school of podiatry shall be deemed by the board to be in good standing if it meets the provisions of CPME 120, "standards and requirements for accrediting colleges of podiatric medicine," revised November 1997 by the council on podiatric medical education and hereby adopted by reference. (Authorized by K.S.A. 65-2013; implementing K.S.A. 65-2003; effective May 1, 1980; amended Jan. 10, 2003.)

**100-49-2. Licensure by examination.** (a) Each applicant for licensure by examination shall submit the following materials not later than 30 days prior to the date of examination:

(1) A completed written application on a form prescribed by the board. The application shall include the full name and address of the applicant;

(2) A photograph of the applicant. The photograph shall measure three by four inches and shall be signed across the front by the applicant with

the signature of the photographer, the address of the photographer, and the date when the photograph was taken on the back of the photograph. A statement that the photograph is a true picture of the applicant taken within 90 days prior to the date of application shall also be placed on the back of the photograph;

(3) An affidavit from an approved college of podiatry stating the dates of attendance at the college, and the date of graduation, over the seal of the college;

(4) A certified copy of the podiatry college diploma;

(5) A transcript from the podiatry school;

(6) A written oath of applicant that all statements are strictly true in every respect; and

(7) The appropriate fee.

(b) All examinations shall be given in the English language only.

(c) A second re-examination shall require the full payment of the examination fee. (Authorized by K.S.A. 65-2013; implementing K.S.A. 65-2004, K.S.A. 1983 Supp. 65-2003; effective May 1, 1980; amended May 1, 1984.)

**100-49-3. Licensure by endorsement.** (a)

Each applicant for licensure by endorsement shall submit the following materials not later than 30 days preceding the June or the December meeting of the board:

(1) A completed written application, on a form prescribed by the board. The application shall include the full name and address of the applicant;

(2) A photograph of the applicant. The photograph shall measure three by four inches and shall be signed across the front by the applicant. The name of the photographer, the address of the photographer, the date when the photograph was taken and a statement that the photograph is a true picture of the applicant taken within 90 days of the application shall be placed on the back of the photograph;

(3) An affidavit from an approved college of podiatry stating the dates of attendance at the college, and the date of graduation, over the seal of the college;

(4) A certified copy of the podiatry college diploma;

(5) A transcript from the podiatry school;

(6) A written oath of applicant that all statements are strictly true in every respect; and

(7) The appropriate fee.

(b) A certificate of endorsements from another

state or country shall include grades in subjects required by K.S.A. 65-2004, as certified by a board of examiners of that state or country. (Authorized by K.S.A. 65-2013; implementing K.S.A. 65-2004, K.S.A. 1983 Supp. 65-2003; effective May 1, 1980; amended May 1, 1984.)

**100-49-4. Fees.** The following fees shall be collected by the board:

- (a) Application for license ..... \$300.00
- (b) Examination ..... \$450.00
- (c) (1) Annual renewal of active or federally active license:
  - (A) Paper renewal ..... \$330.00
  - (B) On-line renewal ..... \$320.00
- (2) Annual renewal of inactive license:
  - (A) Paper renewal ..... \$150.00
  - (B) On-line renewal ..... \$150.00
- (3) Annual renewal of exempt license:
  - (A) Paper renewal ..... \$150.00
  - (B) On-line renewal ..... \$150.00
- (d) (1) Conversion from exempt to active license ..... \$175.00
- (2) Conversion from inactive to active license ..... \$175.00
- (e) (1) Late renewal of active or federally active license:
  - (A) Paper late renewal ..... \$350.00
  - (B) On-line late renewal ..... \$339.00
- (2) Late renewal of inactive license:
  - (A) Paper late renewal ..... \$175.00
  - (B) On-line late renewal ..... \$165.00
- (3) Late renewal of exempt license:
  - (A) Paper late renewal ..... \$175.00
  - (B) On-line late renewal ..... \$165.00
- (f) Temporary license ..... \$50.00
- (g) Duplicate license ..... \$15.00
- (h) Temporary permit ..... \$50.00
- (i) Certified statement of license ..... \$15.00
- (j) Postgraduate permit ..... \$50.00
- (k) Reinstatement of revoked license ..... \$1,000.00
- (l) Reinstatement of canceled license ..... \$300.00
- (m) Written verification of license or permit ..... \$25.00

(Authorized by K.S.A. 2009 Supp. 65-2012 and K.S.A. 65-2013; implementing K.S.A. 2009 Supp. 65-2012; effective May 1, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended April 24, 1989; amended Aug. 21, 1989; amended, T-100-12-28-89, Dec. 28, 1989; amended April 9, 1990;

amended Dec. 27, 1993; amended May 1, 1998; amended Aug. 4, 2000; amended, T-100-6-27-02, Aug. 1, 2002; amended Nov. 15, 2002; amended Aug. 13, 2004; amended Aug. 17, 2007; amended, T-100-6-2-09, June 2, 2009; amended Sept. 11, 2009; amended May 21, 2010.)

**100-49-5. Expiration of license.** Each license to practice podiatry issued by the board shall expire on September 30 of each year. (Authorized by and implementing K.S.A. 65-2005; effective, T-100-7-1-92, July 1, 1992; effective Aug. 17, 1992; amended Aug. 1, 1997.)

**100-49-6. Education requirements.** (a) Each applicant for a license to practice podiatry shall provide proof of successful completion of a minimum of one year in an approved podiatric residency program. An approved podiatric residency program shall be a program that meets the requirements of or is substantially equivalent to CPME 320, “standards, requirements and guidelines for approval of residencies in podiatric medicine,” approved by the council on podiatric medical education, effective July 1, 2002, and hereby adopted by reference.

(b) Each applicant who does not meet the requirements of subsection (a) shall be deemed to have completed acceptable postgraduate training if the applicant meets one of the following:

(1) The applicant has been in the continuous practice of podiatry for a minimum of 10 years before the date of submission of the application.

(2) The applicant is currently certified by a specialty board meeting the requirements of CPME 220, “criteria and guidelines for recognition of a specialty board for podiatric medical practice,” effective January 1, 2001, approved by the council on podiatric medical education, and hereby adopted by reference. (Authorized by K.S.A. 65-2013; implementing K.S.A. 65-2003; effective Jan. 10, 2003.)

**100-49-7. Examinations.** (a) Each applicant for licensure as a podiatrist shall submit proof of having passed a nationally administered, standardized examination that is approved by the board and consists of written questions assessing knowledge on subject matter from the following content areas:

(1) Medicine, including podiatric and non-podiatric dermatology, podiatric vascular medicine, podiatric neurology, immunology, emergency medicine, cardiovascular medicine, neurology,

respiratory medicine, metabolic and endocrine medicine, hematology, behavioral medicine, and rheumatology;

(2) orthopedics, biomechanics, and sports medicine;

(3) surgery, general anesthesia, regional anesthesia, intravenous sedation, and hospital protocol; and

(4) radiology.

(b) In order to qualify as board-approved, part III of PMLexis, as administered by the national board of podiatric medical examiners, shall meet the standards for an examination established by the board in this regulation.

(c) To pass the approved examination, each applicant for licensure shall obtain a criterion-referenced score of at least 75.

(d) Each applicant for licensure by endorsement shall show proof of successful completion of any examinations that met the Kansas requirements for licensure by examination at the time the applicant completed the examinations. (Authorized by K.S.A. 65-2013; implementing K.S.A. 65-2003 and K.S.A. 65-2004; effective Jan. 10, 2003.)

**100-49-8. Continuing education.** (a) Every three years, each podiatrist shall submit, before or with the application for renewal, evidence of having completed a minimum of 54 hours of continuing education during the preceding three-year period.

(b) Any podiatrist who suffered an illness or injury that made it impossible or extremely difficult to reasonably obtain the required hours may be granted an extension of not more than six months.

(c) Continuing education shall be acquired from any of the following:

(1) Courses offered by sponsors of continuing education in podiatric medicine and meeting the requirements of CPME 720, "standards, requirements, and guidelines for approval of sponsors of continuing education in podiatric medicine," revised May 1999 by the council on podiatric medical education and hereby adopted by reference;

(2) courses and instructional media approved for category I by the American medical association;

(3) courses and instructional media approved for category I by the American osteopathic association; or

(4) other courses approved by the board.

(d) Each applicant desiring to reinstate a license that has been canceled for failure to renew and each exempt licensee desiring to apply for a

license to regularly engage in the practice of podiatry shall submit proof of continuing education to the board as follows:

(1) If the time since the license was canceled or exempt has been one year or less, no continuing education in addition to that which would have been necessary had the license been renewed before cancellation or not exempt shall be required.

(2) If the time since the license was canceled or exempt has been more than one year, the applicant shall complete a program of continuing education recommended by the board.

(e) If, since the date the license was canceled or exempt, the applicant has been in active practice as a podiatrist in another state or jurisdiction, the applicant shall submit proof of the current license and proof of compliance with the continuing education requirements of that jurisdiction.

(f) Each applicant seeking reinstatement of a revoked license shall successfully complete an individually tailored program approved by the board. (Authorized by K.S.A. 65-2013; implementing K.S.A. 65-2010; effective Jan. 10, 2003.)

**100-49-9. Additional requirements.** In addition to meeting the requirements of this article, each podiatrist shall also meet the requirements of each of the following:

(a) K.A.R. 100-10a-1;

(b) K.A.R. 100-10a-2;

(c) K.A.R. 100-10a-3;

(d) K.A.R. 100-10a-4;

(e) K.A.R. 100-10a-6;

(f) K.A.R. 100-21-1;

(g) K.A.R. 100-21-2;

(h) K.A.R. 100-21-3;

(i) K.A.R. 100-21-4;

(j) K.A.R. 100-21-5;

(k) K.A.R. 100-22-1;

(l) K.A.R. 100-22-2;

(m) K.A.R. 100-22-3;

(n) K.A.R. 100-24-1;

(o) K.A.R. 100-24-2;

(p) K.A.R. 100-24-3; and

(q) K.A.R. 100-26-1. (Authorized by K.S.A. 65-2013; implementing K.S.A. 2001 Supp. 65-2002, K.S.A. 65-2005, K.S.A. 2001 Supp. 65-2006; effective Jan. 10, 2003.)

**100-49-10. Definition of human foot.** As utilized in the podiatry act, K.S.A. 65-2001 through 65-2013 and amendments thereto, "human foot" shall mean that part of the human

anatomy that consists of the tarsus, metatarsus, phalanges, cartilage, muscles, tendons, ligaments, skin, vasculature, and the other tissues distal to and including the articulating cartilaginous surfaces of the ankle joint. (Authorized by K.S.A. 65-2013; implementing K.S.A. 65-2001, K.S.A. 65-2002, K.S.A. 65-2004, and K.S.A. 2006 Supp. 65-2005; effective Sept. 14, 2007.)

#### Article 54.—OCCUPATIONAL THERAPY

**100-54-1. Application.** (a) Each applicant for licensure as an occupational therapist or occupational therapy assistant shall submit the application on a form provided by the board. The form shall include the following information in legible writing:

- (1) The applicant's full name;
- (2) the applicant's social security number, non-driver identification number, or individual tax identification number if the applicant is advised that providing a social security number is voluntary pursuant to K.S.A. 74-139 and 74-148, and amendments thereto, and that if the social security number is provided, the agency may provide this number to the Kansas department of social and rehabilitation services for child support enforcement purposes and to the Kansas department of revenue's director of taxation;
- (3) the applicant's mailing address. If the applicant's mailing address is different from the applicant's residential address, the applicant shall also provide the residential address;
- (4) the applicant's daytime telephone number;
- (5) the applicant's date and place of birth;
- (6) the names of all educational programs recognized under K.A.R. 100-54-2 that the applicant attended, including the program from which the applicant graduated, the degree awarded to the applicant, and the date of graduation;
- (7) information regarding licenses, registrations, or certifications issued to the applicant to practice any healthcare profession;
- (8) information regarding any prior acts that could constitute grounds for denial of the application, as specified in K.S.A. 65-5410 and amendments thereto;
- (9) a notarized release authorizing the board to receive any relevant information, files, or records requested by the board in connection with the application; and
- (10) certification that the applicant has completed an occupational therapy program or oc-

cupational therapy assistant program from a postsecondary school recognized under K.A.R. 100-54-2.

(b) Each applicant shall submit the following with the application:

- (1) The fee required by K.A.R. 100-54-4;
- (2) an official transcript from an educational program recognized by the board under K.A.R. 100-54-2 that specifies the degree awarded to the applicant;
- (3) a verification on a form provided by the board of each license, registration, or certification issued to the applicant by any state or the District of Columbia relating to any healthcare profession;
- (4) a current photograph of the applicant taken within 90 days of the date the application is received by the board; and
- (5) the results of a written examination recognized and approved by the board under K.A.R. 100-54-3, which shall be provided directly to the board from the testing entity.

(c) The applicant shall sign the application under oath and have the application notarized.

(d) The occupational therapist council shall consider every application from persons who have been neither engaged in an educational program recognized by the board nor engaged in the practice of occupational therapy during the five years preceding the date of the application. The council shall then make its recommendation to the board. (Authorized by K.S.A. 65-5405; implementing K.S.A. 65-5404, K.S.A. 65-5406, and K.S.A. 2008 Supp. 65-5410; effective, T-88-17, July 1, 1987; effective May 1, 1988; amended Jan. 15, 1999; amended Sept. 23, 2005; amended Nov. 20, 2009.)

**100-54-2. Education requirements.** (a) An educational program for licensure as an occupational therapist shall be recognized by the board if the program meets the "standards for an accredited educational program for the occupational therapist," adopted December 1998 by the accreditation council for occupational therapy education and hereby adopted by reference.

(b) An educational program for licensure as an occupational therapy assistant shall be recognized by the board if the program meets the "standards for an accredited educational program for the occupational therapy assistant," adopted December 1998 by the accreditation council for occupational therapy education and hereby adopted by reference. (Authorized by K.S.A. 65-5405; imple-

menting K.S.A. 65-5406; effective, T-88-17, July 1, 1987; effective May 1, 1988; amended Jan. 15, 1999; amended Nov. 21, 2003.)

**100-54-3. Examinations.** (a) Each applicant for licensure as an occupational therapist or occupational therapy assistant shall submit proof of having passed a nationally administered, standardized examination. This examination shall be one that is approved by the board and consists of written questions from the following content areas of occupational therapy:

- (1) Human development and performance;
- (2) principles and strategies in the identification and evaluation of strengths and needs;
- (3) principles and strategies in intervention and treatment planning;
- (4) principles and strategies in intervention;
- (5) the nature of the occupation and occupational performance;
- (6) service management; and
- (7) the individual's responsibilities as a professional.

(b) In order to qualify as board-approved, the entry-level certification examination for an occupational therapist administered by the national board for certification in occupational therapy, inc. shall meet the standards for an examination established by the board in subsection (a).

(c) In order to qualify as board-approved, the entry-level certification examination for an occupational therapy assistant administered by the national board for certification in occupational therapy, inc. shall meet the standards for an examination established by the board in subsection (a).

(d) To qualify for a license, each applicant for a license as an occupational therapist and occupational therapy assistant shall obtain a minimum criterion-scaled score of 450 on the required examination. (Authorized by K.S.A. 65-5405; implementing K.S.A. 65-5407; effective, T-88-17, July 1, 1987; effective May 1, 1988; amended Jan. 15, 1999; amended Nov. 21, 2003.)

**100-54-4. Fees.** The following fees shall be collected by the board:

- (a) Application for license ..... \$80.00
- (b) License renewal:
  - (1) Paper renewal..... \$75.00
  - (2) On-line renewal..... \$72.00
- (c) License late renewal:
  - (1) Paper late renewal..... \$80.00
  - (2) On-line late renewal..... \$77.00

- (d) License reinstatement ..... \$80.00
- (e) Certified copy of license ..... \$15.00
- (f) Temporary license..... \$25.00

(Authorized by K.S.A. 65-5405; implementing K.S.A. 65-5409; effective, T-88-17, July 1, 1987; effective May 1, 1988; amended, T-100-10-17-89, Oct. 17, 1989; amended Feb. 5, 1990; amended May 1, 1998; amended Sept. 29, 2000; amended Jan. 10, 2003; amended Nov. 21, 2003; amended, T-100-3-19-04, March 19, 2004; amended July 23, 2004; amended March 7, 2008.)

