KANSAS REGISTER

State of Kansas

JACK H. BRIER
Secretary of State

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New State Laws Enacted

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Carol A. Bell
Publications Director

State of Kansas

BOARD OF EXAMINERS IN OPTOMETRY

NOTICE OF EXAMINATION

Pursuant to K.S.A. 74-1504, notice is hereby given that the Kansas State Board of Examiners in Optometry will be available for the purpose of examining applicants for certificates of Optometric Registration at the Howard Johnson Motel, 3637 S. Topeka Boulevard in Topeka, Kansas, on June 4, 5, 6, and 7, 1983.

HAROLD A. FRIEDEN, O.D.
Secretary-Treasurer
727 Commercial
Atchison, Kansas 66002

Doc. No. 001068

State of Kansas

LEGISLATURE

The following list gives the numbers and titles of bills and resolutions recently introduced in the Legislature.

Copies of bills and resolutions are available free of charge. (Limit: 5 copies of any one item.) Write: Legislative Document Room; State Capitol; Topeka, KS 66612. Or call: (913) 296-7394.

Bills Introduced March 31-April 6:

SB 435, by Committee on Ways and Means: An act concerning a program for employment and training for students at certain public universities; prescribing powers, duties and functions for the state board of regents.

SB 436, by Committee on Ways and Means: An act relating to taxation of income; concerning deduction of federal income tax liability; amending K.S.A. 1982 Supp. 79-32,120 and repealing the existing section.

SB 437, by Committee on Ways and Means: An act amending the Kansas retailers' sales tax act; repealing the exemption therefrom relating to used farm machinery sales and repair services; amending K.S.A. 1982 Supp. 69-3606 and repealing the existing section.

SB 438, by Committee on Ways and Means: An act concerning the department of human resources; placing certain personnel in the unclassified service under the Kansas civil service act.

SB 439, by Committee on Federal and State Affairs: An act concerning public improvements; relating to the assessment of the costs thereof; amending K.S.A. 12-6a08 and repealing the existing section.

SB 440, by Committee on Ways and Means: An act relating to the firemen's relief fund; concerning allocation of expenses of administration thereof; amending K.S.A. 40-1706 and 40-1707 and repealing the existing sections.

SB 441, by Committee on Ways and Means: An act repealing K.S.A 1982 Supp. 74-7221 and 74-7245 to 74-7274, inclusive, concerning the Kansas sunset law.

SB 442, by Committee on Ways and Means: An act concerning the workers' compensation fund; relating to financing the expenses of administration; amending K.S.A. 1982 Supp. 44-566a and repealing the existing section.

SB 443, by Committee on Ways and Means: An act relating to alcoholic beverages; concerning the rates of certain taxes relating thereto; amending K.S.A. 41-501, 79-3818 and 79-4101 and repealing the existing sections.

SB 444, by Committee on Ways and Means: An act relating to taxation; concerning the levy of taxes by the state of Kanss upon all tangible property in the state; amending K.S.A. 76-6b01 and K.S.A. 1982 Supp. 76-6b04 and repealing the existing sections.

SB 445, by Committee on Ways and Means: An act relating to national direct student loan funds; providing for the transfer of money from the state general fund to each national direct student loan fund of state educational institutions under the control and supervision of the state board of regents in an amount attributable to interest earned on moneys in each such fund; creating the national direct student loan dispute fund; providing for transfers of money thereto.

HB 2564, by Committee on Ways and Means: An act concerning unlawful actions and transactions in restraint of trade; increasing criminal penalties for violations; amending K.S.A. 50-105, 50-106 and 50-114, and repealing the existing sections.

HB 2565, by Committee on Ways and Means: An act concerning insurance for public employees; amending K.S.A. 40-2305 and repealing the existing section.

HB 2566, by Committee on Ways and Means: An act relating to the financing of highways; concerning the taxation of motor-vehicle fuels, special fuels and LP-gas fuels and the fixing of fees for certain trip permits for such purpose; amending K.S.A. 79-3408c, 79-3475a, 79-3492, 79-34,118 and 79-34,126 and K.S.A. 1982 Supp. 79-3408, 79-3425, 79-3425c, 79-3487 and 79-34,104 and repealing the existing sections.

HB 2567, by Committee on Ways and Means: An act relating to taxation of income; concerning the depreciation expense deduction for corporations; amending K.S.A. 1982 Supp. 79-32,138 and 79-32,139 and repealingthe existing sections.

HB 2568, by Committee on Ways and Means: An act concerning criminal procedure; relating to discharge of persons not brought promptly to trial; amending K.S.A. 22-3402 and repealing the existing section.

HCR 5046, by Representative Holderman: A concurrent resolution commending the Kansas bankers for keeping Kansas a true unit banking system state.

HCR 5047, by Committee on Ways and Means: A concurrent resolution directing the State Board of Education to conduct a study on the duplication of associate degree programs at community colleges and to submit a plan to lessen the duplication of these degree programs to the Legislative Educational Planning Committee to review and to report thereon to the Legislature.

SR 1833, by Senator Thiessen: A resolution congratulating and commending Mrs. Betty Holliday, 1983 Kansas Mother of the Year.

SR 1834, by Senator Pomeroy: A resolution providing for uniform accounting of expenditures from the prosecuting attorneys' training funds.

SR 1835, by Senators Karr, Harder, Kerr, Meyers, Roitz and Werts: A resolution congratulating and commending the Kansas Master Teachers for 1983.

SR 1836, by Senator Johnston: A resolution establishing April 5 through April 12, 1983, as Local Health Planning Volunteer Week.

SR 1837, by Senators Karr, Arasmith, Chaney, Gaar, Gannon, Hayden, Kerr, Morris and Vidricksen: A resolution congratulating and commending the eleven educators to be inducted into the Kansas Teachers' Hall of Fame on June 11, 1983.

SR 1838, by Senator Steineger: A resolution directing the Senate Energy and Natural Resources Committee to report Senate Bill No. 209 without recommendation to the senate and directing the president to rerefer such bill to the Senate Federal and State Affairs Committee in order that Senate Bill No. 209 can be acted upon by the 1983 session of the Kansas legislature.

SR 1839, by Senator Thiessen: A resolution congratulating and commending the Indpendence Community College basketball team on its sixth-place finish in the NJCAA Tournament.

SR 1840, by Senator McCray: A resolution requesting the Kansas Corportion Commission to compile and make available data on the number of households disconnected from utility service for home heating fuel because of inability to pay.

HR 6062, by Representative Littlejohn: A resolution congratulating and commending Jake Aust on being chosen for induction into the Kansas Teachers' Hall of Fame on June 11, 1983.

HR 6063, by Representative Wilbert: A resolution congratulating and commending Barbara Tims on her selection as the recipient of the Outstanding Educator Award from Pittsburg State University.

HR 6064, by Representative Wilbert: A resolution congratulating and commending Elaine Fowler Bryant, Pittsburg, on being named a 1983 Kansas Master Teacher.

HR 6065, by Representative Knopp: A resolution commending Dr. Ruth Hoeflin for 25 years of leadership and service to the College of Home Economics and Kansas State University.

HR 6066, by Representatives Charlton and Branson: A resolution proclaiming July 20 of each year as "Space Exploration Day" and the period of July 16 through July 24 of each year as "Kansas Space Observance."

HR 6067, by Representative Long: A resolution in memory of Edd L. Sterling.

HR 6068, by Representative Roenbaugh: A resolution congratulating and commending Elmer and Ellen Musil on being named among the recipients of the 1982 Kansas Master Farmer and Master Farm Homemaker Awards.

State of Kansas

DEPARTMENT ON AGING
ADVISORY COUNCIL ON AGING

NOTICE OF PUBLIC HEARING ON THE NEEDS OF OLDER KANSANS

Notice is hereby given to all interested parties that the State Advisory Council on Aging, in conjunction with the Kansas Department on Aging (KDOA), will be holding a public hearing on the needs of Older Kansans on Thursday, May 19, 1983 at 9:00 A.M. on the campus of Wichita State University.

The purpose of the hearing, which is being held in conjunction with the eighth Annual Governor's Conference on Aging, is to receive direct input from interested individuals and organizations about the needs of Older Kansans and other aging issues as KDOA developes the FY 84-85 State Plan on Aging.

Persons wishing to speak at this needs hearing are asked to notify KDOA prior to the hearing and to provide a written copy of their comments at the hearing. Depending upon the number of persons wishing to be heard, the time available for oral presentations may be limited. Written comments will be accepted by KDOA through June 2, 1983.

For more information contact Mr. George A. Dugger at KDOA, 610 W. 10th; Topeka, Kansas 66612; 913-296-4986 or 1-800-432-3535.

SYLVIA HOUGLAND
Secretary

Doc. No. 001074

State of Kansas

SOCIAL AND REHABILITATION SERVICES

NOTICE TO ALL PERSONS HAVING AN INTEREST IN THE ADMINISTRATIVE REGULATIONS PROMULGATED BY THE SECRETARY OF SOCIAL AND REHABILITATION SERVICES

Notice is hereby given to all interested parties that on May 3, 1983, at 9:00 a.m., in the Staff Development Training Center, Topeka State Hospital, Topeka, Kansas, the Secretary of Social and Rehabilitation Services will hold a public hearing concerning the adoption on a temporary basis of certain proposed administrative regulations. A summary of the proposed regulations is set forth below. The proposed changes are scheduled to become effective on July 1, 1983.

1. 30-5-61. Suspension of Payments to Medical Providers. This regulation is being amended to allow the suspension of payments whenever the agency has been notified by the Department of Health and Human Services to withhold all or part of the federal share from payment to a medical provider.

2. 30-5-101. Scope of chiropractic services. This regulation is being amended to: (a) delete limitation of treatment to the diathermy modality; (b) add limitation that spinal manipulations are limited to neuromuscular skeletal conditions; and (c) add limitation on office visits for diagnosis and treatment of 24 per calendar year.

3. 30-10-7. Certification and Recertification by Physicians. This regulation is being amended to delete reference to the Code of Federal Regulations and in lieu thereof state that physician recertifications are required annually in intermediate care facilities for the mentally retarded and every 60 days in intermediate care facilities, intermediate care facilities for the mentally ill, and skilled nursing facilities.

A copy of the proposed regulations and fiscal impact statements may be obtained prior to the above mentioned hearing by contacting Mrs. Mary Slaybaugh, Legal Division, State Department of Social and Rehabilitation Services, 6th Floor, State Office Building, Topeka, Kansas 66612 (913) 296-3969. Written comments submitted prior to the hearing should be forwarded to Dr. Harder, Secretary of Social and Rehabilitation Services, 6th Floor, State Office Building, Topeka, Kansas 66612.

Interested persons will be given reasonable opportunity at the hearing to present their views and arguments on the adoption of the proposed regulations. Presentations should be in writing whenever possible. Depending on the number of persons wanting to speak, the department may require that each participant limit his or her oral presentation to no more than three (3) minutes.

The public is invited to this meeting. Telephone hook-ups are provided at the following locations of Social and Rehabilitation Services offices: Chanute, Emporia, Garden City, Hays, Hiawatha, Hutchinson, Junction City, Kansas City, Lawrence, Olathe, Ottawa, Parsons, Pittsburg, Pratt, Salina, Topeka (Area Office and State Office Building), Wichita, and Winfield.

ROBERT C. HARDER
Secretary

Doc. No. 001075

State of Kansas

FISH AND GAME COMMISSION

NOTICE OF HEARING ON PROPOSED TEMPORARY ADMINISTRATIVE REGULATIONS

A public hearing will be held on Friday, April 29, 1983, commencing at 10:00 a.m., at the Johnson County Courthouse Annex, 6000 Lamar, Mission, to consider the adoption of proposed temporary rules and regulations of the Fish and Game Commission.

All interested parties may submit written comments at any time prior to the hearing by addressing them to the Director of the Kansas Fish and Game Commission, Rt. 2, Box 54A, Pratt, Kansas 67124. Following the hearing, all written and oral comments submitted by interested parties will be considered by the Commission as the basis for making any changes to these proposed regulations.

Summaries of the regulations follow. Copies of the regulations and the fiscal impact statement may be obtained by writing to the agency in Pratt.

Regulation 23-1-8 establishes a fall hunting season for wild turkey and addresses archery and firearms season dates, limits, open areas, permit quotas, and application dates. A total of 1,000 firearms permits and 350 archery permits are expected to be issued in 1983, creating $27,000 in revenue. Beyond fiscal impact on the agency, fall turkey hunting season activity is valued at approximately $221,400 to the economy of the state.

Regulation 23-2-5 provides for deer hunting seasons and establishes archery and firearm season dates, open areas, bag limits, quotas, and application dates. Over 16,000 archery permits and a total of 23,160 firearms permits will be issued in 1983, providing $979,000 to the agency. Beyond the agency's fiscal impact, deer hunting activities in Kansas are valued at approximately $6.5 million to the economy of the state.

Regulation 23-2-12 provides for antelope hunting seasons and establishes archery and firearms season dates, open areas, bag limits, permit quotas, and permit application dates. A total of 150 archery and 390 firearms permits will be issued in 1983 providing $16,200 to the agency. Beyond fiscal impact on the agency, antelope hunting season activity is valued at approximately $88,560 to the economyof the state.

RON HOPKINS
Chairman

Doc. No. 001067

State of Kansas

BOARD OF REGENTS

NOTICE TO ALL PERSONS HAVING AN INTEREST IN THE REGULATIONS GOVERNING TRAFFIC AND PARKING ON THE ROADS, STREETS, DRIVEWAYS AND PARKING FACILITIES AT PITTSBURG STATE UNIVERSITY

Notice is hereby given to all interested parties that on May 2, 1983, at 3:00 p.m. C.D.T., at the Student Union on the campus of Pittsburg State University, Pittsburg, Kansas, a public hearing will be held concerning the adoption by the Board of Regents of regulations concerning traffic and parking on the roads, streets, driveways and parking facilities at Pittsburg State University. Previously adopted rules and regulations set forth by the Board of Regents with exceptions for Pittsburg State University have been redrafted into a form for Pittsburg State University in particular. The following is a summary of the substance of those rules.

I. Authority. The current regulations specify the authority of the Board of Regents to establish parking rules and regulations for Pittsburg State University in accordance with Kansas statutes. The University will establish limited access areas, create toll lots and other requirements for the general control of traffic and parking at the University.

II. Registration of Vehicles. The current regulations specify that motorized vehicles owned and used by students, faculty or staff oprated on campus are required to display a current registration sticker or parking permit.

III. Permits for Parking. The current regulations specify that permits for controlled parking areas are available on the basis of priorities established by the Parking Committee and discusses the various kinds of parking permits available.

IV. Visitor Parking. The current regulations discuss the use of officially designated visitor parking on the campus.

V. Enforcement of Parking Regulations. The current regulations specify that parking regulations go into effect the first day of classes each semester, summer session, short course, seminar or workshop.

VI. Prohibited Parking. Current regulations reviews certain conditions prohibiting parking on University property.

VII. Operation of All Motor Vehicles. The current regulations specify that all motor vehicles operated on the roads, street, driveways, and parking facilities at Pittsburg State University shall be operated in accordance with posted signs and designates the speed limit on University streets.

VIII. Operations of Mopeds and Bicycles. The current regulations specify special conditions regarding the operation of mopeds and bicycles.

IX. Removal of Vehicles. The current regulations specify conditions for handling continuing infractions and violations of parking rules and regulations.

X. Parking Violation Penalties. The current regulations specify the procedure for paying parking violations and for appealing those violations. It, also, includes the adopted practices at the University concerning outstanding obligations to the University for non-payment of parking violations.

XI. Parking Appeals. The current regulations specify appeals may be made from a charge of misuse of parking areas by student faculty or staff through a Parking Violation Appeals Board composed of faculty and students.

XII. Disposition of Parking Violation Penalties and Parking Zone Fees. The current regulations specify that penalties for parking violations and fees charged for parking permits shall be deposited with the State Treasurer in a parking fee account for Pittsburg State University. This is accomplished under Kansas Statutes cited in the regulations.

Interested persons will be given a reasonable opportunity at the hearing to present their views concerning the traffic and parking regulations. Written comments may also be submitted prior to the hearing. Written comments or a request for a copy of the regulations and a copy of the financial impact statement should be submitted to Dr. C. R. Baird, Vice President for Administration, 204 Russ Hall, Pittsburg State University, Pittsburg, Kansas 66762.

WILLIAM R. KAUFFMAN
General Counsel
Board of Regents

Doc. No. 001069

(Published in the *KANSAS REGISTER*, April 14, 1983.)

NOTICE OF CALL FOR REDEMPTION OF BONDS CITY OF HOLTON, JACKSON COUNTY, KANSAS WATERWORKS PLANT AND SYSTEM REVENUE BONDS SERIES 1976-A DATED FEBRUARY 1, 1976

In accordance with Section 23 of Ordinance No. 1042, the City of Holton, Jackson County, Kansas has called for redemption on June 1, 1983 and will redeem and pay on that date the Waterworks Plant and System Revenue Bonds dated February 1, 1976, number 15-53 inclusive, at the redemption price of the principal amount thereof plus accrued interest to the date of redemption, together with a premium of $40.00 for each $1,000.00 in principal amount of Bonds so redeemed. The Bonds so called for redemption with the coupons attached should be presented for payment and redemption at the office of the Treasurer of the State of Kansas in Topeka, Kansas, and will cease to bear interest after June 1, 1983, whether or not so presented.

DATED this 22nd day of February, 1983.

CITY OF HOLTON, KANSAS
By VIRGINIA ZIBELL
City Clerk

Doc. No. 001071

(Published in the *KANSAS REGISTER*, April 14, 1983.)

(NOTICE OF SALE)
CITY OF CHANUTE
NEOSHO COUNTY, KANSAS
NOTICE OF BOND SALE
INTERNAL IMPROVEMENT BONDS
(SEWER, GAS, WATER, STREET, AND ALLEY)
(SERIES A 1983)

Sealed bids will be received by the Governing Body in the city of Chanute, Kansas, at the City Clerk's Office in the Memorial Building, 101 South Lincoln, Chanute, Kansas 66720, April 26, 1983, at 7:30 p.m., at which time bids shall be publicly opened for the purchase of $1,232,622.19 Internal Improvement Bonds. Said bonds will be dated May 1, 1983, and will be in the denomination of $5,000.00 each, except No. 1 $2,622.19 and will become due as follows:

Number	*Amount*	*Maturity*
1	$ 2,622.19	November 1, 1984
2-24	115,000.00	November 1, 1984
25-48	120,000.00	November 1, 1985
49-72	120,000.00	November 1, 1986
73-97	125,000.00	November 1, 1987
98-122	125,000.00	November 1, 1988
123-147	125,000.00	November 1, 1989
148-172	125,000.00	November 1, 1990
173-197	125,000.00	November 1, 1991
198-222	125,000.00	November 1, 1992
223-247	125,000.00	November 1, 1993

Said bonds are payable primarily from special assessments; however, if necessary from a general tax levy on the entire tangible property in said City. Said bonds are not callable.

Interest on said bonds will be payable semiannually on May 1 and November 1 in each year, beginning May 1, 1984. Both principal and interest will be payable at the office of the State Treasurer, Topeka, Kansas.

Said bonds are being issued for the purpose of certain Sewer, Gas, Water, Street and Alley Improvements for said City.

Delivery and Legal Opinion

Said bonds, properly printed, are to be furnished by the City without cost to the successful bidder, and said bonds will be sold subject to the legal opinion of William P. Timmerman, Attorney and Bond Counsel, 400 North Woodlawn, Wichita, Kansas, phone 316-685-7212, whose final, unqualified, approving opinion will be furnished and paid for by the City and delivered to the successful bidder as and when the bonds are delivered. The successful bidder will also be furnished with a certified transcript of proceedings evidencing the authorization and issuance of said bonds, and the usual closing proofs, including a non-litigation certificate.

Said bonds will be delivered to the successful bidder through any bank, on or about May 18, 1983, in Kansas City, Missouri; Topeka, Kansas; Wichita, Kansas; or Chanute, Kansas, as may be specified by the bidder.

The assessed valuation of all tangible taxable property situated in the city of Chanute, Neosho County, Kansas, is $26,181,319.00 for the year 1982.

The total bonded indebtedness of the City is as follows, to-wit:

G.O. Bonds, $2,651,622.00, including this issue:
Notes: $2,054,410.00, of which $1,769,110.00 will be picked up by this bond issue and from money on hand.
Utility Revenue Bonds: $5,190,000.00.
Warrants: None.
Overlapping debt: U.S.D. #413 $1,556,400.00 of which 66% is applicable to Chanute.
Population of Chanute, Kansas 10,506
Second Class City.

Coupon Rate

Proposals will be received on bonds bearing such rate or rates of interest as may be specified by the bidder; provided, however, that each rate specified shall apply to all bonds of the same maturity. Each rate specified shall be an even multiple of *one-tenth of one percent (1/10th of 1%)* OR *one-twentieth of one percent (1/20th of 1%)*. There shall be no more than five (5) rates.

Conditions for Bidders

Bids shall be submitted on a contract form with the usual information thereon, and should be addressed to the City Clerk of Chanute, Kansas, plainly marked, "Bond Bid." All bids must state the gross interest cost of the bid and the average annual interest rate and premium, if any, all certified by the bidder to be correct, and the City will be entitled to rely upon such representations. Each bid must be accompanied by a certified cashier's check or bank draft equal to two percent (2%) ($24,652.44) of the amount of such bid, to the city of Chanute, Kansas. In the event a bidder whose bid is accepted shall fail to carry out his contract of purchase, said deposit shall be retained by the City as liquidated damages. The checks of unsuccessful bidders will be returned. The awards will be made on the basis of the lowest net interest cost to the City. In the event an error should occur in computing the coupon rates, the net interest cost will govern.

The right is reserved to reject any or all bids.

JESSIE JACKSON
Mayor

ATTEST: JAMES D. YOUNGBERG
City Clerk

(SEAL)

Doc. No. 001049

State of Kansas

ATTORNEY GENERAL

OPINION NO. 83-44

Amendments to U.S. Constitution—Rights and Immunities of Citizens—Fourteenth Amendment; Equal Protection; Due Process.

Kansas Constitution—Legislative—Not More than One Subject in a Bill.

Taxation—Severance or Mineral Production Tax—Imposition and Administration. Senator Jack Steineger, Senate Minority Leader, Sixth District, Kansas City, April 1, 1983.

"Royalty interest owners" may be exempted from tax liability under a severance or mineral production tax. If, however, a royalty interest owner exemption is provided, the exemption must be granted to all persons who indeed are royalty interest owners, regardless of the size of their royalty interest.

Additionally, the inclusion of reasonable provisions in a severance tax bill prescribing the manner in which the proceeds of the tax are to be handled when collected and the purposes for which those proceeds are to be used is not in violation of that part of Article 2, Section 16, of the Kansas Constitution which requires each bill to contain only one subject.

Finally, the provisions of 1983 Substitute for Senate Bill No. 267 relating to a credit for property taxes are not so vague and indefinite that those provisions would be declared void for vagueness. Cited herein: 1983 Substitute for Senate Bill No. 267, U.S. Const., XIV Amend., Kan. Const., Art. 2, § 16. RJB

OPINION NO. 83-45

Agriculture—County Extension Councils; Boards and Agents—Budgets; Procedure for Approval. Jack Cramer, Chairman, Johnson County Extension Council, Olathe, April 4, 1983.

Participation by a board of county commissioners in the preparation of the county extension council's budget pursuant to K.S.A. 2-610 requires the exercise of the board's judgment and discretion. Therefore, this function is in the nature of a public trust and not delegable to an agent or employee of the board of county commissioners.

Unless agreement can be reached by consensus, a vote must be taken by the individuals specified in K.S.A. 2-610 to approve an extension council's budget, and under this statute each county commissioner has one vote in the extension council's budget approval process. Cited herein: K.S.A. 2-610. RVE

OPINION NO. 83-46

Apportionment—Representative Districts—Boundaries of District.

Counties and County Officers—Election Commissioners—Authority to Establish Precinct Boundaries. Representative Darrel M. Webb, Ninety-Seventh District, Wichita, April 4, 1983.

In those counties in which the office of election commissioner is created by K.S.A. 19-3419 *et seq.*, said officials are empowered to establish the boundaries of wards and precincts within cities located in the county. By implication, an election commissioner is also empowered to divide newly-annexed territory into precincts or to add such territory to existing precincts. However, once the legislature sets the boundaries of the state representative districts, acting pursuant to Article 10, Section 1 of the Kansas Constitution, a precinct cannot subsequently be shifted into another district by the election commissioner or any other elected official. While districts should be reasonably contiguous and compact, the legislature's use of precincts as "building blocks" may make this unattainable in every case. Such deviations are permissible if sustained by a rational state policy and if not created to cancel out the voting strength of racial or political elements of the population. Cited herein: K.S.A. 4-3,283, 12-520, 12-520c, 12-521, 19-3419, 19-3424, Kansas Const., Art. 10, § 1. JSS

OPINION NO. 83-47

Cities and Municipalities—General Provisions—Apportionment of Revenue from Countywide Retailers' Sales Tax. William H. Pringle, Barton County Attorney, Great Bend, April 4, 1983.

The term "preceding year," as used in K.S.A. 12-192(a)(1), refers to the calendar year which precedes the current year in which revenue is received by the county treasurer. Cited herein: K.S.A. 12-192 (as amended by 1983 Senate Bill No. 45), 77-201, *Second* and *Eleventh*. TRH

OPINION NO. 83-48

Notaries Public and Commissioners—Notaries Public—Revocation of Appointments. The Honorable Jack H. Brier, Secretary of State, Topeka, April 4, 1983.

An applicant for appointment by the secretary of state as a notary public must include in the application an oath of office, and the failure to take the oath of office may constitute grounds for revocation of a notary's appointment pursuant to K.S.A. 1982 Supp. 53-118. However, whether an oath has been legally administered is a question of fact.

Prior to revoking the appointment of a notary public, the secretary of state must give reasonable notice thereof and provide an opportunity for the notary to respond to the charges being relied upon as grounds for revocation at a hearing held for such purpose. Further, revocation of a notary's appointment pursuant to K.S.A. 1982 Supp. 53-118 operates prospectively, and the secretary of state has no authority to revoke a notary's appointment *ab initio*.

Even though there may have been a defect in a person's appointment as a notary public, or such person failed to conform to some condition precedent to assuming the office of notary public, such person is nonetheless a *de facto* officer where such person was issued a certificate of appointment as a notary, such person held himself or herself out to the public as

(continued)

being a duly appointed notary and, in availing themselves of the notary's services, the public, without inquiry, clearly has presumed such person to be a validly appointed officer. As a consequence, the acts of such person as a *de facto* officer are as valid and effectual, where they concern the public or the rights of third parties, as though such person was an officer *de jure*, and such acts are not subject to collateral attach. Cited herein: K.S.A. 1982 Supp. 53-101, 53-102, 53-104, 53-105, 53-105a, 53-116, 53-117, 53-118, K.S.A. 54-102, 54-104, 54-106. WRA

OPINION NO. 83-49

Grain and Forage—Grain Storage; Terminal and Local Wa house—Financial Statements; Public Records. Laws, Journals and Public Information—Records Open to Public—Grain Inspection Department; Financial Statements. Marvin Webb, Director, Grain Inspection Department, Topeka, April 4, 1983.

Financial statements of public grain elevator operators filed pursuant to K.S.A. 1982 Supp. 34-228 are documents of public record, available for public inspection pursuant to K.S.A. 1982 Supp. 45-201. Confidential information contained in such statements which is closed by law may be deleted from an otherwise public document. Cited herein: K.S.A. 1982 Supp. 34-228, K.S.A. 34-229, K.S.A. 1982 Supp. 45-201, K.A.R. 1982 Supp. 25-1-1. BJS

OPINION NO. 83-50

Taxation—Mortgage Registration—Property in Two or More Counties; Apportionment of Fee. Robert H. Gale, Jr., Hamilton County Attorney, Syracuse, April 4, 1983.

K.S.A. 79-3105 provides that when a mortgage covers property in two or more counties, the entire mortgage registration fee due thereon shall be paid to the register of deeds and treasurer of the county where it is first presented for recording. These county officials are then required to apportion the mortgage registration fee, in proportion to assessed valuation, and pay the proportionate shares to the other counties. A division of the fee by the mortgagee is accordingly improper, and a register of deeds may decline to accept for filing a mortgage under such circumstances. Cited herein: K.S.A. 1982 Supp. 79-3102, K.S.A. 79-3105, 79-3107. JSS

OPINION NO. 83-51

State Boards, Commissions and Authorities—State Park and Resources Authority—Contracts with Federal Government. Lynn Burris, Jr., Director, Kansas State Park and Resources Authority, Topeka, April 4, 1983.

The State Park and Resources Authority is authorized to contract with the federal government to acquire lands by purchase, lease, agreement or otherwise at Hillsdale State Park, pursuant to K.S.A. 1982 Supp. 74-4510, but only to the extent that state moneys in support of the contract are appropriated by the legislature. State statutory and constitutional provisions preclude the Authority from obligating the state to any greater extent. Cited herein: K.S.A. 46-155, K.S.A. 1982 Supp. 74-4510, K.S.A. 75-3025, 42 U.S.C. § 1962d, P.L. 91-611, P.L. 89-72, Kan. Const., Art. 2, § 24, Art. 11, §§ 6, 7. CMA

ROBERT T. STEPHAN
Attorney General

Doc. No. 001070

State of Kansas
SECRETARY OF STATE

NOTICE

The following bills have been signed into law by the Governor, as of April 7, and transmitted to this office:

Senate Bills

8	35	56	84	119	174	312
16	36	57	85	120	204	314
20	40	59	86	122	226	321
24	42	61	90	124	238	322
27	45	73	93	132	263	337
30	49	74	94	134	280	338
31	52	75	103	147	297	342
34	54	83	116	172	298	358
						359

House Bills

2009	2037	2071	2102	2177	2333	2461
2017	2038	2072	2110	2194	2357	2464
2021	2039	2080	2117	2197	2379	2489
2024	2047	2084	2124	2218	2438	2491
2025	2054	2093	2127	2221	2443	2492
2030	2056	2097	2168	2242	2455	2520
2032	2059					

The following bill has been vetoed by the Governor:

House Bill: 2175

The following resolutions have been adopted by the Legislature and transmitted to this office:

Senate Concurrent Resolutions: 1603, 1608, 1609, 1616, 1620, 1621, 1623.

House Concurrent Resolutions: 5002, 5005, 5006, 5007, 5010, 5011, 5012, 5014, 5016, 5018, 5042, 5043.

House Resolutions: 6001, 6002, 6003, 6004, 6005, 6006, 6007, 6008, 6009, 6010, 6011, 6012, 6013, 6014, 6015, 6016, 6017, 6018, 6019, 6020, 6022, 6023, 6024, 6025, 6026, 6027, 6028, 6029, 6030, 6031, 6032, 6033, 6034, 6035, 6036, 6037, 6038, 6039, 6040, 6042, 6043, 6044, 6045, 6046, 6047, 6048, 6049, 6050, 6051, 6052, 6053, 6054, 6056, 6057, 6058, 6059, 6060, 6061, 6062, 6063, 6064, 6065, 6066, 6067, 6068.

Titles of the above bills and resolutions were listed in earlier editions of the *Kansas Register*, as they were introduced. Copies of enrolled (final) bills and resolutions are available from the Legislative Division of the Secretary of State's Office; State Capitol; Topeka 66612. Phone: 913/296-4557.

State of Kansas

OFFICE OF JUDICIAL ADMINISTRATION

COURT OF APPEALS DOCKET

(NOTE: Dates and times of arguments are subject to change.)

KANSAS COURT OF APPEALS
LABETTE COUNTY JUDICIAL CENTER
201 SOUTH CENTRAL, PARSONS, KANSAS

Before FOTH, C.J., ABBOTT and MEYER, JJ.

Tuesday, April 19, 1983

Case No.	Case Name	Attorney	County
	9:00 a.m.		
54,139	State of Kansas, Appellee, v. Doug Heiskell, Appellant.	Charles S. Gray, Co. Atty.; Atty. Gen. Timothy A. Short.	Labette
54,835	State of Kansas, Appellee, v. Robert W. Moore, Appellant.	Charles S. Gray, Co. Atty.; Atty. Gen. L. Stephen Garlow.	Labette
54,501	Betty J. Terry, Appellee, v. Harold Dean Terry, Appellant.	John Forsyth. W. J. Fitzpatrick.	Montgomery
54,621	Hub Standley, Flossie Duby, and Lillian Neely, Appellants, v. Violet L. Harney, et al., Appellees.	Richard J. McDonald. W. J. Fitzpatrick.	Montgomery
54,667	Glenn Kennett and June Kennett, Appellees, v. Charles Large and Enid Large, Appellants.	Charles Gentry. Ronald P. Wood.	Bourbon
	1:30 p.m.		
54,797	State of Kansas, Appellee, v. Lewis Landsaw and Raymond E. Smith, Appellants.	Jeffrey A. Chubb, Co. Atty.; Atty. Gen. John R. Horst.	Montgomery
54,368	State of Kansas, Appellee, v. Lewis Landsaw, Appellant.	Jeffrey A. Chubb, Co. Atty.; Atty. Gen. Bruce E. Borders.	Montgomery
54,388	Leo B. Charvat and Adaline R. Charvat, Husband and Wife, Appellants, v. Denzell E. Jones and Mary K. Jones, Husband and Wife, Appellees.	Frank W. Liebert. Bruce E. Borders.	Montgomery
54,781	The First National Bank of Girard, Appellee, v. Richard Coykendall, et al., Appellants.	John R. Toland. John C. Rubow. Thomas E. Wright.	Allen

(continued)

Wednesday, April 20, 1983
9:00 a.m.