**100-54-5. Unprofessional conduct; defined.** "Unprofessional conduct" means any of the following: (a) Using fraudulent or false advertisements;

(b) engaging in occupational therapy under a false or assumed name, or by impersonating another person licensed by the board as an occupational therapist or occupational therapy assistant;

(c) practicing occupational therapy without reasonable skill and safety because of illness; disability; excessive use of alcohol or drugs; illegal use of controlled substances, chemicals, or any other type of material; or as a result of any mental or physical condition;

(d) having an occupational therapy license, registration, or certification revoked, suspended, or limited, or an application for any of these denied by the proper regulatory authority of another state, territory, District of Columbia, or other country;

(e) cheating or attempting to subvert the validity of the examination required for licensure;

(f) having been found either not guilty by reason of insanity or incompetent to stand trial by a court of competent jurisdiction;

(g) failing to furnish the board, its investigators, or its representatives any information legally requested by the board;

(h) being sanctioned or disciplined by a peer review committee or medical care facility for acts or conduct that would constitute grounds for denial, refusal to renew, suspension, or revocation of a license under K.S.A. 65-5410 and amendments thereto;

(i) surrendering a license, registration, or certification to practice occupational therapy in another state while disciplinary proceedings are pending for acts or conduct that would constitute grounds for denial, refusal to renew, suspension, or revocation of a registration under K.S.A. 65-5410 and amendments thereto;

(j) being professionally incompetent, as defined in K.S.A. 65-2837 and amendments thereto;

(k) representing to a patient that a manifestly incurable disease, condition, or injury can be permanently cured;

(l) providing occupational therapy to a patient without the consent of the patient or the patient's legal representative;

(m) willfully betraying confidential information;

(n) using any advertisement that is false, misleading, or deceptive in a material respect;

(o) committing conduct likely to deceive, defraud, or harm the public;

(p) making a false or misleading statement regarding the licensee's skill, which shall include providing any form of occupational therapy without appropriate education, training, and knowledge in the specific therapeutic methods used;

(q) committing any act of sexual, psychological, or physical abuse, or exploitation;

(r) obtaining any fee by fraud, deceit, or misrepresentation;

(s) charging an excessive fee for services rendered;

(t) failing to keep written records justifying the course of treatment of the patient; or

(u) delegating occupational therapy to a person who the licensee knows or has reason to know is not qualified by training or experience to perform it. (Authorized by K.S.A. 65-5405 and 65-5410; implementing K.S.A. 65-5410; effective, T-88-17, July 1, 1987; effective May 1, 1988; amended Jan. 15, 1999; amended Nov. 21, 2003.)

**100-54-6. License; temporary license; renewal; late renewal.** (a) Each license issued by the board shall expire on March 31 of each year.

(b) A temporary license shall be issued by the board to each applicant for licensure who meets the requirements for licensure or the requirements for licensure except examination, pays the temporary license fee, and has not been guilty of unprofessional conduct.

(c) The license specified in subsection (a) may be renewed annually. Each request for renewal shall be submitted on a form provided by the board and shall be accompanied by the following:

(1) The prescribed license renewal fee; and

(2) proof of satisfactory completion of a program of continuing education as required by the board.

(d) Each license not renewed by March 31 shall expire. Any expired license may be renewed within

30 days of expiration, upon request of the licensee. Each request for late renewal shall be submitted on the same form as that for a request for renewal and shall be accompanied by the following:

(1) The prescribed license renewal fee and the late renewal fee; and

(2) proof of satisfactory completion of a program of continuing education as required by the board. (Authorized by K.S.A. 65-5405; implementing K.S.A. 2004 Supp. 65-5412; effective, T-88-17, July 1, 1987; effective May 1, 1988; amended Dec. 27, 1993; amended Jan. 15, 1999; amended Nov. 21, 2003; amended Sept. 23, 2005.)

**100-54-7. Continuing education; license renewal.** (a)(1) Each licensee shall submit evidence of completing at least 40 contact hours of continuing education during the preceding 24 months. Evidence of this attainment shall be submitted before or with the application for renewal in each odd-numbered year.

(2) No evidence of continuing education shall be required for license renewal in even-numbered years.

(b) A licensee initially licensed within one year of a renewal date when evidence of continuing education must be submitted shall not be required to submit evidence of satisfactory completion of a program of continuing education required by paragraph (a)(1) for that first renewal period. Each licensee who was initially licensed or whose license has been reinstated for more than one year but less than two years from a renewal date when continuing education required by paragraph (a) (1) must be submitted shall be required to submit evidence of satisfactory completion of at least 20 contact hours of continuing education.

(c) Any licensee who cannot meet the requirements of paragraph (a)(1) or subsection (b) may request an extension from the board. The request shall include a plan for completion of the continuing education requirements within the requested extension period. An extension of not more than six months may be granted by the board for good cause shown by a substantiated medical condition, natural disaster, death of a spouse or an immediate family member, or any other compelling reason that in the judgment of the board renders the licensee incapable of meeting the requirements of paragraph (a)(1) or subsection (b).

(d) A contact hour shall consist of 60 minutes of instruction, unless otherwise specified in this regulation.

(e) The content of the continuing education classes or literature shall be related to the field of occupational therapy or similar areas.

(f) Each licensee shall acquire continuing education from the classes of education experiences defined in subsection (g). The licensee shall acquire at least 30 contact hours from one or more of the following: class I, class IV, class V, and class VI.

(g) Continuing education experiences shall be classified as follows:

(1) Class I: attendance at or participation in an education presentation. Class I continuing education experiences shall include the following types of education offerings:

(A) Lectures. A “lecture” means a discourse given for instruction before an audience or through a teleconference.

(B) Panels. A “panel” means the presentation of a number of views by several professional individuals on a given subject, with none of the views considered a final solution.

(C) Workshops. A “workshop” means a series of meetings designed for intensive study, work, or discussion in a specific field of interest.

(D) Seminars. A “seminar” means directed advanced study or discussion in a specific field of interest.

(E) Symposiums. A “symposium” means a conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and presented by various speakers.

(F) College or university courses. Ten contact hours shall be given for each college credit hour with a grade of at least C or a “pass” in a pass/fail course.

(G) Other courses. An “other course” means a home study, correspondence, or internet course for which the provider of the activity evaluates the licensee’s knowledge of the subject matter presented in the continuing education activity. A maximum of 20 contact hours may be acquired from other courses.

(2) Class II: in-service training. “In-service training” means training that is given to employees during the course of employment. A maximum of four contact hours may be given for attending an in-service training session. A maximum of four contact hours may be given for instructing an in-service training session, but no additional hours shall be acquired for attending that particular in-service training session or for any subse-

quent instruction on the same subject matter. A maximum of eight contact hours may be acquired from class II.

(3) Class III: professional reading. “Professional reading” means reading professional literature, whether printed or provided by audiotapes, videotapes, or electronic media. A maximum of two contact hours may be acquired from class III.

(4) Class IV: professional publication. The maximum number of contact hours that may be given for professional publication shall be as follows:

(A) 30 hours for publication of a book or original paper; and

(B) 15 hours for a review paper, case report, abstract, or book review.

(5) Class V: instructor preparation of class I programs. Any licensee who presents a class I continuing education program or its equivalent may receive three class V contact hours for each hour of presentation. No credit shall be granted for any subsequent presentations on the same subject matter. A maximum of 30 contact hours may be acquired from class V.

(6) Class VI: fieldwork supervision of level II students. One contact hour per week may be given for supervising a level II student’s full-time fieldwork. “Full-time fieldwork” shall mean at least 35 hours per week. A maximum of 24 contact hours may be acquired from class VI.

(h) Each licensee shall submit documented evidence of attendance at, participation in, or presentation to class I and class II continuing education activities. Each licensee shall submit personal verification for class III activities. Copies of publications shall be submitted for verification of class IV activities. Verification of class VI fieldwork supervision shall be submitted by the licensee’s employer.

(i) Instructional staff shall be competent in the subject matter and in the methodology of instruction and learning processes as evidenced by experience, education, or publication. (Authorized by K.S.A. 65-5405; implementing K.S.A. 2013 Supp. 65-5412; effective, T-88-17, July 1, 1987; effective May 1, 1988; amended Feb. 14, 1997; amended Nov. 21, 2003; amended July 6, 2007; amended May 13, 2016.)

**100-54-8. Continuing education; expired, canceled, and revoked licenses.** (a) If the license has expired but has not been canceled, no continuing education shall be required in addition to the continuing education that would have been

necessary if the license had been renewed before its expiration.

(b) Each applicant who wishes to reinstate a license that has been canceled shall submit proof of continuing education as follows:

(1) If the applicant has continuously held an active license in another state or the District of Columbia since the date on which the Kansas license was canceled or the applicant currently holds a license that has been active for at least two years in any state that has licensing and continuing education requirements at least as strict as those of Kansas, the applicant shall submit proof of the applicant's current license, registration, or certification from that jurisdiction.

(2) If the time since the license was canceled has been one year or less, no continuing education in addition to the continuing education that would have been necessary if the license had been renewed before cancellation shall be required.

(3) If the time since the license was canceled has been more than one year but less than two years, the applicant shall complete a minimum of 20 contact hours.

(4) If the time since the license was canceled has been at least two years but less than three years, the applicant shall complete 40 contact hours.

(5) If the time since the license was canceled has been at least three years or the applicant has not held an active license in another state that has licensing and continuing education requirements at least as strict as those of Kansas, the applicant shall complete an educational program related to continued competency based on a written recommendation by the occupational therapist council and approved by the board.

(c) An occupational therapist or an occupational therapy assistant whose license has been reinstated within one year of a renewal date when evidence of continuing education must be submitted shall not be required to submit evidence of satisfactory completion of a program of continuing education for that first renewal period. Each licensee whose license has been reinstated for more than one year but less than two years from a renewal date when continuing education must be submitted shall be required to submit evidence of satisfactory completion of at least 20 contact hours of continuing education.

(d) Each applicant seeking reinstatement of a revoked license shall be required to successfully complete a program approved by the board. (Authorized by K.S.A. 65-5405; implementing K.S.A.

2008 Supp. 65-5412; effective, T-88-17, July 1, 1987; effective May 1, 1988; amended Jan. 15, 1999; amended Nov. 21, 2003; amended Sept. 23, 2005; amended July 6, 2007; amended Nov. 20, 2009.)

**100-54-9. Occupational therapy assistants; information to board.** Before an occupational therapist allows an occupational therapy assistant to work under the occupational therapist's direction, the occupational therapist shall inform the board of the following:

(a) The name of each occupational therapy assistant who intends to work under the direction of that occupational therapist;

(b) the occupational therapy assistant's place of employment; and

(c) the address of the employer. (Authorized by K.S.A. 65-5405 and implementing K.S.A. 65-5406; effective, T-88-17, July 1, 1987; effective May 1, 1988; amended Jan. 15, 1999.)

**100-54-10. Delegation and supervision.**

(a) Occupational therapy procedures delegated by an occupational therapist or occupational therapy assistant to an occupational therapy aide, occupational therapy technician, or occupational therapy paraprofessional shall be performed under the direct, on-site supervision of a licensed occupational therapist or occupational therapy assistant.

(b)(1) "Occupational therapy technician" as used in this regulation, shall mean "occupational therapy tech" pursuant to K.S.A. 65-5419 and amendments thereto.

(2) An occupational therapy aide, occupational therapy technician, or occupational therapy paraprofessional shall mean an individual who provides support services to the occupational therapist and occupational therapy assistant.

(c) A task delegated to an occupational therapy aide, occupational therapy technician, or occupational therapy paraprofessional by an occupational therapist or occupational therapy assistant shall not exceed the level of training, knowledge, skill, and competence of the individual being supervised. The occupational therapist or occupational therapy assistant shall be responsible for the acts or actions performed by the occupational therapy aide, occupational therapy technician, or occupational therapy paraprofessional functioning in a practice setting.

(d) Each occupational therapist and each occupational therapy assistant shall delegate only specific tasks to an occupational therapy aide,

occupational therapy technician, or occupational therapy paraprofessional that meet all of the following conditions:

- (1) The tasks are routine in nature.
- (2) The treatment outcome is predictable.
- (3) The task does not require judgment, interpretation, or adaptation by the occupational therapy aide, occupational therapy technician, or occupational therapy paraprofessional.

(e) The tasks that an occupational therapy aide, occupational therapy technician, or occupational therapy paraprofessional may perform shall include the following specifically selected routine tasks:

- (1) Clerical, secretarial, or administrative duties;
- (2) transportation of patients, clients, or students;
- (3) preparation or setup of the treatment equipment and work area;
- (4) attending to a patient's, client's, or student's needs during treatment; and
- (5) maintenance or restorative services to patients, clients, or students.

(f) Any occupational therapy aide, occupational therapy technician, or occupational therapy paraprofessional may assist in the delivery of occupational therapy services. However, no occupational therapy aide, occupational therapy technician, or occupational therapy paraprofessional shall provide independent treatment or use any title or description implying that the occupational therapy aide, occupational therapy technician, or occupational therapy paraprofessional is a provider of occupational therapy services.

(g) An occupational therapy aide, occupational therapy technician, or occupational therapy paraprofessional shall not perform any of the following:

- (1) Interpret referrals or prescriptions for occupational therapy services;
- (2) evaluate treatment procedures;
- (3) develop, plan, adjust, or modify treatment procedures;
- (4) act on behalf of the occupational therapist or occupational therapy assistant relating to direct patient care that requires judgment or decision making; and
- (5) act independently or without the supervision of an occupational therapist or occupational therapy assistant. (Authorized by K.S.A. 65-5405; implementing K.S.A. 65-5419; effective Sept. 23, 2005.)

**100-54-11. Occupational therapists; ownership of corporation or company.** (a) Licensed occupational therapists shall not hold more than 49 percent of the total number of

shares issued by a professional corporation that is organized to render the professional services of a physician, surgeon or doctor of medicine, osteopathic physician or surgeon, podiatrist, dentist, or optometrist.

(b) Licensed occupational therapists shall not contribute more than 49 percent of the total amount of capital to a professional liability company that is organized to render the professional services of a physician, surgeon or doctor of medicine, osteopathic physician or surgeon, podiatrist, dentist, or optometrist.

(c) This regulation shall be effective on and after January 1, 2006. (Authorized by K.S.A. 17-2716 and K.S.A. 2004 Supp. 65-5421; implementing K.S.A. 2004 Supp. 65-5421; effective Jan. 1, 2006.)

**100-54-12. Supervision of occupational therapy assistants.** (a) For the purposes of this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) "Full-time" means employed for 30 or more hours per week.

(2) "Supervision" means oversight of an occupational therapy assistant by a licensed occupational therapist that includes initial direction and periodic review of service delivery and the provision of relevant instruction and training.

(b) Supervision shall be considered adequate if the occupational therapist and occupational therapy assistant have on-site contact at least monthly and interim contact occurring as needed by other means, including telephone, electronic mail, text messaging, and written communication.

(c) Each occupational therapist who supervises an occupational therapy assistant shall meet the following requirements:

- (1) Be licensed in Kansas;
- (2) be actively engaged in the practice of occupational therapy in Kansas;
- (3) be responsible for the services and tasks performed by the occupational therapy assistant under the supervision of the occupational therapist;
- (4) be responsible for any tasks that the supervised occupational therapy assistant delegates to an occupational therapy aide, occupational therapy technician, or occupational therapy paraprofessional;
- (5) delegate only those services for which the occupational therapist has reasonable knowledge that the occupational therapy assistant has the knowledge, experience, training, and skill to perform;

(6) document in the patient's chart any direction or review of occupational therapy services provided under supervision by the occupational therapy assistant; and

(7) report to the board any knowledge that the occupational therapy assistant has committed any act specified in K.S.A. 65-5410, and amendments thereto. The occupational therapist shall report this information to the board within 10 days of receiving notice of the information.

(d) An occupational therapist shall not supervise more than the combined equivalent of four full-time occupational therapy assistants. This combination shall not exceed a total of eight occupational therapy assistants.

(e) Each occupational therapist's decision to delegate components of occupational therapy services under this regulation to an occupational therapy assistant shall be based on that occupational therapist's education, expertise, and professional judgment.

(f) An occupational therapy assistant shall not initiate therapy for any patient or client before the supervising occupational therapist's evaluation of the patient or client.

(g) An occupational therapy assistant shall not perform any of the following services for a patient or client:

(1) Performing and documenting an initial evaluation;

(2) developing or modifying the treatment plan; or

(3) developing a plan of discharge from treatment.

(h) Any occupational therapy assistant, under supervision, may perform the following services for a patient or client:

(1) Collecting initial patient data through screening and interviewing;

(2) assessing initial activities of daily living by administering standardized assessments;

(3) performing a chart review;

(4) implementing and coordinating occupational therapy interventions;

(5) providing direct services that follow a documented routine and accepted protocol;

(6) grading and adapting activities, media, or the environment according to the needs of the patient or client;

(7) contributing to the reassessment process; and

(8) contributing to the discontinuation of intervention, as directed by the occupational therapist,

by implementing a discharge plan and providing necessary client discharge resources.

(i) Failure by any occupational therapist or occupational therapy assistant to meet the applicable requirements of this regulation shall constitute evidence of unprofessional conduct. (Authorized by K.S.A. 65-5405; implementing K.S.A. 2015 Supp. 65-5402 and 65-5410; effective May 13, 2016.)

## Article 55.—RESPIRATORY THERAPY

**100-55-1. Application.** (a) Each applicant for licensure as a respiratory therapist shall submit a completed application on a form provided by the board. The application shall contain the following information in legible writing:

(1) The applicant's full name;

(2) the applicant's mailing address. If the applicant's mailing address is different from the applicant's residential address, the applicant shall also provide the residential address;

(3) the applicant's social security number, driver's license number, nondriver identification number, or individual tax identification number if the applicant is advised that providing a social security number is voluntary pursuant to K.S.A. 74-139 and 74-148, and amendments thereto, and that if the social security number is provided, the agency may provide this number to the Kansas department of social and rehabilitation services for child support enforcement purposes and to the Kansas department of revenue's director of taxation;

(4) information on any licenses, registrations, or certifications issued to the applicant to practice any health care profession;

(5) information on any prior acts constituting unprofessional conduct, as defined in K.A.R. 100-55-5, that could constitute grounds for denial of the application;

(6) the applicant's daytime telephone number;

(7) the applicant's date and place of birth;

(8) the name of each educational program recognized under K.A.R. 100-55-2 that the applicant attended, including the program from which the applicant graduated, the degree awarded to the applicant, and the date of graduation;

(9) the number of times the applicant has taken the examination required by the board for licensure and the date that the applicant passed the examination; and

(10) a notarized release authorizing the board to receive any relevant information, files, or re-

cords requested by the board in connection with the application.

(b) Each applicant shall submit the following with the application:

- (1) The fee required by K.A.R. 100-55-4;
- (2) an official transcript that specifies the degree awarded from an educational program recognized by the board under K.A.R. 100-55-2;
- (3) a verification on a form provided by the board of each license, registration, or certification issued to the applicant by any state or the District of Columbia relating to any health care profession;
- (4) a current photograph, two by three inches in size, of the applicant's head and shoulders taken within 90 days before the date the application is received by the board; and
- (5) evidence provided directly to the board from the testing entity recognized and approved under K.A.R. 100-55-3 that the applicant has passed the examination.

(c) The applicant shall sign the application under oath and have the application notarized. (Authorized by K.S.A. 65-5505; implementing K.S.A. 65-5506; effective, T-88-17, July 1, 1987; effective May 1, 1988; amended Jan. 3, 1997; amended June 30, 2000; amended June 4, 2010.)

**100-55-2. Education requirements.** A list of approved educational programs in respiratory therapy shall be maintained by the board. In determining whether an educational program should be approved, accreditation by the committee on accreditation for respiratory care or its predecessor at the time of applicant's graduation may be considered by the board. (Authorized by K.S.A. 1999 Supp. 65-5505; implementing K.S.A. 1999 Supp. 65-5506; effective, T-88-17, July 1, 1987; effective May 1, 1988; amended Jan. 3, 1997; amended June 30, 2000.)

**100-55-3. Examinations.** (a) The examinations approved by the board to practice respiratory therapy, one of which shall be required for each applicant, shall be the following:

- (1) The examination developed by the national board for respiratory care for credentialing as a certified respiratory therapist; and
- (2) the examination developed by the national board for respiratory care for credentialing as a registered respiratory therapist.

(b) To pass the required and approved examination, each applicant shall achieve the minimum qualifying score established by the national

board for respiratory care for certification or registration.

(c) Each applicant who has passed the required examination for a license and has not been in the active practice of respiratory therapy for more than one year, but less than five years shall provide one of the following:

- (1) Evidence of completion of a minimum of 24 contact hours of continuing education; or
- (2) proof that the applicant has passed one of the examinations required for a license within 12 months of the date the application was submitted.

(d) Each applicant who has passed the required examination for a license and has not been in the active practice of respiratory therapy for five years or more shall provide proof that the applicant has passed one of the examinations required for a license within 12 months of the date the application was submitted. (Authorized by K.S.A. 1999 Supp. 65-5505; implementing K.S.A. 1999 Supp. 65-5507; effective, T-88-17, July 1, 1987; effective May 1, 1988; amended Jan. 3, 1997; amended June 30, 2000.)

**100-55-4. Fees.** The following fees shall be collected by the board:

- (a) Application for a license..... \$80.00
- (b) License renewal:
  - (1) Paper renewal..... \$75.00
  - (2) On-line renewal..... \$72.00
- (c) License late renewal:
  - (1) Paper late renewal..... \$80.00
  - (2) On-line late renewal..... \$77.00
- (d) License reinstatement ..... \$80.00
- (e) Certified copy of license ..... \$15.00
- (f) Special permit ..... \$15.00
- (g) Temporary license..... \$25.00

(Authorized by K.S.A. 65-5505; implementing K.S.A. 65-5509; effective, T-88-17, July 1, 1987; effective May 1, 1988; amended, T-100-10-17-89, Oct. 17, 1989; amended Feb. 5, 1990; amended Jan. 3, 1997; amended May 1, 1998; amended June 30, 2000; amended Sept. 29, 2000; amended Jan. 10, 2003; amended, T-100-3-19-04, March 19, 2004; amended July 23, 2004; amended March 7, 2008.)

**100-55-5. Unprofessional conduct; defined.** "Unprofessional conduct" means any of the following: (a) Using fraudulent or false advertisements;

- (b) being addicted to intoxicating liquors or drugs;

(c) engaging in respiratory therapy under a false or assumed name or by impersonating another person licensed by the board as a respiratory therapist;

(d) practicing respiratory therapy without reasonable skill and safety because of any of the following:

(1) Illness;

(2) alcoholism;

(3) excessive use of drugs, controlled substances, chemicals, or any other type of material; or

(4) a result of any mental or physical condition;

(e) having a respiratory therapy license, registration, or certification revoked, suspended, or limited or an application for any of these denied by the proper regulatory authority of another state, territory, or country, or of District of Columbia;

(f) cheating or attempting to subvert the validity of the examination required for licensure;

(g) having been found to be mentally ill, disabled, not guilty by reason of insanity, or incompetent to stand trial by a court of competent jurisdiction;

(h) failing to furnish to the board, or to its investigators or representatives, any information legally requested by the board;

(i) being sanctioned or disciplined by a peer review committee or medical care facility for acts or conduct that would constitute grounds for denial, refusal to renew, suspension, or revocation of a license under K.S.A. 65-5510 and amendments thereto;

(j) surrendering a license, registration, or certification to practice respiratory therapy in another state while disciplinary proceedings are pending for acts or conduct that would constitute grounds for denial, refusal to renew, suspension, or revocation of a license under K.S.A. 65-5510 and amendments thereto;

(k) being professionally incompetent, as defined in K.S.A. 65-2837 and amendments thereto;

(l) representing to a patient that a manifestly incurable disease, condition, or injury can be permanently cured;

(m) providing respiratory therapy to a patient without the consent of the patient or the patient's legal representative;

(n) willfully betraying confidential information;

(o) advertising the ability to perform in a superior manner any professional service related to respiratory therapy;

(p) using any advertisement that is false, misleading, or deceptive in a material respect;

(q) committing conduct likely to deceive, defraud, or harm the public;

(r) making a false or misleading statement regarding the licensee's skill;

(s) committing any act of sexual abuse, misconduct, or exploitation;

(t) obtaining any fee by fraud, deceit, or misrepresentation;

(u) charging an excessive fee for services rendered;

(v) failing to keep written records justifying the course of treatment of the patient;

(w) delegating respiratory therapy to a person who the licensee knows or has reason to know is not qualified by training or experience to perform it;

(x) willfully supervising the holder of a special permit when the holder is not currently enrolled in a recognized program of education; or

(y) willfully allowing the holder of a special permit to perform tasks and procedures not verified by the respiratory therapy school on the holder's task proficiency list. (Authorized by and implementing K.S.A. 65-5510; effective, T-88-17, July 1, 1987; effective May 1, 1988; amended Jan. 3, 1997; amended June 30, 2000; amended May 23, 2003.)

**100-55-6. Licensure; renewal; late renewal and reinstatement.** (a) Each license issued by the board shall expire on March 31 of each year.

(b) A license issued or reinstated from January 1 through March 31 shall expire on March 31 of the following year.

(c) Each license may be renewed annually. The request for renewal shall be on a form provided by the board and shall be accompanied by the following:

(1) The prescribed license renewal fee; and

(2) proof of satisfactory completion of a program of continuing education as required by the board.

(d) Licenses not renewed by March 31 may be renewed for a period of 30 days thereafter upon request of the licensee. The request for late renewal shall be on the same form as that required for renewal and shall be accompanied by the following:

(1) The prescribed license late renewal fee; and

(2) proof of satisfactory completion of a program of continuing education as required by the board.

(e) Any applicant may request reinstatement of a license that has expired for a period of more than 30 days. The request for reinstatement shall be on a form provided by the board and shall be accompanied by the following:

(1) The prescribed license reinstatement fee; and

(2)(A) Proof of satisfactory completion of a program of continuing education as required by the board; or

(B) proof that the licensee has passed one of the examinations for a license required under K.A.R. 100-55-3 within the past six months. (Authorized by K.S.A. 1999 Supp. 65-5505; implementing K.S.A. 1999 Supp. 65-5512; effective, T-88-17, July 1, 1987; effective May 1, 1988; amended Dec. 27, 1993; amended Jan. 3, 1997; amended June 30, 2000.)

**100-55-7. Continuing education; license renewal.** (a) Each licensee shall submit documented evidence of completion of at least 12 contact hours of continuing education since April 1 of the previous year, before or with the request for renewal.

(b) Any licensee who suffered an illness or injury that made it impossible or extremely difficult to reasonably obtain the required contact hours may be granted an extension of not more than six months.

(c) Each respiratory therapist initially licensed after September 30 and before the following March 31 shall be exempt from the continuing education required by subsection (a) for the first renewal period.

(d) A contact hour shall be 50 minutes of instruction or its equivalent.

(e) The purpose of continuing education shall be to provide evidence of continued competency in the advancing art and science of respiratory therapy. All program objectives, curricular content, presenter qualifications, and outcomes shall be subject to review. Contact hours shall be determined based on program content, outcomes, and participant involvement.

(f) Continuing education shall be acquired from the following:

(1) Offerings approved by the American association of respiratory care. Any licensee may obtain all contact hours from any continuing education offerings approved by the American association of respiratory care and its state affiliates, subject to the limitations specified in paragraphs (f)(2) through (f)(8).

(2) Seminars and symposiums. At least six contact hours shall be obtained each reporting year from seminars or symposiums that provide for direct interaction between the speakers and the participants. A seminar shall mean directed advanced study or discussion in a specific field of interest. A symposium shall mean a conference of more than

a single session organized for the purpose of discussing a specific subject from various viewpoints and by various speakers.

(3) Nontraditional or alternative educational programs. A nontraditional or alternative educational program shall be defined as one that is not presented in the typical conference setting. Educational programs may be provided by any print medium or presented through the internet or other electronic medium. The licensee shall submit proof of successful completion of a test administered as part of the nontraditional or alternative educational program. A maximum of six contact hours each reporting year may be obtained from nontraditional or alternative educational programs.

(4) Clinical instruction. Clinical instruction shall mean the education and evaluation of a respiratory therapy student in the clinical setting. A maximum of three contact hours may be given for clinical instruction.

(5) Presentations of a seminar or a nontraditional or alternative program. Each licensee who presents a continuing education seminar or a nontraditional or alternative educational program shall receive two contact hours for each hour of presentation. No credit shall be granted for any subsequent presentations on the same subject content.

(6) Academic coursework. Successful completion of academic coursework shall mean obtaining a grade of at least C or the equivalent in any courses on respiratory care or other health-related field of study in a bachelor's degree program or higher educational degree program. One credit hour of academic coursework shall be equal to one contact hour of continuing education. A maximum of six contact hours may be obtained through academic coursework each reporting year.

(7) Advanced lifesaving courses. Contact hours shall be restricted to first-time attendees of advanced lifesaving courses and the associated instructor courses. Advanced lifesaving courses shall include neonatal resuscitation provider (NRP), pediatric advanced life support (PALS), neonatal advanced life support (NALS), and advanced cardiac life support (ACLS).

(8) Voluntary recredentialing. Each licensee who completes voluntary recredentialing shall receive the number of contact hours approved by the American association for respiratory care.

(g) The following shall not be eligible for continuing education credit:

(1) Learning activities in the work setting designed to assist the individual in fulfilling employer requirements, including in-service education and on-the-job training; and

(2) basic life support courses and cardiopulmonary resuscitation courses. (Authorized by K.S.A. 65-5505; implementing K.S.A. 2008 Supp. 65-5512; effective, T-88-17, July 1, 1987; effective May 1, 1988; amended Jan. 3, 1997; amended June 30, 2000; amended July 17, 2009; amended May 21, 2010.)

**100-55-8. Reinstatement; expired and revoked licenses.** (a) Each applicant desiring to reinstate a license that has been expired for more than 30 days shall submit proof of continuing education as follows:

(1) If the time since the license expired has been one year or less, no continuing education in addition to that which would have been necessary had the license been renewed before expiration shall be required.

(2) If, since the date the license expired, the applicant has been in the active practice of respiratory therapy in another state or jurisdiction that requires a license, registration, or certification to practice, the applicant shall submit proof of the current license, registration, or certification, and compliance with the continuing education requirements of that jurisdiction.

(3) If the time since the license expired has been more than one year but less than five years, the applicant shall provide one of the following:

(A) Evidence of completion of a minimum of 24 contact hours of continuing education; or

(B) proof that the applicant has passed one of the examinations required for a license within 12 months of the date the application was submitted.

(4) If the time since the license expired has been five years or more, the applicant shall provide proof that the applicant has passed one of the examinations required for a license within 12 months of the date the application was submitted.

(b) Each applicant seeking reinstatement of a revoked license shall successfully complete an individually tailored program approved by the board. (Authorized by K.S.A. 1999 Supp. 65-5505; implementing K.S.A. 1999 Supp. 65-5512; effective, T-88-17, July 1, 1987; effective May 1, 1988; amended Jan. 3, 1997; amended June 30, 2000.)

**100-55-9. Special permits.** (a) Each student who holds a special permit shall be identified

as a student respiratory therapist or “student R.T.” by a name tag that includes the student’s job title.

(b) A special permit shall be valid for a period not to exceed 24 months and shall not be extended without additional proof that the student continues to be enrolled in an approved school of respiratory therapy.

(c) During February of each year, each student who holds a special permit shall provide the following to the board:

(1) Verification of current enrollment in an approved school of respiratory therapy; and

(2) a statement of the anticipated graduation date.

(d) Each special permit issued to a student who fails to meet the requirements under subsection (c) shall expire on March 31 of the year in which the verification and statement were to be provided.

(e) Each applicant for a special permit shall have a task proficiency list verified and submitted directly to the board by the school of respiratory therapy. The task proficiency list may be updated at the end of each session by the school of respiratory therapy. Each holder of a special permit shall perform only those tasks verified on the most recent task proficiency list that has been submitted directly to the board.