54,423	State of Kansas, Appellee, v. Bob Abernathy, Appellant.	Ronald L. Boyer, Co. Atty.; Atty. Gen. Bryon Neal Fox. Richard W. Niederhauser.	Cherokee
54,657	In the Interest of Tanya Reed & Ronald Judson, minor children under the age of 18 to-wit: 6 and 4 years of age respectively.	Patrick S. Bishop. Robert L. Farmer. Blake Hudson. Gerald W. Hart.	Bourbon
54,459	In the Interest of Richard, Kenneth, Tracy Southworth, and Shawna Maude, Minor Children.	Vernon D. Grassie. Lawrence P. Daniels, Asst. Co. Atty.; Atty. Gen.	Crawford
54,442	Patty Brewer, a/k/a Patty E. Brewer, Appellant, v. City of Galena, Kansas, appellee.	Alois R. Bieber. A. J. Wachter.	Cherokee
54,783	Marla Sue Gronquist, Appellant, v. Bradford Gronquist, Appellee.	Murvyl M. Sullinger. Gail Christy.	Crawford
54,817	Richard J. Grassi & Linda K. Grassi, Appellees, v. Secretary, Department of Social & Rehabilitation Services, Assignee of Child Support Rights of Defendant Herein, Appellant.	Louie L. Barney. Donald R. Noland. J. A. Robertson.	Crawford
54,787	Gregory John Hafner, Appellant, v. Vickie Lynn Hafner, Appellee.	Fred Spigarelli. Garry Lassman.	Crawford

KANSAS COURT OF APPEALS
COURT OF APPEALS COURTROOM, 2nd FLOOR, KANSAS JUDICIAL CENTER
301 WEST TENTH, TOPEKA, KANSAS
Before ABBOTT, P.J., PARKS and MEYER, JJ.
Thursday, April 21, 1983
9:00 a.m.

54,595 S.C.	William A. Jenkins, Jr., Appellant, v. Marjorie A. Jenkins, Appellee.	Robert M. Brown. Hal E. DesJardins.	Shawnee
54,731	Ramon Guillan & Catherine Guillan, Appellants, v. J & J Oil Company, James C. Debbrecht, Jule Maskrod, and Al George, Appellees.	F. G. Manzanares. James C. Debbrecht, *pro se.* Al George, *pro se.*	Shawnee
53,905	Sunflower Investors, Inc., Appellant, v. Kevin William Halback, et al., Appellees.	Patricia E. Riley. Herbert A. Marshall. Kenneth Carpenter.	Shawnee
54,886	James B. Cubie & Rosemary Cubie, Appellants, v. William C. Hogue Construction, Inc., Appellee.	William Hergenreter. Arthur E. Palmer.	Shawnee

(continued)

54,833	Betty L. Spielman, et al., Appellants, v. Michael E. Bowden, et al., Patrons Mutual Insurance Association, Appellees,	Ralph E. Skoog. Victor W. Miller. Allen R. Slater.	Jefferson

1:00 p.m.

54,939	Merel I. Fowler, Appellee, v. Sauder Industries, Inc., & Insurance Company of North America & Kansas Workmen's Compensation Fund, Appellants.	Gary L. Jordan. C. K. Sayler. John C. Peterson.	Lyon
54,638	Donald V. Madison, Claimant, Frank Taff, Appellant, v. Goodyear Tire & Rubber Co., Respondent, & Travelers Insurance Co., Insurance Carrier, Appellees.	Frank D. Taff, *pro se.* Reginald Labunker. C. K. Sayler. James Benfer.	Shawnee
54,973	Cindy K. Pipes, Appellee, v. Kansas Manufacturing Facility-Combustion Engineering, Appellant, and Kansas Workmen's Compensation Fund, Appellee.	John M. Ostrowski. Jeffrey Nelson. Richard F. Waters.	Dickinson
55,053	Alice A. Thomas, Appellee, v. Artex Manufacturing Co. & Wausau Ins. Companies, Appellants.	Wendell F. Cowan, Jr. Thomas P. Fay.	Pottawatomie

Friday, April 22, 1983
9:00 a.m.

54,757	State of Kansas, Appellee, v. Leonard E. Duncan, Appellant.	C. William Ossman, Ass't. D.A.; Atty. Gen. Michael L. Harris.	Shawnee
54,984	State of Kansas, Appellee, v. Calvin Strong, Appellant.	Sue Carpenter, Ass't. D.A.; Atty. Gen. Michael L. Harris.	Shawnee
54,663	State of Kansas, Appellee, v. James Edgar Spencer, Appellant.	Sue Carpenter, Ass't. D.A.; Atty. Gen. Ronald E. Wurtz.	Shawnee
55,130	In the Interest of Lewis Moore, Jr., Patricia Browning & Claudia Clay, Children Under 18 Years of Age.	David P. Troup. Steven L. Opat, Co. Atty. John H. Taylor. Bruce C. Barry. Michael D. Hepperly.	Geary
54,744	State of Kansas, Appellee, v. Gilbert A. Burnett, Appellant.	John K. Bork, Co. Atty.; Atty. Gen. Lawrence P. Ireland.	Jefferson
54,408	State of Kansas, Appellee, v. Donnie Weaver, Danny Forbes, & Marvin William Rowe a/k/a Bill Rowe, Appellants.	Gunnar A. Sundby. Atty. Gen. Charles M. Tuley.	Atchison

(continued)

54,834	Jeffrey Betts, Appellant, v. International Paper Co., Appellee.	Brandon L. Myers. Robert H. Bingham.	Wyandotte

KANSAS COURT OF APPEALS

COURT OF APPEALS COURTROOM, 3rd FLOOR, OLD SEDGWICK COUNTY COURTHOUSE
541 NORTH MAIN, WICHITA, KANSAS

Before REES, P.J., SPENCER and SWINEHART, JJ.

Wednesday, April 27, 1983
9:00 a.m.

55,043 S.C.	State of Kansas, Appellee, v. Larry Brooks, Appellant.	Janice Fitch, Asst. D.A.; Atty. Gen. Carla L. Roberts.	Sedgwick
54,592	State of Kansas, Appellee, v. Clarence J. Smith, Appellant.	Jack Peggs, Asst. D.A.; Atty. Gen. F. C. Davis, II.	Sedgwick
54,373	Robert J. Ratley, Appellee, v. Sheriff's Civil Service Bd. of Sedgwick County, Kansas, Appellant.	Ted Peters. David A. Gripp.	Sedgwick
54,309	State of Kansas, Appellee, v. Kenneth L. Frazee, Appellant.	Jim Pringle, Co. Atty.; Atty. Gen. Frank L. Korte.	Sumner
54,121	Fred Shaw & Faye Shaw, Appellees, v. Elouise Shaw, a/k/a Eleanor Shaw, Appellant.	Darrell D. Kellogg. Rodney H. Symmonds.	Greenwood

1:00 p.m.

54,981	Shirley M. Beeman, Appellee, v. Iowa Beef Processors, Inc., Appellant.	Carl W. Shewmaker. Gary M. Korte.	Lyon
54,882	Patricia A. Bahr, Appellee, v. Iowa Beef Processors, Inc., Appellant.	E. L. Kinch. Wendell F. Cowan, Jr.	Lyon
54,437	State of Kansas, Appellee, v. Roberta Sue Humphreys, Appellant.	Mickey Mosier, Ass't. Co. Atty.; Atty. Gen. William L. Winkley.	Saline
54,622	John Locke, Appellant, v. Kansas Fire & Cas. Co., Robert L. Kitt, Gay & Taylor, Inc., & Abilene, Inc., Appellees.	George Rickey Robertson. Clarence L. King, Jr. Larry G. Pepperdine. John Conderman.	Saline
54,682	In the Matter of the Estate of Ila Mae Miesbauer.	Frank A. Miesbauer. Jay K. Bremyer.	McPherson
54,605	Tip Top Credit Union, Appellee, v. Shirley Bell, Appellant.	Tim R. Karstetter. J. Thomas Marten.	McPherson

Thursday, April 28, 1983
9:00 a.m.

54,407	Dr. Vernon H. Dicke, P.A., Appellant, v. Billie J. Graves & Paul B. Graves, Appellees.	Ronald D. DeMoss. Ralph M. Baehr.	Sedgwick

(continued)

54,675	Kathryn Thompson, Indiv. & as Executor of the Estate of Clarence J. Thompson, Dec'd., Appellee, v. Eugene C. Gibbs, M.D., Appellant.	Richard D. Cordry. Darrell D. Kellogg.	Montgomery
53,701	Nellie Mae Parsons & Ranklin M. Parsons, husband & wife, Appellants, v. Wayne E. Stevens, Appellee.	Ronald D. Albright. Robert S. Wunsch.	Harper
51,025	Dean Wesley Hughes, II, Appellant, v. Dennis Hughes, Glennys Theresa Hughes, & Mary Maxine Jack, Appellees.	Ronald D. Albright. Edward J. Hund. Hall and Hall.	Harper

1:00 p.m.

54,843	State of Kansas, Appellee, v. James E. Rooker, Appellant.	William P. Ronan, Co. Atty.; Atty. Gen. Leonard F. Watkins.	Butler
54,158	State of Kansas, Appellee, v. James L. Long, Appellant.	William P. Ronan, Co. Atty.; Atty. Gen. Ray L. Connell.	Butler
54,714	Robert A. Minard, Appellant, v. Shun Yueh Minard, Appellee.	Allyn M. McGinnis. Tim Connell.	Butler
54,846	Martin Jernigan, By and Through His Next Friend, Mary Drew, Appellee, v. The Gillette Co., Appellant.	Tim Connell. D. Lee McMaster.	Butler
54,234	Getty Refining & Marketing Co., a corporation, Appellant, v. United Insulation Co., a corporation, Appellee.	Robert C. Foulston. Jerry G. Elliott. James C. Wright. Hal D. Meltzer.	Sedgwick
54,372	Alvin C. Baird, Appellant, v. MBPXL Corporation; William I. Nicholson; Robert Fleming; John Bailey; Eldred L. Failing; and Professional Engineering Consultants, P.A., Appellees.	John W. Johnston. Larry Withers. Jerry G. Elliott. Vincent L. Bogart.	Sedgwick

Friday, April 29, 1983
9:00 a.m.

54,331	State of Kansas, Appellee, v. Charles McGhee & Brenda P. Goodwin, Appellant.	Geary Gorup, Asst. D.A.; Atty. Gen. Orval Fisher. Ronald D. DeMoss.	Sedgwick
54,542	Lawrence D. Boyer, Appellant, v. Estate of Aldula A. Boyer & Charles C. Boyer, Appellee.	Lawrence D. Boyer, *pro se*,	Reno
54,690	Dortha Nell Monical, Appellant, v. St. Francis Hospital, Inc., Appellee.	Andrew W. Hutton. Richard A. Loyd	Sedgwick

LEWIS C. CARTER
Clerk of the Appellate Courts

Doc. No. 001032

State of Kansas

DEPARTMENT OF ADMINISTRATION DIVISION OF PURCHASES

NOTICE TO BIDDERS

Sealed bids for items hereinafter listed will be received by the Director of Purchases, State Office Building, Topeka, Kansas, until 2:00 p.m., CST or DST, whichever is in effect on the date indicated, and then will be publicly opened:

MONDAY, APRIL 25, 1983

#53345

Social and Rehabilitation Services, Topeka—VENDING EQUIPMENT, for Kansas Vending Facility, Wichita

#53346

Kansas Fish and Game Commission, Pratt—FLOATING TROUT FEED, for various locations

#53348

University of Kansas Medical Center, Kansas City—DNA SYNTHESIZER

#53372

University of Kansas, Lawrence—MICROCOMPUTER

#53398

Department of Human Resources, Topeka—PRINTERS, for various locations

#53416

Youth Center at Topeka, Topeka—MICROCOMPUTER SYSTEM

TUESDAY, APRIL 26, 1983

#53354

Kansas State University, Manhattan—FEED

#53355

Kansas State University, Manhattan—CONSTRUCT COLD CABINET

#53356

Pittsburg State University, Pittsburg—MEMORY AND MEMORY BOARDS

#53357

Social and Rehabilitation Services, Topeka—REFRIGERATOR

#53358

University of Kansas, Lawrence—LABOR, MATERIAL TO INSTALL TEMPERATURE RECORDING SYSTEM

#53363

Kansas State University, Manhattan—KABSU SUPPLIES

#53365

Department of Transportation, Topeka—ERECTION OF 300-FOOT WINDCHARGER TOWER, in Marion, Kansas

#53366

Kansas State University, Manhattan—AIR COMPRESSOR

#53367

Adjutant General's Department, Topeka—FUEL OIL, for the Kansas National Guard Mobilization and Training Site, Ft. Riley, Kansas

#53373

Kansas State University, Manhattan—COMPUTER SYSTEM, for Fort Hays Experiment Station, Hays, Kansas

#53399

Department of Human Resources, Topeka—WORD PROCESSOR

#A-4638

Youth Center at Topeka, Topeka—HANDICAP MODIFICATIONS, to Administration Building

WEDNESDAY, APRIL 27, 1983

#25549

Social and Rehabilitation Services, Topeka—WIRE MAT INSULATORS, for Kansas Industries for the Blind, Kansas City, Kansas

#25552

Kansas State Agencies—COFFEE AND TEA

#53339

Wichita State University, Wichita—SALE OF SURPLUS VACUUM TUBES

#53361

Department of Human Resources, Topeka—WORD PROCESSING SYSTEM

#53370

Department of Transportation, Hutchinson—TREATED WOOD GUARD RAIL POSTS AND BLOCKS

#53374

Department of Transportation, Hutchinson—CONCRETE SAW

#53376

Department of Human Resources, Topeka—MICROFICHE READERS, for various locations

#53377

Department of Transportation—CHAIN SAWS, for various locations

#53383

University of Kansas, Lawrence—MICROPROCESSOR SYSTEM

#53412

Wichita State University, Wichita—25% RAG BOND—WATERMARK OF WICHITA STATE UNIVERSITY

#53414

Wichita State University, Wichita—WORD PROCESSING SYSTEM

#A-4525

Department of Administration, Topeka—PARTIAL EXTERIOR PAINTING OF CEDAR CREST (Governor's Residence)

THURSDAY, APRIL 28, 1983

#53362

Department of Human Resources, Topeka—WORD PROCESSING SYSTEM

#53384

University of Kansas Medical Center, Kansas City—LIQUID CHROMATOGRAPHY/ELECTROCHEMISTRY SYSTEM

#53385

Kansas Technical Institute, Salina—USED PARTS FOR AIRCRAFT

#53386

Kansas State University, Manhattan—BUMPER STICKERS—VINYL 2 COLORS "SEAT BELTS"

#53387

Social and Rehabilitation Services, Topeka—CONTINUOUS FORMS "CASE STATUS" 310-T

#53388

Social and Rehabilitation Services, Topeka—CONTINUOUS 3-PART CARBON INTERLEAVED FP-T

(continued)

#53389
Department of Human Resources, Topeka—WORD PROCESSING SYSTEM
#53393
University of Kansas Medical Center, Kansas City—GAMMA COUNTING SYSTEM
#53396
Osawatomie State Hospital, Osawatomie—LAUNDRY SUPPLIES
#53397
University of Kansas Medical Center, Kansas City—BLOOD GAS pH METER
#53405
Kansas State University, Manhattan—DISPLAY CASE AND CHALKBOARDS
#53406
Kansas State University, Manhattan—LAB FURNITURE
#53415
Kansas State University, Manhattan—MICROCOMPUTER SYSTEM

FRIDAY, APRIL 29, 1983

#52836
Kansas Correctional Industries, Lansing—CANS AND CARDBOARD CARTONS
#53371
Department of Human Resources, Topeka—CATHODE RAY TUBE TERMINALS, for various locations
#53395
Wichita State University, Wichita—CRT TERMINALS
#53413
University of Kansas, Lawrence and University of Kansas Medical Center, Kansas City—COMPUTER SOFTWARE SYSTEM

MONDAY, MAY 2, 1983

#25538
Statewide—PLAIN PAPER COPIERS
#53359
Department of Human Resources (CETA), Topeka—AUDIT SERVICES
#53400
Kansas State University, Manhattan—MOVING SERVICES

TUESDAY, MAY 3, 1983

#A-4584
Wichita State University, Wichita—PROVIDE REPAIRS to Campus Streets (21st and Hillside)
#A-4360(a)
Wichita State University, Wichita—PROVIDE REPAIR FOR EXTERIOR MASONRY WALLS, in McKnight Fine Arts Facility
#A-4585
Wichita State University, Wichita—PROVIDE REPAIRS TO CAMPUS WALKS (1st and Hillside)

FRIDAY, MAY 20, 1983

#25550
Pittsburg State University, Pittsburg—PROPERTY INSURANCE

NICHOLAS B. ROACH
Division of Purchases

Doc. No. 001073

State of Kansas

KANSAS PUBLIC DISCLOSURE COMMISSION

NOTICE OF COMMISSION MEETING

The Kansas Public Disclosure Commission will hold its monthly meeting on Wednesday, April 20, 1983, at 109 West 9th, Topeka, Kansas, Room 504, at 9:00 a.m. For a copy of the meeting agenda call 913-296-4219.

CAROL E. WILLIAMS
Commission's Administrative Assistant

Doc. No. 001083

State of Kansas

DEPARTMENT OF CORRECTIONS

TEMPORARY ADMINISTRATIVE REGULATIONS

(Approved by the State Rules and Regulations Board March 29, 1983. Will expire May 1, 1984.)

Article 11.—COMMUNITY CORRECTIONS

44-11-125. Chargebacks; deductions from grant. (a) Chargebacks for calendar quarters shall be computed by the department of corrections at the close of the quarter and subtracted from a subsequent quarterly grant payment to the planning unit.

(b) For aggravated juvenile delinquents, the chargeback shall be assessed against the county from which the juvenile was originally committed. (Authorized by K.S.A. 1982 Supp. 75-5294; implementing K.S.A. 1982 Supp. 75-52,104, 75-52,105; effective May 1, 1981; amended T-84-6, March 29, 1983.)

Article 12.—CONDUCT AND PENALTIES

44-12-1101. Attempt, conspiracy and accessory. Any attempt or conspiracy to violate any rule, or acting as an accessory for any offense, shall carry the same penalty as of the offense itself. (a) *Attempt.*

(1) An attempt is any overt act toward the perpetration of an offense by an inmate who intends to commit such offense but fails in the perpetration of the offense or is prevented or intercepted in executing that offense.

(2) It shall not be a defense to a charge of attempt that the circumstances under which the act was performed or the means employed or the act itself were such that the commission of the offense was not possible.

(b) *Conspiracy.*

(1) A conspiracy is an agreement with another person to commit an offense or to assist in committing an offense. No inmate may be convicted of a conspiracy unless an overt act furthering that conspiracy is alleged and proved to have been committed by the inmate, or by a co-conspirator.

(2) It shall be a defense to a charge of conspiracy

(continued)

that the accused voluntarily and in good faith withdrew from the conspiracy, and communicated the fact of such withdrawal to one or more of the accused conspirators, before any overt act in furthering the conspiracy has been committed by the accused or by a co-conspirator.

(c) *Accessory to an offense.* Aiding an offender or one charged with an offense is knowingly harboring, concealing, or aiding any inmate who has committed an offense, or one who has been charged with an offense, with intent that such inmate shall avoid or escape from apprehension, disciplinary hearing, conviction, or punishment for such offense.

(d) This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended T-84-6, May 1, 1983.)

44-12-1301. Class I offenses. (a) Class I offenses are:

(1) Those violations of a very serious nature that are designated in this code as class I offenses, whether or not such offense is also a violation of law; or

(2) Those violations of law designated by the laws of the state of Kansas as felonies; or

(3) Those violations of law designated by the laws of the United States as felonies.

(b) The penalty for a class I offense may be any or all, or any combination of the following:

(1) Disciplinary segregation not to exceed 90 days.

(2) Loss of "good time credits" not to exceed six months.

(3) Extra work for up to two hours per day not to exceed 30 days.

(4) Restriction to inmate's own cell not to exceed a period of 10 days.

(5) Restriction from privileges not to exceed 60 days.

(6) Fine not to exceed $20.00.

(7) Restitution.

(8) Reprimand.

(c) This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended T-84-6, May 1, 1983.)

44-12-1302. Class II offenses. (a) Class II offenses are:

(1) Those offenses of moderate seriousness that are designated in this code as class II offenses, whether or not such offenses are also violations of the law; or

(2) Those violations of law designated by the laws of the state of Kansas as misdemeanors; or

(3) Those violations of law designated by the laws of the United States as misdemeanors.

(b) The penalty for a class II offense may be any, or all, or any combination of the following:

(1) Disciplinary segregation not to exceed 15 days.

(2) Loss of good time credits not to exceed three months.

(3) Extra work for up to two hours per day not to exceed 20 days.

(4) Restriction to inmate's own cell for a period not to exceed seven days.

(5) Restriction from privileges not to exceed 30 days.

(6) Fine not to exceed $15.00.

(7) Restitution.

(8) Reprimand.

(c) This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended T-84-6, May 1, 1983.)

44-12-1303. Class III offenses. (a) Class III offenses are those offenses of a less serious nature that are designated in this code as class III offenses, whether or not such offense is also a violation of law.

(b) The penalty for a class III offense may be any, or all, or any combination of the following:

(1) Restriction to inmate's own cell for a period not to exceed three days.

(2) Restriction from privileges for period not to exceed 20 days.

(3) Extra work for not more than two hours per day for a period not to exceed 10 days.

(4) Fine not to exceed $10.00.

(5) Restitution.

(6) Reprimand.

(c) This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended T-84-6, May 1, 1983.)

44-12-1304. Class IV offenses. (a) Class IV offenses are:

(1) Any violation of any published secretary of corrections' regulation or order of the principal administrator, which is not otherwise designated in these regulations or principal administrator's orders as a class I, class II, or class III offense; or

(2) Any violation of any applicable regulation of any other department, agency, board or commission of the state of Kansas or the United States or any civil penalty statute, not otherwise designated in these regulations as class I, class II, or class III offense.

(b) The penalty for class IV offenses may be any, all or any combination of the following:

(1) Restriction from privileges for a period not to exceed 10 days.

(2) Extra work for up to two hours per day for a period not to exceed five days.

(3) Restitution.

(4) Fine not to exceed $5.00.

(5) Reprimand.

(c) This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended T-84-6, May 1, 1983.)

Article 13.—DISCIPLINARY PROCEDURE

44-13-101. Disciplinary procedure established. (a) The principal administrator of each institution or facility shall establish and administer a disciplinary procedure in accordance with these regulations.

(b) Prosecution by criminal justice agencies in the

(continued)

community is a separate process from this disciplinary procedure and both prosecution and disciplinary procedure may be conducted on matters relating to the same factual situations.

(c) The contract work release center shall not be required to use this disciplinary procedure but may use:

(1) The disciplinary procedures established by the United States bureau of prisons and amendments thereto; or

(2) any other system which meets the requirements of the United States constitution as interpreted by the United States supreme court decisions and which is approved by the secretary of corrections.

(d) The inmate shall be entitled:

(1) To recieve advance written notice of the charge and a fair hearing by an impartial hearing body;

(2) To be present at the hearing;

(3) To present documentary evidence;

(4) To testify on the inmate's own behalf;

(5) To have witnesses called to testify on the inmate's behalf;

(6) To confront and cross examine witnesses against the inmate; and

(7) To representation by counsel or counsel substitute in certain serious cases.

All these procedural entitlements are subject to the limitations and guidelines set out in these regulations and are subject to the control of the hearing officer or board chairperson within the parameters of the law and these regulations.

(e) The charge may be amended according to the provisions of these regulations.

(f) If the factual situation giving rise to the disciplinary violation also constitutes a felony under the laws of the state of Kansas, then notice shall be given to the prosecutor of the local jurisdiction for possible state prosecution.

(g) There shall be four (4) classes of offenses. Class I, II and III offense cases shall be processed by a disciplinary board or hearing officer, while class IV offense cases shall be processed by the unit team.

(h) The disciplinary hearing process shall be structured as follows:

(1) Part I, which is the first hearing, shall include the explanation of the charge and the disciplinary process, and the taking of the plea; and

(2) Part II, which is the final hearing, shall consist of:

(A) Stage A, the fact finding needed to determine guilt or innocence; and

(B) Stage B the disposition.

(i) At the first hearing the inmate shall be advised of the nature of the offense and the nature and extent of the possible consequent discipline, the nature of the disciplinary process and his or her rights thereunder. In addition, a plea shall be taken from the inmate at the first hearing. If a plea of guilty or no contest is entered, during the first hearing, stage A of the final hearing shall not be required; a finding of guilt may be recorded and the process shall go to final hearing, stage B for disposition. In these cases, stage B may be conducted along with the first hearing. If a plea of not guilty or no plea at all is entered, the process shall go to final hearing, stage A for the finding of guilt or innocence.

(j) (1) The first hearing may be conducted by a hearing officer or by the disciplinary board in class I, II, or III offense cases.

(2) Stage A of the final hearing may be conducted by a hearing officer in class I cases only if the inmate pleads guilty or no contest at the first hearing, and in class II and III cases regardless of the plea. In class I cases where a plea of not guilty or no plea at all is entered, the disciplinary board shall conduct the final hearing stage A.

(3) Stage B of the final hearing may be conducted by a hearing officer in all class II and III cases and in those class I cases where the plea is "guilty" or "no contest". The principal administrator may require class I cases to be sent to the board for stage B.

(k) A representative of the institution shall be used in class I cases and may be used in class II and III cases to assist the officer in presenting the case against the inmate during the disciplinary process.

(l) A complete log of the disciplinary process shall be maintained. This shall consist of at least the case number, inmate name, rule violated, charging officer, and a list of the nature and date of each action taken from start to finish for each case, including those dismissed and those rejected by the shift supervisor.

(m) The disciplinary hearings shall be conducted within a certain time following notice of the charge as established by these rules and regulations. Continuances of the hearing may be granted. Generally, the inmate shall be permitted to be present at both the first and final hearing except as provided by these regulations.

(n) Representation for the inmate, provided by Legal Services for Prisoners, Inc., or their designee, shall be permitted only under limited conditions established by these regulations.

(o) A summary record shall be made of both the first hearing and the final hearing.

(p) In class I and II offense cases, following an administrative review of the record and any needed adjustments by the principal administrator, the inmate may appeal the case to the secretary of corrections on the record. In class III offense cases, an appeal may be made to the principal administrator on the record following an initial review of the record by some person within the facility other than the principal administrator. No appeal to the secretary of corrections shall be permitted.

(q) Nothing in these regulations shall prohibit the assignment or delegation of the disciplinary hearing and review process or portion of it to the principal administrator of another Kansas state correctional facility for good cause shown and if justice and fairness will not thereby be infringed. An assignment or delegation shall not be made except by the secretary of corrections or by the principal administrator with the secretary of corrections' written approval. This sub-

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section does not apply to hearings at a receiving institution following a transfer based on a classification decision in the sending institution where the offense occurred in the sending institution (see 44-13-507).

(r) This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended T-84-6, May 1, 1983.)

44-13-102. (Authorized by K.S.A. 1980 Supp. 75-5210, 75-5210(f); effective May 1, 1980; amended May 1, 1981; revoked, T-84-6, May 1, 1983.)

44-13-105. The duties of the disciplinary administrator. The principal administrator of each facility shall appoint a disciplinary administrator to manage the disciplinary process for the entire facility. The principal administrator may designate a sergeant or lieutenant, or some other suitable person, to carry out this task on a continuing basis. This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210(f); effective T-84-6, May 1, 1983.)

44-13-201. Disciplinary report and written notice. (a) A disciplinary proceeding shall be commenced upon making a charge by a disciplinary report. The inmate shall be notified in writing within 24 hours after the issuance of the disciplinary report (excluding Saturdays, Sundays and holidays) by personal service of a copy of the report upon the inmate. The report shall not be served upon the inmate by the same officer who brought the charge against the inmate unless no other officer is available to personally serve the inmate. Service of the report upon the inmate may be made by summoning the inmate for a first hearng within 24 hours after issuance, excluding Saturdays, Sundays, and holidays, thus combining the service with the explanation and plea taking provided for in the first hearing.

(b) The disciplinary report shall be written within 48 hours of the offense, the discovery of the offense, or the determination following an investigation that the inmate is the suspect in the case and is to be named as defendant. The investigation shall be completed as soon as possible under the existing circumstances. If necessary, pending completion of the investigation, the inmate may be held in administrative segregation for a certain period pursuant to K.A.R. article 44-14 on administrative segregation. The report shall be reviewed and approved or disapproved by the shift supervisor based on whether or not the report is sound, adequate and made in proper manner and form. If the charge is dismissed, or the report is otherwise rejected by the shift supervisor, a written explanation shall be made in the record and filed with the report, with a copy given to the officer. The report shall not be destroyed.

(c) The disciplinary report shall be in a form prescribed by the secretary and shall include the name and number of the inmate, the institution, the signature and title of the writing officer, the date and time of the alleged offense, the date the report is written, the nature of the alleged offense and the class, title and number of the rule violated. The report shall show the names of known witnesses. The report shall state briefly the circumstances and facts of the violation.

(d) No inmate shall be charged unless the rule or law has been made in writing and published.

(e) The officer may warn or reprimand the inmate instead of writing a report if the offending conduct observed is a class II, III, or IV offense.

(f) This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended T-84-6, May 1, 1983.)

44-13-301. Disciplinary board in class I offense cases. (a) For final hearing in all class I offense cases, an impartial board shall be appointed by the principal administrator as follows:

(1) A three member board at the following institutions:

(A) Kansas state penitentiary (K.S.P.).

(B) Kansas correctional institution for women (K.C.I.W.).

(C) Kansas correctional vocational training center (K.C.V.T.C.).

(D) Kansas state industrial reformatory (K.S.I.R.).

(E) Kansas reception and diagnostic center (K.R.D.C.).

(2) A two or three member board, as designated by the principal administrator, at the following institutions or facilities:

(A) All honor camps.

(B) All department operated work release centers.

(b) The board shall be selected from the following:

(1) Security personnel having at least two years prior service, which may be waived in writing by the secretary of corrections, and completed required training; and

(2) Treatment, counseling, programs, or classification personnel.

(c) The board shall not be composed entirely of personnel from the same division or section, but shall be a mix.

(d) No person shall be a member of the board who is the reporting officer, investigator, or a witness.

(e) In those boards composed of three persons, a finding of guilt and the imposition of sentence shall be made only upon the vote of two of the three board members. In those cases in which a two man board sits, a finding of guilty or imposition of sentence shall be made only upon the unanimous decision of both members of the board.

(f) When a plea of not guilty in a class I case was entered by or on behalf of the inmate at the first hearing, the disciplinary board shall conduct both stages of the final hearing. When a plea of guilty or no contest in a class I case was entered at first hearing, either the disciplinary board or a hearing officer shall conduct the stages of the final hearing as determined by the principal administrator or designee.

(g) This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-

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5210; effective May 1, 1980; amended May 1, 1981; amended T-84-6, May 1, 1983.)

44-13-302. Hearing officer in certain cases. (a) For the final hearing in all class II and class III offense cases, an impartial hearing officer may be appointed by the principal administrator to hear the case in lieu of disciplinary board.

(b) The hearing officer shall have had experience of hearing at least 10 disciplinary cases as a member of the board within the last three years.

(c) The hearing officer shall not be the reporting officer, investigator or a witness.

(d) In class II and III offense cases, the hearing officer may conduct both stage A and B of the final hearing. When a plea of guilty or no contest has been taken in class I cases at the first hearing, the hearing officer shall record a finding of guilt. Stage B may then be conducted either by the disciplinary board or by the hearing officer, as determined by the principal administrator or designee. (See K.A.R. 44-13-405.)

(e) This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended T-84-6, May 1, 1983.)

44-13-303. Unit team as hearing board in class IV cases. The unit team to which the inmate is assigned shall act as a hearing board for all class IV cases. Whenever possible, the unit team hearing board shall consist of the unit team leader, a correctional counselor and a correctional officer from the unit team responsible for the inmate being disciplined. This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended T-84-6, May 1, 1983.)

44-13-304. The disciplinary representative. (a) The disciplinary representative, if appointed, shall present the case against the inmate on behalf of the facility. In class I offense cases a representative shall, and in class II and III offense cases may, be designated by the facility principal administrator. Instead of a representative the principal administrator may appoint the reporting officer to act on the facility's behalf. If needed, the representative may obtain the advice and assistance of the departmental attorney or administrative legal advisor.

(b) The board or hearing officer may bring out the facts by direct or cross examination but the board shall not act as prosecutor to argue or pursuade on behalf of the facility or charging officer against the accused inmate, nor on behalf of the inmate. This does not preclude the board from discussing the evidence presented among themselves.

(c) This reguiation takes effect May 1,1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended T-84-6, May 1, 1983.)