(f) Before engaging in any clinical assignments, each holder of a special permit shall present the current task proficiency list to the employer.

(g) Each licensed respiratory therapist responsible for the supervision of a student holding a special permit shall meet the requirements for supervision specified in K.A.R. 100-55-11(d). (Authorized by K.S.A. 65-5505; implementing K.S.A. 65-5508; effective Jan. 3, 1997; amended June 30, 2000; amended May 23, 2003; amended May 15, 2009.)

**100-55-10.** (Authorized by K.S.A. 65-5505; implementing K.S.A. 65-5508; effective Jan. 3, 1997; revoked May 1, 1998.)

**100-55-11. Delegation and supervision.**

(a) The delegation of respiratory therapy procedures by a licensed respiratory therapist to an unlicensed person may be made after the respiratory therapist has determined all of the following:

(1) The health status and mental and physical stability of the individual receiving care;

(2) the complexity of the procedures;

(3) the training and competence of the unlicensed person;

(4) the proximity and availability of the respiratory therapist when the procedures are performed;

(5) the degree of supervision required for the unlicensed person; and

(6) the length and number of times that the procedures may be performed.

(b) The procedures that may be delegated to an unlicensed person shall be only those that meet the following criteria:

(1) Would be determined by a reasonable and prudent respiratory therapist to be within the scope of accepted respiratory therapy standards or practice;

(2) can be performed properly and safely by an unlicensed person;

(3) do not require the unlicensed person to perform an assessment or to alter care;

(4) do not require the specific skills, evaluation, and judgment of a licensed respiratory therapist; and

(5) do not allow an unlicensed person to perform either of the following:

(A) Continue to perform the procedures on an ongoing basis; or

(B) perform the same procedures on other individuals without specific delegation.

(c) The licensed respiratory therapist shall be responsible for the following:

(1) The management and provision of care; and

(2) the performance of the procedures in compliance with established standards of practice, policies, and procedures.

(d) The supervision of an unlicensed person by a licensed respiratory therapist shall include all of the following:

(1) Providing clear directions for and expectations of how the procedures are to be performed;

(2) being available for communication with the unlicensed person when the procedures are performed;

(3) monitoring the performance of the procedures to assure compliance with established standards of practice, policies, and procedures;

(4) intervening, as necessary;

(5) ensuring that the unlicensed person makes appropriate documentation of the procedures that are performed;

(6) reassessing, reevaluating, and altering care, as necessary; and

(7) determining the appropriateness of continued delegation of the procedures. (Authorized by K.S.A. 1999 Supp. 65-5505; implementing K.S.A. 1999 Supp. 65-5514; effective June 30, 2000.)

## Article 60.—PHYSICIANS' ASSISTANTS

**100-60-1.** (Authorized by and implementing K.S.A. 1999 Supp. 65-2896; effective, E-79-35, Dec. 20, 1978; effective May 1, 1979; amended, T-100-10-17-89, Oct. 17, 1989; amended Feb. 5, 1990; amended May 1, 1998; amended Sept. 29, 2000; revoked, T-100-2-13-01, Feb. 13, 2001; revoked June 1, 2001.)

**100-60-2.** (Authorized by K.S.A. 1978 Supp. 65-2896; effective, E-79-35, Dec. 20, 1978; effective May 1, 1979; revoked, T-100-2-13-01, Feb. 13, 2001; revoked June 1, 2001.)

**100-60-3.** (Authorized by K.S.A. 1978 Supp. 65-2896; effective, E-79-35, Dec. 20, 1978; effective May 1, 1979; revoked Feb. 15, 1993.)

**100-60-4.** (Authorized by and implementing K.S.A. 1991 Supp. 65-2896, 65-2896a(a)(2); effective, E-79-35, Dec. 20, 1978; effective May 1, 1979; amended Feb. 15, 1993; revoked, T-100-2-13-01, Feb. 13, 2001; revoked June 1, 2001.)

**100-60-5.** (Authorized by K.S.A. 1991 Supp. 65-2896; implementing K.S.A. 1991 Supp. 65-2896a; effective, E-79-35, Dec. 20, 1978; effective May 1, 1979; amended Feb. 15, 1993; revoked, T-100-2-13-01, Feb. 13, 2001; revoked June 1, 2001.)

**100-60-6.** (Authorized by and implementing K.S.A. 1991 Supp. 65-2896a(c); effective, E-79-35, Dec. 20, 1978; effective May 1, 1979; amended Feb. 15, 1993; revoked, T-100-2-13-01, Feb. 13, 2001; revoked June 1, 2001.)

**100-60-7.** (Authorized by K.S.A. 65-2896, 65-2896b(b); effective, E-79-35, Dec. 20, 1978; effective May 1, 1979; revoked May 1, 1988.)

**100-60-8.** (Authorized by and implementing K.S.A. 1991 Supp. 65-2896e; effective May 1, 1988; amended Feb. 15, 1993; revoked, T-100-2-13-01, Feb. 13, 2001; revoked June 1, 2001.)

**100-60-9.** (Authorized by and implementing K.S.A. 65-2896a; effective May 1, 1988; amended Feb. 15, 1993; amended May 5, 2000; revoked, T-100-2-13-01, Feb. 13, 2001; revoked June 1, 2001.)

**100-60-10.** (Authorized by and implementing K.S.A. 65-2896e, as amended by L. 1999, Ch. 115, Sec. 13, and K.S.A. 65-2897a; effective May 1, 1988; amended Feb. 15, 1993; amended May

5, 2000; revoked, T-100-2-13-01, Feb. 13, 2001; revoked June 1, 2001.)

**100-60-11.** (Authorized by and implementing K.S.A. 1991 Supp. 65-2896e and 65-2897a; effective May 1, 1988; amended Feb. 15, 1993; revoked, T-100-2-13-01, Feb. 13, 2001; revoked June 1, 2001.)

**100-60-12.** (Authorized by K.S.A. 1991 Supp. 65-2896; implementing K.S.A. 65-2896f; effective May 1, 1988; amended Feb. 15, 1993; revoked, T-100-2-13-01, Feb. 13, 2001; revoked June 1, 2001.)

**100-60-13.** (Authorized by and implementing K.S.A. 65-2896e, as amended by L. 1999, Ch. 115, Sec. 13; effective May 1, 1988; amended Feb. 15, 1993; amended June 20, 1994; amended May 5, 2000; revoked, T-100-2-13-01, Feb. 13, 2001; revoked June 1, 2001.)

**100-60-14.** (Authorized by and implementing K.S.A. 1991 Supp. 65-2896e and 65-2897a; effective May 1, 1988; amended Feb. 15, 1993; revoked, T-100-2-13-01, Feb. 13, 2001; revoked June 1, 2001.)

**100-60-15.** (Authorized by and implementing K.S.A. 1988 Supp. 65-2896, as amended by L. 1989, Ch. 197, Sec. 1; effective, T-100-10-17-89, Oct. 17, 1989; amended Feb. 5, 1990; revoked, T-100-2-13-01, Feb. 13, 2001; revoked June 1, 2001.)

#### Article 69.—ATHLETIC TRAINING

**100-69-1. Approved education.** Each applicant for licensure as an athletic trainer shall provide proof that the applicant has received a baccalaureate degree or post-baccalaureate degree with a major course of study in athletic training curriculum from one of the following:

(a) An institution whose program for athletic trainers is accredited by the commission on accreditation of athletic training education; or

(b) an educational institution whose programs are determined by the board to have standards at least equal to those of an accredited program. (Authorized by and implementing K.S.A. 2007 Supp. 65-6905 and K.S.A. 2007 Supp. 65-6907; effective July 19, 1996; amended Sept. 9, 2005; amended Nov. 21, 2008.)

**100-69-2.** (Authorized by and implementing K.S.A. 2004 Supp. 65-6905 and K.S.A. 2004 Supp.

65-6907; effective July 19, 1996; amended Sept. 9, 2005; revoked Nov. 21, 2008.)

**100-69-3. Examination.** (a) Each applicant for licensure as an athletic trainer shall submit proof of having passed a nationally administered, standardized examination. This examination shall be one that is approved by the board and consists of written questions, written simulation questions, and practical section questions assessing knowledge on subject matter from the following domains of athletic training:

- (1) Prevention of athletic injuries;
- (2) recognition, evaluation, and assessment of athletic injuries;
- (3) immediate care of athletic injuries;
- (4) treatment of athletic injuries, rehabilitation, and reconditioning;
- (5) health care administration; and
- (6) professional development and responsibility.

(b) In order to qualify as board-approved, the entry-level certification examination administered by the national athletic trainers' association board of certification, inc. shall meet the standards for an examination established by the board in this regulation. (Authorized by and implementing K.S.A. 2004 Supp. 65-6905 and K.S.A. 2004 Supp. 65-6907; effective July 19, 1996; amended Nov. 15, 2002; amended Sept. 9, 2005.)

**100-69-4.** (Authorized by and implementing K.S.A. 1995 Supp. 65-6905 and K.S.A. 1995 Supp. 65-6906; effective July 19, 1996; revoked Sept. 9, 2005.)

**100-69-5. Fees.** The following fees shall be collected by the board:

- |                                     |         |
|-------------------------------------|---------|
| (a) Application for license .....   | \$80.00 |
| (b) Annual renewal of license:      |         |
| (1) Paper renewal.....              | \$70.00 |
| (2) On-line renewal.....            | \$67.00 |
| (c) Late renewal of license:        |         |
| (1) Paper late renewal.....         | \$5.00  |
| (2) On-line late renewal.....       | \$5.00  |
| (d) License reinstatement .....     | \$10.00 |
| (e) Certified copy of license ..... | \$15.00 |
| (f) Temporary permit.....           | \$25.00 |

(Authorized by K.S.A. 65-6905, as amended by L. 2004, Ch. 24, Sec. 5, and K.S.A. 65-6910, as amended by L. 2004, Ch. 24, Sec. 9; implementing K.S.A. 65-6909, as amended by L. 2004, Ch. 24, Sec. 8, and 65-6910, as amended by L. 2004, Ch. 24, Sec. 9; effective July 19, 1996; amended

May 1, 1998; amended Sept. 29, 2000; amended Nov. 19, 2004.)

**100-69-6. Expiration of license.** The license of each athletic trainer shall expire on December 31 of each year. (Authorized by and implementing K.S.A. 2004 Supp. 65-6909; effective July 19, 1996; amended Sept. 9, 2005.)

**100-69-7. Unprofessional conduct; definitions.** (a) "Unprofessional conduct" shall mean any of the following:

(1) Soliciting patients through the use of false advertisements or profiting by the acts of those representing themselves to be agents of the licensee;

(2) representing to a patient that a manifestly incurable disease, condition, or injury can be permanently cured;

(3) assisting in the care or treatment of a patient without the consent of the patient or the patient's legal representative;

(4) using any letters, words, or terms as an affix on stationery or in advertisements or otherwise indicating that the person is entitled to practice any profession regulated by the board or any other state licensing board or agency for which the person is not licensed;

(5) willful betrayal of confidential information;

(6) advertising professional superiority or the performance of professional services in a superior manner;

(7) advertising to guarantee any professional service or to perform any professional service painlessly;

(8) engaging in conduct related to the practice of athletic training that is likely to deceive, defraud, or harm the public;

(9) making a false or misleading statement regarding the licensee's skill or the efficacy or value of the treatment or remedy prescribed by the licensee or at the licensee's direction;

(10) commission of any act of sexual abuse, misconduct, or other improper sexual contact that exploits the licensee-patient relationship, with a patient or a person responsible for health care decisions concerning the patient;

(11) using any false, fraudulent, or deceptive statement in any document connected with the practice of athletic training, including the intentional falsifying or fraudulent altering of a patient record;

(12) obtaining any fee by fraud, deceit, or misrepresentation;

(13) failing to transfer a patient's records to another licensee when requested to do so by the patient or by the patient's legally designated representative;

(14) performing any unnecessary tests, examinations, or services that have no legitimate purpose;

(15) charging an excessive fee for services rendered;

(16) repeated failure to engage in the practice of athletic training with that level of care, skill, and treatment that is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances;

(17) failure to keep written medical records that accurately describe the services rendered to each patient, including patient histories, pertinent findings, examination results, and test results;

(18) providing services as an athletic trainer without practice protocols or contrary to the practice protocols filed with the board;

(19) practicing athletic training while the licensee's ability to practice with reasonable skill and safety to patients is impaired by reason of physical or mental illness or the use of alcohol, drugs, or controlled substances;

(20) committing fraud or misrepresentation in applying for or securing an original, renewal, or reinstated license;

(21) willfully or repeatedly violating the healing arts act, any implementing regulations, or any regulations of the board or the secretary of health and environment that govern the practice of athletic training;

(22) unlawfully practicing any profession regulated by the board in which the licensed athletic trainer is not licensed to practice;

(23) failing to report or reveal the knowledge required to be reported or revealed pursuant to K.S.A. 65-7621, and amendments thereto;

(24) failing to furnish the board, or its investigators or representatives, any information legally requested by the board;

(25) incurring any sanction or disciplinary action by a peer review committee, a governmental agency or department, or a professional association or society for conduct that could constitute grounds for disciplinary action under the act or this article of the board's regulations;

(26) knowingly submitting any misleading, deceptive, untrue, or fraudulent representation on a claim form, bill, or statement;

(27) giving a worthless check or stopping pay-

ment on a debit or credit card for fees or moneys legally due to the board;

(28) knowingly or negligently abandoning medical records;

(29) engaging in conduct that violates patient trust and exploits the licensee-patient relationship for personal gain; or

(30) obstructing a board investigation, including engaging in one or more of the following acts:

(A) Falsifying or concealing a material fact;

(B) knowingly making or causing to be made any false or misleading statement or writing; or

(C) committing any other acts or engaging in conduct likely to deceive or defraud the board.

(b) "Advertisement" shall mean all representations disseminated in any manner or by any means that are for the purpose of inducing or that are likely to induce, directly or indirectly, the purchase of professional services.

(c) "False advertisement" shall mean any advertisement that is false, misleading, or deceptive in a material respect. In determining whether any advertisement is misleading, the following shall be taken into account:

(1) Representations made or suggested by statement, word, design, device, or sound, or any combination of these; and

(2) the extent to which the advertisement fails to reveal facts material in the light of the representations made. (Authorized by and implementing K.S.A. 65-6905 and K.S.A. 65-6911; effective July 19, 1996; amended Sept. 9, 2005; amended Jan. 10, 2020.)

**100-69-8.** (Authorized by and implementing K.S.A. 1995 Supp. 65-6905; effective July 19, 1996; revoked Sept. 9, 2005.)

**100-69-9. Practice protocols.** (a) As a condition of providing services as an athletic trainer in this state that constitute the practice of the healing arts, each athletic trainer licensed by the board shall file a practice protocol with the board on a form issued by the board.

(b) Each practice protocol shall contain the following information:

(1) The name, license number, signature, and date of signature of any person licensed to practice the healing arts who will delegate to the athletic trainer any professional responsibilities that constitute the practice of the healing arts;

(2) a description of the functions and proce-

dures delegated to the athletic trainer that constitute the practice of the healing arts;

(3) a statement from a person licensed to practice the healing arts specifying those acts that have been delegated to the athletic trainer in the absence or unavailability of the licensee; and

(4) a statement that the board will be provided with any changes or amendments to the practice protocol within 10 days after any changes or amendments have been made. (Authorized by and implementing K.S.A. 2004 Supp. 65-6905 and 65-6906; effective July 19, 1996; amended Nov. 15, 2002; amended Sept. 9, 2005.)

**100-69-10. License renewal; continuing education.** (a) As a condition of renewal, each licensed athletic trainer shall submit, in addition to the annual application for renewal of licensure, evidence of satisfactory completion of at least 20 hours of continuing education within the preceding year and proof of continuous certification in emergency cardiac care procedures including administration of an automated external defibrillator (AED) through a nationally recognized provider approved by the board. Each course approved by the board of certification for the athletic trainer shall meet this requirement.

(1) Acceptable providers of certification in emergency cardiac care (ECC) procedures shall be those adhering to the most current international guidelines for cardiopulmonary resuscitation and emergency cardiac care.

(2) Online ECC courses shall not be accepted, unless the provider confirms in writing that the skills were demonstrated and tested in person by a qualified instructor.

(3) Instructor certifications shall not be accepted, unless the provider confirms in writing that the instructors are required to maintain and successfully demonstrate provider skills to renew instructor status.

(b) Any licensee who suffered an illness or injury during the 12-month period before the expiration date of the license that made it impossible or extremely difficult to reasonably obtain the required continuing education hours may be granted an extension of not more than six months.

(c) Each athletic trainer initially licensed within one year of the expiration date of the license shall be exempt from the continuing education required by subsection (a) for that first renewal period.

(d) All continuing education shall be related to the field of athletic training and shall be presented

by providers approved by the board. In order to qualify as board-approved, the continuing education shall be delivered by an approved provider or shall be intended for an audience of credentialed health care providers. The content shall be at least entry-level and shall pertain to one of the current domains of athletic training practice identified by the board. The current domains of athletic training practice identified by the board of certification of athletic trainers shall meet this requirement.

(e) One hour shall be 60 minutes of instruction or the equivalent.

(f) All continuing education shall meet the requirements of subsection (h).

(g) Each licensee seeking continuing education credit shall participate in at least two of the categories listed in subsection (h).

(h) The categories of continuing education experiences shall be the following:

(1) Category A. The number of hours for all category A continuing education experiences shall be granted upon receipt of documented evidence of attendance or documented evidence of satisfactory completion issued by a national, state, or local organization with standards that are at least as stringent as the standards of the board. Category A continuing education experiences shall include the following:

(A) Symposium. "Symposium" shall mean a conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and by various speakers.

(B) Seminar. "Seminar" shall mean directed advanced study or discussion in a specific field of interest.

(C) Workshop. "Workshop" shall mean a series of meetings designed for intensive study, work, or discussion in a specific field of interest.

(D) Conference. "Conference" shall mean a formal meeting of a number of people for a discussion in a specific field of interest.

(E) Home study course. "Home study course" shall mean an online webinar course designed for advanced study in a specific field of interest.

(2) Category B. Category B continuing education experiences shall include the following:

(A) Scholarly presentations. The number of hours granted for scholarly presentations shall be the following:

(i) 10 hours for a speaker at a clinical symposium where the primary audience is allied health care professionals; and

(ii) five hours for a speaker at a seminar, work-

shop, or conference where the primary audience is allied health care professionals.

(B) Publication activities. The number of hours granted for writing a professional publication shall be the following:

(i) Five hours to author an article in a non-refereed journal;

(ii) 15 hours to author an article in a refereed journal;

(iii) 10 hours to coauthor an article in a refereed journal;

(iv) 20 hours to author a published textbook;

(v) 10 hours to coauthor a published textbook;

(vi) five hours for being a contributing author of a published textbook;

(vii) 10 hours to author a refereed or peer-reviewed poster presentation; and

(viii) five hours to coauthor a poster presentation.

(3) Category C. Category C continuing education experiences shall consist of postcertification education. The number of hours assigned to category C continuing education experiences shall be 10 hours for each credit hour for postcertification education. The content shall be related to one of the domains of athletic training.

(4) Category D. Category D continuing education experiences shall consist of miscellaneous activities, which shall include evidence-based practice. The number of hours granted upon receipt of documented evidence of satisfactory completion for Category D continuing education experiences shall be the following:

(A) One hour shall be granted for each hour of attendance at continuing education program activities that are not approved by the board for category A or category B, but that are related to specific athletic training and sports medicine topics.

(B) One hour shall be granted for each hour of listening to unapproved continuing education programs or other multimedia products related to one of the domains of athletic training. No more than five hours per renewal period shall be allowed.

(i) No credit shall be granted for making any repeated presentations of the same subject matter.

(j) No credit shall be granted for reiteration of material or information obtained from attendance at a continuing education program.

(k) To provide evidence of satisfactory completion of continuing education, the following shall be submitted to the board:

(1) Documented evidence of attendance at category A and category D activities;

(2) proof of participation in category B activities, which shall include a copy of any professional publication or documentation of any presentation;

(3) receipt and verification of completion of approved self-instruction from home study courses;

(4) a copy of each transcript or grade report for category C activities; and

(5) personal verification of listening to or viewing continuing education program videotapes, audiotapes, or other multimedia products, as described in paragraph (h)(4)(B). (Authorized by K.S.A. 65-6905; implementing K.S.A. 65-6905 and 65-6909; effective Jan. 9, 1998; amended Nov. 15, 2002; amended Sept. 9, 2005; amended May 15, 2009; amended Jan. 10, 2020.)

**100-69-11. Reinstatement; canceled and revoked licenses.** (a) Each applicant desiring to reinstate a license that has been canceled for failure to renew for more than 30 days shall submit proof of continuing education to the board as follows:

(1) If the time since the license was canceled has been one year or less, no continuing education in addition to that which would have been necessary had the license been renewed before cancellation shall be required.

(2) If the time since the license was canceled has been more than one year, but fewer than four years, the applicant shall provide one of the following:

(A) Evidence of completion of a minimum of 20 hours of continuing education credit hours for each year the applicant has not been in active practice;

(B) proof of completion of continuing education required by the national athletic trainers' association board of certification, inc., as evidenced by proof of active status certification; or

(C) proof that the applicant has passed the written simulation section of the examination required for a license within 12 months before the date the application was submitted.

(3) If the time since the license expired has been four years or more, the applicant shall provide one of the following:

(A) Proof of current active status certification by the national athletic trainers' association board of certification, inc.; or

(B) proof that the applicant has passed the examination required for a registration within 12 months before the date the application was submitted.

(4) If, since the date the license was canceled, the applicant has been in active practice as an ath-

letic trainer in another state or jurisdiction that requires a license, registration, or certification to practice, the applicant shall submit proof of the current license, registration, or certification and proof of compliance with the continuing education requirements of that jurisdiction.

(b) Each applicant seeking reinstatement of a revoked license shall successfully complete an individually tailored program approved by the board. (Authorized by K.S.A. 2004 Supp. 65-6905 and K.S.A. 2004 Supp. 65-6911; implementing K.S.A. 2004 Supp. 65-6909; effective Nov. 15, 2002; amended Sept. 9, 2005.)

**100-69-12. Application.** (a) Each applicant for licensure as an athletic trainer shall submit a completed application on a form provided by the board. The application shall include the following information in legible writing:

(1) The applicant's full name;

(2) the applicant's mailing address. If the applicant's mailing address is different from the applicant's residential address, the applicant shall also provide the residential address;

(3) the applicant's social security number, driver's license number, nondriver identification number, or individual tax identification number if the applicant is advised that providing a social security number is voluntary pursuant to K.S.A. 74-139 and 74-148, and amendments thereto, and that if the social security number is provided, the agency may provide this number to the Kansas department of social and rehabilitation services for child support enforcement purposes and to the Kansas department of revenue's director of taxation;

(4) information on any licenses, registrations, or certifications issued to the applicant to practice any health care profession;

(5) information on any prior acts constituting unprofessional conduct, as defined in K.A.R. 100-69-7, that could constitute grounds for denial of the application;

(6) the applicant's daytime telephone number;

(7) the applicant's date and place of birth;

(8) the name of each educational program recognized under K.A.R. 100-69-1 that the applicant attended, including the program from which the applicant graduated, the degree awarded to the applicant, and the date of graduation;

(9) the number of times the applicant has taken the examination required by the board for licensure and the date that the applicant passed the examination; and

(10) a notarized release authorizing the board to receive any relevant information, files, or records requested by the board in connection with the application.

(b) Each applicant shall submit the following with the application:

- (1) The fee required by K.A.R. 100-69-5;
- (2) an official transcript that specifies the degree awarded from an educational program recognized by the board under K.A.R. 100-69-1;
- (3) a verification on a form provided by the board of each license, registration, or certification issued to the applicant by any state or the District of Columbia relating to any health care profession;
- (4) a current photograph, two by three inches in size, of the applicant's head and shoulders taken within 90 days before the date the application is received by the board; and
- (5) evidence provided directly to the board from the testing entity recognized and approved under K.A.R. 100-69-3 that the applicant has passed the examination.

(c) The applicant shall sign the application under oath and have the application notarized. (Authorized by K.S.A. 2008 Supp. 65-6905; implementing K.S.A. 2008 Supp. 65-6906; effective June 4, 2010.)

**Article 72.—NATUROPATHY**

**100-72-1. Fees.** The following fees shall be collected by the board:

(a) Application for registration .....	\$165.00
(b) registration renewal .....	\$125.00
(c) registration late renewal additional fee .....	\$20.00
(d) registration reinstatement .....	\$155.00
(e) certified copy of registration .....	\$15.00
(f) temporary registration .....	\$30.00
(g) acupuncture certification .....	\$20.00

(Authorized by K.S.A. 65-7203; implementing K.S.A. 65-7207 and K.S.A. 65-7213; effective, T-100-1-2-03, Jan. 2, 2003; effective May 23, 2003; amended, T-100-10-16-08, Oct. 16, 2008; amended Feb. 13, 2009.)

**100-72-2. Application.** (a) Each individual who desires to register as a naturopathic doctor shall submit an application on a form provided by the board. The form shall contain the following information:

- (1) The applicant's full name;
  - (2) the applicant's social security number, individual tax identification number, driver's license number, or nondriver identification number, if the applicant is advised that providing a social security number is voluntary pursuant to K.S.A. 74-139 and 74-148, and amendments thereto, and that if the social security number is provided, the agency may provide this number to the Kansas department of social and rehabilitation services for child support enforcement purposes and to the Kansas department of revenue's director of taxation;
  - (3) the applicant's mailing address. If the applicant's mailing address is different from the applicant's residential address, the applicant shall also provide the residential address;
  - (4) the applicant's date and place of birth;
  - (5) the applicant's daytime phone number;
  - (6) the names of all educational programs recognized under K.A.R. 100-72-4 that the applicant attended, including the program from which the applicant graduated, the degree awarded to the applicant, and the date of graduation;
  - (7) notarized certification that the applicant has completed a program in naturopathy from a postsecondary school recognized under K.A.R. 100-72-4;
  - (8) the issue date; state, territory, the District of Columbia, or other country of issuance; and the identifying number on any license, registration, or certification issued to the applicant to practice any health care profession;
  - (9) documentation of any prior acts constituting unprofessional conduct as defined in K.S.A. 65-7208, and amendments thereto, and K.A.R. 100-72-3;
  - (10) the number of times the applicant has taken the examination required by the board for licensure and the date the applicant passed the examination; and
  - (11) a notarized release authorizing the board to receive any relevant information, files, or records requested by the board in connection with the application.
- (b) Each applicant shall submit the following with the application:
- (1) The fee required by K.A.R. 100-72-1;
  - (2) an official transcript for the applicant from an educational program approved by the board, as provided in K.A.R. 100-72-4, that specifies the degree awarded to the applicant;
  - (3) a verification from each state, country, territory, or the District of Columbia where the appli-

cant has been issued any license, registration, or certification to practice any health care profession;

(4) a photograph of the applicant measuring two inches by three inches and showing the head and shoulder areas only. The photograph shall be taken within 90 days before the date of application; and

(5) evidence provided directly to the board from the testing entity recognized and approved under K.A.R. 100-72-5 that the applicant has passed the examination.

(c) The applicant shall sign the application under oath and shall have the application notarized. (Authorized by K.S.A. 65-7203; implementing K.S.A. 65-7203, 65-7204, and K.S.A. 2008 Supp. 65-7208; effective, T-100-1-2-03, Jan. 2, 2003; effective May 23, 2003; amended June 4, 2010.)

**100-72-3. Unprofessional conduct: defined.** “Unprofessional conduct” means the commission of any of the following by an applicant or a registrant: (a) Unlawfully invading any branch of the healing arts by providing professional services that exceed the statutory definition of naturopathy, unless the professional services are provided under the supervision of or by order of a person who is licensed to practice the healing arts;

(b) identifying the professional services provided under authority of registration by the board as being other than naturopathy;

(c) providing professional services under a false or assumed name or by impersonating another person registered by the board as a naturopath;

(d) practicing as a naturopathic doctor without reasonable skill and safety because of any of the following:

(1) Illness;

(2) alcoholism;

(3) excessive use of drugs, controlled substances, chemicals, or any other type of material; or

(4) a result of any mental or physical condition;

(e) having a naturopathic license, registration, or certification revoked, suspended, or limited or having an application for any of these credentials denied by the proper regulatory authority of another state, territory, or country, or of the District of Columbia for conduct that would constitute grounds for denial, refusal to renew, suspension, or revocation of a registration under K.S.A. 65-7208 and amendments thereto;

(f) cheating or attempting to subvert the validity of the examination required for registration;

(g) providing professional services within this state without maintaining a policy of professional

liability insurance as required by K.S.A. 65-7217 and amendments thereto;

(h) failing to furnish to the board, or to its investigators or representatives, any information legally requested by the board;

(i) being sanctioned or disciplined by a review committee for acts or conduct that would constitute grounds for denial, refusal to renew, suspension, or revocation of a registration under K.S.A. 65-7208 and amendments thereto;

(j) surrendering a license, registration, or certification to practice naturopathy in another state while disciplinary proceedings are pending for acts or conduct that would constitute grounds for denial, refusal to renew, suspension, or revocation of a registration under K.S.A. 65-7208 and amendments thereto;

(k) more than one instance involving failure to adhere to the applicable standard of care to a degree that constitutes ordinary negligence, as determined by the board;

(l) representing to a patient that a manifestly incurable disease, condition, or injury can be permanently cured;

(m) providing naturopathy to a patient without the consent of the patient or the patient’s legal representative;

(n) willfully betraying confidential information;

(o) advertising the ability to perform in a superior manner any professional service related to naturopathy;

(p) using any advertisement that is false, misleading, or deceptive in a material respect;

(q) committing conduct likely to deceive, defraud, or harm the public;

(r) making a false or misleading statement regarding the applicant’s or registrant’s skill;

(s) committing any act of sexual abuse, misconduct, or exploitation;

(t) obtaining any fee by fraud, deceit, or misrepresentation;

(u) charging an excessive fee for services rendered;

(v) failing to keep written records justifying the course of treatment of the patient;

(w) delegating naturopathy to a person who the registrant knows or has reason to know is not qualified by training or experience to perform it;

(x) directly or indirectly giving or receiving any fee, commission, rebate, or other compensation for professional services not actually and personally rendered, other than through the legal functioning of a professional partnership, professional corporation, limited liability company, or similar

business entity that may be performed only by designated licensed or registered professionals;

(y) using experimental forms of diagnosis or treatment without adequate informed consent of the patient or the patient's legal guardian;

(z) administering, dispensing, or prescribing any natural substance or device for other than an accepted therapeutic purpose;

(aa) offering, undertaking, or agreeing to cure or treat a disease, injury, ailment, or infirmity by a secret means, method, device, or instrumentality;

(bb) offering any treatment that has been demonstrated by controlled trials to lack efficacy or that has been demonstrated by controlled trials as likely to harm the patient, except in the course of clinical investigation. If the registrant participates in a clinical investigation, before the investigation is begun, the registrant shall apply for and obtain approval of the investigation from the board, in addition to meeting all other requirements of applicable laws; or

(cc) violating any provision of these regulations, or any provision of the naturopathic doctor registration act and amendments thereto. (Authorized by and implementing K.S.A. 65-7208; effective, T-100-1-2-03, Jan. 2, 2003; effective May 23, 2003.)

**100-72-4. Criteria for approval of programs in naturopathy.** To be recognized by the board as providing an approved educational program in naturopathy, each school of naturopathy shall meet the following standards: (a) The accreditation standards for naturopathic medical education, as specified in part two of the "handbook of accreditation for naturopathic medicine programs," 2002 edition, published by the council on naturopathic medical education and hereby adopted by reference; and

(b) the accreditation criteria of the commission on institutions of higher education of the north central association of colleges and schools, or its regional equivalent, as specified in chapter four of the "handbook of accreditation," second edition, published September 1997, and in the "addendum to the handbook of accreditation, second edition," published March 2002, which are hereby adopted by reference. (Authorized by K.S.A. 65-7203; implementing K.S.A. 65-7204; effective, T-100-1-2-03, Jan. 2, 2003; effective May 23, 2003.)