44-13-402. Continuing the hearing. (a) In the event that either the employee filing a complaint or the inmate charged is not prepared for the hearing, or in the event counsel is not available in those cases where counsel is allowed, one continuance of five working days excluding Saturdays, Sundays, and holidays shall be allowed upon request for each side. In addition, one continuance of up to 15 working days, excluding Saturdays, Sundays and holidays, as requested, may be permitted to each side at the fair discretion of the hearing officer or board chairman or by the disciplinary administrtor if no board or hearing officer has yet been appointed for the case. Such continuance dates shall be recorded on the institution or facility disciplinary board log. The board may continue the case indefinitely as necessary in the event that:

(1) The inmate or the employee is unable to appear for medical reasons as certified by the institution, or facility medical director or other licensed physician;

(2) There is a delay to await determination of whether the case will go to trial in a court of law or the outcome of such trial;

(3) There is a delay awaiting the return of evidence from an analysis laboratory;

(4) The inmate is transferred to Kansas reception and diagnostic center (KRDC), out to court or to a mental hospital before hearing; or

(5) The inmate is on "escape" status, but at the board's discretion the case may be dismissed, or heard *in absentia* on the record.

(b) To obtain a continuance in advance of the hearing, the requesting party shall make the request to the chairman of the board or the disciplinary administrator. The continuance shall be granted if it complies with the rules. If there is a hearing officer appointed for the case the request shall be forwarded to such officer.

(c) This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended T-84-6, May 1, 1983.)

44-13-403. First hearing and taking pleas. (a) A first hearing shall be held no more than four days excluding Saturdays, Sundays and holidays, following the receipt of notice of charge by the inmate. This hearing may be conducted by the hearing officer or by the board when the board meets to conduct disciplinary hearings. The first hearing may be combined with personal service of the disciplinary report.

(b) At the first hearing the presiding officer shall read the disciplinary report to the inmate including the date, nature of offense, and the reporting officer's name and the synopsis of the observation. The presiding officer shall assure that the inmate understands the charges and that a copy was received by the inmate. The officer shall explain the possible penalties.

(c) Counsel, if available, shall be permitted to be with the inmate at the first hearing in the following cases:

(1) All class I cases;

(2) Class II cases where the inmate is unable to prepare or present a defense as described in these regulations on representation by counsel.

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Counsel shall not be permitted in other kinds of cases.

(d) If the inmate is disruptive or is deliberately refusing to be present, the hearing may proceed *in absentia* and the record shall indicate reasons for the inmate's absence. The inmate's counsel shall be permitted to be present.

(e) The presiding officer shall assure that the inmate has counsel in class I and certain class II offense cases if counsel is requested and available.

(f) The presiding officer shall advise the inmate of the inmate's rights to a hearing, and to counsel in class I and certain class II offense cases, pursuant to K.A.R. 44-13-408, and other procedural due process rights.

(g) The presiding officer shall then ask the inmate to plead guilty, not guilty, or no contest, and shall take the plea if the presiding officer is assured that it is made knowledgeably and without threat or promise of reward to the inmate. If the inmate refuses to plead the hearing officer shall enter a plea of not guilty. A plea of no contest shall be treated the same as a plea of guilty.

(h) The hearing officer may in class I, II and III cases, upon a plea of guilty or no contest, make a finding of guilt and conduct a sentencing hearing and impose sentence. In class I cases the hearing officer may refer the case to the disciplinary board for disposition and sentencing.

(i) If the hearing officer finds at the first hearing that the case must be dismissed, the officer may dismiss the charge on the officer's own motion or on motion of either party. The hearing officer shall give a brief explanation on the record.

(j) This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended T-84-6, May 1, 1983.)

44-13-405. Conducting the final hearing. (a) The final hearing in the disciplinary process shall be conducted in two stages: stage A and stage B. In stage A the board or hearing officer shall determine guilt or innocence and in stage B the board or hearing officer shall make disposition including the determination and imposition of sentence if guilt was established in stage A. Hearing officers may make disposition only in class II and III cases and in class I cases where the plea was "guilty" or "no contest."

(b) In stage A only the facts relevant to determination of guilt or innocence shall be considered. In stage B, in which disposition and sentence shall be determined, the inmate's entire institution record and other relevant facts, observations and opinions may be considered.

(c) The chairman or hearing officer shall rule on all matters of evidence. Strict rules of evidence as used in a court of law shall not be required, but the chairman or hearing officer shall exercise diligence to admit reliable and relevant evidence and to refuse to admit irrelevant or unreliable evidence.

(d) The chairman or hearing officer shall rule on all matters of representation for the accused inmate in accordance with these regulations. If the accused inmate is represented by an attorney, an inmate, or a staff advisor, then that representative shall be permitted to fully represent the accused and shall be permitted to question witnesses and present arguments on behalf of the accused inmate, except as otherwise provided by these regulations.

(e) The disciplinary process shall, to the extent possible, discover the truth regarding charges against the inmate. For this purpose the chairman is authorized to call witnesses, and to interrogate any witness. All testimony and evidence shall be given or presented in the presence of the accused inmate; testimony or evidence shall not be received by the board or introduced by any board member outside the presence of the inmate, except as provided in (f) below, 44-13-403(d), 44-13-402(a)(5), 44-13-405(n), and as otherwise provided in these regulations.

(f) If the testimony of any inmate, in the judgment of the chairman or hearing officer, will subject the inmate to possible retaliation for having testified, the chairman may receive the testimony in confidence without confrontation or cross examination by the accused inmate and the witnesses may be sequestered. The testimony shall be examined and tested by the board or hearing officer. The testimony shall be in writing and shall be sworn to. The chairman shall closely question the testifying inmate to determine the veracity and weight of the testimony offered. The accused shall be apprised of the general nature of the confidential testimony omitting those details as that would tend to identify the inmate who gave the confidential testimony. Identity of witness shall be kept secret. The attorney shall be permitted to be present when the board receives testimony, and the attorney may ask questions. The testimony shall be recorded for confidential review but shall be kept secret.

(g) In any class I, II and III offense cases, the chairman or hearing officer shall ensure that the entire disciplinary hearing is tape recorded. If at any time, for any reason, the tape recorder is turned off during the hearing, the chairman shall indicate this fact on the record, shall state the reasons for that action, shall state the duration of the time that the recorder was off and shall summarize the events occurring which were not tape recorded.

(h) The chairman or hearing officer shall have and exercise all powers necessary to ensure the orderly process of the disciplinary hearing proceedings.

(i) The board or the hearing officer shall listen to all testimony offered by the reporting officer, the accused inmate, and all other witnesses. The chairman or hearing officer shall require the reporting officer and all witnesses to provide all details concerning the alleged offense. The chairman and board members or hearing officer shall question each witness, as the need arises, to clarify in their own minds the facts surrounding the alleged offense.

(j) The board members, or hearing officer, in deciding whether or not the inmate is guilty, shall consider only the relevant testimony or report. The accused inmate's record shall not be considered in determining guilt or innocence.

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(k) The hearing officer shall proceed as follows: (1) The prosecution shall state its case simply in summary and then the defense shall do likewise.

(2) The prosecution shall present its evidence and the defense shall be permitted to cross examine, except as otherwise provided by these regulations.

(3) The defense shall present its case and the prosecution shall be permitted to cross examine.

(4) Prosecution may make closing argument. The defense may do likewise, and then the prosecution may make a short rebuttal.

(l) The chairman may restrict testimony to avoid repetition or disruption of the proceedings.

(m) The hearing officer or chairperson may refuse to call a witness when institutional safety or correctional goals would be jeopardized. When a denial is made, a written explanation shall be made on the record unless it would endanger some person, in which case a written explanation shall be made to the principal administrator with a copy to secretary of corrections for confidential review.

(n) If the inmate is disruptive or is deliberately refusing to be present, the hearing may proceed in absentia and the record shall indicate reasons for the inmate's absence. The inmate's counsel, if available, shall be permitted to be present.

(o) The decision in the hearing shall be based solely on evidence provided by testimony of witnesses and documentary evidence presented in the hearing. The unit team file shall be available to hearing officer or board. Only matters relating to guilt or innocence on the charge may be used by the board in stage A.

(p) Confrontation and cross examination may be denied by the hearing officer or chairperson when deemed necessary in any case except class I cases. In class I cases it may be limited or denied when necessary to protect the safety of an accuser, informant, or witness or when necessary to maintain institutional safety, security and control. Unless a security risk is involved endangering some person, the explanation shall be in the record, otherwise written explanation of the reason shall be sent to the principal administrator with a copy to the secretary for confidential review.

(q) This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended T-84-6, May 1, 1983.)

44-13-406. Disposition. (a) The disposition shall be rendered by the board or hearing officer in an official session with the inmate present unless otherwise provided by law or regulation. The disposition shall be made without unreasonable delay following the final hearing, preferably at the conclusion of the hearing.

(b) The disciplinary board or hearing officer may:

(1) Designate the minimum and maximum penalty;

(2) impose a flat sentence, within the limits set in the disciplinary code; or

(3) may designate only the minimum within the limits set out in the disciplinary code, in which case the maximum shall be that shown in the code. If not a flat sentence, the case shall be reviewed after the minimum penalty has been served by the principal administrator or designee.

(c) The disciplinary board or hearing officer may suspend all or part of the sentence imposed.

(d) Disciplinary board or hearing officer may make a recommendation to the unit team on a separate form or in a separate space on the disposition form as designated for such purpose.

(e) The charging officer shall be notified promptly of the disposition.

(f) This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended T-84-6, May 1, 1983.)

44-13-407. Nature of unit team hearing in class IV offense cases. (a) The unit team shall explain the charge, the possible penalties, and the evidence against the inmate.

(b) The inmate shall have the opportunity to respond in the inmate's own defense.

(c) Unit team may permit witnesses at its discretion.

(d) No counsel shall be permitted, except as authorized pursuant to K.A.R. 44-13-408 when the inmate is not capable of effectively preparing and presenting a defense.

(e) No appeal shall be permitted.

(f) A summary record shall be made.

(g) No other hearing shall be held in class IV offense cases.

(h) The principal administrator or deputy director of programs shall review the record to assure the hearing was conducted in accordance with stated procedures and that action conforms to institution rules and secretary of corrections regulations. If not, the principal administrator shall modify it to bring it into compliance, or revoke it, or order a new hearing or take other action as necessary to bring it into compliance.

(i) This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended T-84-6, May 1, 1983.)

44-13-408. Representation by counsel or counsel substitute. (a) An inmate may request services of any staff member to represent the inmate at disciplinary hearings and to question relevant witnesses.

(b) The principal administrator shall appoint a staff member to represent the inmate when it is apparent that the inmate is not capable of effectively collecting and presenting evidence on the inmate's own behalf.

(c) Representation by Legal Services for Prisoners, Inc., or its designee, or by counsel substitute selected by the inmate and approved by the principal administrator shall be permitted in class I offense cases. If such counsel is not available, the hearing may proceed without legal counsel. However, the provisions of (b) will still apply.

(d) Counsel shall be considered not available in cases where counsel fails to appear, or will not appear

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within three days, excluding Saturdays, Sundays, and holidays, not including authorized continuances.

(e) Counsel substitute shall mean another inmate or a correctional staff member.

(f) Legal services for prisoners, inc., may designate the Kansas university law school defender project or Washburn university legal clinic by general designation for all members and participants of such programs on a continuing basis. When a bona fide conflict of interest exists, Legal Services for Prisoners, Inc., may designate a private attorney, on a case by case basis, in any case with prior written approval by the secretary of corrections.

(g) In a class I case, if the inmate is represented by legal counsel, the officer also shall be permitted to have representation by legal counsel provided by the staff attorney of the facility if one is on staff, or by a department staff attorney, if possible and if available.

(h) This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended T-84-6, May 1, 1983.)

44-13-601. Serving sentence. (a) In all cases the inmate shall begin serving the sentence immediately upon disposition by the board. This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended T-84-6, May 1, 1983.)

44-13-602. Time not credited for administrative segregation. If the inmate is held in administrative segregation before the disciplinary hearing, for some administrative reason, other than merely to await the disciplinary hearing or for investigation of the offense, then that time spent in administrative segregation shall not be credited against the service of sentence in disciplinary segregation. However, any time during which the inmate is held pending the hearing, which is solely for the purpose of awaiting the disciplinary hearing or awaiting completion of the investigation, shall be credited and subtracted from the inmate's disciplinary segregation sentence if one is rendered on the charge. This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended T-84-6, May 1, 1983.)

44-13-701. Appeal on the record to secretary of corrections in class I and II offense cases only. (a) In class I and II cases the inmate shall have the right to appeal on the record to the secretary of corrections from a decision made by the disciplinary board after review by the principal administrator. The inmate shall be notified of such right of appeal before or immediately following the principal administrator's review.

(b) The appeal shall be initiated by the unit team upon request for the inmate. The inmate may, on forms provided by the unit team and with their assistance, prepare the inmate's own appeal. The unit team shall assure that the proper forms are included before it is forwarded.

(c) The inmate must request such appeal within two days of the date of receiving the inmate's copy of the final action of the principal administrator excluding Saturdays, Sundays and holidays, and shall complete preparation and the appeal within seven days from date of such request, excluding Saturdays, Sundays and holidays.

(d) If the inmate pleads guilty at the hearing, no appeal is permitted unless the inmate alleges and shows the inmate was under duress at the time of the plea, or that fraud or substantial error was involved in the inmate's plea of guilt, or that the inmate was not advised of the nature of the hearing and the rights the inmate would waive by such plea.

(e) Argument in writing submitted by both sides and served on opposing sides. In any case of appeals, each side may write a statement arguing the law and shall serve a copy of the argument on the opposing side. The inmate shall serve a copy of the argument on the unit team. The unit team shall forward a copy to the institution administrative legal advisor or to the deputy director for programs so that a responsive argument may be made. A copy of the responsive argument made by the institution or facility shall be served upon the inmate or the inmate's attorney or both. Such responsive argument shall be made a part of the record and forwarded to the secretary of corrections along with the appeal. All arguments shall identify on their face the disciplinary case to which they are attached.

(f) This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended T-84-6, May 1, 1983.)

44-13-702. Secretary of corrections' final review on appeal. The secretary of corrections shall, within 10 days of receiving an appeal, excluding Saturdays, Sundays and holidays, review all cases appealed to the secretary and may approve the decision as rendered, revoke it entirely, reduce the penalty, or order a new hearing. The date of receipt shall not be counted. The secretary's decision shall be final. A copy of the appeal decision shall be given to the inmate within 15 days following the secretary's decision. This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended T-84-6, May 1, 1983.)

44-13-704. Administrative review. (a) In class I and II offense cases, within 10 days after preparation of the record, excluding Saturdays, Sundays, and holidays, there shall be a review of the case without the presentation of further arguments from either side. The principal administrator shall approve the decision, disapprove the decision and dismiss the case, reduce the penalty, or remand the case to the board or hearing officer and order a new hearing.

(b) The principal administrator shall notify the inmate of the results of the review without unnecessary delay but in no case later than 10 days after receipt of the record excluding Saturdays, Sundays and holidays. The date of receipt shall not be counted.

(c) In Class III cases, where possible, the reviewer

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shall not be the principal administrator. The principal administrator shall designate someone to do the review. No person who was a member of the disciplinary board or who was the hearing officer may act as reviewing authority, nor shall the reviewer be any person involved in the offense as witness or reporting officer.

(d) This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended T-84-6, May 1, 1983.)

44-13-707. Harmless error; plain error. (a) An error in either the admission or exclusion of evidence, an error or defect in any ruling or order, an error in anything done or omitted by the hearing officer or disciplinary board or by any of the institution officials in processing the disciplinary case, or an error by the inmate in processing the inmate's defense of the case, shall not be grounds for granting a new hearing, for setting aside a finding, or for vacating, modifying or otherwise disturbing a disposition or order, unless refusal to take that action appears to the hearing officer, disciplinary board, or the reviewing authority inconsistent with substantial justice. The hearing officer or board or the reviewing authority at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the inmate or the state.

(b) Plain error which affects the substantial rights of the parties may be given judicial notice and acted upon to remedy the error even though it was not drawn to the attentio of the hearing or reviewing body by either party.

(c) This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; T-84-6, May 1, 1983.)

Article 14.—ADMINISTRATIVE AND DISCIPLINARY SEGREGATION

44-14-302. Types of inmates or situations for use of administrative segregation. Inmates confined in administrative segregation may be any of the following. (a) Protective custody (P.C.). Those who request security segregation for their personal safety or those who the principal administrator knows to be in serious and imminent danger, if the principal administrator documents the basis for the administrator's knowledge. It shall be documented that protective custody is warranted and that no reasoable alternatives are available.

(b) Pending results of investigation. Inmates may be placed in administrative segregation pending the completion of an investigation to determine whether charges should be brought. This may be done to prevent communication and collaboration between inmates involving an attempt to improperly or dishonestly coordinate the testimony which might be given, to prevent the possible intimidation of witnesses or accusers, or to prevent further disruption if a threat to security and control, including danger to other inmates, continues to exist in the judgment of the principal administrator. The inmate may be held in administrative segregation under both this subsection and any of subsections (a), (c), (d), (e), or (f) simultaneously. This shall be mentioned on the report form given to the inmate within 48 hours, excluding Saturdays, Sundays and holidays, unless a continued holding in administrative segregation under this section is justified in writing and approved by the principal administrator. This notice and explanation shall be given to the inmate in writing. The inmate's status in this situation shall be reviewed by the principal administrator or designee within 72 hours.

(c) Pre-hearing detention. If necessary to maintain security and control, inmates who have been charged with an alleged violation of law or class I or II offenses may be held in administrative segregation pending a hearing before the institution disciplinary board, or pending a trial by the court on a charge. Credit shall be given for this time against any sentence of disciplinary segregation which might result from that hearing. The inmate may be held in administrative segregation under this subsection and any of subsections (a), (b), (d), (e), or (f) of this section simultaneously and if this is the case it shall be stated in the administrative segregation report. The inmate's status in this situation shall be reviewed by the principal administrator or designee within 72 hours.

(d) Communicable disease. Those whom a doctor of medicine has declared to be carrying any communicable disease may be placed in administrative segregation until danger of contagion is past.

(e) Special security inmate. Administrative segregation may be applied to:

(1) Persons accused of or who have a history of aggressive or forceable homosexual attacks, provided that there has been verification and documentation of that history, or upon verification by psychiatrist or psychologist after any such occurrence that there is a substantial and likely probability it will occur again;

(2) inmates with suicidal tendencies verified by a psychiatrist or psychologist before, or within 72 hours after, lock-up in administrative segregation. An inmate who inflicts any self-injury may be placed in administrative segregation for up to 72 hours for observation and to give clinical staff an opportunity to determine whether the injury is a significant indication of a suicidal tendency;

(3) inmates with a history of self-mutilation or self-injury after a demonstration has been made from the record that this history exists;

(4) inmates with mental problems which cause them to be a threat to themselves, employees, or other inmates, when that mental problem has been verified by a psychiatrist or psychologist;

(5) emergency situations in which the violent behavior of an inmate indicates that the inmate is potentially dangerous to the inmate's self, or others. Segregation in this case shall continue for the duration of the emergency only, and in no case beyond 72 hours without psychiatrist's or psychologist's verification that the inmate's potential for danger is continuing, unless the actual violent behavior continues; and

(6) inmates who have been determined by the

(continued)

principal administrtor, or in the administrator's absence, by the deputy director, to be an extreme risk of escape. Such segregation shall be for the duration of the risk condition. This segregation may be done for good reason as documented by the principal administrator, or as shown in the record. When these officers are absent during an emergency, segregation may be authorized by the highest ranking officer on duty; the principal administrator's approval and documentation shall be obtained as soon as possible.

(f) Consistent bad behavior. Any inmate may be placed in administrative segregation indefinitely when the inmate's record shows consistent bad behavior as evidenced by three offenses within the preceeding 12 months and when:

(1) The inmate has been found guilty of the offense by a disciplinary process;

(2) such offenses involve acts which are violent and are a substantial threat to the safety and security of the institution or facility; and

(3) when such offenses arise from separate fact situations. Placement under this provision shall be only with prior written approval of the principal administrator.

(g) Other security risk. The principal administrator may place in administrative segregation or lock-up in the inmate's own cell any inmate or group of inmates if such inmate or inmates are engaging in behavior which threatens the maintenance of security or control in the correctional facility. In such cases, the principal administrator shall explain the threat and show the justification for segregation or lock-up in writing and send a copy immediately to the secretary of corrections.

(h) This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 75-5251 and K.S.A. 1982 Supp. 75-5252, and, 75-5210; effective May 1, 1980; amended May 1, 1981; amended T-84-6, May 1, 1983.)

44-14-310. Procedure for the administrative segregation review board upon initial placement. (a) Within seven days of placement, the administrative segregation review board shall review the placement decision and may interview the inmate. This shall apply to any case of administrative segregation including segregation pending hearing on a disciplinary violation case.

(b) The administrative segregation review board shall provide a written comment, including references to the facts which were relied upon and the reasons for the confinement in administrative segregation. The record shall include a brief statement summarizing the position of the principal administrator and the inmate, if known or if interviewed, and may include the recommendation to the principal administrator and the reasons for such recommendation.

(c) This regulation takes effect May 1, 1983. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1982 Supp. 75-5252; effective May 1, 1980; amended T-84-6, May 1, 1983.)

MICHAEL A. BARBARA
Secretary of Corrections

Doc. No. 001058

State of Kansas

PERMANENT ADMINISTRATIVE REGULATIONS

NOTICE

The following are permanent administrative regulations which were adopted by a state agency pursuant to K.S.A. 1982 Supp. 77-415 *et seq.* ***These regulations are scheduled to become effective May 1, 1983, but are subject to legislative review and may be modified or revoked by the Kansas Legislature prior to May 1.*** Any such legislative action will be reported in the *Kansas Register*. The May 5, 1983 issue of the *Register* will contain a complete index to regulations effective May 1, and any legislative actions on them.

INSURANCE DEPARTMENT ADMINISTRATIVE REGULATIONS

Article 1.—GENERAL

40-1-1. Officers, directors, trustees; financial interest in sale or loan by company; prohibited. (a) Except as permitted by K.S.A. 40-2a13(d) and 40-2b10(e) respectively, no officer, director or trustee of an insurance company, association or society doing business in this state shall receive any money or valuable thing for negotiating, soliciting, procuring, recommending, or aiding in any purchase or sale by the company, association or society of any property or receive any loan from the company, association or society nor be financially interested either as principal, coprincipal, agent, or beneficiary in any such purchase, sale or loan.

(b) With respect to the sale or purchase of any real estate to or from an officer, director or trustee of any insurance company, association or society doing business in this state by an insurance company, association or society, an appraisal of the property shall be made prior to purchase or sale. A true copy of the appraisal shall be provided to the commissioner upon request.

(c) No company, association, or society doing business in this state shall make any loan, other than a policy loan, to any officer, director, trustee or other person having authority in the management of its funds, nor shall such an officer, director, trustee or other person accept any loan. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-205, 40-222, 40-225; effective Jan. 1, 1966; amended Jan. 1, 1969; amended May 1, 1979; amended May 1, 1983.)

Article 2.—LIFE INSURANCE

40-2-12. Replacement of life insurance and annuities. (a) This regulation shall apply to the replacement of all policies of life insurance as defined here.

(b) Definitions.

(1) "Agent" means any agent, broker, or other person representing any insurer in the sale of any type of policy as defined here.

(2) "Company" or "insurer" means any company, society, association or other financial institution which

(continued)

issues any policy as defined here and is subject to the supervision of the insurance department of this state.

(3) "Life insurance" means any life insurance policy, annuity, or variable annuity contract, unless specifically exempted in subsection c.

(4) "Replacement" means any transaction wherein new life insurance is to be purchased from an agent and it is known, or reasonably should be known, to the agent that, as a part of the transaction or in consequence of it, any previously existing life insurance has been or is likely to be:

(A) Lapsed or surrendered;

(B) converted into paid-up insurance, continued as extended term insurance or under another form of non-forfeiture benefit;

(C) converted otherwise so as to effect a reduction either in the amount of the existing life insurance or in the period of time the existing life insurance will continue in force;

(D) reissued with a reduction in amount such that substantial cash values are released. ("Substantial cash values" include all transactions wherein an amount in excess of 50 percent of the tabular cash value is to be released on one or more of the existing policies); or

(E) assigned as collateral for a loan or subjected to substantial borrowing of the loan values whether in a single loan or under a schedule of borrowing over a period of time. "Substantial borrowings" include all transactions wherein an amount in excess of 50 percent of the tabular cash value is to be borrowed on one or more existing policies.

(5) "Sales proposal" means individualized, written sales aids of all kinds. Sales aids of a generally descriptive nature, which are maintained in the insurer's advertising compliance file, shall not be considered a sales proposal.

(c) This regulation shall not apply when:

(1) The application for the new life insurance is made to the same insurer that issued the existing life insurance and a contractual policy change or conversion privilege is being exercised;

(2) the new life insurance is provided under:

(A) A group life insurance policy; or

(B) policies covering employees of an employer, debtors of a creditor, or members of an association, which are distributed on a mass merchandising basis and administered by group-type methods;

(3) the existing life insurance is a nonconvertible term policy with five years or less to expire and which cannot be renewed;

(4) the solicitation is made by direct mail and:

(A) all sales material is standard and printed;

(B) within three business days the insurance company notifies the existing insurance company of the fact that the proposed insured has answered "yes" to the replacement question in the application; and

(C) concurrent with the notice to the existing company, the insurance company mails to the applicant a copy of the "notice to applicant regarding replacement of life insurance" described in subsection (f); or

(5) the policy is issued in connection with a pension, profit sharing, an individual retirement account, or other benefit plan qualifying for tax deductibility of premiums.

(d) Each life insurance agent shall:

(1) Obtain with or as a part of each application for life insurance a statement signed by the applicant as to whether this insurance will replace existing life insurance;

(2) submit to the insurer in connection with each application for life insurance a statement as to whether, to the best of the agent's knowledge, replacement is involved in the transaction; and

(3) When a replacement is involved:

(A) Obtain with or as a part of each application a list of all existing life insurance policies proposed to be replaced;

(B) present to the applicant, not later than at the time of taking the application, a copy of any sales proposal utilized and a "notice to applicants regarding replacement of life insurance" in form substantially as described in exhibits A, B, and C. The forms shall be left with the applicant for the applicant's records subsequent to providing the applicant a thorough explanation of their content;

(C) submit with the application to the insurer a copy of any proposal used and the name of each insurer which issued any insurance being replaced; and

(D) Have the applicant acknowledge receipt of the "notice to applicants regarding replacement of life insurance."

(e) Each insurer shall:

(1) Inform its field representatives of the requirements of this regulation;

(2) require with or as a part of each application for life insurance a statement signed by the applicant as to whether the insurance will replace existing life insurance;

(3) require in connection with each application for life insurance a statement signed by the agent as to whether, to the best of the agent's knowledge, replacement is involved in the transaction; and

(4) When a replacement is involved:

(A) Require with or as a part of each application for life insurance a list prepared by the agent representing, to the best of his or her knowledge, all of the existing life insurance policies proposed to be replaced;

(B) obtain a copy of any sales proposal used, proof of the receipt by the applicant of the "notice to applicants regarding replacement of life insurance" and the name of each insurer whose insurance is being replaced;

(C) within three working days notify any insurer whose insurance is being replaced;

(D) delay, if it is not also the existing insurer, the issue of its policy for 20 days after it sends the notification required by subparagraph (C). However, the replacing insurer may issue its policy immediately if:

(i) it provides in that notice in either its policy or in a separate written notice that is delivered with the policy that the applicant has a right to an unconditional refund of all premiums paid, which right may be

(continued)

exercised within a period of twenty days commencing from the date of delivery of the policy; and

(ii) it sends the required notice to the existing insurer within three working days of the date its policy is issued.

(E) Maintain copies of any sales proposal used, proof of receipt by the applicant of the "notice to applicants regarding replacement," and the applicant's signed statement with respect to replacement in its home office for at least three years or until the conclusion of the next succeeding regular examination by the insurance department of its state of domicile, whichever is later. Any insurer which receives notice that its existing insurance may be replaced shall maintain copies of this notification on its premises, indexed by insurer notifying it of this replacement, for three years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later.

(f) With the exception of the reference to a comparative information form, the forms set forth in exhibits A, B, and C of the national association of insurance commissioners' model life insurance replacement regulation, December 1978 edition are hereby adopted by reference. Substantially equivalent forms may be adopted with the prior approval of the insurance commissioner. To the extent the forms in exhibits A, B, and C are not entirely appropriate for replacements involving annuity contracts or contracts sold by direct mail methods, each company shall have the responsibility of modifying these forms as necessary to accommodate these cases. A copy of the modified forms shall be filed with the insurance commissioner for prior approval.

(g) If an agent who holds both a life insurance license and a securities license proposes to sell securities to a policyholder and that proposal will result in any of the situations set forth in section (b), the agent shall give written notice to the policyholder before consummating this proposal. The word "securities" as used in this rule shall not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or for some other specified period.

This written notice shall:

(1) Be dated and signed by the licensed agent and state the agent's address;

(2) state the name and address of the policyholder;

(3) describe the insurance which has been or is to be affected including the policy number, amount of insurance, plan of insurance, issue age, effective date and the total premium;

(4) state how the insurance will be affected, the amount of cash value affected, and the facts which make it advisable; and

(5) list the company or companies which are involved.

(h) Every dually licensed agent shall keep a file containing a copy of each written notice. The agent shall keep a copy of each notice for three years. The file shall be subject to inspection and review by this department, upon the department's written request.

(i) In case any duly licensed agent solicits life insurance in connection with the sale of securities, when not prohibited by K.S.A. 40-232, this agent shall, in addition to the requirements of section d, submit a copy of the notice required by this section (g) to his or her insurance. That notice shall be attached to and become a part of exhibit A, which is required by this rule.

(j) Any violation of this rule shall be presumed to constitute a misleading representation for the purpose of inducing or tending to induce an insured to lapse, forfeit or surrender the insured's existing insurance. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-2404; effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-72-20, Sept. 1, 1972; amended Jan. 1, 1973; amended Feb. 15, 1977; amended May 1, 1982; amended May 1, 1983.)

Article 5.—CREDIT INSURANCE

40-5-102. Consumer credit insurance; definitions. (a) "Credit life insurance" means insurance on the life of a consumer pursuant to or in connection with a consumer credit transaction.

(b) "Credit accident and health insurance" means insurance, written in connection with a consumer credit transaction, to provide benefits in the event of disability of a consumer.

(c) "Claims incurred" means claims actually paid during the year appropriately adjusted for the yearly change in claim reserves, including reserves for reported claims in process of settlement and claims incurred but not reported.

(d) "Claims" means benefits payable on death or disability excluding loss adjustment expense, claims settlement costs, or other additions of any kind.

(e) "Premiums earned" means the total gross premiums which become due to the insurance company, without reduction of any kind, except the premiums refunded or adjusted on account of termination of coverage, and appropriately adjusted for changes in gross unearned premiums in force upon a pro rata basis or a "sum of the digits" basis consistent with K.A.R. 40-5-108(a).

(f) "Commissioner" means the commissioner of insurance of the state of Kansas. (Authorized by K.S.A. 16a-4-112; implementing K.S.A. 16a-4-101 et seq., K.S.A. 1982 Supp. 16a-4-103; effective Jan. 1, 1974; amended May 1, 1979; amended May 1, 1983.)

Article 7.—AGENTS

40-7-7. Agents; procedure for obtaining licenses and company certification. (a) Licenses. (1) Any individual desiring to become licensed shall complete and submit an application and evidence of graduation from an accredited four year high school or its equivalent. A copy of the applicant's high school or college diploma, certification from proper school authorities verifying the applicant's graduation from an accredited four year high school, or certification of the applicant's completion of the general education development test (GED) shall be deemed to be acceptable evidence.

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(2) An examination fee of $10.00 for each class of insurance to be covered under the examination shall accompany the application and other required material.

(3) When the commissioner of insurance is satisfied that the applicant has met all the requirements for an agent's license as prescribed by statute and these rules and regulations, except the passing of a written examination, the commissioner shall notify the applicant that the applicant may appear for examination.

(4) If the applicant has not been licensed and certified during the two years immediately preceding the date of the application, for the classes or subclasses of insurance that the applicant intends to write, the applicant shall pass a written examination covering each class or subclass of insurance.

(b) Certifications. (1) The company certification shall be completed to show the company name, name and address of the agent to be certified, the code number of the desired certification, the application date, and the address of the insurance company office submitting the certification.

(2) Certification shall be issued only upon request from the company itself and shall be accompanied by proper certification fees.

(3) The certification shall be personally signed by an authorized representative of the insurance company.

(c) A full certification fee shall be charged for any certification issued.

(d) The company certification of a non-resident agent shall be accompanied by a certification from the chief insurance regulatory official of the applicant's state of domicile indicating that the applicant is duly licensed as an insurance agent in the state for the classes of insurance to be transacted in Kansas. (Authorized by K.S.A. 40-103; implementing 40-240, 40-241, 40-252; effective Jan. 1, 1966; amended Jan. 1, 1967; amended Jan. 1, 1970; amended, E-70-28, July 1, 1970; amended Jan. 1, 1971; amended, E-71-24, July 1, 1971; amended Jan. 1, 1972; amended Feb. 15, 1977; amended, E-79-25, Oct. 19, 1978; amended May 1, 1979; amended May 1, 1983.)

Article 8.—EXCESS COVERAGE

40-8-2. Excess line insurance; refusal of admitted carriers; rate differentials; artificial divisions of coverage; portions of risk unacceptable. Subject to the following conditions, risks which may be written but are declined by admitted insurers may be placed with non-admitted insurers in accordance with K.S.A. 40-246b.

(a) When the coverage sought would be acceptable as a single contract to admitted insurers, artificial divisions of coverage into two or more proposed contracts shall be prohibited for the purpose of:

(1) Rendering a portion of the coverage unacceptable to admitted companies; or

(2) Obtaining a rate advantage upon the entire risk.