**100-72-5. Examinations.** (a) Each applicant for registration by examination as a naturopathic doctor shall submit proof of having passed

a nationally administered, standardized examination that is approved by the board and consists of written questions and practical questions assessing knowledge and proficiency on subject matter from the following content areas:

(1) Basic sciences, including the following:

- (A) Anatomy;
- (B) biochemistry;
- (C) microbiology;
- (D) pathology; and
- (E) physiology; and

(2) clinical sciences, including the following:

- (A) Emergency medicine and public health;
- (B) laboratory diagnosis and diagnostic imaging;
- (C) botanical medicine;
- (D) clinical nutrition;
- (E) physical and clinical diagnosis;
- (F) physical medicine;
- (G) psychology;
- (H) counseling;
- (I) ethics; and
- (J) homeopathy.

(b) Each applicant for specialty certification in naturopathic acupuncture shall submit proof of having passed a nationally administered, standardized examination that is approved by the board and consists of written and practical questions assessing knowledge and proficiency in acupuncture.

(c) In order to qualify as board-approved, the following examinations as administered by the North American board of naturopathic examiners shall meet the examination standards established by the board in this regulation:

- (1) Part I, part II, and the homeopathic add-on clinical series of the naturopathic physicians licensing examinations (NPLEX); and
- (2) the acupuncture add-on clinical series of NPLEX.

(d) To pass an approved examination, each applicant for registration shall obtain a criterion-referenced score of at least 75. (Authorized by K.S.A. 65-7203; implementing K.S.A. 65-7205; effective, T-100-1-2-03, Jan. 2, 2003; effective May 23, 2003.)

**100-72-6. Professional liability insurance.** (a) Each person registered by the board as a naturopathic doctor shall, before rendering professional services within the state, submit to the board evidence that the person is maintaining professional liability insurance coverage as required by K.S.A. 65-7217 and amendments thereto for which the limit of the insurer's liability is not

less than \$200,000 per claim, subject to an annual aggregate of not less than \$600,000 for all claims made during the period of coverage.

(b) Each person registered by the board as a naturopathic doctor and rendering professional services in this state shall submit, with the annual application for renewal of the registration, evidence that the person is maintaining the professional liability insurance coverage specified in subsection (a). (Authorized by K.S.A. 65-7203; implementing K.S.A. 2004 Supp. 65-7217; effective, T-100-1-2-03, Jan. 2, 2003; effective May 23, 2003; amended July 22, 2005.)

**100-72-7. Registration renewals; continuing education.** (a) Each registration initially issued or renewed by the board on or after January 1, 2009 and through December 31, 2009 shall expire on December 31, 2010.

(b) Each registration initially issued or renewed by the board on or after January 1, 2010 shall expire on December 31 of the year of issuance.

(c) Each registered naturopath who wishes to renew the registration shall meet the following requirements:

(1) Submit an application for renewal of registration and the registration renewal fee; and

(2) for the second and each subsequent renewal and for each renewal after reinstatement, submit evidence of satisfactory completion of at least 50 hours of continuing education since the registration was last renewed or was reinstated, whichever is more recent. At least 20 of these hours shall be taken in a professionally supervised setting, and not more than 30 of these hours may be taken in a non-supervised setting.

(d) Continuing education activities shall be designed to maintain, develop, or increase the knowledge, skills, and professional performance of persons registered to practice as a naturopathic doctor. All continuing education shall deal primarily with the practice of naturopathy. Each continuing education activity that occurs in a professionally supervised setting shall be presented by a provider.

(e) One hour shall mean 60 minutes of instruction or the equivalent.

(f) The content of each continuing education activity shall have a direct bearing on patient care.

(g) An activity occurring in a "professionally supervised setting" shall mean any of the following:

(1) Lecture, which means a discourse given before an audience for instruction;

(2) panel discussion, which means the presentation of a number of views by several professional individuals on a given subject;

(3) workshop, which means a series of meetings designed for intensive study, work, or discussion in a specific field of interest;

(4) seminar, which means directed, advanced study or discussion in a specific field of interest;

(5) symposium, which means a conference that consists of more than a single session and is organized for the purpose of discussing a specific subject from various viewpoints and by various speakers; or

(6) other structured, interactive, and formal learning methods approved by the board on a case-by-case basis.

(h) An activity occurring in a "non-supervised setting" shall mean any of the following:

(1) Teaching health-related courses to practicing naturopathic doctors or other health professionals;

(2) presenting a scientific paper to an audience of health professionals, or publishing a scientific paper in a medical or naturopathic journal;

(3) engaging in self-instruction, including journal reading and the use of television and other audiovisual materials;

(4) receiving instruction from a medical or naturopathic consultant;

(5) participating in programs concerned with review and evaluation of patient care;

(6) spending time in a self-assessment examination, not including examinations and quizzes published in journals; or

(7) engaging in meritorious learning experiences that provide a unique educational benefit to the registrant.

(i) To provide evidence of satisfactory completion of continuing education, each registrant shall submit the following to the board, as applicable:

(1) Documented evidence of attendance at each activity occurring in a professionally supervised setting; and

(2) proof of participation in each activity occurring in a non-supervised setting, which shall include a copy of any professional publication, the certification of a teaching activity, or the personal verification of any other activity occurring in a non-supervised setting. (Authorized by K.S.A. 65-7203; implementing K.S.A. 2007 Supp. 65-7209; effective, T-100-1-2-03, Jan. 2, 2003; effective Nov. 14, 2003; amended March 27, 2009.)

**100-72-8. Naturopathic formulary.** The following list shall constitute the naturopathic formulary for drugs and substances that are approved for intramuscular (IM) or intravenous (IV) administration, or both, by a naturopathic doctor pursuant to a written protocol entered into with a physician:

- (a) Electrolytes and carrier solutions:
  - (1) Sterile water (IV, IM);
  - (2) electrolyte solution (IV);
  - (3) lactated ringers (IV);
  - (4) saline solution (IV); and
  - (5) half normal saline (IV);
- (b) vitamins:
  - (1) Vitamin C (IV);
  - (2) B complex (IV, IM);
  - (3) folic acid (IV, IM);
  - (4) vitamin D (IV);
  - (5) vitamin E (IV);
  - (6) vitamin K (IV, IM);
  - (7) vitamin A (IV, IM); and
  - (8) vitamin B<sub>12</sub> (IV, IM);
- (c) minerals:
  - (1) Calcium (IV, IM);
  - (2) chromium (IV, IM);
  - (3) copper (IV, IM);
  - (4) iron (IV, IM);
  - (5) zinc (IV, IM);
  - (6) iodine (IV, IM);
  - (7) magnesium (IV, IM);
  - (8) selenium (IV, IM);
  - (9) molybdenum (IV, IM);
  - (10) vanadium (IV, IM);
  - (11) phosphorus (IV, IM); and
  - (12) manganese (IV, IM);
- (d) amino acids:
  - (1) Amino acids, singular or in combination (IV);
  - (2) glutathione (IV, IM);
  - (3) tryptophan (IV); and
  - (4) 5 hydroxy tryptophan (IV);
- (e) botanicals:
  - (1) Glycyrrhizin (IV, IM); and
  - (2) thujone-free artemisia (IV, IM); and
- (f) the following miscellaneous drugs and substances:
  - (1) Lipids (IV);
  - (2) co-enzyme Q 10 (also known as ubiquinone or Co-Q 10) (IV, IM);
  - (3) alpha lipoic acid (IV, IM);
  - (4) hydrochloric acid (IV);
  - (5) epinephrine (IM);
  - (6) chelators, only with prior board approval:
    - (A) EDTA (IV); and

- (B) DMPS (IV);
- (7) diphenhydramine hydrochloride (IV, IM); and
- (8) atropine sulfate (IV). (Authorized by K.S.A. 65-7203; implementing K.S.A. 65-7212; effective Jan. 21, 2005.)

**100-72-9. Written protocol.** (a) Each physician entering into a written protocol with a registered naturopathic doctor shall be licensed to practice medicine and surgery in the state of Kansas and shall provide a copy of the protocol to the board within 10 days of entering into the protocol.

(b) Each written protocol between a physician and a naturopathic doctor shall contain the following information:

(1) The date on which the protocol was signed and the signatures of the physician and the naturopathic doctor;

(2) the license number of the physician and the registration number of the naturopathic doctor;

(3) the names of the drugs and substances from the naturopathic formulary, which is specified in K.A.R. 100-72-8, that the naturopathic doctor will be allowed to administer and the method of administration of each drug and substance;

(4) the usage and dosage authorized for each drug and substance;

(5) any warning or precaution associated with the administration of each drug and substance;

(6) a statement that a current copy of the protocol will be maintained at each practice location of the physician and the naturopathic doctor and that any change made to the protocol will be provided to the board within 10 days of making the change;

(7) a statement that the physician is professionally competent to order each drug and substance that the protocol authorizes the naturopathic doctor to administer and that treating the conditions identified in the protocol is within the lawful and customary practice of the physician;

(8) a statement that the authority to administer any drug or substance intravenously is limited to times when the physician either is physically present in the same building or can be present within five minutes at the location where the service is performed;

(9) the identification of any task or service that the physician delegates to any unlicensed person working with the naturopathic doctor;

(10) a statement that emergency procedures have been established by the physician and adopted by the naturopathic doctor to protect the

patient in the absence of the physician and that the naturopathic doctor is competent to carry out those emergency procedures; and

(11) any conditions imposed by the physician on the naturopathic doctor before the administration of any of the drugs and substances listed in the protocol.

(c) Each written protocol shall be reviewed by the physician and naturopathic doctor at least annually, and each review shall be signed and dated on the current copy of the protocol. (Authorized by K.S.A. 65-7203; implementing K.S.A. 65-7202; effective Nov. 19, 2004.)

**Article 73.—RADIOLOGIC TECHNOLOGISTS**

**100-73-1. Fees.** The following fees shall be collected by the board:

- (a) Application for license ..... \$60.00
- (b) Annual renewal of license:
  - (1) Paper renewal..... \$50.00
  - (2) On-line renewal..... \$45.00
- (c) Late renewal of license:
  - (1) Paper late renewal..... \$55.00
  - (2) On-line late renewal..... \$50.00
- (d) Reinstatement of cancelled license... \$60.00
- (e) Certified copy of license ..... \$15.00
- (f) Temporary license..... \$25.00
- (g) Reinstatement of revoked license ... \$100.00

(Authorized by K.S.A. 2008 Supp. 65-7312; implementing K.S.A. 2008 Supp. 65-7308; effective, T-100-7-1-05, July 1, 2005; effective Sept. 23, 2005; amended Aug. 17, 2007; amended, T-100-6-2-09, June 2, 2009; amended Sept. 11, 2009.)

**100-73-2. Application.** (a) Each individual for licensure as a radiologic technologist shall submit an application on a form provided by the board. The form shall contain the following information in legible writing:

- (1) The applicant’s full name;
- (2) the applicant’s social security number, driver’s license number, nondriver identification number, or individual tax identification number if the applicant is advised that providing a social security number is voluntary pursuant to K.S.A. 74-139 and 74-148, and amendments thereto, and that if the social security number is provided, the agency may provide this number to the Kansas department of social and rehabilitation services for child support enforcement purposes and to the Kansas department of revenue’s director of taxation;

(3) the applicant’s residence address and, if different from the residence address, the applicant’s current mailing address;

(4) the applicant’s date and place of birth;

(5) the names of all educational programs recognized under K.A.R. 100-73-2 that the applicant attended, including the program from which the applicant graduated, the degree received, and the date of graduation;

(6) information on whether the applicant is currently certified or registered by any national organization; and

(7) for each license, registration, or certification issued to the applicant to practice any health care profession, the following information:

(A) The date of issuance;

(B) the identifying number on the license, registration, or certification; and

(C) the place of issuance, specifying the state, country, or territory, or the District of Columbia; and

(8) documentation of any prior acts constituting unprofessional conduct as defined in K.S.A. 65-7313, and amendments thereto, and K.A.R. 100-73-6.

(b)(1) Each applicant shall submit the following with the application:

(A) The fee required by K.A.R. 100-73-1;

(B) an official transcript for the applicant from an educational program approved by the board, as specified in K.A.R. 100-73-3, that indicates the degree awarded to the applicant;

(C) a verification from each state or jurisdiction where the applicant has been issued any license, registration, or certification to practice any health care profession; and

(D) a photograph of the applicant measuring two inches by three inches and showing the head and shoulder areas only. The photograph shall be taken within 90 days of submission of the application for licensure.

(2) In addition to meeting the requirements specified in paragraph (1) of this subsection, each applicant shall have the testing entity specified in K.A.R. 100-73-4 provide evidence directly to the board that the applicant has passed the national certifying examination.

(c) Each applicant shall sign the application under oath and shall have the application notarized. (Authorized by K.S.A. 2009 Supp. 65-7312; implementing K.S.A. 2009 Supp. 65-7305; effective, T-100-7-1-05, July 1, 2005; effective Sept. 23, 2005; amended May 14, 2010.)

**100-73-3. Criteria for approval of programs in nuclear medicine technology, radiation therapy, and radiography.** (a) To be recognized by the board as providing an approved educational program in radiation therapy or radiography, each school shall meet one of the following:

(1) The accreditation standards for the radiologic sciences, as specified in the “standards for an accredited educational program in radiologic sciences,” adopted and published by the joint review committee on education in radiologic technology, effective January 1, 2002 and hereby adopted by reference; or

(2) the accreditation criteria of the commission on institutions of higher education of the north central association of colleges and schools, or its regional equivalent, as specified in chapter four of the “handbook of accreditation,” second edition, published September 1997, and in the “addendum to the handbook of accreditation,” second edition, published March 2002, which are hereby adopted by reference.

(b) To be recognized by the board as providing an approved educational program in nuclear medicine technology, each school shall meet one of the following:

(1) The accreditation standards for nuclear medicine technologist as specified in the “essentials and guidelines for an accredited educational program for the nuclear medicine technologist,” adopted and published by the joint review committee on educational programs in nuclear medicine technology, as revised in 2003 and hereby adopted by reference; or

(2) the accreditation criteria of the commission on institutions of higher education of the north central association of colleges and schools, or its regional equivalent, as specified in chapter four of the “handbook of accreditation,” second edition, published September 1997, and in the “addendum to the handbook of accreditation,” second edition, published March 2002, which are adopted by reference in paragraph (a)(2). (Authorized by K.S.A. 2004 Supp. 65-7312; implementing K.S.A. 2004 Supp. 65-7305; effective, T-100-7-1-05, July 1, 2005; effective Sept. 23, 2005.)

**100-73-4. Examinations.** (a) Each applicant for licensure as a radiologic technologist who has completed a course of study in radiography shall submit proof of having passed a nationally administered, standardized examination. This examination shall be one that is approved by the

board and consists of written questions assessing knowledge on subject matter from the following content categories:

- (1) Radiation protection;
- (2) equipment operation and quality control;
- (3) image production and evaluation;
- (4) radiographic procedures; and
- (5) patient care and education.

(b) Each applicant for licensure as a radiologic technologist who has completed a course of study in radiation therapy shall submit proof of having passed a nationally administered, standardized examination. This examination shall be one that is approved by the board and consists of written questions assessing knowledge on subject matter from the following content categories:

- (1) Radiation protection and quality assurance;
- (2) clinical concepts in radiation oncology;
- (3) treatment planning;
- (4) treatment delivery; and
- (5) patient care and education.

(c) Each applicant for licensure as a radiologic technologist who has completed a course of study in nuclear medicine technology shall submit proof of having passed a nationally administered, standardized examination. This examination shall be one that is approved by the board and consists of written questions assessing knowledge on subject matter from the following content categories:

- (1) Radiation protection and safety;
- (2) radionuclides and radiopharmaceuticals;
- (3) instrumentation and quality control;
- (4) diagnostic and therapeutic procedures; and
- (5) patient care and education.

(d) Each applicant who has passed an approved examination required for licensure and has not been in the active practice of radiologic technology for more than one year but fewer than four years from the date the application was submitted shall provide the board with one of the following:

- (1) Evidence of completion of a minimum of 12 continuing education credits for each year during which the applicant has not been in active practice;
- (2) proof of current active status certification by the American registry of radiologic technologists or the nuclear medicine technology certification board; or
- (3) proof that the applicant has passed an approved examination required for licensure within the 12 months before the date the application was submitted.

(e) Each applicant who has passed an approved examination for licensure and has not been in the

active practice of radiologic technology for four years or more from the date the application was submitted shall provide the board with one of the following:

(1) Proof of current active status certification by the American registry of radiologic technologists or the nuclear medicine technology certification board; or

(2) proof that the applicant has passed an approved examination required for licensure within the 12 months before the date the application was submitted.

(f) To pass an approved examination, each applicant shall obtain a scaled score of at least 75. (Authorized by K.S.A. 2004 Supp. 65-7312; implementing K.S.A. 2004 Supp. 65-7305 and 65-7306, as amended by L. 2005, ch. 34, § 3; effective, T-100-7-1-05, July 1, 2005; effective Sept. 23, 2005.)

**100-73-5. Expiration of license.** (a) Each radiologic technologist license issued before June 1, 2006 shall expire on September 30, 2006.

(b) For each license issued on or after June 1, 2006, the following requirements shall apply:

(1) Each radiologic technologist license issued within the seven-month period beginning June 1 and ending December 31 shall expire on September 30 of the following year.

(2) Each radiologic technologist license issued within the five-month period beginning January 1 and ending May 31 shall expire on September 30 of the same year. (Authorized by K.S.A. 2004 Supp. 65-7312; implementing K.S.A. 2004 Supp. 65-7307; effective, T-100-7-1-05, July 1, 2005; effective Sept. 23, 2005.)

**100-73-6. Unprofessional conduct; defined.** “Unprofessional conduct” shall mean the commission of any of the following by an applicant or a licensee: (a) Having a radiologic technologist license, registration, or certification revoked, suspended, or limited or having an application for any of these credentials denied by the proper regulatory authority of another state, territory, or country, or of the District of Columbia;

(b) cheating or attempting to subvert the validity of the examination required for registration;

(c) failing to furnish to the board, or to its investigators or representatives, any information legally requested by the board;

(d) being sanctioned or disciplined by a peer review committee, or a medical care facility for

acts or conduct that would constitute grounds for denial, limitation, suspension, or revocation of a license under K.S.A. 65-7313 and amendments thereto;

(e) surrendering a license, registration, or certification to practice radiologic technology in another state while disciplinary proceedings are pending for acts or conduct that would constitute grounds for denial, limitation, suspension, or revocation of a license under K.S.A. 65-7313 and amendments thereto;

(f) being professionally incompetent, as defined in K.S.A. 65-2837 and amendments thereto;

(g) willfully betraying confidential information;

(h) committing conduct likely to deceive, defraud, or harm the public;

(i) committing any act of sexual abuse, misconduct, or exploitation;

(j) delegating radiologic technology to a person who the licensee knows or has reason to know is not qualified by training or experience to perform it; or

(k) violating any provision of these regulations or any provision of the radiologic technologists practice act and amendments thereto. (Authorized by and implementing K.S.A. 2004 Supp. 65-7313; effective, T-100-7-1-05, July 1, 2005; effective Sept. 23, 2005.)

**100-73-7. License renewal; continuing education.** (a) As a condition of license renewal, each licensed radiologic technologist shall certify, on the form provided with the license renewal application, that, during the 12-month period immediately preceding the license expiration date, the person completed at least 12 credits of continuing education. This requirement shall not apply to any person renewing a license for the first time.

(b) Any licensee may request that the board grant an extension of the time to complete the required continuing education if, during the 12-month period immediately preceding the license expiration date, the person experienced an undue hardship resulting from illness, injury, or any other circumstance preventing the licensee's timely completion of continuing education.

(c) One credit shall be 50 minutes of instruction or the equivalent.

(d) Each person who certifies completion of continuing education shall, for at least three years following the date of certification, maintain documentation of completion that shall include one of the following:

(1) A verification of completion issued by a national, state, or local organization with standards for continuing education that are at least as stringent as the standards of the board;

(2) a copy of the written materials provided with the continuing education activity, along with documentation of all of the following:

(A) The name, address, and telephone number of the activity sponsor and the name and telephone number of a contact person for the activity sponsor;

(B) the title of the continuing education activity;

(C) the date and location of the activity;

(D) specification of whether the activity was presented in person or by video, satellite, or internet;

(E) the number of continuing education credits completed;

(F) the activity agenda;

(G) the name and professional biographical information of each presenter; and

(H) written proof of participation; or

(3) a notarized certificate of current registration with the American registry of radiologic technologists or the nuclear medicine technology certification board.

(e) Within 30 days following a written request by the board to a licensee, the licensee shall provide the board with proof of completion of continuing education as specified in this regulation.

(f) The categories of continuing education experiences shall be the following:

(1) Meetings and courses. Meetings and courses shall be planned, organized, and administered to enhance the knowledge and skills that a radiologic technologist uses to provide services to patients, the public, or the medical profession. Meetings and courses shall include the following:

(A) Symposium. "Symposium" shall mean a conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and by various speakers.

(B) Seminar. "Seminar" shall mean directed advanced study or discussion in a specific field of interest.

(C) Workshop. "Workshop" shall mean a series of meetings designed for intensive study, work, or discussion in a specific field of interest.

(D) Conference. "Conference" shall mean a formal meeting of a number of people for a discussion in a specific field of interest.

(E) Home study course. "Home study course"

shall mean a correspondence course designed for advanced study in a specific field of interest.

(2) Leadership. Leadership shall include any presentation at one of the types of meetings described in paragraphs (f)(1)(A) through (D). The number of credits granted for leadership shall be the following:

(A) Six credits for instructor or instructor-trainer at a cardiopulmonary resuscitation (CPR) course provided by the American red cross, American heart association, or American safety and health institute; and

(B) two credits for the development of each one-hour presentation that meets the requirements of paragraph (f)(1)(A), (B), (C), or (D).

(3) Classwork. Classwork shall include the following:

(A) Six credits for satisfactory completion of an advanced life support class or a pediatric life support class provided by the American red cross, the American heart association, or the American safety and health institute; and

(B) 12 credits for each academic quarter or semester credit granted by a post-secondary educational institution in a course that is relevant to radiologic technology or patient care for which the student received a grade of at least C or its equivalent, or a grade of pass in a pass-fail course. Relevant courses shall include courses in the biologic sciences, physical sciences, radiologic sciences, health and medical sciences, social studies, communication, mathematics, computers, management, and education methodology.

(g) Each continuing education activity offered using distance-learning media shall qualify for continuing education credit if the activity is in one of the categories of continuing education experiences specified in subsection (f) and meets all of the following conditions:

(1) The activity has a mechanism in place for the user to be able to contact the provider regarding questions about the continuing education activity.

(2) The provider of the activity evaluates the user's knowledge of the subject matter discussed in the continuing education activity.

(3) The activity limits the amount of time within which a user can complete the activity, which shall be no more than twice the number of hours for each credit awarded for the activity.

(4) The person or organization offering the activity provides a printed verification of completion of the activity or allows the user to print verification when the activity is completed. (Authorized

by K.S.A. 2005 Supp. 65-7307 and 65-7312; implementing K.S.A. 2005 Supp. 65-7307; effective Nov. 27, 2006.)

**100-73-8. Reinstatement; canceled and revoked licenses.** (a) Each applicant desiring to reinstate a license that has been canceled for failure to renew for more than 30 days shall submit proof of continuing education to the board as follows:

(1) If the time since the license was canceled has been one year or less, no continuing education shall be required in addition to that which would have been necessary had the license been renewed before cancellation.

(2) If the time since the license was canceled has been more than one year but fewer than four years, the applicant shall provide one of the following:

(A) Evidence of completion of a minimum of 12 credits of continuing education for each year during which the applicant has not been in active practice;

(B) proof of completion of the continuing education required by the American registry of radiologic technologists or nuclear medicine technology certification board, as evidenced by proof of current active status certification; or

(C) proof that the applicant has passed an examination required for a license within 12 months before the date the application was submitted.

(3) If the time since the license was canceled has been four years or more, the applicant shall provide one of the following:

(A) A notarized certificate of current registration with the American registry of radiologic technologists or nuclear medicine technology certification board; or

(B) proof that the applicant has passed the examination required for a license within 12 months before the date on which the application was submitted.

(4) If, since the date the license was canceled, the applicant has been in active practice as a radiologic technologist in another state or jurisdiction that requires a license, registration, or certification to practice, the applicant shall submit proof of the current license, registration, or certification and proof of compliance with the continuing education requirements of that jurisdiction.

(b) Each applicant seeking reinstatement of a revoked license shall be required to successfully complete an individually tailored program ap-

proved by the board. (Authorized by K.S.A. 2005 Supp. 65-7307 and 65-7312; implementing K.S.A. 2005 Supp. 65-7307; effective Nov. 27, 2006.)

**100-73-9. Continuing education; persons exempt from licensure.** Each person who performs any radiologic technology procedures and who is exempt from the licensure requirement pursuant to K.S.A. 65-7304(f), and amendments thereto, shall obtain 12 credits of continuing education each calendar year. The continuing education shall meet the criteria for continuing education specified in K.A.R. 100-73-7 and shall include the subjects for the training of x-ray equipment operators specified in K.A.R. 28-35-256. (Authorized by K.S.A. 2006 Supp. 65-7312; implementing K.S.A. 2006 Supp. 65-7304; effective July 6, 2007; amended March 28, 2008.)

#### Article 75.—CONTACT LENSES

**100-75-1. Fees.** The following fees shall be collected by the board:

- (a) Application for registration ..... \$150.00
- (b) Annual renewal ..... \$150.00

(Authorized by K.S.A. 65-4968; implementing K.S.A. 65-4967; effective, T-100-1-2-03, Jan. 2, 2003; effective May 23, 2003.)

#### Article 76.—ACUPUNCTURISTS

**100-76-1. Fees.** (a) The following fees shall be collected by the board:

- (1) Application for license ..... \$ 165.00
- (2) Annual renewal of active license:
  - (A) Paper renewal ..... \$ 150.00
  - (B) On-line renewal ..... \$ 125.00
- (3) Annual renewal of inactive license:
  - (A) Paper renewal ..... \$ 125.00
  - (B) On-line renewal ..... \$ 100.00
- (4) Annual renewal of exempt license:
  - (A) Paper renewal ..... \$ 125.00
  - (B) On-line renewal ..... \$ 100.00
- (5) Conversion from inactive to active license ..... \$ 75.00
- (6) Conversion from exempt to active license ..... \$ 75.00
- (7) Late renewal:
  - (A) Paper renewal ..... \$ 50.00
  - (B) On-line renewal ..... \$ 25.00
- (8) Application for reinstatement of canceled license ..... \$ 165.00

- (9) Application for reinstatement of revoked license..... \$ 500.00
- (10) Certified copy of license ..... \$ 20.00
- (11) Written verification of license..... \$ 20.00

(b) If a licensed acupuncturist’s initial licensure period is six months or less before the first annual renewal period, the first annual renewal fee shall be prorated at \$10.00 per month for any full or partial month. (Authorized by K.S.A. 2017 Supp. 65-7615; implementing K.S.A. 2017 Supp. 65-7611; effective, T-100-9-21-17, Sept. 21, 2017; effective Jan. 12, 2018.)

**100-76-2. Licensure by examination.**

Each applicant for licensure by examination shall provide the following or the substantial equivalent of the following as determined by the board:

(a) Documentation of successful completion of the certification examination offered by the NCCAOM or an entity with standards equivalent to the standards of NCCAOM at the time the applicant completed the examination as determined by the board. The certification examination shall include the following components:

- (1) Foundations of oriental medicine;
- (2) acupuncture with point location; and
- (3) biomedicine, except that the biomedicine component of the examination shall not be required for any applicant who completed the NCCAOM certification, or its equivalent, before 2005; and

(b) a copy of a clean needle technique (CNT) certificate from the council of colleges of acupuncture and oriental medicine (CCAOM) or NCCAOM. (Authorized by K.S.A. 2017 Supp. 65-7615; implementing K.S.A. 2017 Supp. 65-7606; effective, T-100-9-21-17, Sept. 21, 2017; effective Jan. 12, 2018; amended March 8, 2019.)

**100-76-3. Waiver of examination and education.**

(a) Pursuant to K.S.A. 2017 Supp. 65-7608 and amendments thereto, certain license prerequisites for education and examination shall be waived by the board for each applicant who submits an application on or before January 1, 2018 and provides the following:

(1) Proof that the applicant has completed at least 1,350 hours of curriculum-based study, an approved apprenticeship, or a tutorial program, or a combination of these, excluding on-line study, in the field of acupuncture. Proof of hours may be shown by successful completion of a curriculum-based program, an approved appren-

ticeship, or a tutorial program, or a combination of these, that meets the standards of the NCCAOM or any entity determined by the board to be the equivalent of the NCCAOM. To demonstrate successful completion of the requirements, the applicant shall submit the following:

(A)(i) Evidence that the apprenticeship preceptor either is licensed as an acupuncturist in the state in which the individual practices acupuncture or is a diplomate of acupuncture; and

(ii) a copy of the notes, records, or other documentation maintained by the preceptor conducting the apprenticeship or tutorial program providing evidence of the educational materials used in the apprenticeship and documenting the number of hours taught and the subjects covered; or

- (B) an official school transcript;
- (2) evidence of a current clean needle technique (CNT) certificate obtained from the CCAOM, NCCAOM, or any entity determined to be the equivalent by the board; and

(3) proof that the applicant has been engaged in the practice of acupuncture and has had at least 1,500 patient visits in three of the last five years. The applicant shall provide any of the following for the board’s review:

- (A) Affidavits from at least two people who have practiced acupuncture with the applicant, including office partners, clinic supervisors, and any other individuals approved by the board;
- (B) a copy of each continuing education certificate obtained within the last three years;
- (C) a copy of the applicant’s patient appointment books; or
- (D) a copy of the applicant’s patient charts.

(b) Each applicant shall provide any additional documentation requested by the board. (Authorized by K.S.A. 2017 Supp. 65-7608 and 65-7615; implementing K.S.A. 2017 Supp. 65-7608; effective, T-100-9-21-17, Sept. 21, 2017; effective Jan. 12, 2018.)

**100-76-4. Exempt license; description of professional activities.**

(a) Each person applying for an exempt license shall specify on the application all professional activities related to the practice of acupuncture that the person will perform if issued an exempt license.

(b) The professional activities performed by each individual holding an exempt license shall be limited to the following:

- (1) Performing administrative functions, in-

cluding peer review, utilization review, and expert opinions; and

(2) providing direct patient care services gratuitously or providing supervision, direction, or consultation for no compensation. Nothing in this subsection shall prohibit an exempt license holder from receiving payment for subsistence allowances or actual and necessary expenses incurred in providing these services.

(c) Each person holding an exempt license shall, at the time of license renewal, specify on the renewal application all professional activities related to the practice of acupuncture that the person will perform during the renewal period.

(d) Each person who requests modification of the professional activities on that person's application or renewal application for an exempt license shall notify the board of the modification within 30 days. The request for modification shall be submitted on a form provided by the board.

(e) Each licensed acupuncturist who has held an exempt license for less than two years and requests an active license designation shall submit evidence of satisfactory completion of at least 15 contact hours of continuing education within the preceding one-year period, as specified in K.A.R. 100-76-6.

(f) Each violation of subsection (a), (c), or (d) shall constitute prima facie evidence of unprofessional conduct pursuant to K.S.A. 2017 Supp. 65-7616, and amendments thereto. (Authorized by K.S.A. 2017 Supp. 65-7615; implementing K.S.A. 2017 Supp. 65-7609 and 65-7616; effective, T-100-9-21-17, Sept. 21, 2017; effective Jan. 12, 2018.)

**100-76-5. Professional liability insurance; active license.** (a) Each person applying for an active license in acupuncture shall submit to the board, with the application, evidence that the person has obtained the professional liability insurance coverage required by K.S.A. 2017 Supp. 65-7609, and amendments thereto, for which the limit of the insurer's liability is at least \$200,000 per claim, subject to an annual aggregate of at least \$600,000 for all claims made during the period of coverage.