(b) With the prior approval of the commissioner, a risk involving a single class of coverage may be placed with a non-admitted insurer if a portion of the risk is unacceptable to admitted insurers and the non-admitted insurer will not write the unacceptable portion separately.

(c) A risk shall not be placed with a non-admitted insurer if the risk includes a combination of classes of insurance that may be procured from separate admitted insurers under separate contracts.

(d) A risk shall not be placed with a non-admitted insurer if the risk includes a combination of classes of insurance that a single admitted insurer is prohibited from writing in either a single contract or in separate contracts or both. In these cases, separate forms of contracts, each incorporating a class or a lawful combination of classes, shall be offered to and refused by admitted insurers for each class or combination of classes, before the insurance can be placed with non-admitted insurers. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-246d, K.S.A. 1982 Supp. 40-246b, 40-246c, 40-246e, 40-246f; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1983.)

40-8-7. Excess line insurance; agents; submission of affidavit required. (a) The excess line agent who actually places business with a non-admitted insurer shall file the combined affidavit annual statement (forms ECA-B, and C). Other excess line agents shall file form ECA-C1. These forms shall be filed with the department on or before March 1st of each year for the contracts effected during the preceding calendar year.

(1) The excess lines agent shall include the following with the affidavit:

(a) A full account of the gross premiums upon all policies written on risks placed on and after July 1, 1982; and

(b) A tax remittance in the amount of 4% of the gross premiums included in the account developed pursuant to subparagraph (C).

(2) Gross premium is the amount charged the insured for the insurance procured. When an audit or gross receipts contract requires a deposit premium, the amount collected during the calendar year either as a deposit or partial payment shall be reported on the affidavit-annual statement form as gross premium for that calendar year.

Gross premium shall not include the tax due on such premium nor shall tax be charged to the insured unless specifically identified and provided for in the policy.

(3) When a policy is renewed or if an adjustment, addition, or reduction is made on a risk previously placed, the appropriate adjusting entry shall be made on form ECA-B.

(b) The commissioner shall collect double the amount of excess premium tax required by K.S.A. 40-246c if the excess lines agent fails to submit a statement and pay the premium tax as required by section (a) of this regulation. This section shall not apply:

(1) When the required statement and excess premium tax payment is submitted by mail on or before the 1st day of March of each year;

(2) When the required statement and the excess

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premium tax payment is received by the commissioner before the 1st day of January of each year and the statement and premium include all transactions of the excess coverage licensee during the year;

(3) When the required statement and excess premium tax payment is not received by the commissioner because no transactions contemplated by the statute occurred during the preceding year. (Authorized by K.S.A. 40-103; implementing K.S.A. 1982 Supp. 40-246b, 40-246c, 40-246e, 40-246f; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1971; amended, E-76-29, June 19, 1975; amended May 1, 1976; amended May 1, 1979; amended, T-83-22, Aug. 11, 1982; amended May 1, 1983.)

40-8-8. Excess line insurance contracts; signature of agent; required endorsement. Every insurance contract procured and delivered as excess coverage pursuant to K.S.A. 40-246b shall bear the signature of the agent who placed the coverage with a non-admitted insurer. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-246d, K.S.A. 1982 Supp. 40-246b, 40-246c, 40-246e, 40-246f; effective Jan. 1, 1966; amended Jan. 1, 1970; amended May 1, 1979; amended, T-83-22, Aug. 11, 1982; amended May 1, 1983.)

40-8-11. Excess line agents; records required. The record required to be maintained by each excess lines agent pursuant to K.S.A 1982 Supp. 40-246b shall include the following:

(a) A duplicate copy of the combined affidavit-annual statement (form ECA-B, and C);

(b) The exact amount of each kind of insurance permitted under this act which has been procured for each assured;

(c) The home address of the insurer and the kind or kinds of insurance effected;

(d) The address of the insured, and a brief description of the property insured;

(e) The insurance canceled or added and premiums thereon;

(f) A duplicate of the policy with riders, endorsements, and attachments.

(g) Evidence that the information and consent of the insured required by K.S.A. 1982 Supp. 40-246b was provided and obtained. (Authorized by K.S.A. 40-103; implementing K.S.A.40-246d, K.S.A. 1982 Supp. 40-246b, 40-246c, 40-246e, 40-246f; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1970; amended, T-83-22, Aug. 11, 1982; amended May 1, 1983.)

FLETCHER BELL
Commissioner of Insurance

Doc. No. 001061

State of Kansas

PERMANENT ADMINISTRATIVE REGULATIONS

NOTICE

The following are permanent administrative regulations which were adopted by a state agency pursuant to K.S.A. 1982 Supp. 77-415 *et seq.* ***These regulations are scheduled to become effective May 1, 1983, but are subject to legislative review and may be modified or revoked by the Kansas Legislature prior to May 1.*** Any such legislative action will be reported in the *Kansas Register*. The May 5, 1983 issue of the *Register* will contain a complete index to regulations effective May 1, and any legislative actions on them.

MINED-LAND CONSERVATION AND RECLAMATION BOARD ADMINISTRATIVE REGULATIONS

Article 2.—MEANING OF TERMS

47-2-21. Employee defined. Employee means any person employed by the mined-land conservation and reclamation board or the state corporation commission who performs any function or duty under the state act, or consultants who perform decision-making functions under the authority of state law or these rules and regulations. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-404; effective May 1, 1980; amended May 1, 1983.)

Article 8.—BONDING PROCEDURES

47-8-10. Options to satisfy bonding requirements. (a) The bonds required by K.S.A. 1982 Supp. 49-406(h)(1) may be satisfied by depositing with the state treasurer:

(1) Cash;

(2) negotiable bonds of the United States or of the state of Kansas. The board shall value the negotiable bonds at their current value, not face value;

(3) negotiable certificates of deposit of any bank organized under the laws of the United States or of the state of Kansas, subject to the following conditions:

(A) The board shall require that certificates of deposit be assigned to the board, in writing. The bank shall record the assignment of the certificates of deposit upon their books.

(B) The board shall not accept an individual certificate for a denomination in excess of the maximum insurable amount as determined by F.D.I.C. and F.S.L.I.C.

(C) The board shall require the banks issuing these certificates to waive all rights of setoff or liens which it has or might have against those certificates.

(D) The board shall only accept automatically renewable certificates of deposit; and

(4) irrevocable letters of credit from any bank organized under the laws of the United States or of the state of Kansas, subject to the following conditions:

(A) The letter shall be payable to the board in part

(continued)

or in full upon demand and upon receipt from the board of a notice of bond forfeiture.

(B) Letters of credit shall be irrevocable during the period of time the operator, permittee, or agent of the permittee has a continuing responsibility for reclamation under K.S.A. 49-401 *et seq.*

(C) In the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the board.

(D) Upon receipt of such a notice, the board or its authorized representative shall immediately order a cessation of surface coal mining in the permit areas without bond coverage.

(i) Reclamation operations shall continue on the permitted area that has lost its coverage.

(ii) Surface coal mining shall not be allowed to start up again, until adequate bond coverage is established.

(E) The board shall not accept a letter of credit in excess of 10 percent of the bank's capital surplus account as shown on a balance sheet certified by a certified public account.

(b) The cash deposit or market value of any such securities shall be equal to or greater than the amount of the bond required for the bonded area. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-406; effective May 1, 1983.)

47-8-11. Use of forfeited bond funds. The board shall utilize funds collected from any bond forfeiture only to complete the reclamation plan on the permit area on which bond was made for the surface mining operation for coal, and to cover associated administrative expenses. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-420; effective May 1, 1983.)

Article 16.—RECLAMATION DUTIES

47-16-1. Eligible lands and water. (a) Coal mined lands and associated waters are eligible for reclamation activities if:

(1) They were mined or affected by mining processes;

(2) they were mined prior to August 3, 1977, and were left or abandoned in either an unreclaimed or inadequately reclaimed condition; and

(3) there is no continuing responsibility for reclamation by the operator, permittee or agent of the permittee under statutes of the state or federal government as a result of bond forfeiture. Bond forfeiture shall render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation.

(b) Lands and water which were mined or affected by mining for minerals and materials other than coal shall be eligible for reclamation activities if all reclamation with respect to abandoned coal mine land and water has been accomplished within the state.

(c) "Left or abandoned in either an unreclaimed or inadequately reclaimed condition" means land and water:

(1) Where all mining processes have ceased and for which current permit for continuing operations existed as of August 3, 1977, or, if a permit did exist on that date, it has since lapsed and has not been renewed or superseded by a new permit as of the date of request for reclamation assistance; and

(2) Which continue, in their present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of the land or water resources, or endanger the health or safety of the public. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-428; effective May 1, 1983.)

47-16-2. Reclamation project evaluation. Proposed reclamation projects and completed reclamation work shall be evaluated in terms of the factors stated in this section. The factors shall be used to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the objectives of K.S.A. 1982 Supp. 49-428.

Completed reclamation shall be evaluated in terms of the factors set forth below as a means of identifying conditions which should be avoided, corrected, or improved in plans for future reclamation work. The factors shall include:

(a) The need for reclamation work to accomplish one or more specific reclamation objectives as stated in K.S.A. 1982 Supp. 49-428;

(b) the availability of technology to accomplish the reclamation work with reasonable assurance of success. In the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts;

(c) the specific benefits of reclamation for the area in which the work will be carried out. Benefits to be considered include, but are not limited to:

(1) Protection of human life, health, or safety;

(2) protection of the environment, including air and water quality, fish, wildlife, and plant habitat, visual beauty, historic or cultural resources and recreation resources, and abatement of erosion sedimentation;

(3) protection of public or private property;

(4) abatement of adverse social and economic impacts of past mining on persons or property including employment, income, and land values or uses, or assistance to persons disabled, displaced or dislocated by past mining practices;

(5) improvement of environmental conditions which may be considered to generally enhance the quality of human life;

(6) improvement of the use of natural resources, including post-reclamation land uses which:

(A) Increase the production capability of the land to be reclaimed;

(B) enhance the use of surrounding lands consistent with existing land use plans;

(C) provide for construction or enhancement of public facilities;

(D) provide for residential, commercial, or industrial developments consistent with the needs and plans of the community in which the site is located;

(7) demonstration to the public and industry of

(continued)

methods and technologies which can be used to reclaim areas disturbed by mining;

(d) the acceptability of any additional adverse impacts to people or the environment that will occur during or after reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation;

(e) the costs of reclamation. Consideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation;

(f) the availability of additional coal or other mineral or material resources within the project area which:

(1) Result in a reasonable probability that the desired reclamation will be accomplished during the process of future mining; or

(2) requires special consideration to assure that the resource is not lost as a result of reclamation and that the benefits of reclamation are not negated by subsequent, essential resource recovery operations;

(g) the acceptability of post-reclamation land uses in terms of compatibility with land uses in the surrounding area, consistency with applicable state, regional, and local land use plans and laws, and the needs and desires of the community to which the project is located.

(h) the probability of post-reclamation management, maintenance and control of the area consistent with the reclamation completed. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-428; effective May 1, 1983.)

47-16-3. Consent to entry. The board shall take all reasonable actions to obtain written consent from the owner of record of the land or property to be entered in advance of the entry. The consent shall be in the form of a signed statement by the owner of record or the owner's authorized agent which, as a minimum, includes a legal description of the land to be entered, the projected nature of work to be performed on the lands and any special conditions for entry. This statement shall not include any commitment by the board to perform reclamation work nor to compensate the owner for entry. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-432; effective May 1, 1983.)

47-16-4. Entry for studies or exploration. (a) The board, or its agents, employees or contractors, shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and the feasibility of restoration, reclamation, abatement, control, or prevention of those adverse effects.

(b) If the owner of the land to be entered under this section will not provide consent to entry, the board shall give notice in writing to the owner of its intent to enter for purposes of study and exploration to determine the existence of adverse effects of past coal mining practices which may be harmful to the public health, safety, or general welfare. The notice shall be by mail, return receipt requested, to the owner, if known, and shall include a statement of the reasons why entry is believed necessary. If the owner if not known, or the current mailing address of the owner is not known, or if the owner is not readily available, the notice shall be posted in one or more places on the property to be entered where it is readily visible to the public. In addition, the notice shall be published once in a newspaper of general circulation in the locality in which the land is located. Notice shall be given at least 30 days before entry. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-432; effective May 1, 1983.)

47-16-5. Entry and consent to reclaim. The board shall give notice of its intent to enter for purposes of conducting reclamation at least 30 days before entry upon the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by K.S.A. 1982 Supp. 49-432. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it is readily visible to the public. In addition, the notice shall be published once in a newspaper of general circulation in the locality in which the land is located. The notice shall include a statement of where the findings required by K.S.A. 1982 Supp. 49-432 may be inspected or obtained. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-432; effective May 1, 1983.)

47-16-6. Liens. (a) The board shall place a lien against land reclaimed if the reclamation results in an increase in the fair market value based on the pre- and post-reclamation appraisals.

(1) The board may waive the lien if the cost of filing it, including indirect costs, exceeds the increase in fair market value that resulted from reclamation activities.

(2) The lien may be waived if the reclamation work performed primarily benefits health, safety or environmental values of the community or area in which the land is located, or if reclamation is necessitated by an unforeseen occurence and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the occurence.

(b) If a lien is to be filed, the board shall, within six months after completion of the reclamation work, file a statement in the district court of the county for the lands for which a lien is required. That statement shall consist of an account of monies expended for the reclamation work, together with notarized copies of the appraisals obtained. The amount reported to be the increase in value of the property shall constitute the amount of the lien recorded and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-428; effective May 1, 1983.)

47-16-7. Appraisals. (a) A notarized appraisal of the fair market value of land to be reclaimed shall be

(continued)

obtained from an independent professional appraiser. The appraisal shall be obtained before any reclamation activities are started. The appraisal shall state the fair market value of the land as adversely affected by past mining.

(b) An appraisal of the fair market value of all land reclaimed shall be obtained after all reclamation activities have been completed. The appraisal shall be obtained in accordance with paragraph (a) of this section and shall state the market value of the reclaimed land.

(c) The landowner shall receive a statement of the increase in market value, an itemized statement of reclamation expenses and notice that a lien will or will not be filed against the property. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-428; effective May 1, 1983.)

47-16-8. Satisfaction of liens. (a) A lien shall be satisfied to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property and shall be satisfied in accordance with this paragraph. Testate and intestate transfers shall be excluded from this rule.

(b) The board shall maintain or renew liens from time to time as may be required.

(c) Monies derived from the satisfaction of liens established under this part shall be deposited in the state abandoned mined land fund. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-428; effective May 1, 1983.)

DELNO L. BASS
Executive Director

Doc. No. 001059

State of Kansas

PERMANENT ADMINISTRATIVE REGULATIONS

NOTICE

The following are permanent administrative regulations which were adopted by a state agency pursuant to K.S.A. 1982 Supp. 77-415 *et seq.* ***These regulations are scheduled to become effective May 1, 1983, but are subject to legislative review and may be modified or revoked by the Kansas Legislature prior to May 1.*** Any such legislative action will be reported in the *Kansas Register*. The May 5, 1983 issue of the *Register* will contain a complete index to regulations effective May 1, and any legislative actions on them.

ADJUTANT GENERAL ADMINISTRATIVE REGULATIONS

Article 1.—ARMORIES

56-1-1. Definitions. (a) "Armory" means any armory property deeded to the Kansas military advisory board; any armory property licensed, leased, or rented from an agency within the state; and any armory property licensed from a federal military agency permitted by chapter 133, title 10, U.S.C.A.

(b) "State military" means any unit of the Kansas national guard or when organized, any state guard unit, or both, provided by K.S.A. 48-204 and K.S.A. 48-501.

(c) "State military use of the armory" means the common practice of a Kansas national guard unit or, when organized, a state guard unit using the armory for training that is permitted by state and federal military law. It shall include two other state military uses:

(1) Any activity that is compatible with any unit morale program;

(2) Any activity that results from a natural or manmade disaster emergency under provisions of K.S.A. 48-907.

(d) "Station commander" means any commissioned officer in the Kansas national guard who has been appointed by the adjutant general to manage an armory operation.

(e) "Use of armories for other public functions" shall include activities of non-profit organizations or noncommercial activities. (Authorized by K.S.A. 48-907, L. 1982, ch. 225; implementing K.S.A. 48-324, 48-907, K.S.A. 1982 Supp. 48-301, 48-309; effective May 1, 1983.)

56-1-2. Armory purpose and funding. (a) Purpose.

(1) Each unit shall use the armory for:

(A) An assembly area;

(B) state military training provided for by federal and state military law;

(C) storage and security of property and equipment; and

(D) other state military unit activity.

(2) Any armory shall be utilized to the fullest extent possible that is compatible with each Kansas national guard unit activity provided by state and federal military law.

(3) Any person may be temporarily housed in any armory when the governor or the governor's authorized agent has declared a natural or manmade disaster emergency.

(4) The state guard, when organized, may use any armory.

(b) Funding.

(1) Any operational cost or capital improvement for state military use of an armory shall be funded under provisions of appropriate state and federal law.

(2) Any operational cost associated with use of any armory for a public function shall be reimbursed by one or more contractual means as follows:

(A) Cash;

(B) equipment;

(C) services;

(D) goods;

(E) any other item or items of value.

(3) Sources of revenue used to construct each armory include one or more of the following:

(A) Donation;

(B) city fund;

(C) county fund;

(D) state fund;

(continued)

(E) federal fund; or

(F) agreed upon combination of revenue sources. (Authorized by K.S.A. 48-907, K.S.A. 1982 Supp. 48-301; implementing K.S.A. 48-206, 48-303, 48-306, 48-308, 48-504, 48-907, K.S.A. 1982 Supp. 48-301, 48-305, 48-309, 48-313, 48-324; effective May 1, 1983.)

56-1-3. Policies. (a) Written copies of all armory related orders and rules, and of K.A.R. 56-1-1, *et seq.*, shall be furnished in writing to any person, community or government agency upon request.

(b) Any person, community or government agency, and any Kansas national guard unit or, when organized, any state guard unit that uses any armory shall comply with the alcoholic beverage laws provided for by K.S.A. 41-719.

(c) Any state military use of the armory shall take precedence over any other use of the armory. (Authorized by K.S.A. 48-907, L. 1982, ch. 225; implementing K.S.A. 48-304, 48-504, K.S.A. 1982 Supp. 48-301; effective May 1, 1983.)

56-1-4. Responsibilities. (a) Each person, community, or government agency shall:

(1) Submit to the station commander a completed application form or a written request for temporary use of the armory;

(2) Submit a completed application form or a written request for regular use of the armory to the adjutant general's office in the state defense building, 2800 Topeka avenue. This shall include any request for pre-school use of any armory located in any city pursuant to K.S.A. 1982 Supp. 48-324;

(3) Meet each requirement listed in the agreement or contract for use of any armory.

(b) The adjutant general shall:

(1) Provide a common application form and lease or rental agreement for each armory;

(2) Publish, disseminate, and supervise the implementation of each armory policy and procedure upon receiving recommendations from the military advisory board or armory board, or both;

(3) Make the decision on each request for regular use of each armory upon recommendations of the military advisory board and station commander;

(4) When a determination is requested by a station commander, decide whether a proposed temporary use of that armory constitutes a public function as defined in K.A.R. 56-1-1;

(5) Submit annually, or more often if needed, to the military advisory board or armory board, as appropriate, a report on management and use of each armory; and

(6) Audit annually, or more often if needed, each armory performance record.

(c) Each station commander shall:

(1) Plan, procure, and manage the use of any fund, equipment, good, or service or any other item of value which the armory may receive for its use;

(2) Publish supplemental armory policy and procedure that is consistent with each adjutant general policy, city ordinance, county resolution, lawful business practice, and state and federal military law. The station commander shall forward to the adjutant general a copy of each publication;

(3) Approve each request for temporary use of the armory when the criteria has been met that use is for any public function as defined in K.A.R. 56-1-1;

(4) Meet each requirement listed in the agreement or contract for use of the armory;

(5) Forward to the adjutant general any requests for:

(A) Temporary use of the armory when that use is not granted;

(B) any regular use of the armory. The station commander shall include an appropriate recommendation with each request;

(C) a determination as to whether a proposed temporary use of the armory constitutes a public function as defined in K.A.R. 56-1-1;

(6) Submit annually, or more often if needed, the adjutant general an armory income statement and any other financial management report required by the adjutant general. The statement and any other required report shall include any item of value used or expected to be received in an armory operation. All cash receipts shall be reported; and

(7) Establish and maintain permanent records on use of the armory.

(d) Each unit administrator shall:

(1) Administer and manage daily unit and armory operations;

(2) Exercise the responsibilities of the station commander listed in subsection (c) when the station commander is not available for duty;

(3) Open the armory for temporary use by any person when a natural or manmade disaster emergency has been declared by the governor or the governor's authorized agent. "Unit administrator" shall mean any qualified person appointed by the adjutant general who is:

(A) A federal employee under the provisions of title 32, U.S.C.A.;

(B) both a member of the Kansas national guard and a state unclassified employee. (Authorized by K.S.A. 48-907, K.S.A. 1982 Supp. 48-301; implementing K.S.A. 48-204, 48-304, 48-504, 48-907, K.S.A. 1982 Supp. 48-301, 48-309, 48-324; effective May 1, 1983.)

56-1-5. Variance. If exceptional circumstances make strict conformity with K.A.R. 56-1, *et seq.*, impractical or not feasible, any person, community, or government agency may submit a written request to the adjutant general for an exception. The military advisory board may be given the opportunity to review the request and make appropriate recommendations to the adjutant general. The adjutant general may grant an exception in the interest of public health, safety, and welfare. (Authorized by K.S.A. 48-907, K.S.A. 1982 Supp. 48-301; implementing K.S.A. 48-204, 48-304, 48-907, L. 1982, ch. 225; effective May 1, 1983.)

56-1-6. Enforcement. (a) Any person, community, or government agency violating any of these regulations or armory rules and procedures may be expelled and ejected from the armory.

(continued)

(b) Any dispute concerning applicant rights or obligations under the rental or lease agreement or concerning any decision made by the adjutant general shall be submitted to the military advisory board. The decision of the board shall be final and binding on all parties. (Authorized by K.S.A. 48-204, 48-205, 48-304, K.S.A. 1982 Supp. 48-301; implementing K.S.A. 48-204, 48-304, K.S.A. 1982 Supp. 48-301; effective May 1, 1983.)

MAJOR GENERAL RALPH T. TICE, KSARNG
The Adjutant General

Doc. No. 001060

State of Kansas

PERMANENT ADMINISTRATIVE REGULATIONS

NOTICE

The following are permanent administrative regulations which were adopted by a state agency pursuant to K.S.A. 1982 Supp. 77-415 *et seq.* ***These regulations are scheduled to become effective May 1, 1983, but are subject to legislative review and may be modified or revoked by the Kansas Legislature prior to May 1.*** Any such legislative action will be reported in the *Kansas Register*. The May 5, 1983 issue of the *Register* will contain a complete index to regulations effective May 1, and any legislative actions on them.

DEPARTMENT OF HEALTH AND ENVIRONMENT ADMINISTRATIVE REGULATIONS

Article 1.—DISEASES

28-1-14. Rabies control in wildife animals. (a) The possession or sale of striped or spotted skunks, civit cats, raccoons, foxes and coyotes for keeping of these animals as pets shall be prohibited.

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

(c) Attempts to immunize skunks, coyotes, raccoons, foxes, and other wildlife animals known to be involved in the transmission of rabies shall be prohibited.

(d) Sections (a) and (b) above shall not apply to bonafide zoological parks or research institutions. (Authorized by and implementing K.S.A. 1982 Supp. 65-101; effective May 1, 1982; amended May 1, 1983.)

28-1-21. Notice to secretary of disposition of claims. (a) Any veteran who files a claim with a state or federal agency for financial or medical assistance, or both, due to exposure to chemical defoliants, herbicides or other causative agents, including agent orange, shall give written notice to the secretary of the disposition of the claim.

(b) The notice shall include, at a minimum, the following information:

(1) the name of the agency to which the claim was made;

(2) the date the claim was filed;

(3) the date the claim was allowed or denied; and

(4) the award allowed, if any, including any financial award granted or medical evaluation or treatment authorized, or both.

(c) The notice shall be mailed or delivered to the secretary not more than 60 days after the date upon which the veteran receives notice of the disposition of the claim. (Authorized by L. 1982, ch. 256, sec. 7; implementing L. 1982, ch. 256, sec. 2; effective May 1, 1983.)

28-1-22 to 28-1-24. Reserved.

Article 4.—MATERNAL AND CHILD HEALTH

28-4-76. Licensing procedures. (a) Any person, corporation, firm, association or other organization desiring to conduct a residential center shall apply for a license to do so on forms provided by the Kansas department of health and environment.

(b) No person, corporation, firm, association or other organization shall conduct a residential center for children under 16 years of age or a maternity home, unless the person, corporation, firm, association or other organization has been issued a license to do so by the Kansas department of health and environment.

(c) The application for a license shall be accompanied by a written proposal which details the purpose of the center, the administration, financing, staffing and services to be offered including age range and sex of residents to be served. This proposal shall be approved by the Kansas department of social and rehabilitation services before a full license is issued by the Kansas department of health and environment.

(d) Plans for all buildings to be used as a residential center shall be submitted to the Kansas department of health and environment for approval, as prescribed in K.A.R. 1981 Supp. 28-4-86.

(e) A full license shall be issued if the secretary finds that the applicant is in compliance with the requirement of K.S.A. 65-501 *et seq.* and amendments thereof and the rules and regulations promulgated pursuant to those statutes, and has made full payment of the license fee required by the provisions of K.S.A. 65-505 and amendments thereof. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-503, 65-508, K.S.A. 1982 Supp. 65-504, 65-505; effective, E-76-36, July 14, 1975; effective May 1, 1976; amended May 1, 1979; amended T-83-24, Aug. 25, 1982; amended May 1, 1983.)

28-4-92. License Fees. (a) When application is made for a license, and when application is made for the renewal of a license, the applicant shall send to the secretary of the Kansas department of health and environment the appropriate license fee specified below:

Licensed Day Care Home or Group Boarding Home	$ 5.00
Detention Center, Child Placing Agency Maternity Center, or Day Care Referral Agency	$15.00
Child Care Center, Preschool or Residential Center for 60 or fewer children	$15.00
Child Care Center, Preschool or Residential Center for 61 or more children	$25.00

(continued)

(b) A full license shall be issued if the secretary finds that the applicant is in compliance with the requirements of K.S.A. 65-501 *et seq.* and amendments thereof and the rules and regulations promulgated pursuant to those statutes and has made full payment of the license fee required by the provisions of K.S.A. 65-505 and amendments thereof. (Authorized by and implementing K.S.A. 1982 Supp. 65-505; effective, T-83-24, Aug. 25, 1982; effective May 1, 1983.)

28-4-93 to 28-4-99. Reserved.

28-4-113. Definitions. (a) "Care provider" or "provider" means a person, association, corporation or other organization who has control or custody of one or more children under 16 years of age who are unattended by a parent or guardian for the purpose of providing those children with care for less than 24 hours a day, except children related to the person by blood, marriage or legal adoption.

(b) "Day care home" means a home in which care is provided for a maximum of 10 children under 14 years of age, not more than six of whom are under kindergarten age.

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

(d) "Evening care" means care for children staying with the provider after 6:00 p.m. and leaving before 1:00 a.m. the following day.

(e) "Fire inspector" means a person approved by the state fire marshal to conduct fire safety inspections.

(f) "Group day care home" means a home in which care is provided for a maximum of 12 children under 14 years of age.

(g) "Infant" means a child under 12 months of age.

(h) "Kindergarten age" means the age at which children are eligible to enter kindergarten as set forth in K.S.A. 1981 Supp. 72-1107.

(i) "License capacity" means the maximum number of children unrelated to the provider who may be allowed to be in attendance at any one time.

(j) "Overnight care" means care for children staying with the care provider after 1:00 a.m.

(k) "Planned absence" means more than two consecutive days away from the day care home or group day care home.

(l) "Pre-school child" means a child between 18 months and kindergarten age.

(m) "School age" means kindergarten age or older as set forth in K.S.A. 72-1107.

(n) "Substitute care provider" means a person who supervises children in the day care home or group day care home in the absence of the provider.

(o) "Temporary absence" means time away from the day care home or group day care home and from the children in care for a period not to exceed two consecutive days, and not more than 14 days per year. (Implementing K.S.A. 65-501, 65-503, 65-504, 65-508; authorized by K.S.A. 65-508; effective, E-80-18, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1981; amended May 1, 1983.)

28-4-114. The applicant and licensee. (a) (1) Any person desiring to conduct a day care home or group day care home shall apply for a license on forms provided by the Kansas department of health and environment.

(2) The applicable fee shall be submitted at the time of license application and reapplication, and shall not be refundable.

(b) The applicant:

(1) Shall be at least 18 years of age;

(2) shall be qualified by temperament, emotional maturity, sound judgment, and an understanding of children;

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

(4) shall not be licensed concurrently for more than one type of child care or for child and adult care in the same home.

(c) (1) The maximum number of children under kindergarten age for which a day care home may be licensed shall be reduced by one for each child under 18 months in care, in excess of one, as follows:

TABLE

Maximum Number of children under 18 months	Maximum number of children under kindergarten age
1	6
2	5
3	4

(2) The maximum number of children permitted under kindergarten age shall include the family's own children under kindergarten age.

(3) Children kindergarten age or over may be enrolled to bring the total in care to a maximum of 10 including the family's own children under 14.

(d) The maximum number of children for which a group day care home may be licensed shall be as follows:

				Maximum Children
One Adult	2½ Years To 14 Years Of Age			9
	3 Years To 14 Years Of Age			10
	Kindergarten Age To 14 Years Of Age			12
Two Adults	3 Children Under 18 Months	5 Children 18 Months To Kindergarten Age	4 Children Kindergarten Age To 14 Years Of Age	12
Two Adults		5 Children 18 Months To 2½ Years	7 Children 2½ Years To 14 Years	12

(2) The maximum number of children permitted in a group day care home shall include the family's own children under 14 years.

(e) The total number of children in attendance who are unrelated to the provider shall not exceed the license capacity.

(f) Group day care home providers shall meet one of the following training requirements prior to initial licensure:

(1) Five sessions of observations for not less than 2½ consecutive hours per observation in a licensed group day care home or a licensed child care center.

(continued)

Observations shall be planned so that all daily activities (morning, lunch, nap, late afternoon) can be observed;

(2) requirements for program directors of child care centers as specified in 28-4-429;

(3) a child development associate credential;

(4) ten hours of directed reading in child care or related topics; or

(5) fifteen hours attendance at workshops or at membership meetings of child care organizations.

(g) At the time of obtaining the license application forms, the applicant shall receive a self-evaluation checklist which the applicant shall complete and forward to the local health department or to the district office of the department.

(h) A license shall be issued if the secretary finds that the applicant is in compliance with the requirements of K.S.A. 65-501 *et seq.* and amendments thereof and the rules and regulations promulgated pursuant thereto and that the applicant has made full payment of the license fee required by the provisions of K.S.A. 65-505 and amendments thereof. The license and any written exceptions granted by the secretary under K.A.R. 28-4-119 shall be posted as required by K.S.A. 65-504.

(i) (1) The applicant or licensee shall arrange for a substitute care provider 16 years of age or older to care for children in the event of a temporary absence. In the event of a planned absence extending beyond two consecutive days, the substitute provider shall be over 18 years of age.

(2) The applicant or licensee shall have on file a record of tuberculin test or x-ray for the substitute provider. That test shall have been obtained within two years prior to serving as a substitute. Further tuberculin testing shall not be routinely required.

(j) Emergency care may be provided for children not regularly enrolled in a specific day care home or group day care home if the additional children do not cause that home to exceed its license capacity. Emergency care shall not exceed two consecutive weeks.

(k) Prior to relicensure group day care home licensees shall provide documentation of three clock-hours of in-service training or five hours of directed reading in child care or related topics. In-service training may include child care association membership meetings and annual conferences, extension homemaker programs or other programs on child care.

(l) A copy of the "regulations for licensing day care homes and group day care homes for children" shall be kept on the premises at all times.

(m) The care provider shall notify the county health department or the department when day care or group day care service is to be indefinitely discontinued. If child care is resumed at a later date a new application for license shall be required.

(n) An applicant or licensee receiving notice of denial or revocation of license shall be notified of the right to an administrative hearing by the department and subsequently to the right to appeal the denial or revocation to the district court. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-503, 65-508, K.S.A. 1982 Supp. 65-504, 65-505; effective, E-80-18, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1981; amended May 1, 1983.)

28-4-115. The home. (a) If a public sewerage system is not available, the care provider's home shall have a safe water supply and a sewage disposal system which complies with the requirements of K.A.R. 28-4-50 and K.A.R. 28-4-55 and amendments thereto.

(b) The home shall be so constructed, arranged and maintained as to provide adequately for the health and safety of children in care.

(c) Group day care homes shall be approved for fire safety by a fire inspector.

(d) Basements used for play space in day care homes shall be approved for fire safety by a fire inspector.

(e) A refrigerator shall be available for the storage of perishable foods.

(f) Infants shall be held when bottle fed until they can hold their own bottles. If infants under one year are enrolled in homes using private well water, commercially bottled water shall be purchased and used.

(g) All medications, dangerous chemicals, household cleaning supplies, and sharp instruments shall be stored safely out of the reach of children or placed in locked storage.

(h) All guns shall be in locked storage or equipped with trigger locks.

(i) An outdoor play area shall be available and free from hazards which might be dangerous to the life and health of the children. The outdoor play area shall be fenced if the area surrounding, or the conditions existing outside, the play area present hazards which might be dangerous to the safety of the children. (Authorized by and implementing K.S.A. 65-508; effective, E-80-18, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1981; amended May 1, 1983.)

28-4-116. The children in care. (a) Children shall be offered the opportunity to participate daily in activities which promote their healthy growth and development. Age-appropriate toys and play equipment of safe construction and in good repair shall be available.

(b) The day care home shall have indoor play space designated for use by the children. Group day care homes shall have 25 square feet of available play space per child.

(c) Children shall have at least one hour of outdoor play daily unless extreme weather conditions prevail. Children playing outdoors shall be under the supervision of an adult who is within hearing distance at all times.

(d) Each child shall have a daily supervised rest period as needed. Napping facilities or sleeping facilities for evening and overnight care shall be provided as follows:

(1) A crib or playpen for each child under 18 months;

(2) A family bed, cot, sofa, lower bunk or a pad over the carpet for each child over 18 months. Two children may sleep on a double bed.

(e) Children in day or group day care homes shall receive a nutritious mid-morning and mid-afternoon snack, and if they remain in the home for longer than

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four hours, exclusive of overnight care, they shall be served a balanced meal which provides 1/3 of their daily nutritional requirements.

(f) Methods of discipline shall be appropriate to the age and developmental level of the child. Punishment shall not be humiliating, frightening, or physically or mentally harmful to the child.

(g) A file shall be maintained for each child which includes:

(1) The full name, home and business addresses, and home and business phone numbers of the child's parent or parents or guardian, and the name of the person to notify in case of emergency;

(2) the full name and telephone number of each person authorized to call for the child, and to provide transportation to and from the day care home or group day care home;

(3) a health record as required by K.A.R. 28-4-117(a); and

(4) written parental permission for emergency medical care as required by K.A.R. 28-4-118(c). (Implementing K.S.A. 65-507, 65-508; authorized by K.S.A. 65-508; effective, E-80-18, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1981; amended May 1, 1983.)

28-4-117. Health care policies. (a) Physical health of children in day care. (1) A health assessment conducted within six months prior to initial enrollment in a child care facility shall be on file for each child under school age. The assessment shall be conducted by a licensed physician or a nurse approved to perform health assessments.

(2) School age children shall have health assessments as required by the school districts in which they are enrolled.

(3) Children under 16 years of age shall not be required to have routine tuberculin tests.

(b) (1) Immunizations shall be current or in process in accordance with the child's age at time of enrollment, and shall be maintained current for protection against diphtheria, pertussis, tetanus, measles, mumps, rubella, and poliomyelitis. A record of each child's immunizations shall be maintained on that child's health assessment form.

(2) Exceptions to health assessments and immunizations shall be permitted if one of the following is obtained:

(A) Certification from a licensed physician stating the physical condition of the child is such that the test and immunization would seriously endanger the child's life or health; or

(B) a written statement signed by one parent or guardian that the parent or guardian is an adherent of a religious denomination whose religious teachings are opposed to health assessments or such tests and immunizations.

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

(d) Applicants or licensees shall educate parents of children in their program about the value of periodic well-child health assessments, and the importance of seeking medical advice when children exhibit health problems.

(e) Physical health of applicant or licensee and other household members.

(1) All persons living or working in the day or group day care home shall have a health assessment conducted by a licensed physician or by a nurse approved to perform health assessments. The health assessment shall be conducted within two years prior to application.

Children under 16 living in the home shall have current immunizations.

(2) All persons over 16 years of age living in the home shall have a record of a tuberculin test or x-ray obtained within two years prior to application. Further tuberculin testing shall not be routinely required. (Implementing K.S.A. 65-507, 65-508, 65-510; authorized by K.S.A. 65-508; effective, E-80-18, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1981; amended, T-83-27, Sept. 28, 1982; amended May 1, 1983.)

28-4-118. Policies relating to illness, accident and emergency. (a) Non-prescription medications shall be administered to children only with permission of the parent or guardian. A record shall be kept of medications given.

(b) Prescription medications shall be administered only from a container labeled with the child's name, name of the medication, dosage, dosage intervals, name of the physician and the date the prescription was filled. The label shall be considered the order from the physician. A record shall be kept of medications given.

(c) The care provider shall make arrangements for emergency medical care at a nearby hospital or clinic and shall have written permission from the child's parent or guardian to obtain such emergency care for the child.

(d) The licensee shall develop disaster plans to provide for the safety of children in emergencies such as fire, tornado, flood, civil disorders, serious illness or injury. Emergency drills shall be practiced with the children.

(e) The home shall have a telephone in service, and the telephone numbers of community emergency services shall be posted on or near it.

(f) Persons responsible for caring for children shall know how to carry out simple first-aid procedures.

(g) The child care provider shall notify the department:

(1) Of any accident to children which requires hospitalization while in the provider's care;

(2) of the death of any member of the provider's household or of a child in care; or

(3) of any communicable disease contracted by a child in care, as specified in K.A.R. 28-1-6. All parents of children enrolled shall be notified when a child in care contracts a communicable disease.

(h) The child care provider, as required by law, shall report to the Kansas state department of social

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and rehabilitation services or the district court any evidence of suspected child abuse or neglect observed in children enrolled for care. (Authorized by and implementing K.S.A. 65-503, 65-508; effective, E-80-18, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1981; amended May 1, 1983.)

28-4-119. Compliance with regulations. (a) An exception to a regulation may be allowed by the department if:

(1) The applicant requests an exception from the department; and

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

(b) Written notice from the Kansas department of health and environment stating the nature of the exception and its duration shall be posted with the license. (Authorized by and implementing K.S.A. 65-503, 65-508; effective, E-80-18, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1981; amended May 1, 1983.)

28-4-174. Social services related to child placing. (a) *Intake requirements.* A child placing agency shall have a written description of services offered and the criteria for service eligibility which shall include who is eligible for the services and what fees, if any, are charged. The statement of services and criteria shall be available in individual copies for distribution to clients and to the public. A child placing agency shall document that social services to preserve the family unit have been provided to the family and child and alternatives to placement have been explored with them. The agency shall keep a record of all applications for services and the reasons for denial of services. The agency shall provide referral assistance to persons seeking services not provided by the agency.

(b) *Intake procedures and practices.* Upon referral or application, the agency shall assess the child's social and family history, the child's legal status, the strengths, resources, and needs of the child and his or her family, the role the child's parent or parents and other persons are to have during placement, and the identification of the specific needs of the child and family that warrant placement.

(c) *Initial case plan.* Upon completion of the intake assessment and before placement, except in cases of emergency, the agency shall develop a written service plan. The plan shall include:

(1) Selection and description of the type of placement appropriate to meet the child's needs;

(2) Projected duration of the placement;

(3) Preplacement activities with child and family;

(4) Specific treatment goals for child and family;

(5) Specific steps to accommodate each goal;

(6) Specific time frames for goals;

(7) Designation of responsibility for carrying out steps with child, parents, foster parent, adoptive parent(s), and court (when involved) including frequency of contacts;

(8) Date for first review of progress on steps and goals; and

(9) Description of the conditions under which the child shall be returned home or when proceedings for termination of parental rights should be initiated.

(d) *Case plan development.* The parents or other significant persons to the child as well as the child, appropriate to his or her age and understanding, shall participate in developing the placement plan and participate in service contracts or agreements. Before accepting a child for placement from a parent or custodian, the agency shall secure written authority to provide care and written authority for medical care. In emergency situations necessitating immediate placement, the agency shall initiate assessment and initial case plan within one week of placement, which shall be completed within six weeks of placement.

(e) *Supervision and review of the case plan.* The agency shall specify in writing the worker or workers who have the ongoing responsibility for the child, the biological, foster and adoptive families, and the casework plan. When a child is placed with another agency or division or whenever more than one worker or division are involved with the same family, the roles shall be clearly delineated for the workers and the family members and the specific responsibilities necessary to carry out the plan shall be in writing in the case records. The case plan shall specify the frequency of social worker visits with the child, the child's family and the foster family, but these visits shall not be made less than once each month. The agency shall complete a quarterly review and assessment of the case plan and progress toward goal achievement. The agency shall have a periodic individual case review, either administrative or with outside agency personnel to ascertain whether children are being served in a prompt manner and whether return to home, continual placement, or adoption efforts are appropriate on the child's behalf.

(f) *Placement services to parents.* The agency's services shall be accessible and available to the parents of children in care and to an expectant parent or parents requesting services. The choice to use an agency's services shall be the parent's decision except when the choice has been taken from the parents by court order. The agency shall have as a goal helping the parents achieve positive self image and to carry out their parental roles and responsibilities while the child is in care. The agency shall have personal contacts with the parents when possible. It shall promote constructive contact by the parent or parents with the child after placement. The agency shall help the family have access to the services necessary to accomplish the case plan goals. While the child is in care, the agency shall counsel the parents relative to the problems and needs that brought about the circumstances of placement. Expectant parents considering placement shall receive assistance in the decision making process before the child is born and immediately thereafter.

(g) *Selection of placement.* The agency shall select the most appropriate form of placement for the child consistent with the needs of the child's family, including foster family care, residential group care or adoption. In choosing the appropriate placement for

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the child, the agency shall provide for any specialized services the child may need in the least restrictive setting and in the closest available program to the child's home, and shall take into consideration and preserve the child's racial, cultural, ethnic, and religious heritage to the extent possible without jeopardizing the child's right to care. The agency shall consider the child's treatment plan steps and goals and select a placement that has the capacity to assist in their achievement. The agency shall, in accordance with the case plan, provide the child with a continuity of relationships for the anticipated duration of care when selecting the placement.

(h) *Preplacement preparation.* The caseworker for the child shall become acquainted with the child before placement. The child's worker shall help the child understand the reasons for the placement plan, preparing him or her for a new environment. The worker shall plan and participate in at least one preplacement visit. The agency shall arrange a general medical examination by a physician for each child within a week of admission into care unless the child has received an examination within 30 days before admission. The results of this examination shall be recorded on forms supplied by the Kansas department of health and environment. The agency shall ensure that each child has had a dental examination by a dentist within 60 days of admission unless the child has been examined within 6 months before admission. Results of the examination shall be recorded on forms supplied by the Kansas department of health and environment.

(i) *Services during care.* The agency shall supervise the child in care and shall coordinate the planning and services to child and family as outlined in the case plan. The supervising worker shall see the child a minimum of biweekly in the first three months of placement and monthly thereafter. Parents and children shall be provided the opportunity to meet on a regular basis with the agency worker regarding their progress on resolving problems that may be precipitated by placement, their progress in coping with problems through the use of substitute care, the parent and child's relationship difficulties arising from separation, and case goals. The placing agency shall have a written agreement with the parents regarding visits to the child and shall facilitate and promote visitation while the child is in care. If the parents require services that the agency does not offer, referral shall be made to appropriate services. Communication between the two agencies shall be on a regular planned basis. The agency shall provide for the child's specialized services as outlined in the case plan. The agency shall have documentation of maintaining clear working agreements with other community resources, confidential referrals and providing access to services necessary to meet goals in the case plan.

(j) *Aftercare services.* The agency shall provide for continuing services for children and families following an adoption or a child's return to the family from the placement. In the case of the disruption of an adoptive placement, the agency shall make plans, either through purchase of service or provision of foster care services, for continued care of the child until a permanent home has been secured. The agency shall offer supportive help to a family receiving a child into placement or giving up a child for placement for a minimum period of 6 months after the placement or relinquishment of the child. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-503, 65-508; effective May 1, 1982; amended May 1, 1983.)

28-4-200. (Authorized by and implementing K.S.A. 65-508; effective Jan. 1, 1973; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1979; amended, T-83-24, Aug. 25, 1982; revoked May 1, 1983.)

28-4-201 to 28-4-202. (Authorized by K.S.A. 65-508; effective Jan. 1, 1973; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1979; revoked May 1, 1983.)

28-4-203. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-503, 65-504, 65-505, 65-508; effective Jan. 1, 1973; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1979; amended, T-83-24, Aug. 25, 1982; revoked May 1, 1983.)

28-4-204. (Authorized by K.S.A. 65-501, 65-504; effective Jan. 1, 1973; amended May 1, 1975; revoked May 1, 1983.)

28-4-205 to 28-4-208. (Authorized by K.S.A. 65-508; effective Jan. 1, 1973; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1979; revoked May 1, 1983.)

28-4-209. (Authorized by K.S.A. 65-508; effective Jan. 1, 1973; amended May 1, 1975; amended Feb. 15, 1977; revoked May 1, 1983.)

28-4-210. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-503, 65-504, 65-505, 65-508; effective Jan. 1, 1973; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1979; amended, T-83-24, Aug. 25, 1982; revoked May 1, 1983.)

28-4-211. (Authorized by K.S.A. 65-508; effective Jan. 1, 1973; amended May 1, 1975; revoked May 1, 1983.)

28-4-212. (Authorized by K.S.A. 65-508; effective Jan. 1, 1973; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1979; modified, HCR No. 5019, May 1, 1981; revoked May 1, 1983.)

28-4-213. (Authorized by K.S.A. 65-508; effective Jan. 1, 1973; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1979; amended, T-83-27, Sept. 22, 1982; revoked May 1, 1983.)

28-4-214 to 28-4-216. (Authorized by K.S.A. 65-508; effective Jan. 1, 1973; amended May 1, 1975; revoked May 1, 1983.)

28-4-217. (Authorized by K.S.A. 65-508; effective Jan. 1, 1973; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1979; revoked May 1, 1983.)

28-4-218. (Authorized by K.S.A. 65-508; effective

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Jan. 1, 1973; amended May 1, 1975; revoked May 1, 1983.)

28-4-219, 28-4-220. (Authorized by K.S.A. 65-508; effective Jan. 1, 1973; amended May 1, 1975; amended Feb. 15, 1977; revoked May 1, 1983.)

28-4-251. Licensing procedures. (a) A child shall not be placed in a group boarding home by any placing agent unless that home is in possession of a license issued by the Kansas department of health and environment.

(b) A person, corporation, firm, association or other organization shall not conduct a group boarding home unless the person, corporation, firm, association or other organization has been issued a license to do so by the Kansas department of health and environment.

(c) Any person, corporation, firm, association or other organization desiring to conduct a group boarding home shall apply for a license to do so on forms provided by the Kansas department of health and environment.

(d) The application for a license shall be accompanied by a written proposal which details the purpose of the group boarding home, the administration, financing, staffing, and services to be offered including age range and sex of residents to be served. This proposal shall be approved by the Kansas department of social and rehabilitation services before a license is issued by the Kansas department of health and environment. Any changes in the services shall be approved by the Kansas department of social and rehabilitation services before implementation.

(e) Plans for all buildings to be used as a group boarding home shall be submitted to the Kansas department of health and environment for aproval, as prescribed in K.A.R. 1981 Supp. 28-4-262. A full license shall be issued if the secretary finds that the applicant is in compliance with the requirements of K.S.A. 65-501 *et seq.* and amendments thereof and the rules and regulations promulgated pursuant to those statutes, and has made full payment of the license fee required by the provisions of K.S.A. 65-505 and amendments thereof. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-503, 65-508, K.S.A. 1982 Supp. 65-504, 65-505; effective, E-76-36, July 14, 1975; effective May 1, 1976; amended, T-83-24, Aug. 25, 1982; amended May 1, 1983.)

28-4-312. The license. (a) Any person desiring to conduct a family foster home shall apply for a license to do so on forms provided by the Kansas department of health and environment.

(b) Inconsequential care shall not require a license.

(c) A family foster home shall be licensed for a maximum of four foster children, not more than two of whom shall be under 18 months of age, with a total of six children in the home including the applicant's own children under 16 years of age. Approval may be granted to care for two additional foster children in order to meet the needs of sibling groups or other special needs of foster children.

(d) Licenses shall not be issued concurrently for more than one type of child care or for child and adult care in the same family foster home.

(e) A license shall be issued if the secretary finds that the applicant is in compliance with the requirements of K.S.A. 65-501 *et seq.* and amendments thereof and the rules and regulations promulgated pursuant to these statutes.

(f) Exceptions.

(1) The applicant or licensee may request an exception to a regulation from the Kansas department of health and environment. Such exceptions may be allowed when it is in the best interest of a child or children and when the exception does not violate statutory requirements.

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

(g) The applicant may terminate the license by notifying the Kansas department of health and environment if the licensee no longer wishes to maintain a family foster home.

(h) A copy of the "regulations for licensing family foster homes for children" shall be kept on the premises of the family foster home at all times. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-503, 65-508, K.S.A. 1982 Supp. 65-504, 65-505; effective, E-81-22, Aug. 27, 1980; effective May 1, 1981; amended, T-83-24, Aug. 25, 1982; amended May 1, 1983.)

28-4-351. Licensing procedures. (a) A person, corporation, firm, association or other organization shall not conduct a detention center for children under 16 years of age, unless the person, corporation, firm, association or other organization has been issued a license to do so by the Kansas department of health and environment.

(b) Any public agency or private individual, corporation, firm, association or other organization desiring to conduct a detention center shall apply for a license to do so on forms provided by the Kansas department of health and environment.

(c) Detention centers and other foster care facilities operated by or receiving support from county or municipal governments shall meet the same requirements for licensure as facilities operated by nongovernmental entities.

(d) The application for a license shall be accompanied by a written proposal which details the purpose of the center, the administration, financing, staffing and services to be offered including age range and sex of residents to be served. This proposal shall be approved by the Kansas department of social and rehabilitation services before a license is issued by the Kansas department of health and environment.

(e) Plans for all buildings to be used to as a detention center shall be submitted to the Kansas department of health and environment for approval, as prescribed in K.A.R. 1981 Supp. 28-4-359. A full license shall be issued if the secretary finds that the applicant is in compliance with the requirements of K.S.A. 65-501 *et seq.* and amendments thereof and the rules and regulations promulgated pursuant to those statutes,

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and has made full payment of the license fee required by the provisions of K.S.A. 65-505 and amendments thereof. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-503, 65-508, K.S.A. 1982 Supp. 65-504, 65-505; effective May 1, 1979; amended, T-83-24, Aug. 25, 1982; amended May 1, 1983.)

28-4-371. Licensing procedures. (a) Any person, corporation, firm, association or other organization desiring to conduct a maternity center shall apply for a license on forms provided by the Kansas department of health and environment.

(b) The application shall be accompanied by a written proposal detailing the following:

(1) Description of services offered;

(2) Staff number and qualifications for the various staff positions;

(3) Equipment and supplies maintained at the center;

(4) Admission and discharge criteria;

(5) Criteria for transfer to the hospital with which the center has an agreement;

(6) Outline of prenatal education curriculum completed by professional staff and prenatal education plan;

(7) Plan for care of newborn;

(8) Hospital service agreement;

(9) Ambulance service agreement;

(10) Agreements with a pediatrician and an obstetrician or a group of such practitioners for emergency service; and

(11) The establishment of a community advisory board.

(c) Plans for any building to be used as a maternity center shall be submitted to the Kansas department of health and environment, as prescribed in K.A.R. 1981 Supp. 28-4-377.

(d) A full license shall be issued if the secretary finds that the applicant is in compliance with the requirements of K.S.A. 65-501 *et seq.* and amendments thereof and the rules and regulations promulgated pursuant to those statutes, and has made full payment of the license fee required by the provisions of K.S.A. 65-505 and amendments thereof. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-503, 65-508, K.S.A. 1982 Supp. 65-504, 65-505; effective May 1, 1981; amended, T-83-24, Aug. 25, 1982; amended May 1, 1983.)

28-4-400. Definitions. (a) "Annual margin" means family income minus family living allowance.

(b) "Cash assets" means money, savings accounts, savings certificates, checking accounts, and stocks and bonds.

(c) "Diagnostic service" means an evaluation to identify a handicapping disease or disease process.

(d) Family.

(1) "Family," for crippled children who reside with their parents, step-parents, or legal guardian, or who are considered dependents of their parents, step-parents, or legal guardian for income tax purposes, means the crippled child, the child's parents, step-parents, or legal guardian, and all other persons who reside in the same home as the crippled child. This shall not include persons who lease or rent a portion of the residence.

(2) "Family," for a crippled child who has established a separate residence and is no longer considered a dependent of the child's parents, step-parents, or legal guardian for income tax purposes, means the crippled child, the crippled child's spouse, children and relatives, and all other persons who reside in the same home as the crippled child. This shall not include persons who lease or rent a portion of the residence.

(e) "Family income" means the total amount of adjusted gross income reported for federal income tax purposes on the most recent federal income tax return filed by each member of the family.

(f) "Family living allowance" means the amount established by the secretary as specified in K.A.R. 28-4-403(b).

(g) "Individual service plan" means documents which state a plan of treatment, authorized services, approved providers of service, time frame for provision of services, and source of payment for services.

(h) "Prior authorization" means the approval of a request to provide a specific service before the provision of the service.

(i) "Medical treatment" means any medical or surgical services and any medical equipment, devices, or supplies provided to a crippled child who is eligible for assistance under the crippled children's program.

(j) "Resident" means a child who is living in the state with the intention of making a home here and not for a temporary purpose.

(k) "Secretary" means the secretary of the department of health and environment or the secretary's designee. (Authorized by and implementing K.S.A. 65-5a08; effective, E-82-10, April 27, 1981; effective May 1, 1982; amended May 1, 1983.)

28-4-401. Responsibilities of applicants and recipients. (a) An individual shall supply, insofar as possible, information essential to the establishment of eligibility, within 30 days of request.

(b) An individual shall give written permission on forms prescribed by the secretary for release of information needed to determine medical and financial eligibility.

(c) An individual shall report changes in address, number of children living in the home, marital status, custody of children, insurance coverage, family income or cash assets of more than $500.00 per year, or other circumstances that affect the special health care needs of the child, within 10 working days of the change.

(d) An individual shall:

(1) Apply for insurance benefits, title XIX medicaid program benefits, supplemental security income benefits, or benefits from other sources, when requested;

(2) assign the insurance benefits to hospitals and other providers of service for any medical treatment provided by the crippled children's program;

(3) apply the benefits of any non-assignable insur-

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ance by making payments to hospitals or other providers of service for items ordered by the attending physician; and

(4) reimburse the crippled children's program any insurance proceeds sent directly to the recipient, if the insurance payment is made for medical treatment provided by the crippled children's program. (Authorized by and implementing K.S.A. 65-5a08; effective E-82-10, April 27, 1981; effective May 1, 1982; amended May 1, 1983.)

28-4-402. Responsibilities of the secretary to applicants and recipients. The secretary shall: (a) Inform applicants of program requirements;

(b) develop an individual service plan for each child accepted into the program;

(c) inform the parents, step-parents, or legal guardian of each child accepted into the program of that portion of costs for medical treatment to be paid by the parents, step-parents, or legal guardian, and of that portion of costs to be paid by the program;

(d) redetermine, at least once each 12 months, eligibility for each child accepted into the program; and

(e) terminate crippled children's program services for individuals who fail to meet one or more of the requirements of K.A.R. 28-4-401. Notification of termination shall be sent to the parents, step-parents, or legal guardian of the child and providers of service. (Authorized by and implementing K.S.A. 65-5a08; effective E-82-10, April 27, 1981; effective May 1, 1982; amended May 1, 1983.)

28-4-405. Providers of service. (a) Application. All persons and corporations desiring to supply services or sell prosthetic devices, equipment, appliances, or supplies shall file an application with the secretary. The secretary shall approve or disapprove each application and notify interested parties of the action taken and maintain a list of approved providers of service.

(b) Designation of hospitals. Hospitals approved to provide medical and surgical services for the care and treatment of crippled children shall:

(1) Be licensed as a hospital in Kansas;

(2) be certified by the joint commission on accreditation of hospitals;

(3) have a department of pediatrics, with qualified pediatric nurses regularly assigned to the pediatric area;

(4) have on the hospital staff at least one pediatrician, with a designated chief of pediatrics;

(5) have a social work department, with social work staff regularly assigned to the pediatric area;

(6) have staff physicians certified by specialty boards in the specialty appropriate for the needs of the child;

(7) have a separate area for children, with provisions made for parents who wish to live-in with their child, non-restrictive visiting hours for parents, and suitable recreational facilities for children;

(8) have facilities to isolate the children with communicable diseases or other conditions requiring isolation or separation;

(9) have available consultation in other specialty areas for the cases being treated;

(10) have adequate operating facilities for the specialty for which the hospital is approved;

(11) have persons qualified to give pediatric anesthesia;

(12) have hematologic, chemistry, micro-biology, and serologic laboratory facilities appropriate for the needs of the child;

(13) have x-ray facilities appropriate for the needs of the child;

(14) have facilities for the application of plaster or other cast material for pediatric orthopedic cases;

(15) have a physical therapy department with qualified personnel to treat children; and

(16) have regularly scheduled in-service programs relating to children and pediatric conditions for all health care staff.

(c) Designation of other providers. Other providers approved to provide medical, surgical and other services for the care and treatment of crippled children shall meet the following standards:

(1) Audiologists shall have an American speech and hearing certification or its equivalent, and professional experience with children.

(2) Dentists shall be licensed by the Kansas dental board and dental specialists shall be licensed to practice their specialty by the Kansas dental board.

(3) Hearing aid dealers shall be licensed by the Kansas board of examiners in fitting and dispensing of hearing aids.

(4) Nurses shall be registered with the Kansas state board of nursing.

(5) Nutritionists shall be registered with the American dietetic association.

(6) Occupational therapists shall have professional occupational therapy experience with children.

(7) Pharmacists shall be licensed by the Kansas state board of pharmacy.

(8) Physical therapists shall be licensed by the Kansas state board of healing arts and have professional physical therapy experience with children.

(9) Physicians shall be licensed by the Kansas state board of healing arts and be certified by their respective specialty board, or be eligible, through training, for that certification.

(10) Prosthetic and orthotic appliance facilities shall have employees who are trained in the use of these appliances and have an approved physical plant.

(11) Social workers shall have a master's degree in social work, at least two years experience in case work under a qualified social work supervisor, and one year social work experience in supervision, consultation, or independent case work after completion of the master's degree.

(d) Responsibilities. Providers of service shall agree:

(1) That race, color, religion, national origin, or ancestry will not be a basis for refusing to provide service;

(2) to submit reports requested by the crippled children's program;

(3) to accept personal responsibility for the care and treatment they provide children under the crippled children's program;

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(4) to accept payment in accordance with the fees established by the secretary as payment in full and to not bill families for any crippled children's program covered service without permission of the secretary;

(5) to obtain prior authorization from the crippled children's program for services provided; and

(6) to notify the secretary of withdrawal from the crippled children's program.

(e) Reimbursement.

(1) Service shall not be reimbursed without prior authorization, except in the case of an emergency. In the event emergency care or emergency hospital admission is necessary, the crippled children's program shall be notified within two working days after the admission or the rendering of emergency care.

(2) Insurance, title XIX, and other coverage. For children receiving funding from both the title XIX medicaid program and the crippled children's program, the medicaid program holds primary funding responsibility. The crippled children's program shall not pay for services eligible for title XIX medicaid reimbursement. Private insurance holds primary funding responsibility over the crippled children's program and every effort shall be made to utilize insurance benefits. When insurance fails to pay or pays only a portion of the total bill, the providers shall file a crippled children's program claim. If the insurance payment is less than the crippled children's program allowable rate, additional payment may be made up to the allowable rate. If the insurance payment exceeds or equals the maximum crippled children's program allowable rate, an additional payment shall not be made.

(3) Each claim submitted for reimbursement shall state the child's name, and address, and the date service was provided. The claim submitted also shall give a description of the services provided and indicate the appropriate procedure code. The claim also shall specify one of the following:

(A) The services provided were covered by a policy of insurance;

(B) a claim on a policy of insurance was made, but rejected by the insurer;

(C) a policy of insurance was not available for the services provided;

(D) the services provided were covered by a policy of insurance, but the costs of the services were not paid in full by the insurer; or

(E) a claim for the services provided was filed under the medicaid program, but was rejected. The reason for the rejection of the claim by medicaid shall be stated, if known to the claimant.

(f) Termination. The secretary may terminate a provider's participation in the crippled children's program for one or more of the following reasons:

(1) Voluntary withdrawal of the provider from participation in the program;

(2) non-compliance with applicable state laws or regulations;

(3) unethical or unprofessional conduct; or

(4) suspension or termination of license or certificate.

(g) Limitations. The secretary shall specify in the prior authorization for service the number and types of service, including days of hospitalization, for which the crippled children's program shall be responsible for payment. Services in excess of those having prior authorizaton shall not be reimbursed under the crippled children's program, unless a provider of service, patient, parent, or guardian requests an extension which is granted by the secretary.

(h) The secretary may allow claims for reimbursement by individuals or hospitals who do not meet the requirements of subsections (a) to (c), inclusive, of this rule and regulation, if the individual or hospital provides emergency medical treatment for a crippled child, or, with the prior authorization of the secretary, provides specialized medical treatment for a crippled child. (Authorized by and implementing K.S.A. 65-5a08; effective May 1, 1982; amended May 1, 1983.)

28-4-408 to 28-4-419. Reserved.

CHILD CARE CENTERS AND PRESCHOOLS

28-4-420. Definitions. (a) "Administrator" means the staff member of a child care center or preschool who is responsible for the general and fiscal management of the facility.

(b) "Attendance" means the number of children present at any one time.

(c) "Basement" means an area in which all four outside walls are more than two-thirds below ground level.

(d) "Child care center" means a facility in which care and educational activities are provided for 13 or more children six weeks to 16 years of age for more than three hours and less than 24 hours per day including day time, evening, and nighttime care. A facility may have fewer than 13 children and be licensed as a center if the program and building meet child care center regulations.

(e) "Child with handicaps" means a child in care who does not function according to age-appropriate expectations to such an extent that the child requires special help, program adjustment, and support services on a regular basis.

(f) "Corporal punishment" means activity directed toward modifying a child's behavior by means of physical contact such as spanking with the hand or any implement, slapping, swatting, pulling hair, yanking the arm, or any similar activity.

(g) "Discipline" means the on-going process of helping children develop inner control so that they can manage their own behavior in a socially-approved manner.

(h) "Enrollment" means the total number of children for whom services are available.

(i) "Evening care" means care provided between 6 o'clock p.m. and midnight of the same day.

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

(k) "Infant" means a child who is under 12 months of age, or a child over 12 months who has not learned to walk.

(l) "In-service training" means job-related training provided for employed staff and volunteers.

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(m) "Integrated unit" means a center or preschool program serving both handicapped and non-handicapped children, in which not less than 1/3 and not more than 2/3 of the children are handicapped.

(n) "License" means a document issued by the Kansas department of health and environment which authorizes a licensee to operate and maintain a child care center or preschool.

(o) "License capacity" means the maximum number of children that shall be allowed to attend at any one time.

(p) "Licensee" means a person, corporation, firm, association, educational group or other organization which operates or maintains a child care center or preschool.

(q) "Mother's day out" means a program operating more than five consecutive hours or more than one day per week and in which any one child is enrolled for not more than one session per week.

(r) "Nighttime care" means care provided after six o'clock p.m. and continuing until after midnight.

(s) "Preschool" means a facility:

(1) which provides learning experiences for children who have not attained the age of eligibility to enter kindergarten prescribed in K.S.A. 1981 Supp. 72-1107(c) and any amendments thereto, and who are 30 months of age or older;

(2) which conducts sessions not exceeding three hours per session;

(3) which does not enroll any child more than one session per day; and

(4) which does not serve a meal. The term "preschool" shall include educational preschools, Montessori schools, nursery schools, church-sponsored preschools, and cooperatives. A preschool may have fewer than 13 children and be licensed as a preschool if the program and facility meet preschool regulations.

(t) "Preschool age" means a child who is between 30 months of age and the age of eligibility to enter kindergarten as prescribed in K.S.A. 1981 Supp. 72-1107(c) and any amendments thereto.

(u) "Program" means a comprehensive and coordinated plan of activities providing for the education, care, protection, and development of children who attend a preschool or a child care center.

(v) "Program director" means the staff member of a child care center or preschool who meets the requirements specified in K.A.R. 28-4-429(b), (c) and (d) and who is responsible for implementing and supervising the program.

(w) "School-age child" means a child who has attained the age of five years on or before September 1 of a given year, but who is not 16 years of age or older.

(x) "Self-contained unit" means an area separated by permanent or movable partitions which contains indoor learning materials for the maximum number of children permitted in one group as specified in K.A.R. 28-4-428(a).

(y) "Sick child" means a child who has a contagious disease or shows other signs or symptoms of an acute illness.

(z) "Special purpose unit" means a program in which more than two-thirds of the children enrolled have severe or mild handicaps.

(aa) "Summer program for school-age children" means a program in which any one school-age child is enrolled for more than three hours daily for more than two consecutive weeks, and shall include summer camps.

(bb) "Swimming pool" means an enclosed body of water more than 12 inches deep.

(cc) "Toddler" means a child who has learned to walk and who is between 12 and 30 months of age.

(dd) "Unit" means the number of children that may be present in one group, as specified in K.A.R. 28-4-428(a). (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983.)

28-4-421. Terms of license. (a) License capacity shall be specified on the license. Permission for an overlap of periods of attendance to accommodate lunchtime and shift changes shall be requested from the Kansas department of health and environment, and if granted, shall be posted.

(1) License capacity shall be determined by age of children, available space, and program director qualifications. License capacity of a child care center or preschool shall not exceed 100 children per session.