(b) Each licensed acupuncturist with an active license designation shall submit to the board, with the annual application for license renewal, evidence that the licensee has continuously maintained and currently holds the professional liability insurance coverage specified in subsection (a).

(c) Each licensed acupuncturist who submits an application for change of designation to active license designation shall submit to the board, with the application, evidence that the licensee currently holds the professional liability insurance coverage specified in subsection (a). (Authorized by K.S.A. 2017 Supp. 65-7609 and 65-7615; implementing K.S.A. 2017 Supp. 65-7609; effective, T-100-9-21-17, Sept. 21, 2017; effective Jan. 12, 2018.)

**100-76-6. Continuing education.** (a) Each licensee shall complete at least 30 contact hours of approved continuing education within the 24 months preceding each renewal date in an even-numbered year, except as specified in subsection (b).

(b) A licensee initially licensed less than 12 months before a renewal date when continuing education is required shall not be required to submit evidence of completion of the continuing education required by subsection (a) for the first renewal period. Each licensee initially licensed more than one year but less than two years before a renewal date when continuing education is required shall complete at least 15 contact hours of approved continuing education within the licensure period.

(c) Each licensee shall maintain evidence of successful completion of all continuing education activities for five years from the date of completion of the activity. Evidence of successful completion of the continuing education activities required by subsections (a) and (b) may be requested by the board.

(d) Upon request by a licensee, an extension of up to six months may be granted by the board if the licensee cannot meet the requirements of subsection (a) or (b) due to a substantiated medical condition, natural disaster, death of a spouse or an immediate family member, or any other similar circumstance that renders the licensee incapable of meeting the requirements of subsection (a) or (b). Each request shall include a plan for completing the required continuing education activities.

(e) A contact hour shall consist of 50 minutes of approved continuing education activities. Meals and breaks shall not be included in the calculation of contact hours.

(f) All continuing education activities shall be related to the practice of acupuncture and shall pertain to any of the following:

(1) Clinical skills;

- (2) clinical techniques;
- (3) educational principles when providing service to patients, families, health professionals, health professional students, or the community;
- (4) health care and the health care delivery system;
- (5) problem solving, critical thinking, medical recordkeeping, and ethics;
- (6) policy;
- (7) biomedical science; or
- (8) research.
- (g) Continuing education activities shall consist of the following:
  - (1) Offerings. "Offerings" shall mean any offerings approved by the NCCAOM, by NCCAOM state affiliates, or by an entity with standards substantially equivalent to the standards of the NCCAOM as determined by the board or any other offerings approved by the board, subject to the limitation specified in paragraph (g)(9)(A).
  - (2) Lecture. "Lecture" shall mean a live discourse for the purpose of instruction given before an audience.
  - (3) Panel. "Panel" shall mean the presentation of multiple views by several professional individuals on a given subject, with none of the views considered a final solution.
  - (4) Workshop. "Workshop" shall mean a series of meetings designed for intensive study, work, or discussion in a specific field of interest.
  - (5) Seminar. "Seminar" shall mean directed advanced study or discussion in a specific field of interest.
  - (6) Symposium. "Symposium" shall mean a conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and by various speakers.
  - (7) In-service training. "In-service training" shall mean an educational presentation given to employees during the course of employment that pertains solely to the enhancement of acupuncture skills in the evaluation, assessment, or treatment of patients.
  - (8) Administrative training. "Administrative training" shall mean a presentation that enhances the knowledge of an acupuncturist on the topic of quality assurance, risk management, reimbursement, statutory requirements, or claim procedures.
  - (9) Self-instruction. "Self-instruction" shall mean either of the following:
    - (A) Reading professional literature. A maximum of four contact hours for each continuing educa-

tion cycle shall be awarded. Each licensee shall maintain a log of all professional literature read as a continuing education activity; or

(B) completion of a correspondence, audio, video, or internet course approved by the NCCAOM, by NCCAOM state affiliates, or by an entity with standards substantially equivalent to the standards of the NCCAOM as determined by the board or any other continuing education offerings approved by the board, for which a printed verification of successful completion is provided by the person or organization offering the course.

(10) Continuing education activity presentation. "Continuing education activity presentation" shall mean the preparation and presentation of a continuing education activity that meets the requirements of this subsection. Three contact hours shall be awarded for each hour spent presenting.

(h) No contact hours shall be awarded for any continuing education activity that is repeated within a 48-month period. (Authorized by K.S.A. 65-7615; implementing K.S.A. 65-7609; effective, T-100-9-21-17, Sept. 21, 2017; effective Jan. 12, 2018; amended Nov. 13, 2020.)

**100-76-7. Unprofessional conduct; definitions.** Each of the following terms, as used in K.S.A. 2017 Supp. 65-7616 and amendments thereto and this article of the board's regulations, shall have the meaning specified in this regulation:

(a) "Unprofessional conduct" shall mean any of the following:

(1) Soliciting patients through the use of fraudulent or false advertisements or profiting by the acts of those representing themselves to be agents of the licensee;

(2) representing to a patient that a manifestly incurable disease, condition, or injury can be permanently cured;

(3) assisting in the care or treatment of a patient without the consent of the patient or the patient's legal representative;

(4) using any letters, words, or terms as an affix on stationery or in advertisements or otherwise indicating that the person is entitled to practice any profession regulated by the board or any other state licensing board or agency for which the person is not licensed;

(5) willful betrayal of confidential information;

(6) advertising professional superiority or the performance of professional services in a superior manner;

(7) advertising to guarantee any profession-

al service or to perform any professional service painlessly;

(8) engaging in conduct related to the practice of acupuncture that is likely to deceive, defraud, or harm the public;

(9) making a false or misleading statement regarding the licensee's skill or the efficacy or value of the treatment or remedy prescribed by the licensee or at the licensee's direction, in the treatment of any disease or other condition of the body or mind;

(10) commission of any act of sexual abuse, misconduct, or other improper sexual contact that exploits the licensee-patient relationship, with a patient or a person responsible for health care decisions concerning the patient;

(11) using any false, fraudulent, or deceptive statement in any document connected with the practice of acupuncture, including the intentional falsifying or fraudulent altering of a patient record;

(12) obtaining any fee by fraud, deceit, or misrepresentation;

(13) failing to transfer a patient's records to another licensee when requested to do so by the patient or by the patient's legally designated representative;

(14) performing unnecessary tests, examinations, or services that have no legitimate purpose;

(15) charging an excessive fee for services rendered;

(16) repeated failure to engage in the practice of acupuncture with that level of care, skill, and treatment that is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances;

(17) failure to keep written medical records that accurately describe the services rendered to each patient, including patient histories, pertinent findings, examination results, and test results;

(18) delegating professional responsibilities to a person if the licensee knows or has reason to know that the person is not qualified by training, experience, or licensure to perform those professional responsibilities;

(19) failing to properly supervise, direct, or delegate acts that constitute the practice of acupuncture to persons who perform professional services pursuant to the licensee's direction, supervision, order, referral, delegation, or practice protocols;

(20) committing fraud or misrepresentation in applying for or securing an original, renewal, or reinstated license;

(21) willfully or repeatedly violating the act, any implementing regulations, or any regulations of the secretary of health and environment that govern the practice of acupuncture;

(22) unlawfully practicing any profession regulated by the board in which the licensed acupuncturist is not licensed to practice;

(23) failing to report or reveal the knowledge required to be reported or revealed pursuant to K.S.A. 2017 Supp. 65-7621, and amendments thereto;

(24) failing to furnish the board, or its investigators or representatives, any information legally requested by the board;

(25) incurring any sanction or disciplinary action by a peer review committee, a governmental agency or department, or a professional association or society for conduct that could constitute grounds for disciplinary action under the act or this article of the board's regulations;

(26) failing to maintain a policy of professional liability insurance as required by K.S.A. 2017 Supp. 65-7609, and amendments thereto, and K.A.R. 100-76-5;

(27) knowingly submitting any misleading, deceptive, untrue, or fraudulent representation on a claim form, bill, or statement;

(28) giving a worthless check or stopping payment on a debit or credit card for fees or moneys legally due to the board;

(29) knowingly or negligently abandoning medical records;

(30) engaging in conduct that violates patient trust and exploits the licensee-patient relationship for personal gain; or

(31) obstructing a board investigation, including engaging in one or more of the following acts:

(A) Falsifying or concealing a material fact;

(B) knowingly making or causing to be made any false or misleading statement or writing; or

(C) committing any other acts or engaging in conduct likely to deceive or defraud the board.

(b) "Advertisement" shall mean all representations disseminated in any manner or by any means that are for the purpose of inducing or that are likely to induce, directly or indirectly, the purchase of professional services.

(c) "False advertisement" shall mean any advertisement that is false, misleading, or deceptive in a material respect. In determining whether any advertisement is misleading, the following shall be taken into account:

(1) Representations made or suggested by state-

ment, word, design, device, or sound, or any combination of these; and

(2) the extent to which the advertisement fails to reveal facts material in the light of the representations made. (Authorized by K.S.A. 2017 Supp. 65-7615; implementing K.S.A. 2017 Supp. 65-7616; effective, T-100-9-21-17, Sept. 21, 2017; effective Jan. 12, 2018.)

**100-76-8. Professional incompetency; definition.** As used in K.S.A. 2017 Supp. 65-7616 and amendments thereto and this article of the board's regulations, professional incompetency shall mean any of the following:

(a) One or more instances involving failure to adhere to the applicable standard of care to a degree that constitutes gross negligence, as determined by the board;

(b) repeated instances involving failure to adhere to the applicable standard of care to a degree that constitutes ordinary negligence, as determined by the board; or

(c) a pattern of practice or other evidence of incapacity or incompetence to engage in the practice of acupuncture. (Authorized by K.S.A. 2017 Supp. 65-7615; implementing K.S.A. 2017 Supp. 65-7616; effective, T-100-9-21-17, Sept. 21, 2017; effective Jan. 12, 2018.)

**100-76-9. Patient records; adequacy.** (a) Each licensed acupuncturist shall maintain an adequate record for each patient for whom the licensee performs a professional service.

(b) Each patient record shall meet the following requirements:

(1) Be legible;

(2) contain only those terms and abbreviations that are or should be comprehensible to similar licensees;

(3) contain adequate identification of the patient;

(4) indicate the date on which each professional service was provided;

(5) contain all clinically pertinent information concerning the patient's condition;

(6) document what examinations, vital signs, and tests were obtained, performed, or ordered and the findings and results of each;

(7) specify the patient's initial reason for seeking the licensee's services and the initial diagnosis;

(8) specify the treatment performed or recommended;

(9) document the patient's progress during the course of treatment provided by the licensee; and

(10) include all patient records received from other health care providers, if those records formed the basis for a treatment decision by the licensee.

(c) Each entry shall be authenticated by the person making the entry, unless the entire patient record is maintained in the licensee's own handwriting.

(d) Each patient record shall include any writing intended to be a final record, but shall not require the maintenance of rough drafts, notes, other writings, or recordings once this information is converted to final form. The final form shall accurately reflect the care and services rendered to the patient.

(e) For purposes of the act and this regulation, an electronic patient record shall be deemed to be a written patient record if both of the following conditions are met:

(1) Each entry in the electronic record is authenticated by the licensee.

(2) No entry in the electronic record can be altered after authentication. (Authorized by K.S.A. 2017 Supp. 65-7615; implementing K.S.A. 2017 Supp. 65-7616; effective, T-100-9-21-17, Sept. 21, 2017; effective Jan. 12, 2018.)

**100-76-10. Release of records.** (a) Each licensed acupuncturist shall, upon receipt of a signed release from a patient, furnish a copy of the patient record to the patient, to another licensee designated by the patient, or to the patient's legally designated representative, unless withholding records is permitted by law or furnishing records is prohibited by law.

(b) Any licensee may charge a person or entity for the reasonable costs to retrieve or reproduce a patient record. A licensee shall not condition the furnishing of a patient record to another licensee upon prepayment of these costs.

(c) Each violation of this regulation shall constitute prima facie evidence of unprofessional conduct pursuant to K.S.A. 2017 Supp. 65-7616, and amendments thereto. (Authorized by K.S.A. 2017 Supp. 65-7615; implementing K.S.A. 2017 Supp. 65-7616; effective, T-100-9-21-17, Sept. 21, 2017; effective Jan. 12, 2018.)

**100-76-11. Free offers.** Each licensed acupuncturist who offers to perform a free examination, service, or procedure for a patient shall perform only the examination, service, or procedure specified in the offer. Before any additional exam-

ination, service, or procedure is performed, the licensee shall explain the nature and purpose of the examination, service, or procedure and specifically disclose to the patient, to the greatest extent possible, the cost of the additional examination, service, or procedure. (Authorized by K.S.A. 2017 Supp. 65-7615; implementing K.S.A. 2017 Supp. 65-7616; effective, T-100-9-21-17, Sept. 21, 2017; effective Jan. 12, 2018.)

**100-76-12. Business transactions with patients; unprofessional conduct.** (a) Non-health-related goods or services. A licensed acupuncturist offering to sell a non-health-related product or service to a patient from a location at which the licensee regularly engages in the practice of acupuncture shall have engaged in unprofessional conduct, unless otherwise allowed by this subsection. A licensed acupuncturist shall not have engaged in unprofessional conduct by offering to sell a non-health-related product or service if all of the following conditions are met:

- (1) The sale is for the benefit of a public service organization.
- (2) The sale does not directly or indirectly result in financial gain to the licensee.
- (3) No patient is unduly influenced to make a purchase.

(b) Business opportunity. A licensed acupuncturist shall have engaged in unprofessional conduct if all of the following conditions are met:

(1) The licensee recruits or solicits a patient either to participate in a business opportunity involving the sale of a product or service or to recruit or solicit others to participate in a business opportunity.

(2) The sale of the product or service directly or indirectly results in financial gain to the licensee.

(3) The licensee recruits or solicits the patient at any time that the patient is present in a location at which the licensee regularly engages in the practice of acupuncture. (Authorized by K.S.A. 2017 Supp. 65-7615; implementing K.S.A. 2017 Supp. 65-7616; effective, T-100-9-21-17, Sept. 21, 2017; effective Jan. 12, 2018.)

**Article 77.—TELEMEDICINE**

**100-77-1. Definitions.** Each of the following terms, as used in this article of the board’s regulations, shall have the meaning specified in

K.S.A. 2018 Supp. 40-2,211, and amendments thereto:

- (a) “Distant site”;
- (b) “healthcare provider”;
- (c) “originating site”;
- (d) “physician”;
- (e) “telemedicine,” including “telehealth.” (Authorized by and implementing K.S.A. 2018 Supp. 40-2,214; effective, T-100-12-28-18, Dec. 28, 2018; effective May 10, 2019.)

**100-77-2. Telemedicine deemed rendered at location of patient.** For the purposes of this article of the board’s regulations, the delivery of healthcare services shall be deemed to occur at the originating site. (Authorized by and implementing K.S.A. 2018 Supp. 40-2,214; effective, T-100-12-28-18, Dec. 28, 2018; effective May 10, 2019.)

**100-77-3. Prescribing drugs by means of telemedicine.** The same laws and regulations that apply to a healthcare provider prescribing drugs, including controlled substances, by means of in-person contact with a patient shall apply to prescribing drugs, including controlled substances, by means of telemedicine. (Authorized by and implementing K.S.A. 2018 Supp. 40-2,214; effective, T-100-12-28-18, Dec. 28, 2018; effective May 10, 2019.)

**Article 78.—BUSINESS ENTITIES**

**100-78-1. Business entity certificate of authorization; expiration date.** Each business entity certificate of authorization issued by the board shall expire on June 30 of each year, beginning June 30, 2021. (Authorized by and implementing K.S.A. 2019 Supp. 65-28,134; effective, T-100-2-28-20, March 1, 2020; effective May 15, 2020.)

**100-78-2. Fees.** The following fees shall be collected by the board:

- (a) Application for business entity certificate of authorization ..... \$1,000.00
- (b) Annual renewal of business entity certificate of authorization ..... \$1,000.00

(Authorized by and implementing K.S.A. 2019 Supp. 65-28,134; effective, T-100-2-28-20, March 1, 2020; effective May 15, 2020.)