(2) Children enrolled on an irregular basis shall not cause the center or preschool to exceed its license capacity.

(3) A license shall be valid only for the licensee and the address appearing on the license.

(b) A copy of "regulations for licensing child care centers and preschools," provided by the Kansas department of health and environment shall be kept on the premises at all times. (Authorized by K.S.A. 65-508, K.S.A. 1982 Supp. 65-505; implementing K.S.A. 1982 Supp. 65-504; effective May 1, 1983.)

28-4-422. Procedures. (a) General. (1) Any person, corporation, firm, association, or other organization desiring to conduct a child care center or preschool which operates for more than five consecutive hours or more than one day per week shall apply for a license on forms supplied by the Kansas department of health and environment.

(2) An application for a license or an application for renewal of license shall be accompanied by a license fee which is not refundable.

(3) Children shall not be in attendance at the center or preschool until a license has been issued by the Kansas department of health and environment.

(4) Applicants shall be 18 years of age or older at time of application.

(5) A license shall be issued if the secretary finds that the applicant is in compliance with the requirements of K.S.A. 65-501 *et seq.* and amendments thereof, and the rules and regulations promulgated pursuant to those statutes, and that the applicant has made full payment of the license fee required by the provisions of K.S.A. 65-505 and amendments thereof.

(6) A license for an additional facility operated by a current applicant shall not be issued until all existing

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facilities operated by the applicant are in compliance with licensing regulations.

(7) It shall be the responsibility of the licensee to provide the financial resources necessary to maintain compliance with licensing regulations.

(b) Statement of services offered. When making application to the Kansas department of health and environment for a license to conduct a child care center or preschool, the applicant shall state what services will be provided. Advertisements shall conform to the written statement of services. No claims as to specialized services shall be made unless the facility is staffed and equipped to offer those services. No general claim as to "state approval" shall be made unless the facility has obtained a license issued by the Kansas department of health and environment. The licensing agency shall be notified of a change in the position of program director or a change in program which effects licensure.

(c) Initial application.

(1) Site approval.

(A) The proposed site shall be approved by the Kansas department of health and environment, the local building inspector when required, and a fire safety inspector. Inspection reports shall accompany the application for license.

(B) When a building is to be constructed or an existing building is to be remodeled, construction or remodeling plans shall be submitted to the Kansas department of health and environment for approval.

(C) When additional space in an existing building is to be used, prior approval shall be obtained from the Kansas department of health and environment.

(2) A working telephone shall be on the premises and available at all times for use by staff.

(d) Renewals.

(1) Before an existing license expires, the licensee shall apply for renewal of the license on forms supplied by the Kansas department of health and environment.

(2) An application may be withdrawn at any time upon request by the applicant. The applicant shall submit a new application to the Kansas department of health and environment prior to reopening a facility.

(3) A new application and fee shall be submitted for each change of ownership, sponsorship or location.

(e) Grievance procedures.

(1) An applicant or licensee receiving notice of denial or revocation of license shall be notified of the right to an administrative hearing by the Kansas department of health and environment and subsequently of the right of appeal to the district court.

(2) An applicant or licensee aggrieved by a licensing evaluation or by licensing procedures may appeal in writing to the Kansas department of health and environment.

(f) Exceptions.

(1) The applicant or licensee may submit a written request for an exception to a regulation to the Kansas department of health and environment. An exception shall be granted if the secretary determines the exception to be in the best interest of a child or children and their families, and if statutory requirements are not violated.

(2) Written notice from the Kansas department of health and environment stating the nature of the exception and its duration shall be posted with the license. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-508, K.S.A. 1982 Supp. 65-504, 65-505; effective May 1, 1983.)

28-4-423. Physical plant. (a) Premises. (1) The building shall meet the legal requirments of the community as to fire protection, water supply, and sewage disposal.

(2) The designated area for children's activities shall contain a minimum of thirty-five square feet of floor space per child, exclusive of kitchen, passageways, storage areas, and bathrooms.

(3) The building shall have two exits approved by a fire inspector. One exit shall lead directly to the outside.

(4) Second floors approved by a fire inspector may be used for children 2½ years or over. Second-floor windows shall be guarded.

(5) Finished basements approved by a fire inspector may be used for children 2½ years or older. Basements shall be dry and well-ventilated, heated and cooled as specified in K.A.R. 28-4-423(a)(20), and lighted as specified in K.A.R. 28-4-423(a)(18).

(6) Homes in which a family is living shall not be used for a child care center or preschool for 13 or more children, with the following exceptions:

(A) Basements meeting K.A.R. 28-4-423(a)(5) may be used for up to one unit of children as specified in K.A.R. 28-4-428(a).

(B) Ground level recreation rooms may be used for up to one unit of children.

(7) When mobile classroom units are used, they shall be securely anchored to the ground and shall meet all requirements for permanent structures.

(8) All stairs which have more than two steps shall be provided with sturdy handrails. When balusters are more than four inches apart, provisions shall be made to prevent a child's head or body from falling through.

(9) Landings or gates shall be provided beyond each exterior door, and any door opening onto a full-length stairway.

(10) Ceiling height shall be not less than seven feet six inches.

(11) Windows and doors.

(A) Low windows and glass doors shal be screened or guarded.

(B) Windows and doors opened for ventilation shall be screened.

(12) Floors shall be smooth and not slippery, free from cracks, clean and in good condition. Floor covering shall be required over concrete.

(13) Carpeting shall be clean and in good repair. Newly-installed carpeting shall meet fire safety requirements of the state fire marshal.

(14) Walls shall be clean and free of cracks.

(15) All surfaces shall be free of toxic materials.

(16) Electrical outlets within the reach of children

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under five years of age shall be provided with receptacle covers when not in use.

(17) Extension cords shall not be used.

(18) Rooms occupied by children shall have a minimum of twenty foot candles of light in all parts of the room. Sleeping rooms shall be lighted to allow freedom of movement.

(19) The premises shall be maintained in good condition and shall be clean at all times, free from accumulated dirt and trash, and any evidence of vermin or rodent infestation. Outdoor trash and garbage containers shall be covered, and contents shall be removed at least weekly.

(20) Rooms occupied by the children shall be heated, ventilated and cooled. Room temperatures shall not be less than 65° F. nor more than 90° F. Areas occupied by children shall be free of drafts.

(21) Electric fans, if used, shall be mounted high on the wall or shall be guarded.

(22) When gas heaters are used, they shall be approved by a fire inspector before use. Open-faced heaters shall be prohibited.

(23) All heating elements, including hot water pipes, shall be insulated or installed in such a way that children cannot come in contact with them. Asbestos insulation shall not be used. Fireplaces shall not be used when children are present.

(24) Medicines, household poisons, and other dangerous substances and instruments shall be in locked storage.

(25) Storage of firearms in any area used for children's activities shall be prohibted. Firearms stored in any other area of the premises shall be in locked storage, or shall be equipped with trigger locks.

(b) Water supply.

(1) The water supply shall be from a source approved by a health department, or by the Kansas department of health and environment.

(2) Sanitary drinking facilities shall be available to children while indoors or outdoors. One of the following methods shall be used:

(A) Individual disposable cups and water dispenser;

(B) individually-marked glasses or cups which shall be washed daily.

(C) a fountain designed so that a child can get a drink of water without assistance.

(3) Drinking fountains shall not be plumbed to sinks.

(4) Water from drinking fountains shall be under pressure so that the stream is not less than three inches high.

(5) Cold water and hot water not exceeding 110° F. shall be supplied to lavatory fixtures accessible to children.

(c) Toilet and lavatory facilities.

(1) All plumbing fixtures and building sewers shall be connected to public sewers where available.

(2) When a public sewer is not available, a private sewage disposal system meeting requirements of the county health department or the Kansas department of health and environment shall be installed and connected to all plumbing fixtures.

(3) Plumbing shall be installed and maintained according to local and state plumbing codes.

(4) Bathroom facilities shall be readily accessible to the children, and shall be placed low or be provided with safety steps.

(5) There shall be one toilet and one washbasin for each fifteen children.

(6) Bathroom facilities shall be planned to assure privacy for staff.

(7) Soap, individual cloth towels or paper towels, and toilet paper shall be provided. The use of common towels and wash cloths shall be prohibited. When cloth towels and wash cloths are used, they shall be labeled with the child's name, and laundered at least weekly. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983.)

28-4-424. Swimming and wading pools. (a) When swimming pools or wading pools are used as part of the program, they shall be constructed, maintained and used in such a manner as to safeguard the lives and health of the children.

(b) Below-ground swimming pools shall be fenced to prevent chance access by children.

(c) Above-ground pools shall be four feet high, or be enclosed with a fence not less than four feet high.

(d) The number and ages of children using either swimming or wading pools shall be limited to allow appropriate supervision by adult staff members. Licensing regulations for staff/child ratios shall be maintained at the pool at all times. There shall be a minimum of two adults in attendance with the children. A qualified life guard shall be on duty when children are using a swimming pool in which the water is more than two feet deep.

(e) The water in the swimming pool shall be maintained at pH 7.2 to 7.6, and the chlorine content at 0.4 to 0.6 parts per million. The pool shall be cleaned daily.

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

(g) Legible safety rules for the use of swimming and wading pools shall be posted in a conspicuous location, and shall be read and reviewed at regular intervals by all staff members responsible for the supervision of children.

(h) Natural bodies of water may be used only for children over six years of age, and shall be approved for swimming by the county health department or Kansas department of health and environment. A qualified life guard shall be on duty. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983.)

28-4-425. Transportation. (a) Facility-owned or leased vehicles. (1) When a vehicle used for transportation is owned or leased by the facility, the driver shall be 18 years of age or older, and shall hold a valid Kansas operator's license, as follows:

(A) The driver of a vehicle with a passenger limit of more than 10 shall hold a class B driver's license.

(B) The driver of a car transporting five or fewer children, a station wagon transporting eight or fewer

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children, or a van transporting 10 or fewer children, shall have a current class C driver's license.

(2)(A) The driver, whether paid or volunteer, shall have a health assessment performed by a physician or a nurse approved to perform health assessments.

(B) The assessment shall have been conducted within the past 12 months.

(C) Results of the assessment shall be recorded on forms supplied by the Kansas department of health and environment and kept on file at the facility.

(3)(A) The transporting vehicle shall be in safe operating condition.

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

(4) When children are transported in buses, the vehicle shall meet the administrative regulations of the department of transportation governing school buses as specified in K.A.R. 36-13-32 *et seq.*

(5) A vehicle shall not transport more children than its capacity as stated by the manufacturer.

(6) Children shall not be transported in campers, recreation vehicles or in the back of a truck.

(7) The vehicle shall be covered by accident and liability insurance as required by K.S.A. 40-3104 and 40-3118, and any amendments thereof.

(8) Emergency release forms, and health assessment records as specified in K.A.R. 28-4-430 and 28-4-432(e), shall be carried in the vehicle when children are transported. A first aid kit shall be available.

(b) Safety of the children riding in the vehicle shall be protected as follows:

(1) Each child shall be provided with an individual restraint as recommended by the department of transportation.

(2) All doors shall be locked while vehicle is in motion.

(3) Discipline shall be maintained at all times.

(4) Children's arms, legs and heads shall remain inside the vehicle at all times.

(5) Children shall not enter nor exit the vehicle into a lane of traffic.

(6) Children shall not be left in a vehicle unattended by an adult.

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

(8) A second adult shall ride in the vehicle when more than five children under five years of age or more than three infants are being transported, or when the route exceeds 30 minutes.

(9) K.A.R. 28-4-425(b)(1) through (8) shall be posted in the vehicle.

(c) The driver shall deliver the child to a responsible person designated by the child's parent or legal guardian, or by the person legally responsible for the care and custody of the child.

(d) Privately-owned, non-facility vehicles, volunteered without remuneration, shall meet all of the foregoing requirements except those of K.A.R. 28-4-425(a)(2) and (a)(3)(B).

(e) Facilities providing transportation shall develop written policies detailing safety precautions which shall be implemented for the protection of children.

(f) Volunteer drivers shall be informed of the facility's transportation policies. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983.)

28-4-426. Administration. (a) Line of authority. There shall be a written delegation of administrative authority designating the person in charge for all hours of operation of the facility.

(b) Admission policies.

(1) Arrangements for the admission of children shall be made prior to the date they are admitted to the center or preschool.

(2) Admission policies shall be non-discriminatory in regard to race, color, religion, national origin, ancestry, physical handicap, or sex, in accordance with Kansas civil rights statute K.S.A. 44-1009.

(3) Parents shall be informed when religious training is included in the program.

(c) Insurance. Liability and accident insurance shall be carried on children and staff. Documentation of insurance coverage shall be on file, including the name of the insurance company or companies, policy number or numbers and dates of coverage.

(d) Staff records. The following records shall be maintained on each staff person:

(1) Education and experience;

(2) date of employment;

(3) scheduled hours;

(4) record of in-service training;

(5) health certificate; and

(6) work references.

(e) Children's records.

(1) A daily attendance record shall be maintained and kept on file at the facility.

(2) The following emergency information shall be readily accessible to the telephone:

(A) Name, date of birth, and sex of child;

(B) name, home and business address and phone numbers of parents or legal guardian;

(C) name, address, and telephone number of physician, hospital, and person to notify in case of emergency; and

(D) persons authorized to call for child.

(3) A file shall be maintained for each child which includes:

(A) Application for enrollment including beginning date;

(B) scheduled hours and days of attendance;

(C) health assessment and immunization record;

(D) accident reports; and

(E) signed parental permission for field trips, transfer of records, and, when applicable, walking to and from activities away from the facility.

(4) Children's records shall be confidential. Staff shall not disclose nor discuss personal information regarding children and their relatives with any unauthorized person.

(5) A child's records and reports shall be made available to that child's parents on request. Children's

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health records shall be returned to the parents when the children are no longer enrolled. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983.)

28-4-427. Program. (a) Programs shall be conducted in self-contained units with staff and children designated for each unit. Centers or preschools which cannot develop self-contained units shall present a plan for space use to the Kansas department of health and environment for approval.

(b) Equipment.

(1) Low, open shelves shall be provided for play equipment and materials so that they are readily accessible to the children.

(2) Equipment shall be scaled to the size of the children.

(3) Equipment shall be of sound construction with no sharp, rough, loose, nor pointed edges, and in good operating condition.

(4) Equipment shall be placed to avoid danger of accident or collision, and to permit freedom of movement.

(5) Equipment shall be provided in a sufficient quantity so that each child has a choice of at least three activities when all children are using equipment at the same time.

(6) Storage space located conveniently for the staff shall be provided for supplies and equipment not in use.

(7) Each child shall have individual space for the child's garments, clothing, and possessions during the session attended.

(c) Learning experiences.

(1) There shall be a written program plan which includes daily learning experiences appropriate to the developmental level of the children. Experiences shall be designed to develop:

(A) Self-esteem and positive self-image;

(B) social interaction skills;

(C) self-expression and communication skills;

(D) creative expression;

(E) large and small muscle skills; and

(F) intellectual growth.

(2) The program schedule shall be planned to provide a balance of active, quiet, individual and group activities.

(3) A written program plan shall be posted in each unit.

(d) Discipline.

(1) There shall be a written discipline policy outlining methods of guidance appropriate to the ages of the children enrolled. This policy shall be made available to staff and parents.

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

(A) Corporal punishment;

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

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

(D) withholding or forcing foods. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983.)

28-4-428. Staff requirements. (a) Minimum staff/child ratio. The ratio between staff and children shall be determined by the age of children and type of service provided. The required staff/child ratios shall not fall below this minimum level at any time and no child shall be left unsupervised. Only staff who are in attendance with the children shall be counted in the minimum staff/child ratio as follows:

Age of Children	Minimum Staff/Child ratio	Maximum Children per unit
Infants (2 weeks to 12 months)	1 to 3	9
Infants to 6 years	1 to 4 (max. 2 infants)	8 (max. 4 infants)
Toddlers (12 months to 2½ years if walking alone)	1 to 5	10
2½ years to kindergarten age	1 to 10	20
3 years to kindergarten age	1 to 12	24
Kindergarten enrollees	1 to 14	28
School age	1 to 16	32

(b) Substitute staff. Facilities shall have two additional adults who can work in case of illness or emergency. Their names and phone numbers shall be posted, and their health certificates shall be on file.

(c) Volunteers. Volunteers shall be at least 14 years of age. Volunteers may be counted in the staff/child ratio if they are 16 years of age or older, participate in in-service training programs, and are supervised at all times by employed staff.

(d)(1) Each child care center shall have a program director who is employed full time.

(2) A facility enrolling more than 60 children shall employ a program director who has no assigned teaching responsibilities.

(3) A facility enrolling more than 60 children shall have an administrator, who may also be the program director.

(e) Staff training.

(1) The program director shall receive at least five clock-hours of approved in-service training annually that is conducted away from the facility.

(2) Teaching staff shall receive at least 10 clock-hours of approved in-service training annually.

(f) References. All staff members shall provide work references at the time of application for employment.

(g) The program director shall submit an annual program report to the Kansas department of health and environment on forms supplied by the department. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983.)

28-4-429. Staff qualifications. (a) Program directors shall be 18 years of age or older and shall meet the training requirements for the license capacity of the facility.

(b) Facilities with fewer than 13 children shall have a program director who meets the training requirements by one of the following options:

(1) Option 1: (A) Six months' teaching experience

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in licensed facilities with children of the same age as enrolled in present facility.

(2) Option 2: (A) Five sessions of observation for not less than 2½ consecutive hours per observation in licensed facilities with children of the same age as enrolled in present facility; and

(B) 10 clock hours of workshops approved by the state licensing staff;

(3) Option 3: A minimum of three semester hours of academic credit or equivalent training in child development, early childhood education, and curriculum resources; and

(B) supervised observation in high school or college or three months' work experience with children of the same age as enrolled in present facility; or

(4) Option 4: A child development associate credential.

(c) Facilities licensed for not less than 13 and not more than 24 children shall have a program director who meets the training requirements by one of the following options:

(1) Option 1: (A) Five sessions of observation for not less than 2½ consecutive hours per observation in licensed preschools or child care centers. Child care center staff shall plan their observations so that daily activities during morning, lunch, nap time and late afternoon can be observed; and

(B) one year of teaching experience in licensed centers or preschools, or one year of supervised practicum in licensed centers or preschools; or

(2) Option 2: (A) Seven to nine semester hours of academic credit or equivalent training in child development or early childhood education; and

(B) three months' teaching experience in licensed centers or preschools, or one year of supervised practicum in licensed centers or preschools; or

(3) Option 3: A child development associate credential.

(d) Facilities licensed for more than 24 children shall have a program director who meets the training requirements by one of the following options:

(1) Option 1: (A) Twelve semester hours of academic study or equivalent training in child development, early childhood education, curriculum resources, nutrition, child guidance, parent education, supervised practicum, and administration of early childhood programs; and

(B) six months' teaching experience in licensed centers or preschools;

(2) Option 2: A child development associate credential and one year of teaching experience in licensed centers or preschools, or supervised practicum in licensed centers or preschools;

(3) Option 3: (A) An associate of arts degree or a two-year certificate in child development; and

(B) one year of teaching experience in licensed centers or preschools, or a supervised practicum in licensed centers or preschools;

(4) Option 4: (A) An A.B. or B.S. degree in child development or early childhood education, including a supervised practicum; and (B) three months' teaching experience in licensed centers or preschools; or

(5) Option 5: (A) An A.B. or B.S. degree in a related academic discipline, and 12 hours of academic study or equivalent training in child development, early childhood education, curriculum resources, nutrition, child guidance, parent education, supervised practicum, and administration of early childhood programs; and

(B) six months teaching experience in licensed centers or preschools.

(e) Each unit shall have one staff person who is at least 18 years of age and who has a high school diploma or its equivalent. Units enrolling fewer than 13 children shall have a staff person who meets the training requirements specified in subsection (b) of this rule and regulation. Units enrolling 13 to 24 children shall have a staff person who meets the training requirements specified in subsection (c) of this rule and regulation. Units enrolling more than 24 school-age children shall have a staff person who meets the requirements specified in subsection (d) of this rule and regulation.

(f) Assistant teachers shall be at least 16 years of age and shall participate in staff orientation at time of employment. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983.)

28-4-430. Health. (a) Children's health assessments

(1) A pre-entrance health assessment conducted within six months prior to enrollment shall be required for each child. The assessment shall be conducted by a licensed physician, or nurse approved to perform health assessments.

(2) Results of the assessment shall be recorded on forms supplied by the Kansas department of health and environment, and kept in the child's file at the facility.

(3) Children transferring from one facility to another shall not be required to obtain a new health assessment if the old assessment record is available.

(4) Tuberculin testing shall be required only if the child comes in contact with a new active or reactivated case of tuberculosis. The results of this examination shall become a part of the child's health record.

(5) Immunizations shall be current in accordance with the child's age at time of enrollment, and shall be maintained current for protection against diphtheria, pertussis, tetanus, measles, mumps, rubella, and poliomyelitis. A record of each child's immunizations shall be maintained on that child's health assessment form.

(6) Exceptions to health assessments and immunizations shall be permitted if one of the following is obtained:

(A) Certification from a licensed physician stating that the physical condition of the child is such that immunization would endanger the child's life or health; or

(B) A written statement signed by a parent or guardian that the parent or guardian is an adherent of a religious denomination whose teachings are opposed to health assessments or immunizations.

(7) The licensee shall educate the parents of chil-

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dren in care about the value of periodic health assessments and to the importance of seeking medical advice when a child exhibits health problems.

(b) Health practices.

(1) Each child's hands shall be washed with soap and water before eating and after toileting. Each child's hands and face shall be washed after eating.

(2) Children shall be allowed to go to the bathroom individually as needed.

(c) Illness and abuse.

(1) When a child is absent due to a communicable disease, staff shall inform other parents of the nature of the illness.

(2) Communicable diseases shall be reported to the county health department.

(3) All staff members shall be trained to observe symptoms of illness, neglect, and child abuse, and shall observe each child's physical condition daily.

(4) Symptoms of illness shall be reported immediately to parents.

(5) Any evidence of neglect or unusual injuries including bruises, contusions, lacerations, and burns shall be noted on the child's record, and shall be reported immediately to the person in charge of the facility.

(6) The person in charge shall report immediately to the Kansas department of social and rehabilitation services any evidence of suspected child abuse or neglect. When the local offices of the department of social and rehabilitation services are not open, reports shall be made to local law enforcement agencies.

(7) If care of sick children is to be provided, written plans regarding the needs of a sick child, and the care of the sick child, shall be prepared in consultation with the public health nurse, and shall be presented to the parents at time of enrollment.

(8) A quiet area shall be provided for sick children. Sick children shall be supervised by an adult

(9)(A) Non-prescription medications shall not be administered to any child except on written order of the parent or guardian.

(B) Orders shall be renewed yearly.

(C) Such medication shall be administered by a designated staff member.

(10) Prescription medication shall be administered by one designated staff member per session from a pharmacy container labeled with the child's name, name of medication, dosage, dosage intervals, name of physician, and date prescription was filled. The label shall be considered the order from the physician

(11) A record shall be kept in the child's file as to who gave the medication and of the date and time it was given

(d) Staff

(1) General health policies

(A) All staff shall be free of communicable diseases and shall be in such a state of health and freedom from physical or emotional handicaps as is necessary for them to work with children

(B) Smoking shall be prohibited in the presence of children

(C) Alcohol or non-prescribed controlled substances as defined in K.S.A. 65-4101 and any amendments thereof shall not be consumed on the premises during hours of operation, nor while children are present.

(2) Physical health.

(A) All staff who will have contact with the children shall have a health assessment conducted within one year prior to employment. Health assessments shall be conducted by a licensed physician or a nurse approved to perform health assessments

(B) Results of the assessment shall be recorded on forms supplied by the Kansas department of health and environment and kept in the staff person's personnel file.

(C) The health assessment for persons 16 years of age or older shall include a record of tuberculin test or X-ray obtained within the past two years. Test or X-ray results shall be recorded on the person's health record. The county health department and Kansas department of health and environment shall be notified when tests are positive.

(D) Additional tuberculin testing shall not be required unless significant exposure to an active case of tuberculosis occurs, or symptoms compatible with tuberculosis develop. Proper treatment or prophylaxis shall be instituted, and results of that follow-up shall be recorded on the person's health record. The Kansas department of health and environment shall be kept informed.

(e) Persons residing in the same location as a child care center or preschool shall obtain health assessments as described in K.A.R. 28-4-430(d). Persons under 16 years of age shall have current immunizations.

(f) Volunteers shall present written proof of freedom from active tuberculosis obtained within the past two years. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983.)

28-4-431. Safety. (a) Each facility shall develop a disaster plan to provide for the safety of children and staff in emergencies such as fire, tornadoes, storms, floods, civil disorders, and serious injury.

(1) Fire drills shall be conducted monthly and scheduled to allow participation by each child enrolled. The dates and time shall be recorded.

(2) Tornado drills shall be conducted monthly, April through September, and scheduled to allow participation by each child enrolled. The dates and time shall be recorded.

(3) The parents of the children in the facility shall be informed of the disaster plans, and the plans shall be posted in the child care center or preschool.

(b) All staff members shall be trained in elementary principles of first aid by a registered nurse, emergency medical technician, red cross trainer, or a staff member who has completed the red cross training or its equivalent. First aid training shall be offered yearly as a part of inservice training. A first aid kit shall be accessible to the staff.

(c) Education about accident prevention shall be included in staff training. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983.)

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28-4-432. Emergencies. (a) Emergency telephone numbers shall be posted next to the facility's telephone. The following telephone numbers shall be posted: police, fire department, ambulance, hospital or hospitals, and poison control center.

(b) The facility shall have in writing the name, address, and telephone number of a physician to be called in case of emergency.

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

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

(e) Written permission of the parent or guardian for emergency treatment shall be according to the requirements of the hospital or clinic where emergency care will be given.

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

(g) A death or an accident requiring hospitalization shall be reported immediately to the county health department or Kansas department of health and environment. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983.)

28-4-433. Pets and animals. (a) Whenever animals are on the premises, policies shall be written and posted for their care and maintenance. Dogs and cats shall have current immunizations as recommended by a veterinarian. A record of immunizations shall be kept on file.

(b) Water turtles, poisonous snakes, insects, and other animals that represent a hazard to children shall not be kept on the premises. Wild animals shall not be kept on the premises except as a part of an animal exhibit.

(c) Large dogs, horses, other animals and birds shall be confined in areas which are removed from children's activities, and which are maintained in a sanitary manner. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983.)

28-4-434. Preschools. (a) Inside area. A building used as a residence shall be licensed as a preschool only if there is room or rooms designated exclusively for preschool use.

(b) Nutrition.

(1) A nutritious snack shall be provided daily and shall include at least one of the following foods:

(A) Milk, milk product, or food made with milk;

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

(C) meat;

(D) peanut butter; or

(H) bread or cereal product.

(2) Dairy products shall be pasteurized.

(3) Refrigeration shall be provided for perishable foods.

(4) If reusable table service is used for snacks, appropriate dishwashing methods shall be followed as specified in K.A.R. 28-4-439(k).

(5) Appropriate table service shall be used for serving snacks.

(c) Outdoor play. Outdoor play space shall not be required. If outdoor play is included in the preschool program, the requirements of K.A.R. 28-4-437 shall be met. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983.)

28-4-435. Programs serving children with handicapping conditions. (a) Records. Written parental permission shall be on file for evaluation and placement of children.

(b) Physical plant.

(1) Programs which include non-ambulatory children shall be conducted on the ground floor. All exits and steps shall have ramps approved by a fire inspector.

(2) Facilities enrolling children who use walkers or wheelchairs shall have 50 square feet of space for each physically handicapped child.

(3) When physically handicapped children are enrolled, toilets and washbasins shall be designed to accommodate them.

(c) Transportation. A second adult shall ride in the rear seat of the vehicle when three or more handicapped children are being transported.

(d) Staff requirements. Facilities shall have staff who meet the qualifications listed in K.A.R. 28-4-429. The following additional requirements shall be met:

(1) The parent of a child enrolled in the unit shall not be a teacher in that unit.

(2) Each unit shall have a staff person who has a minimum of six hours of academic credits or equivalent clock hours in understanding the needs o handicapped children, and in developing individual program plans.

(3) Consultants shall meet the educational requirements of their profession.

(e) Minimum staff/child ratios. If fewer than one-third of the children enrolled have handicapping conditions, the minimum staff/child ratios shall be those as specified in K.A.R. 28-4-428. If one-third or more of the children enrolled have handicapping conditions, the following minimum staff/child ratios shall be maintained:

	Integrated unit or center		Special purpose unit or center	
Age of children	Adult/child	Max. unit	Adult/child	Max. unit
Under 2½ years	1 to 3	9	1 to 2	6
2 years to 3 years	1 to 4	12	1 to 3	9
2½ years and above	1 to 6	18	1 to 4	12

(f) In-service training. All staff shall have 10 clock-hours of annual in-service training specific to handicapping conditions.

(g) Program. A written individual program plan shall be on file for each handicapped child enrolled,

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and in consultation with the parents, shall be reviewed and revised annually. The plan shall assign responsibility for the delivery of services, and shall indicate the anticipated change in the child's behavior, and how these changes will be measured. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983.)

28-4-436. Child care centers: physical plant. (a) Inside area. A building used as a residence shall be licensed as a child care center only if there is a room or rooms designated exclusively for child care use.

(b) Napping and sleeping.

(1) Children remaining at the center more than four hours shall be encouraged to nap or rest according to their individual needs. Children who do not sleep shall be permitted to have a quiet time through the use of equipment or activities which will not disturb other children.

(2) Centers shall have a crib, cot or pad for each child. Pads shall be enclosed in washable covers and shall be used only over carpet. When pads are used, they shall be long enough so that the child's head does not rest on the carpet. Bunk beds shall be prohibited.

(3) Each crib or cot shall be equipped with individually-labeled bottom sheet. Every child shall have a cover. Children shall not share bedding.

(4) There shall be a complete change of bedding after each five uses, immediately when wet or soiled, and always upon a change in occupancy. Blankets shall be laundered monthly.

(5) Cribs, cots, or pads, when in use, shall be separated from each other by at least two feet in all directions except when bordering on the wall. When not in use, they shall be stored in a clean and sanitary manner.

(6) Nighttime care.

(A) Movable screens shall be available to insure privacy as needed.

(B) Separate sleeping areas shall be provided for boys and girls over six years of age.

(C) A center in which children sleep for more than three consecutive hours shall be provided with a smoke detector installed in consultation with a fire inspector.

(c) Laundry facilities.

(1) If laundry is done at the center, laundry fixtures shall be located in an area separate from food preparation areas and shall be installed and used in such a manner as to safeguard the health and safety of the children.

(2) Separate areas shall be provided for soiled and clean items. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983.)

28-4-437. Child care centers: outside area. (a) There shall be at least 75 square feet of outdoor play space on the premises for each child using the space at a given time. The total outdoor space shall accommodate not less than one-half of the licensed capacity, or shall include a minimum of 750 square feet, whichever is greater.

(b) The boundaries of outdoor play space shall be enclosed with a fence not less than four feet high.

(c) The outdoor play space shall be located to provide both sunshine and shade. Hard-surfaced area or gravel shall not be used under anchored play equipment.

(d) Outdoor play space shall be well drained and free of hazards.

(e) Outdoor play equipment shall be safely constructed and in good repair. Climbing equipment and swings shall be anchored in the ground with metal straps or pins, or set in cement. Swings shall be safely located and shall have canvas or soft rubber seats. Teeter-totters and merry-go-rounds designed for school-age children shall not be used for children under six years.

(f) Sandboxes shall be maintained in a safe and sanitary condition.

(g) A rooftop used as a play area shall be enclosed with a flat board fence or a chainlink fence angled toward the play area, which shall not be less than six feet high. An approved fire escape shall lead from the roof to the ground.

(h) The play area shall be arranged so that staff can provide close supervision at all times.

(i) Outdoor equipment shall be provided in sufficient quantity so that each child has access to at least one activity.

(j) There shall be bathroom facilities accessible to the play area. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983.)

28-4-438. Child care centers: program. (a) The program shall provide regularity in routines such as eating and napping, and protection from excess fatigue and overstimulation.

(b) Unless extreme weather conditions prevail, children shall have a daily period of outdoor play under the supervision of an adult. Children spending more than four consecutive hours at the center shall play outdoors for at least one hour daily.

(c) Routines such as toileting and eating, and intervals between activities shall be planned so that children do not have to wait in lines, or assemble in large groups.

(d) If television is on the premises, its use shall be limited to children's programs.

(e) Activities shall be available for children during the entire time they are in attendance, including early morning and late afternoon. (Authorized by and implementing K.S.A 65-508; effective May 1, 1983.)

28-4-439. Child care centers: food service. (a) Single or multi-unit centers serving a meal prepared at the center to 13 or more children shall employ a staff person who:

(1) Has knowledge of nutritional needs of children;

(2) understands quantity food preparation and service;

(3) practices sanitary methods of food handling and storage;

(4) is sensitive to individual and cultural food tastes of children; and

(5) is willing to work with the program director in planning learning experiences for children relative to nutrition.

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(b) Centers shall serve meals and snacks as follows:

Length of Time at Center	Food Served
2½ to 4 hours	1 snack
4 to 8 hours	1 snack & 1 meal
8 to 10 hours	2 snacks & 1 meal or 1 snack & 2 meals
10 hours or more	2 meals & 2 or 3 snacks

(c) Meals and snacks.

(1) Breakfasts shall include:

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

(B) cereal or egg;

(C) a bread product;

(D) butter or margarine; and

(E) milk.

(2) Noon or evening meals shall include one item from each of the following:

(A) Meat, poultry, fish, egg, cheese, cooked dried peas or beans, or peanut butter;

(B) two vegetables, 2 fruits, or one vegetable and one fruit;

(C) a cereal or bread product;

(D) butter or margarine; and

(E) milk.

(3) Mid-morning and mid-afternoon snacks shall include at least two of the following:

(A) Milk, milk products or food made with milk;

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

(C) meat or a meat alternate; or

(D) bread or cereal product.

(d) A sufficient quantity of food shall be prepared for each meal to allow the children second portions of vegetables or fruit, bread, butter or margarine, and milk.

(e) Food allergies of specific children shall be known to cooks, staff members, child care workers, and substitutes.

(f) Menus shall be posted where parents can see them. Copies of menus served the previous month shall be kept on file.

(g) Staff shall sit at the table with the children, and socialization shall be encouraged. Children shall be encouraged to serve themselves. Appropriate service shall be used for meals and snacks.

(h) Toothbrushes shall be provided for each child's use. They shall be used daily after meals, and shall be stored in a sanitary manner out of children's reach.

(i) When meals are prepared on the premises, the kitchen shall be separate from the eating, play, and bathroom areas, and shall not be used as a passageway while food is being prepared.

(j) Food shall be stored as follows:

(1) Poisonous or toxic materials shall not be stored with food. Medications requiring refrigeration shall be labeled and kept in locked storage in the refrigerator.

(2) All perishables and potentially hazardous foods shall be continuously maintained at 45°F or lower in the refrigerator, or 10°F or lower in the freezer, with 0°F recommended. Each cold storage facility shall be provided with a clearly visible, accurate thermometer.

(3) All foods stored in the refrigerator shall be covered.

(4) Foods not requiring refrigeration shall be stored at least six inches above the floor in clean, dry, well-ventilated storerooms or other areas.

(5) Dry bulk foods which are not in their original unopened containers shall be stored in metal, glass or food-grade plastic containers with tight-fitting covers, and shall be labeled.

(k) Table service shall be maintained in sanitary condition using one of the following methods:

(1) Disposable plates and cups, and plastic utensils of food grade, medium weight; or

(2) a three-compartment sink supplied with hot and cold running water and a drainboard for washing, rinsing, sanitizing, and airdrying; or

(3) a mechanical dishwasher.

(l) Dishes shall have smooth, hard-glazed surfaces, and shall be entirely free from cracks or chips.

(m) Tables shall be washed before and after meals, and floors shall be swept after meals.

(n) If meals are catered:

(1) Food shall be obtained from sources licensed by the Kansas department of health and environment; and

(2) food shall be transported in covered and temperature-controlled containers, and not allowed to stand. Hot foods shall be maintained at not less than 140°F, and cold foods shall be maintained at 45°F or less.

(o) All dairy products shall be pasteurized. Dry milk shall be used only for cooking.

(p) Meat shall be from government-inspected sources.

(q) Home-canned food, food from dented, rusted, bulging, or leaking cans, or food from cans without labels shall not be used.

(r) Garbage shall be placed in covered containers inaccessible to children, and removed from the kitchen daily. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983.)

28-4-440. Infant and toddler programs. (a) Infant and toddler programs shall be conducted on the ground floor only.

(b) Infant and toddler units shall be separate from units for older children.

(c) Floor furnances shall be prohibited.

(d) A sleeping area separate from the play area shall be provided for infants.

(e) A crib or playpen shall be provided for each infant in care at any one time.

(f) Cribs and playpens shall have slats not more than 2 3/8 inches apart, or shall be equipped with bumpers. The side of the crib or playpen shall be up while the crib or playpen is in use.

(g) When children are awake, they shall not be left unattended in cribs or other confinement for more than 30 minutes.

(h) An adult-size rocking chair shall be provided in each infant or toddler unit.

(i) Children not held for feeding shall have low chairs and tables, infant seats with trays, or high chairs with a wide base and a safety strap.

(j) Individually-labeled towels and washclothes or disposable products shall be provided.

(k) Items that children may place in their mouths shall be washed daily with soap and water.

(l) Staff requirements. Single or multi-unit centers serving infants and toddlers shall employ one staff

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person per unit who meets the training requirements by one of the following options:

(A) Option 1: A person with six months' teaching experience or supervised practicum in licensed child care centers enrolling infants and toddlers; or

(B) Option 2: A licensed L.P.N. or R.N. with three months' experience in pediatrics, or in licensed child care centers enrolling infants and toddlers; or

(C) Option 3: A child development associate credential in infant/toddler care.

(m) Program.

(1) Daily activities shall contribute to:

(A) Gross and fine motor development;

(B) visual-motor coordination;

(C) language stimulation; and

(D) social and personal growth.

(2) Infants and toddlers shall spend time outdoors daily unless extreme weather conditions prevail.

(n) Food service.

(1) Nitrate content of water for children under one year of age shall not exceed 45 milligrams per liter as nitrate (NO_3).

(2) Infants shall be held when bottle fed until they can hold their own bottles.

(3) Infants and toddlers shall not be allowed to sleep with bottles in their mouths.

(4) Prepared formula and juice shall be refrigerated until used. Leftover formula and juice shall be labeled and refrigerated with the nipple covered, and used within 24 hours.

(5) Solid foods shall be offered in consultation with the child's parents. Opened containers of solid foods shall be labeled with child's name, covered, and refrigerated, shall be reheated only once, and shall not be served to other children.

(o) Toileting.

(1) Children's clothing shall be changed whenever wet or soiled.

(2) Each child shall have at least two complete changes of clothing.

(3) Handwashing facilities shall be in or adjacent to the diaper—changing area.

(4) Children shall be diapered in their own cribs or playpens, or on a changing table with an impervious and undamaged surface. Each unit shall have a changing table.

(5) Changing tables shall have an impervious surface and shall be sanitized after each use by washing with a disinfectant solution of 1/2 cup of chlorine bleach to one gallon of water, or a commercial solution approved by the Kansas department of health and environment.

(6) Washable diapers or training pants shall be rinsed immediately following changing, and stored in a labeled, covered container or plastic bag.

(7) Disposable diapers shall be placed in a covered container or plastic bag which shall be emptied daily.

(8) There shall be one potty chair for each five toddlers. Potty chairs shall be left in the toilet room. The wastes shall be disposed of immediately in a flush toilet. The container shall be sanitized after each use and shall be washed with soap and water daily. Potty chairs shall not be counted as toilets.

(9) Staff shall wash their hands after changing soiled clothing.

(10) Changing and toileting procedures shall be posted.

(p) There shall be daily communication between parents and the staff about the child's behavior and development. (Authorized by and implementing K.S.A. 65-508; effective May 1, 1983.)

28-4-441. Programs for school-age children. (a) Physical plant.

(1) When enrollment requires more than one adult, units for school-age children shall be separate from units for younger children.

(2) Centers shall have a minimum of thirty-five foot candles of light in areas used for reading, study, and other close work.

(b) Staffing. Single or multi-unit centers shall employ teaching staff who meet the requirements by one of the following options:

Option 1: As specified in K.A.R. 28-4-429; or

Option 2: A.B. or B.S. degree in elementary education, physical education, child development or a related academic discipline, and three months' experience with school-age children.

(c) Full-year program.

(1) Educational and recreational activities shall meet the individual needs of the children.

(2) Children shall be provided the opportunity to plan activities appropriate to their age.

(3) Activities shall include arts, crafts, music, reading, table games, and sports.

(4) Written parental permission shall be obtained for children to participate in activities away from the center.

(d) Summer programs for school-age children. (1) License applications or application renewals for summer programs shall be submitted to the Kansas department of health and environment not later than April 15.

(2) Summer programs shall be based in facilities which meet license requirements.

(3) Sack lunches may be served. Sack lunches and beverages shall be refrigerated.

(4) An exception may be granted for centers to exceed the maximum enrollment of one hundred children for summer school-age programs if space requirements and other regulations are met. Requests for this exception shall be submitted in writing to the Kansas department of health and environment. (Authorized by and implementing K.S.A 65-508; effective May 1, 1983.)

Article 15.—APPLICATION FOR PERMITS; DOMESTIC WATER SUPPLY

28-15-35. Conditions of certification and approval. (a) *Definitions.* (1) "Department" means the Kansas department of health and environment.

(2) "Secretary" means the secretary of the department.

(3) "Laboratory" means any facility where microbiological, chemical, or radiologic examinations are

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performed on drinking water or wastewater for use in determining compliance with K.S.A. 65-163 to 65-171t, inclusive, and K.A.R. 28-15-25, 28-16-28, and 28-16-63.

(4) "Standards" means criteria for certification which a laboratory must meet to be approved.

(5) "Approval" means the recognition by the department that a laboratory has met the minimum requirements of K.A.R. 28-15-35, 28-15-36 and 28-15-37.

(6) "Certification" means the issuance of a document by the secretary attesting to the fact that approval has been given by the department.

(7) "Laboratory director" means the person who has the technical responsibility for the operation of a laboratory.

(8) "Laboratory supervisor" means a person whose function is to direct technical personnel, evaluate the quality of test procedures performed in the laboratory, perform tests requiring special scientific skills, and report results.

(9) "Laboratory analyst" means a person who performs tests with minimal supervision in those specialties for which that person is qualified by education, training and experience.

(10) "Laboratory survey officer" means any person designated by the department to evaluate laboratories.

(11) "Performance evaluation sample" means a specimen submitted to a laboratory for analysis as a means of assessing the laboratory's analytical proficiency.

(b) *Application for approval and certification.* Application for certification and approval shall be made on forms provided by the department. The application shall include but not be limited to the following: (1) Laboratory name and address;

(2) name and address of owner;

(3) the parameters for which certification is being sought;

(4) names of the laboratory director and analytical personnel, their training and experience; and

(5) the appropriate fee as provided for in K.A.R. 28-15-37.

(c) *Certification and approval.* Completed application forms and fees are to be submitted to the department which shall then schedule and conduct an on-site review to determine whether the laboratory meets the minimum requirements of K.A.R. 28-15-35, 28-15-36, and 28-15-37. Upon determination that the laboratory meets all requirements, the secretary shall issue a certificate to the laboratory. The certificate shall be valid for one year from date of issue. To maintain uninterrupted certification, the laboratory shall file its application for renewal, accompanied by the appropriate fee, at least 60 days before its current certification expires.

When applications are submitted requesting additional or expanded certification in categories or parameters, or both, for which the laboratory is not currently certified and for which the department gives approval, the department may, at its option, establish an expiration date of certification currently in effect for the applicant. When the expiration date of new or expanded certification is so adjusted, the appropriate fees for the new or expanded certification shall be accordingly prorated.

A laboratory survey officer shall conduct on-site evaluations at a frequency established by the secretary to determine that the laboratory continues to meet the minimum requirements for certification.

(d) *Scope of certification.* Laboratories may be certified for individual parameters in the following categories: (1) Inorganic and physical-chemical analyses;

(2) organic chemical analyses;

(3) radionuclide analyses; or

(4) microbiological analyses.

Certification may be for any one parameter or for any combination of parameters in categories (1), (2), (3) and (4).

(e) *Personnel.* Certification of a laboratory shall be given only after presentation of documentation to the satisfaction of the department regarding education and work experience of each of the following, as applicable: (1) Laboratory director;

(2) Laboratory supervisor; and

(3) Laboratory analyst.

A laboratory shall notify the department within 10 days when supervisory or technical personnel changes occur.

(f) *Facilities.* Certification of a laboratory shall be granted only after an on-site evaluation indicates adequacy of space, equipment, and instrumentation.

(g) *Procedures.* Analytical procedures, record-keeping, data reporting, and in-house quality assurance programs shall be evaluated during an on-site visit to determine compliance with requirements of K.A.R. 28-15-25, 28-16-28, 28-16-63, 28-15-35, 28-15-36 and 28-15-37.

(h) *Performance evaluation samples.* Acceptable results, based on state of the art and technology, from performance evaluation samples submitted to applicant laboratories shall be a condition of certification.

A minimum of one performance evaluation sample shall be satisfactorily analyzed by an applicant prior to approval and certification. A certified laboratory must satisfactorily analyze a minimum of one performance evaluation sample per certification time period in order to maintain certification and be eligible for uninterrupted recertification for the succeeding 12 month time period.

(i) *Notification of approval.* A certificate of approval shall be issued annually by the secretary to each laboratory satisfactorily meeting all requirements of K.A.R. 28-15-35, 28-15-36 and 28-15-37. The certificate shall note the parameters for which the laboratory is certified and approved.

(j) *Revocation of certificate of approval.* A certificate of approval may be revoked or modified by revocation of individual parameter certification when it is determined that there has been: (1) Failure to meet requirements of K.A.R. 28-15-35, 28-15-36 and 28-15-37;

(2) reporting as official compliance data any parameter or analytical result for which certification has not been obtained; or

(continued)

(3) false reporting or other misrepresentations of fact.

In making a revocation, the affected laboratory shall be notified in writing of the specific action taken, the reasons for revocation, and the effective date of revocation.

Analytical results obtained after a certificate has been revoked or modified by revocation of individual parameters can not be submitted as official compliance data in conforming with requirements of K.S.A. 65-163 to 65-171t, inclusive, and K.A.R. 28-15-35, 28-16-28 and 28-16-63.

(k) *Recertification after revocation.* Recertification shall not be made until a laboratory has demonstrated to the satisfaction of the department that the deficiencies which caused revocation have been corrected. A new application form shall be submitted including the appropriate fee. When recertification is requested after revocation has occurred on the basis of an individual parameter and the laboratory has not been totally decertified, the fees may be prorated at the discretion of the department, so that normal expiration or recertification data for categories and parameters shall occur simultaneously.

(l) *Laboratories located outside of Kansas.* Laboratories located outside of the state of Kansas, and performing laboratory services to comply with K.S.A. 65-163 to 65-171t, inclusive, and K.A.R. 28-15-25, 28-16-28, and 28-16-63, shall be accepted providing the laboratory is certified by a federal or state agency having equivalent or higher standards as determined by the department. These laboratories shall participate in an external proficiency testing program consisting of performance evaluation samples, offered or approved by the department. These laboratories shall submit documentation of the above to the satisfaction of the department. This documentation shall be accompanied by the appropriate fee and an application form for the department's approval and certification.

The department, at its option, may conduct on-site review to determine eligibility for certification of those out-of-state laboratories which are located within "border city" travel areas as determined by the policy and procedure manual of the Kansas department of administration. (Authorized by and implementing K.S.A. 65-171k, 65-3431; effective E-79-14, June 23, 1978; effective May 1, 1979; amended May 1, 1983.)

28-15-36. Standards for certification and approval. The minimum requirements for certification and approval of water and wastewater laboratories and personnel shall be those listed in "standards for the certification and approval of environmental analytical laboratories", January, 1983, published by the department. (Authorized by and implementing K.S.A. 65-171k, 65-3431; effective, E-79-14, June 23, 1978; effective May 1, 1979; amended May 1, 1983.)

Article 17.—DIVISION OF VITAL STATISTICS

28-17-4. Local registrars' reports. Local registrars shall transmit weekly to the state registrar all original certificates of birth, death and stillbirth submitted to the local registrars during the preceding week. (Authorized by K.S.A. 65-2430; implementing K.S.A. 65-2430; effective Jan. 1, 1966; amended May 1, 1983.)

28-17-6. Fees for copies and searches. Subject to the restrictions of K.S.A. 65-2418, 65-2422 and K.S.A. 65-2423, and any amendments to those statutes, the state registrar shall furnish certified copies of certificates or parts of certificates upon request by an authorized applicant and payment of the required fee. For making and certifying such copies, the state registrar shall receive a fee of $4.00 for the first copy and $3.00 for each additional copy of the same record requested at the same time. For any search of the files and records when no certified copy is made, the state registrar shall be entitled to collect from the applicant a fee of $4.00 for each five-year period for which a search is requested, or for each fractional part of that period of years. The state registrar shall also be entitled to collect a fee of $4.00 for any search of the files and records necessary for preparing an amendment to a standard certificate already on file, due to a change in name of an adopted person or of a person whose name has been legally changed.

For non-certified copies of certificates or parts of certificates requested for statistical research purposes, the state registrar shall determine the fee on the basis of costs of providing those services and prescribe the manner in which those costs are to be paid. (Authorized by K.S.A. 23-110, K.S.A. 1982 Supp. 65-2418; implementing K.S.A. 65-2420, K.S.A. 1982 Supp. 65-2418; effective Jan. 1, 1966; amended Jan. 1, 1968; amended, E-78-18, July 7, 1977; amended May 1, 1978; amended May 1, 1983.)

28-17-12. Delayed birth certificate filing fee. Application for a delayed birth certificate shall be accompanied by a fee in the amount of $4.00 for the filing and registration of the delayed birth certificate. A certified copy may be issued in accordance with K.A.R. 28-17-6, and any amendments to that rule and regulation. (Authorized by and implementing K.S.A. 65-2420; effective Jan. 1, 1966; amended Jan. 1, 1968; amended May 1, 1983.)

28-17-17. (Authorized by K.S.A. 65-2402, 65-2426; effective Jan. 1, 1966; revoked May 1, 1983.)

Article 19.—AMBIENT AIR QUALITY STANDARDS AND AIR POLLUTION CONTROL

28-19-17. New source permit requirements for designated attainment and unclassified areas. (a) The provisions of K.A.R. 28-19-17 through 28-19-171 shall apply to the construction of major stationary sources and major modifications of stationary sources in areas of the state designated as attainment or unclassified for any pollutant under the procedures prescribed by Section 107(d) of the federal Clean Air Act (42 U.S.C. 7407(d)).

(b) Any reference in K.A.R. 28-19-17 through 28-19-171 to standards, procedures or requirements of 40 CFR Part 52 shall constitute a full adoption by reference of the part, subpart, section or subsection so

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referred, including any notes and appendices associated with it, unless otherwise specifically noted in the rules and regulations.

(c) When used in any provision adopted from 40 CFR Part 52, references to "administrator" shall mean the secretary of the department of health and environment or an authorized representative of the secretary and "state" shall mean the state of Kansas. (Authorized by and implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983.)

28-19-17a. Definitions. The following words and terms, when used in K.A.R. 28-19-17 through 28-19-171 shall have the following meanings: (a) Incorporation of definitions. The definitions found in 40 CFR Part 52 Subsection 52.21(b), as amended through June 25, 1982, are adopted by reference, except for subsection (b)(17), and except that the references to "40 CFR 52.21" in subsection (b)(14) shall be replaced with the statement: "K.A.R. 28-19-17b or 40 CFR Part 52 Section 52.21(i) as in effect prior to the effective date of K.A.R. 28-19-17b."

(b) "Act" means the federal Clean Air Act (42 U.S.C. 7401 et seq.).

(c) "Applicable maximum allowable increase" means air pollutant concentration increases allowed for any Class I, II or III area of the state under the provisions of Section 163 of the federal Clean Air Act (42 U.S.C. 7473).

(d) "Class I, II or III area" means a classification assigned to any area of the state by the administrator of the U.S. environmental protection agency under the provisions of Section 162 and 164 of the federal Clean Air Act (42 U.S.C. 7472 and 7474.)

(e) "Federally enforceable" means:

(1) all limitations and conditions which are enforceable by the administrator of the U.S. environmental protection agency, including those requirements enforceable under 40 CFR Parts 60 and 61; and

(2) all limitations and conditions that are established under the requirements of regulations included in the federally approved Kansas implementation plan.

(f) "Temporary" means, in relation to the emissions from a source, that the emissions will not occur at a particular location for a period of more than two years in duration unless a longer time is approved by the secretary or an authorized representative of the secretary. (Authorized by and implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983.)

28-19-17b. Permit required. (a) A major stationary source shall not begin actual construction or major modification unless the owner or operator of the source has been issued a permit approving this activity in accordance with the requirements of K.A.R. 28-19-17d through 28-19-17*l*. This permit shall be signed by the secretary or an authorized representative of the secretary and shall specify the emission rate limitations allowable for the source and any special conditions to be imposed on its operations in order to assure compliance with these regulations.

(b) Application for a permit required by this regulation shall be submitted on forms provided by the secretary or an authorized representative of the secretary. The application shall include, in addition to that information required by K.A.R. 28-19-8(c), such information as is required by the secretary or an authorized representative of the secretary in order to determine compliance with regulations K.A.R. 28-19-17d through 28-19-17i.

(c) The secretary or an authorized representative of the secretary shall review all actions reported under the provisions of K.A.R. 28-19-8 to determine the possible applicability of the permit requirements of this regulation to any such action and shall advise the source owner or operator, within 15 days of receipt of the report, of any need to submit a special permit application as required by this regulation. Within 30 days from the receipt of the permit application, or any supplemental information required in addition to this application, the applicant shall be advised of any deficiencies in the submission. In the event of such a deficiency the date on which the department of health and environment or its designated representative received all required information shall be considered the date of receipt of a completed application, for the purpose of this regulation.

(d) The secretary or an authorized representative of the secretary shall make a determination whether to approve or disapprove the construction or modification of a source subject to this regulation within one year of receipt of a completed application and shall provide notice of this determination in accordance with the provisions of K.A.R. 28-19-17k by that date.

(e) Approval to construct that is granted under this regulation shall become invalid if construction is not commenced within 18 months after receipt of this approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time as determined by the secretary or an authorized representative of the secretary. This provision shall not apply to the time period between construction of the approved phases of a phased construction project. In these cases, the 18 month allowable time period shall apply to the projected and approved dates for commencement of construction of individual phases of these projects. The secretary or an authorized representative of the secretary may extend the deadlines prescribed by this section upon a satisfactory showing that the extension is justified.

(f) Approval to construct that is granted under this regulation shall not relieve any owner or operator of the responsibility to comply fully with other applicable provisions of these regulations or any other provisions of local, state or federal law.

(g) If any particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation of any enforceable limitation that was established after August 7, 1980 that restricts the capacity of the source or modification to otherwise emit a pollutant, then the requirements of K.A.R. 28-19-17d through 28-19-17i shall become applicable to the source or modification as though construction had not yet commenced on the source or modification.

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(Authorized by and implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983.)

28-19-17c. Exemptions. (a) The requirements of regulation 28-19-17b shall not be applicable to new major source construction or major modifications if:

(1) the source or modification was subject to the review requirements of 40 CFR 52.21, as in effect on the effective date of this regulation and a permit was issued under that regulation; and

(2) the source owner or operator did not discontinue construction for a period of 18 months or more and completes construction within a reasonable period of time as determined by the U.S. environmental protection agency.

(b) The requirements of K.A.R. 28-19-17b shall not apply to a particular major stationary source or major modification if:

(1) the source or modification will be, or will occur at, a nonprofit health or nonprofit educational institution;

(2) the source or modification meets the criteria included in 40 CFR Part 52 Subsection 52.21(i)(4)(vii) as in effect on July 1, 1981, which is hereby adopted by reference;

(3) the source is a portable stationary source which is operated in accordance with emission limitations prescribed by a permit previously issued for it under K.A.R. 28-19-17b and if at least 10 days advance written notification is given to the department of health and environment that the source will be temporarily relocated to an area where these emissions will not impact on any Class I area or any area where an applicable increment is known to be violated; or

(4) with respect to a particular pollutant, if the owner or operator demonstrates that the source or modification is located in an area designated as nonattainment for that pollutant under Section 107 of the Act.

(c) The requirements of K.A.R. 28-19-17e, 28-19-17g and 28-19-17h shall not apply to a major stationary source or major modification with respect to a particular pollutant from the source if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification would be temporary and would not impact any Class I area or any area where an applicable increment is known to be violated.

(d) The requirement of K.A.R. 28-19-17e, 28-19-17g and 28-19-17h as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification if the major modification occurs at a stationary source that was in existence on March 1, 1978, and if the net increase in allowable emissions of the pollutant after the application of best available control technology would be less than fifty tons per year.

(e) Incorporation. 40 CFR Part 52 Subsection 52.21(i)(8) as in effect on July 1, 1981, is adopted by reference except for the statement "the requirements of paragraph (m) of this section." This statement shall read, "the requirements of K.A.R 28-19-17g." (Authorized by and implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983.)

28-19-17d. Emission limits. (a) Incorporation. 40 CFR Part 52 Subsection 52.21(j), as in effect on July 1, 1981, is adopted by reference.

(b) The owner or operator of a proposed major stationary source or major modification may request, and the secretary or an authorized representative of the secretary may approve, the use of innovative control technology in accordance with the provisions of K.A.R. 28-19-171 as an alternative to the provision of best available control technology as required by section (a) of this regulation. (Authorized by and implementing K.S.A. 65-3002, 65-3008, 65-3010; effective May 1, 1983.)

28-19-17e. Source impact analysis. 40 CFR Part 52 Subsection 52.21(k), as in effect on July 1, 1981, is adopted by reference. (Authorized by and implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983.)

28-19-17f. Air quality models. (a) All estimates of ambient concentrations required under regulations K.A.R. 28-19-17 through 28-19-171 shall be based on the applicable air quality models, data bases, and other requirements specified in the "guideline on air quality models; *OAQPS 1.2-080*", as published by the U.S. environmental protection agency, office of air quality planning and standards, Research Triangle Park, N.C. 27711, April 1978, unless the secretary or an authorized representative of the secretary determines that compliance with this requirement is inappropriate. This document is adopted by reference.

(b) When the secretary or an authorized representative of the secretary determines that use of an air quality impact model specified in the "guideline on air quality models" is inappropriate on their own motion, or upon the receipt of a request for this determination by the applicant for a permit under these regulations, the model may be modified or another model substituted. Such a change shall be subject to notice and opportunity for public comment under regulation K.A.R. 28-19-17k. Written approval of the administrator of the U.S. environmental protection agency, or an authorized representative of the administrator, and the secretary, or an authorized representative of the secretary, shall be obtained for any modification or substitution.

(c) All estimates of ambient concentrations required under regulations K.A.R. 28-19-17 through 28-19-171 shall be subject to the provisions of K.A.R. 28-19-18 (Authorized by and implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983.)

28-19-17g. Air quality analysis. 40 CFR part 52 Subsection 52.21(m), as in effect on July 1, 1981, is adopted by reference except for subsection 52.21(m)(l)(v). (Authorized by and implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983).

28-19-17h. Additional impact analysis. 40 CFR Part 52 Subsection 52.21(o), as in effect on July 1, 1981, is adopted by reference. (Authorized by and implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983.)

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28-19-17i. Source impacting federal Class I areas. If the emissions from any proposed major stationary source or major modification subject to K.A.R. 28-19-17b will impact any federal Class I area, the secretary or an authorized representative of the secretary shall immediately transmit a copy of the permit application for this source or modification to the administrator of the U.S. environmental protection agency. The administrator shall also be notified of every action taken relative to consideration of this application. A permit shall not be issued for this source except as authorized by the administrator under the provisions of 40 CFR 52.21(p). (Authorized by and implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983.)

28-19-17j. Revocation and suspension of permit. Any permit issued under K.A.R. 28-19-17b may be suspended or revoked by the secretary, or an authorized representative of the secretary, upon a finding that the owner or operator has failed to comply with any requirements specified in the permit. Any source subject to that regulation shall not be operated without a valid permit. (Authorized by and implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983.)

28-19-17k. Notification requirements. (a) A permit shall not be issued under K.A.R. 28-19-17b, or suspended or revoked under K.A.R. 28-19-17j, unless:

(1) A public notice that indicates the secretary's intent to issue, suspend or revoke a permit under K.A.R. 28-19-17b or 28-19-17j is published in a newspaper having general circulation in the location of the source. The notice shall indicate:

(A) the nature of the proposed action;

(B) the location at which the materials required by subsection (b) of this regulation may be reviewed by the public;

(C) the portion of the applicable maximum allowable increase that is expected to be consumed by the source or modification; and

(D) that the public may request a hearing or submit written comments directly to the secretary concerning the proposed action;

(2) A copy of the public notice provided for by paragraph (1) of this subsection is mailed to the applicant and to local, state and federal officials having cognizance over the location where the proposed action will occur or over a location that may be affected by emissions from the source; and

(3) A public hearing is held on the matter, if a written request for such a hearing is made to the secretary by any person affected by the proposed action. This request for a hearing shall be made within 30 days of the date of notice being provided in the manner prescribed by paragraphs (1) and (2) of this subsection.

(b) Written materials describing the basis for the proposed action shall be provided for public inspection during normal working hours at the department of health and environment office closest to the location of the source. The material shall include, as appropriate:

(1) a copy of the permit proposed to be issued, suspended or revoked;

(2) a copy of all materials submitted by the applicant under the requirements of K.A.R. 28-19-17b; and

(3) a summary analysis and discussion of these materials as they relate to establishing compliance with the requirements of K.A.R. 28-19-17d through 28-19-17i.

(c) The secretary or a designated representative of the secretary shall consider all written comments that are submitted within the time specified by the public notice, and all comments that are received at any public hearing that is held, before making a final determination to issue, deny, revoke or suspend a permit. The applicant or permit holder and all persons submitting these comments shall be advised in writing of the nature, the basis, and the effective date of this determination.

(d) Copies of all comments received and the written determination required by subsection (c) of this regulation shall be made available for public inspection at the location selected in accordance with subsection (b) of this regulation. (Authorized by and implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983.)

28-19-17l. Innovative control technology. (a) An owner or operator of a proposed major stationary source or major modification may request the secretary, in writing and no later than the close of the comment period under regulation K.A.R. 28-19-17k, to approve a system of innovative control technology.

(b) The secretary or an authorized representative of the secretary shall determine that the source or modification may employ a system of innovative control technology, if:

(1) The proposed control system, in its operation or function, would not cause or contribute to an unreasonable risk to public health, welfare, or safety;

(2) the owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under regulation K.A.R. 28-19-17d(a), by a date specified by the secretary or an authorized representative of the secretary. That date shall not be later than 4 years from the time of start up or 7 years from permit issuance;

(3) the source or modification would meet the requirements of regulations K.A.R. 28-19-17d(a) and 28-19-17e, based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the secretary or an authorized representative of the secretary;

(4) the source or modification would not, before the date specified by the secretary or an authorized representative of the secretary: (A) cause or contribute to a violation of an applicable national ambient air quality standard;

(B) impact any Class I area; or

(C) impact any area where an applicable increment is known to be violated; and

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(5) all other applicable requirements including those for public participation have been met.

(c) The secretary or an authorized representative of the secretary shall withdraw any approval to employ a system of innovative control technology made under this section, if:

(1) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate;

(2) the proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(3) the secretary or an authorized representative of the secretary decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(d) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or if the approval is withdrawn in accordance with section (c) of this regulation, the secretary or an authorized representative of the secretary may allow the source or modification up to an additional 3 years to meet the requirements for the application of best available control technology through use of a demonstrated system of control. (Authorized by and implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983.)

28-19-18. Stack heights. (a) Incorporation. 40 CFR Part 52 Subsection 52.21(h)(1), as in effect on July 1, 1981, is adopted by reference.

(b) Good engineering practice for a stack height shall be determined in accordance with the provisions of K.A.R. 28-19-18a through 28-19-18f. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983).

28-19-18a. Stack height credit. (a) The stack height credit to be used in ambient air quality modeling that is required by these regulations to calculate the air quality impact of a source, for the purpose of meeting an applicable national ambient air quality standard or determining compliance with the provisions of K.A.R. 28-19-17e pertaining to an applicable maximum allowable increase, shall be the actual stack height unless this height exceeds the good engineering practice stack height as determined by procedures prescribed by K.A.R. 28-19-18c. In this case, the allowable good engineering practice stack height value shall be used for the modeling.

(b) The requirements of this regulation shall not apply to any stack that was in existence on December 31, 1970. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-18b. Definitions. The following words and terms when used in K.A.R. 28-19-18 through 28-19-18f, shall have the following meanings:

(a) "Stack" means any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct but not including flares.

(b) "Stack height" is the distance from the ground level elevation at the base of the stack to the elevation of the stack outlet.

(c) "Stack in existence" means that, before the date specified in K.A.R. 28-19-18a(b) and 28-19-18c(b)(1)(A), the owner or operator had begun or caused to begin a continuous program of physical on-site construction of the stack, to be completed within a reasonable time, or had entered into binding agreements or contractual obligations, which could not be cancelled or modified without substantial loss, to the owner or operator, to undertake a program of construction of the stack to be completed within a reasonable time.

(d) "Nearby" is the distance up to five times the lesser of the height or the width dimension of a structure but not greater than 0.8 km. The height of the structure is measured from the ground level elevation at the base of the stack.

(e) "Plume impaction" means concentrations measured or predicted to occur when the plume interacts with elevated terrain.

(f) "Elevated terrain" means terrain which exceeds the elevation of the good engineering practice stack height. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-18c. Methods for determining good engineering practice stack height. (a) The minimum good engineering practice stack height value allowable for any source, regardless of size or location of any structures or terrain features, shall be 65 meters.

(b)(1) Except as provided in subsection (c) of this regulation, the maximum good engineering practice stack height value allowable for any source shall be determined using one of the following mathematical formulas:

(A) for stacks that were in existence on January 12, 1979:

$$Hg = 2.5H$$

(B) for stacks constructed after January 12, 1979:

$$Hg = H + 1.5L$$

(2) When using formula (A) or (B), the terms and values used shall be as follows:

(A) Hg = good engineering practice stack height, measured from the ground level elevation at the base of the stack;

(B) H = height of any nearby structures measured from the ground level at the base of the stack; and

(C) L = lesser dimension (height or projected width) of any nearby structures.

(c) A source may obtain credit for all of the stack height, provided that it demonstrates to the satisfaction of the department that the additional height is necessary. In order to make such a demonstration:

(1) The source shall demonstrate that the maximum concentration caused by the source's emissions from its proposed stack height, without consideration of downwash, wakes and eddys caused by nearby structures or terrain features, will increase 40 percent or more when the effects of the structures or terrain features are considered.

(2) The difference in concentrations demonstrated in (c)(1) shall be shown either by fluid modeling or a field study which has been approved by the depart-

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ment. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-18d. Fluid modeling. In conducting a fluid modeling study, required by K.A.R. 28-19-18c(c), the guidelines and procedures described in the following referenced publications shall be used. These publications are adopted by reference:

(a) EPA-450/4-81-003. *Guideline for use of fluid modeling to determine good engineering practice stack height,* as published in July 1981;

(b) EPA-450/4-80-023. *Guideline for determination of good engineering practice stack height,* as published in July 1981; and

(c) EPA-600/8-81-009. *Guideline for fluid modeling of atmospheric diffusion,* as published in April 1981. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-18e. Plume impaction credit. (a) Sources may receive appropriate stack height credit when plume impaction produces concentrations that exceed a national ambient air quality standard or an applicable maximum allowable increase subject to the provisions of K.A.R. 28-19-17e. This credit shall be calculated as follows:

(1) Using the good engineering practice stack height calculated by any of the three methods described in K.A.R. 28-19-18c, show that the plume will come in contact with the elevated terrain and, when combined with the background concentration, will cause the applicable national ambient air quality standard or the applicable maximum allowable increase to be exceeded;

(2) assuming the terrain features are less than the good engineering practice stack height and using the maximum concentration from this modeling, calculate the maximum emission; and

(3) using the maximum emission calculated in (2) and the actual terrain features, adjust the height of the stack in the model to the height at which the maximum concentration predicted to occur on the elevated terrain equals the concentration predicted to occur in (2).

(b) Credit shall be claimed only if the stack is as tall as the adjusted stack height, otherwise the maximum allowable emission rate shall be lowered to prevent the ambient air quality standard from being exceeded. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-18f. Notification requirements. A source shall not obtain credit for a good engineering practice stack height determined by a fluid modeling or field study or based on allowances for plume impaction, as provided for by K.A.R. 28-19-18c(c) and 28-19-18e, unless:

(a) A public notice that indicates the nature of the proposal, the availability of the demonstration study, and that the public may either request a hearing or submit written comments directly to the secretary concerning the proposal is published in a newspaper having general circulation in the area in which the source is, or will be, located;

(b) a copy of the public notice that is provided for by section (a) is sent to the applicant, state and local officials, and the regional administrator of U.S. environmental protection agency; and

(c) a public hearing is held on the matter upon the written request of any person affected by the proposed action. This request shall be made within 30 days of the date of notice being provided in the manner prescribed by subsections (a) and (b) of this regulation. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-19. Reserved.

28-19-71 to 28-19-79. Reserved.

Part 10.—MONITORING FEES

28-19-80. Power generation facility monitoring programs. (a) On or before December 31 of each year, the owner or operator of a power generation facility who, for the purpose of consideration under the provisions of K.A.R. 28-19-81, proposes to conduct any air quality or radiological environmental impact monitoring of the facility shall submit to the department of health and environment a report describing the activities proposed for the 12 month period commencing on July 1 of the following year. The report shall include, at a minimum, the following information:

(1) The types of samples to be collected;

(2) the method of collecting the samples;

(3) the types of analyses to be conducted on the samples;

(4) the number and location of the sampling sites; and

(5) the sampling schedule.

(b) Upon receipt of the report required under subsection (a) of this regulation, the Department shall require that all data obtained as the result of the monitoring activities be submitted, in writing, to the Department, in accordance with a schedule prescribed by the Department and provided to the plant owner or operator.

(c) All data required to be reported in accordance with subsection (b) of this regulation shall be subject to quality review and evaluation by the Department. Pursuant to the conduct of this quality review and evaluation, the Department may require the owner or operator of the facility to provide additional information and conduct any additional instrumentation and analytical checks that are necessary to verify the data. (Authorized by and implementing K.S.A. 65-3022; effective, T-83-11, June 9, 1982; effective May 1, 1983.)

28-19-81. Environmental impact monitoring. (a) On or before April 1 of each year, the department of health and environment shall notify the owner or operator of each power generation facility of any environmental impact monitoring activities that the Department proposes to conduct at the facility during the 12 month period commencing on July 1 of that year. This proposal shall include the information required to be reported under the provisions of K.A.R. 28-19-80 (a) and shall reflect consideration of any proposals received by the Department under the provisions of that regulation.

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(b) At the time of giving notice, as required by subsection (a) of this regulation, the Department also shall notify the owner or operator of the facility of the fee to be collected for determining and monitoring the environmental impact of the power generation facility, including any quality review and evaluation of monitoring proposed to be conducted by the owner or operator of the facility. The fee shall be computed in accordance with K.A.R. 28-19-82 on the basis of reasonable estimates of costs of the department of health and environment for the conduct of these activities during the proposed 12 month monitoring period.

(c) If, upon receipt of the notices provided for in subsections (a) and (b) of this regulation, the owner or operator of a facility who has submitted a monitoring program proposal in accordance with the provisions of subsection (a) of K.A.R. 28-19-80 believes the monitoring activities to be conducted represent an avoidable duplication of effort and expense, the owner or operator may request that the Department modify the monitoring activities to be conducted. The request shall be submitted, in writing, within 30 days of the receipt of the notices and shall identify the basis upon which duplication is alleged.

(d) Upon receipt of the notices provided for in subsections (a) and (b) of this regulation the owner or operator of a facility who has not submitted a monitoring proposal in accordance with the provisions of subsection (a) of K.A.R. 28-19-80 may submit a monitoring proposal providing the information required by that regulation and additional information indicating the proposed date by which this plan is to be fully placed into effect. This plan shall be submitted to the Department in writing not later than 30 days after receipt of the notices. Any facility owner or operator submitting a plan in accordance with this subsection may request that the Department consider this plan and modify the proposals provided under the provisions of subsection (a) of this regulation in order to avoid any specifically identified duplication of effort and expense between monitoring activities proposed to be carried out by the Department and those proposed to be carried out under the plan. This request shall be in writing and shall be submitted with the plan.

(e) Within 30 days of receipt of a request as provided for by subsections (c) or (d), the Department shall review the request and make a final determination of the monitoring activities that it will conduct at the facility. When possible these activities shall avoid duplication of effort and expense between activities approved to be carried out by the owner or operator of the facility and those to be carried out by the Department. The Department shall notify the owner or operator of the facility, in writing, of that determination and the basis upon which it was made. If the monitoring activities to be conducted at the facility by the Department are modified due to the request, the Department shall recompute the monitoring fee and notify the owner or operator of the new fee.

(f) All fee remittances shall be made payable to the state of Kansas, power generating facility fee fund, and shall be paid annually on or before July 1.

(g) The department of health and environment shall prepare a report that describes the nature and findings of each environmental impact monitoring activity that has been conducted at any power generation facility under the provisions of this regulation. This report shall be provided for each 12 month monitoring period proposed under the provisions of subsection (a) of this regulation. A copy of this report shall be sent to the owner or operator of these facilities not more than 120 days after the end of the monitoring period.

(h) The department of health and environment shall prepare a final fiscal report that computes its actual costs for each power generating facility environmental impact monitoring activity conducted under the provisions of this regulation. This report shall cover the 12 month period reported under subsection (g) of this regulation. A copy of this report shall be sent to the owner or operator of each monitored facility at the same time that the report required by subsection (g) is sent.

(i) The department of health and environment shall determine an adjusted fee to be applicable to each facility for which environmental impact monitoring activities have been conducted. This fee shall be calculated in accordance with the provisions of K.A.R. 28-19-82 using the cost figures included in the reports required by subsection (h) of this regulation. This adjusted fee shall be compared with the fee originally paid by the owner or operator for the same period under the provisions of subsection (f). If the Department finds that the adjusted fee is more than the fee originally paid by the source owner or operator, it shall:

(1) add the difference between the adjusted fee and the original fee that is established under subsections (b) or (e) to the next annual fee for the facility, or any other facility owned or operated by the same person; or

(2) if no new monitoring fees are proposed for those facilities by the following April 1, the Department shall subsequently provide the owner or operator with written notice that an additional fee equal to this difference is to be paid by the following July 1. If the Department finds that the adjusted fee is less than the original fee paid, it shall deduct the difference between the adjusted fee and the original fee from the next annual fee that is established under subsections (b) and (e) for the facility, or any other facility owned or operated by the same person. The source owner or operator shall pay any fee determined in accordance with this subsection in the manner prescribed by subsection (f). (Authorized by and implementing K.S.A. 65-3022; effective, T-83-11, June 9, 1982; effective May 1, 1983.)

28-19-82. Fee determination basis. (a) The fee to be collected for determining and monitoring the environmental impact of a power generation facility during any 12 month period included under the provisions of K.A.R. 28-19-81(a) shall be determined upon the basis of the type of fuel used to power the facility and the generating design capacity of the facility. The

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maximum fee for any facility powered by coal or nuclear energy shall be based on the following formula:

$$\text{Impact Monitoring Fee} = \frac{\text{G.M.} \times \text{C.M.}_y}{\text{T.G.M.}_y} + \frac{\text{G.Q.R.} \times \text{C.Q.R.}_y}{\text{T.G.Q.R.}_y}$$

When using the formula, the following values shall be used:

1. G.M. = the generating design capacity for that particular facility which is monitored with sampling equipment operated by the department of health and environment;

2. T.G.M._y = the sum of the generating design capacities for all facilities in the state powered by the same type of fuel that are monitored with identical sampling equipment operated by the department of health and environment during the same 12 month period;

3. C.M._y = the sum of all the costs of the department of health and environment during the same 12 month period for operating identical sampling equipment at each power generation facility powered by the same type of fuel;

4. G.Q.R. = the generating design capacity for that particular facility where monitoring activities conducted by the owner or operator are subject to quality review and evaluation by the department of health and environment;

5. T.G.Q.R._y = the sum of the generating design capacities for all facilities in the state powered by the same type of fuel where monitoring activities conducted by the owner or operator are subject to identical quality review and evaluation by the department of health and environment during the same 12 month period; and

6. C.Q.R._y = the sum of the costs of the department of health and environment during the same 12 month period for providing identical quality review and evaluation of monitoring activities conducted by the owner or operator at each power generation facility powered by the same type of fuel. (Authorized by and implementing K.S.A. 65-3022; effective, T-83-11, June 9, 1982; effective May 1, 1983.)

28-19-83, 28-19-84. Reserved.

Part 11.—NEW SOURCE PERFORMANCE STANDARDS

28-19-85. Applicability. The provisions of this part shall apply to any stationary source that contains an affected facility for which construction or modification is commenced after the effective date of the adoption of any emission control standard included in this part that pertains to that facility. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-86. Definitions. The following words and terms, when used in this part, shall have the following meanings: (a) Incorporation. Definitions included in 40 CFR Part 60 Selection 60.2, as in effect on July 1, 1981, are adopted by reference except for the definitions of "Administrator," "Reference method" and "Standard."

(b) "Administrator" means the secretary of health and environment or an authorized representative of the secretary.

(c) "Performance specification" means any performance specification and associated specification test procedure adopted in K.A.R. 28-19-88.

(d) "Reference method" means any method of sampling and analyzing for an air pollutant adopted in K.A.R. 28-19-88.

(e) "Standard" means any air pollutant emission control limitation or performance standard adopted under this part. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-87. Units and abbreviations; incorporation. The abbreviations and symbols of units of measure, chemical nomenclature, and miscellaneous abbreviations and symbols included in 40 CFR Part 60 Section 60.3, as in effect on July 1, 1981, are adopted by reference. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-88. Reference methods and performance specifications. The following methods of sampling and analyzing for an air pollutant included in appendices A and B of 40 CFR Part 60, as amended through July 1, 1981, are adopted by reference:

(a) Method 1—Sample and velocity traverses for stationary sources;

(b) Method 2—Determination of stack gas velocity and volumetric flow rate (Type S pitot tube);

(c) Method 3—Gas analysis for carbon dioxide, oxygen, excess air, and dry molecular weight;

(d) Method 4—Determination of moisture content in stack gases;

(e) Method 5—Determination of particulate emissions from stationary sources;

(f) Method 6—Determination of sulfur dioxide emissions from stationary sources;

(g) Method 7—Determination of nitrogen oxide emissions from stationary sources;

(h) Method 9—Visual determination of the opacity of emissions from stationary sources;

(i) Method 10—Determination of carbon monoxide emissions from stationary sources;

(j) Method 11—Determination of hydrogen sulfide content of fuel gas streams in petroleum refineries;

(k) Method 15—Determination of hydrogen sulfide, carbonyl sulfide, and carbon disulfide emissions from stationary sources;

(l) Method 17—Determination of particulate emissions from stationary sources (instack filtration method);

(m) Method 19—Determination of sulfur dioxide removal efficiency and particulate, sulfur dioxide and nitrogen oxides emission rates from electric utility steam generators;

(n) Performance Specification 1—Performance specifications and specification test procedures for transmissometer systems for continuous measurement of the opacity of stack emissions;

(o) Performance Specification 2—Performance specifications and specification test procedures for monitors of SO_2 and NO_x from stationary sources; and

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(p) Performance Specifications 3—Performance specifications and specification test procedures for monitors of CO_2 and O_2 from stationary sources. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-89. Determination of construction or modification. 40 CFR Part 60 Section 60.5, as in effect on July 1, 1981, is adopted by reference. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-90. Review of plans. 40 CFR Part 60 Section 60.6, as in effect on July 1, 1981, is adopted by reference except for subsection (c)(2). (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-91. Notification and record keeping. 40 CFR Part 60 Section 60.7, as in effect on July 1, 1981, is adopted by reference except for subsection (e), and that references to other sections of 40 CFR Part 60 included in section 60.7 shall be changed as follows:

(a) "Section 60.15" shall be "K.A.R. 28-19-97."

(b) "Section 60.14" shall be "K.A.R. 28-19-96(a)."

(c) "Section 60.13," shall be "K.A.R. 28-19-95." (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-92. Performance tests. 40 CFR Part 60 Section 60.8, as in effect on July 1, 1981, is adopted by reference except for the statement "under section 114 of the act" in subsections (a) and (b). (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-93. Compliance with standards and maintenance requirements. 40 CFR Part 60 Section 60.11, as in effect on July 1, 1981, is adopted by reference except that:

(a) The last sentence in subsection (e)(4) that reads "The administrator will promulgate the new opacity standard in the FEDERAL REGISTER" shall be deleted.

(b) All references to "Section 60.8" shall read "K.A.R. 28-19-92."

(c) All references to "Appendix A" and "Appendix B" shall read "K.A.R. 28-19-88." (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-94. Circumvention. 40 CFR Part 60 Section 60.12, as in effect on July 1, 1981, is adopted by reference. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-95. Monitoring requirements. 40 CFR Part 60 Section 60.13, as in effect on July 1, 1981, is adopted by reference except that:

(a) Subsections (c)(2) and (c)(3) shall not be adopted.

(b) The statement "under section 114 of the Act" in subsection (c) shall not be adopted.

(c) The statement "under Section 60.2(x) and (r) respectively" in subsection (h) shall not be adopted.

(d) All references to "Section 60.8" shall read "K.A.R. 28-19-92."

(e) All references to "Appendix B" shall read "K.A.R. 28-19-88." (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-96. Modification. (a) Incorporation. 40 CFR Part 60 Section 60.14, as in effect on July 1, 1981, is adopted by reference except that:

(1) The statement "the procedures specified in Appendix C of this part" shall not be adopted and the statement "the procedures specified in section (b) of this regulation" shall be substituted in its place.

(2) The reference to "Section 60.15" in subsection (e)(1) shall read "K.A.R. 28-19-97."

(3) The reference to "Section 60.1" in subsection (e)(4) shall read "K.A.R. 28-19-85."

(b) Incorporation. The procedure for determining an emission rate change included in 40 CFR Part 60 Appendix C, as in effect on July 1, 1981, is adopted by reference except that:

(1) The reference to "Section 60.8" in section 2.2 shall read "K.A.R. 28-19-92."

(2) The reference to "Appendix A" in section 2.2 shall read "K.A.R. 28-19-88." (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-97. Reconstruction. 40 CFR Part 60 Section 60.15, as in effect on July 1, 1981, is adopted by reference. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-98. Standards of performance for electric utility steam generating units. 40 CFR Part 60 Sections 60.40a, 60.41a, 60.42a, 60.43a, 60.44a, 60.46a, 60.47a, 60.48a and 60.49a, as in effect on July 1, 1981, are adopted by reference except that:

(a) The date "September 18, 1978" in subsection 60.40a(a)(2) shall not be adopted and the statement "the effective date of this regulation" shall be substituted in its place.

(b) The statement "(The gas turbine emissions are subject to Subpart GG.)" shall not be adopted.

(c) All references to "Secton 60.8" shall read "K.A.R. 28-19-92."

(d) The statement "in subpart A of this part" in Section 60.41a shall not be adopted and the statement "in K.A.R. 28-19-86" shall be substituted in its place.

(e) The statements "issued by the administrator in accordance with the provisions of Section 60.45a." in subsections 60.43a(f) and 60.44a(b) shall read "issued by the administrator of the U.S. environmental protection agency under the provisions of 40 CFR Part 60 Section 60.45a."

(f) All references to "Appendix A" shall read "K.A.R. 28-19-88."

(g) The references to subsections "60.13(h)" and "60.13(b)" in subsection 60.47a(g) shall read "K.A.R. 28-19-95."

(h) The references to "Subsections 60.13(c) and 60.13(d)" in subsection 60.47a(i) shall read "K.A.R. 28-19-95."

(i) The statement "appendix B to this part" in sub-

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section 60.47a(i)(2) shall not be adopted and the term "K.A.R. 28-19-88" shall be substituted in its place.

(j) The statement "when the gas turbine is performance tested under Subpart GG." in subsection 60.48a(d) shall not be adopted and the statement "when the gas turbine is performance tested for the U.S. environmental protection agency under the provisions of 40 CFR Part 60 Subpart GG." shall be substituted in its place.

(k) The references to "Section 60.7" and "subpart A" in subsections (h) and (i), respectively, of section 60.49a shall read "K.A.R. 28-19-91." (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-99. Standards of performance for portland cement plants. 40 CFR Plant 60 Sections 60.60, 60.61, 60.62, 60.63 and 60.64, as in effect on July 1, 1981, are adopted by reference except that:

(a) The date "August 17, 1971" in subsection 60.60(b) shall not be adopted and the statement "the effective date of these regulations" shall be substituted in its place.

(b) The statement "in Subpart A of this part" in section 60.61 shall not be adopted and the statement "in K.A.R. 28-19-86" shall be substituted in its place.

(c) All references to "Section 60.8" shall read "K.A.R 28-19-92." (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-100. Standards of performance for nitric acid plants. 40 CFR Part 60 Secton 60.70, 60.71, 60.72, 60.73 and 60.74, as in effect on July 1, 1981, are adopted by reference except that:

(a) The date "August 17, 1971" in subsection 60.70(b) shall not be adopted and the statement "the effective date of this regulation" shall be substituted in its place.

(b) The statement "in Subpart A of the part" in section 60.71 shall not be adopted and the statement "in K.A.R. 28-19-86" shall be substituted in its place.

(c) All reference to "Section 60.8" shall read "K.A.R. 28-19-92."

(d) All references to "Section 60.13" shall read "K.A.R. 28-19-95."

(e) References to "Section 60.7" in Subsection 60.73(e) shall read "K.A.R. 28-19-91." (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-101. Standards of performance for petroleum refineries. 40 CFR Part 60 Sections 60.100, 60.101, 60.102, 60.103, 60.104, 60.105 and 60.106, as in effect on July 1, 1981, are adopted by reference except that:

(a) The dates "June 11, 1973" and "October 4, 1976" in subsection 60.100(b) shall not be adopted and the statement "the effective date of this regulation" shall be substituted in their place.

(b) The statement "in Subpart A" in subsection 60.101 shall not be adopted and the statement "in K.A.R. 28-19-86" shall be substituted in its place.

(c) All references to "Section 60.8" shall read "K.A.R. 28-19-92."

(d) The references to "Section 60.13" in subsection 60.105(a)(3) shall read "K.A.R. 28-19-95."

(e) The reference to "Section 60.7" in subsection 60.105(e) shall read "K.A.R. 28-19-91." (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-102. Standards of performance for storage vessels for petroleum liquids. 40 CFR Part 60 Sections 60.110a, 60.111a, 60.112a, 60.113a, 60.114a and 60.115a, as in effect on July 1, 1981, are adopted by reference except that:

(a) The date "May 18, 1978" in subsection 60.110a(a) shall not be adopted and the statement "the effective date of this regulation" shall be substituted in its place.

(b) The statement "Subpart A of this part" in subsection 60.111a shall not be adopted and the statement "in K.A.R. 28-19-86" shall be substituted in its place.

(c) The reference to "Section 60.8" in subsection 60.113a(a) shall read "K.A.R. 28-19-92." (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-103 to 28-19-149. Reserved.

Part 12.—EMISSION STANDARD FOR HAZARDOUS AIR POLLUTANTS

28-19-150. Applicability. The provisions of this part shall be applicable to the construction or modification of any stationary source that is commenced after the effective date of any applicable standard that is included under this part and to the operation of these sources. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-151. Definitions. The following words and terms, when used in this part, shall have the following meanings:

(a) "Administrator" means the secretary of health and environment or an authorized representative of the secretary.

(b) "Alternative method" means any method of sampling and analyzing for a hazardous air pollutant which is not a reference or equivalent method but which has been demonstrated to the administrator's satisfaction to, in specific cases, produce results adequate for a determination of compliance with requirements of this part.

(c) "Commenced" means that an owner or operator of a source has undertaken a continuous program of construction or modificaton or that an owner or operator has entered into a contractual obligation to undertake and complete a continuous program of construction or modification within a reasonable time.

(d) "Construction" means fabrication, erection, or installation of a stationary source subject to provisions of this part.

(e) "Equivalent method" means any method of sampling and analyzing for a hazardous air pollutant which has been demonstrated to the administrator's satisfaction to have a consistent and quantitatively

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known relationship to the reference method, under specified conditions.

(f) "Hazardous air pollutant" means an air pollutant for which a national emission standard has been promulgated under Section 112 of the federal Clean Air Act (42 U.S.C. 7412) or that otherwise in the judgment of the administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(g) "Modification" means any physical change in, or a change in the method of operation of, a stationary source which increases the amount of emissions from that source of any hazardous air pollutant subject to control under this part, or which results in the emission of any of these air pollutants that were not previously emitted, except that:

(1) Routine maintenance, repair and replacement shall not be considered physical changes.

(2) The following shall not be considered a change in the method of operation.

(A) an increase in the production rate, if this increase does not exceed the operating design capacity of the stationary source; or

(B) an increase in the hours of operation.

(h) "New source" means any stationary source subject to the requirements of this part, the construction or modification of which is commenced after the effective date of an applicable standard.

(i) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source subject to the provisions of this part.

(j) "Reference method" means any method of sampling and analyzing for a hazardous air pollutant that is included in K.A.R. 28-19-153.

(k) "Standard" means any hazardous air pollutant emission control limitation or performance standard adopted under this part.

(l) "Startup" means the setting in operation of a stationary source for any purpose.

(m) "Stationary source" means any building, structure, facility, or installation which emits, or may emit, any hazardous air pollutant subject to control under this part. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-152. Units and abbreviations. Incorporation. The abbreviations and symbols of units of measure, chemical nomenclature, and miscellaneous abbreviations and symbols included in 40 CFR Part 61 Section 61.03, as in effect on July 1, 1981, are adopted by reference. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-153. Reference methods and quality assurance procedures. (a) The following methods of sampling and analyzing for a hazardous air pollutant included in appendix B of 40 CFR Part 61, as amended through September 8, 1982, are adopted by reference:

(1) Method 101—Reference method for determination of particulate and gaseous mercury emissions from stationary sources (air streams).

(2) Method 102—Reference method for determination of particulate and gaseous mercury emissions from stationary sources (hydrogen streams).

(3) Method 103—Beryllium screening method.

(4) Method 104—Reference method for determination of beryllium emissions from stationary sources.

(5) Method 105—Method for determination of mercury in wastewater treatment plant sewage sludges.

(6) Method 106—Determination of vinyl chloride from stationary sources.

(7) Method 107—Determination of vinyl chloride of inprocess wastewater samples, and vinyl chloride content of polyvinyl chloride resin, slurry, wet cake, and latex samples.

(8) Method 107A—Determination of vinyl chloride content of solvents, resn—solvent solution, polyvinyl chloride resin, resin slurry, wet resin, and latex samples.

(9) Method 101A—Determination of particulate and gaseous mercury emissions from sewage sludge incinerators.

(b) The following quality assurance procedures included in appendix C of 40 CFR Part 61, as in effect on September 7, 1982, are adopted by reference:

(1) Procedure 1—Determination of adequate chromatographic peak resolution.

(2) Procedure 2—Procedure for field auditing GC analysis. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-154. Approval required. (a) A stationary source that emits, or will emit, a hazardous air pollutant subject to the control requirements of this part shall not be constructed or modified unless the owner or operator of the source has received prior written approval for this construction or modification from the administrator in accordance with the requirements of this part.

(b) The owner or operator of each source subject to this regulation shall report the proposed construction or modification of the source in accordance with the provisions of K.A.R. 28-19-8(C) at least 60 days before the construction or modification is commenced. In addition to the information required by K.A.R. 28-19-8(C), the owner or operator shall provide all other information that is required in order to establish compliance with the requirements of this part.

(c) Incorporation. The provisions of 40 CFR Part 61 Section 61.08, as in effect on July 1, 1981, are adopted by reference except that the references to "Section 61.07" shall read "this regulation," and that subsection (e)(2) shall not be adopted. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-155. Notification of startup. 40 CFR Part 61 Section 61.09, as in effect on July 1, 1981, is adopted by reference. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-156. Emission tests and monitoring. 40 CFR Part 61 Section 61.12, as in effect on July 1, 1981, is adopted by reference except that the reference to "Appendix B" shall read "K.A.R. 28-19-153." (Autho-

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rized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-157. Source test and analytical methods. 40 CFR Part 61 Section 61.14, as amended through June 8, 1982, is adopted by reference except that:

(a) The reference to "Appendix B" shall read "K.A.R. 28-19-153."

(b) The reference to "Section 61.32(a)" shall read "K.A.R. 28-19-160."

(c) The reference to "Section 61.42(b)" shall not be adopted.

(d) The reference to "Section 61.52(b)" shall read "K.A.R. 28-19-161." (Authorized by and implementing K.S.A 65-3005, 65-3010; effective May 1, 1983.)

28-19-158. Circumvention. 40CFR Part 61 Section 61.17, as in effect on July 1, 1981, is adopted by reference. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-159. Emission standard for asbestos. (a) Incorporation. 40 CFR Part 61 Sections 61.20, 61.21, 61.22, and 61.23, as in effect on July 1, 1981, are adopted by reference except that:

(1) The reference to "Subpart A" in section 61.21 shall read "K.A.R. 28-19-151."

(2) Subsections (d), (e), (i), (j), and (k) of section 61.22 and all references to these subsections in that section shall not be adopted.

(3) The reference to subsection "61.22(d)(4)(iv)" in section 61.23 shall not be adopted.

(b) Asbestos containing waste materials, including control device asbestos waste, resulting from operations subject to the provisions of section (a) of this regulation shall be collected, processed and transported in a manner that is approved by the administrator. There shall be no visible emissions of these materials to the outside air except as provided in 40 CFR Part 61 Subsection 61.22(f).

(c) All asbestos containing waste materials resulting from operations subject to the provisions of section (a) of this regulation shall be disposed of in accordance with the provisions of K.A.R. 28-29-23. (Authorized by and implementing K.S.A.R 65-3005, 65-3010; effective May 1, 1983.)

28-19-160. Emission standard for beryllium. 40 CFR Part 61 Sections 61.30, 61.31, 61.32 and 61.33, as in effect on July 1, 1981, are adopted by reference except that:

(a) The reference to "subpart A" in Section 61.31 shall read "K.A.R. 28-19-151."

(b) Subsection 61.32(b) shall not be adopted.

(c) The statement "Unless a waiver of emission testing is obtained under Section 61.13" in subsection 61.33(a) shall not be adopted.

(d) Subsection 61.33(a)(1) shall not be adopted. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-161. Emission standard for mercury. 40 CFR Part 61 Sections 61.50, 61.51, 61.52, 61.53, 61.54 and 61.55, as amended through June 8, 1982, are adopted by reference except that:

(a) The reference to "Subpart A" in section 61.51 shall read "K.A.R. 28-19-151."

(b) The statement "Unless a waiver of emission testing is obtained under Section 61.13" in subsections 61.53(a)(1), 61.53(b)(1), 61.53(c)(2), and 61.53(d)(1) shall not be adopted.

(c) Subsections 61.53(a)(1)(i), 61.53(b)(1)(i), 61.53(c)(2)(i) and 61.53(d)(2)(i) shall not be adopted.

(d) All references to "appendix B" shall read "K.A.R. 28-19-153."

(e) Subsection 61.54(a)(1) shall not be adopted. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-162. Emission standard for vinyl chloride. 40 CFR Part 61 Sections 61.60, 61.61, 61.62, 61.63, 61.64, 61.65, 61.66, 61.67, 61.68, 61.70 and 61.71, as amended through September 8, 1982, are adopted by reference except that:

(a) The reference to "Subpart A" in Section 61.61 shall read "K.A.R. 28-19-151."

(b) The statement "For an existing source, any request for using an equivalent method as the initial measure of control is to be submitted to the administrator within 30 days of the effective date" in section 61.66 shall not be adopted.

(c) The statement "application for approval of construction or modification required by Section 61.07" in section 61.66 shall not be adopted and the statement "at the time that the construction or modification is reported under K.A.R. 28-19-154" shall be substituted in its place.

(d) The statement "Unless a waiver of emission testing is obtained under Section 61.13" in subsection 61.67(a) shall not be adopted.

(e) Subsection 61.67(a)(1) shall not be adopted.

(f) The references to "Appendix B" in sections 61.67 and 61.70 shall read "K.A.R. 28-19-153."

(g) Subsection 61.70(b)(1) shall not be adopted. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

Article 30.—WATER WELL CONTRACTOR'S LICENSE; WATER WELL CONSTRUCTION AND ABANDONMENT

28-30-3. Licensing. (a) Eligibility. To be eligible for a water well contractor's license an applicant shall:

(1) Have passed an examination conducted by the department; or

(2) meet the conditions contained in subsection (c).

(b) Application and fees.

(1) Each application shall be accompanied by an application fee of $10.00.

(2) Before issuance of a water well contractor's license, each contractor shall pay a license fee of $100.00 plus $25.00 for each drill rig operated by or for the contractor. These fees shall accompany the application and shall be by bank draft, check or money order payable to the Kansas department of health and environment—water well licensure.

(c) Reciprocity.

(1) Upon receipt of an application and payment of

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the required fees from a nonresident, the secretary may issue a license, providing the nonresident holds a valid license from another state and meets the minimum requirements for licensing as prescribed in K.S.A. 82a-1207, and any amendments thereto.

(2) If the nonresident applicant is incorporated, evidence shall be submitted to the department of health and environment showing that the applicant meets the registration requirements of the Kansas secretary of state.

(3) Nonresident fees for a license shall be equal to the fee charged a Kansas contractor by the applicant's state of residence but shall not be less than $100.00. The application fee and drill rig license fee shall be the same as the Kansas resident fees.

(d) Water well contruction fee. A fee of $5.00 shall be paid to the Kansas department of health and environment, either by bank draft, check or money order, for each water well constructed by a licensed water well contractor. The construction fee shall be paid when the contractor requests water well records (form WWC-5) from the department or shall accompany the water well records (form WWC-5) as required under K.A.R. 28-30-4.

(e) License number. Each drill rig operated by or for a licensed water well contractor shall have prominently displayed thereon the drill rig license number, as assigned by the department, in letters at least two inches in height. Decals, paint, or other permanent marking materials shall be used. (Authorized by K.S.A. 1981 Supp. 82a-1205; implementing K.S.A. 1981 Supp. 82a-1202, 82a-1205, 82a-1206, 82a-1207, 82a-1209; effective, E-74-34, July 2, 1974; effective May 1, 1975; amended May 1, 1980; amended May 1, 1983.)

28-30-5. Construction regulations for public water supply and reservoir sanitation zone wells. All activities involving public water supply wells and wells located in reservoir sanitation zones shall conform to existing statutes, and rules and regulations, of the Kansas department of health and environment, including K.A.R. 28-10-100, 28-10-101, and 28-15-16. (Authorized by K.S.A. 1981 Supp. 82a-1205; implementing K.S.A. 1981 Supp. 82a-1202, 82a-1205; effective, E-74-34, July 2, 1974; effective May 1, 1975; amended May 1, 1980; amended May 1, 1983.)

28-30-6. Construction regulations for all wells not included under section 28-30-5. (a) A water well shall be so located as to minimize the potential for contamination of the delivered or obtained groundwater and to protect groundwater aquifers from pollution and contamination.

(b) Grouting:

(1) The top 10 feet of a constructed or reconstructed well shall be sealed by grouting the annular space between the casing and the well bore. If a pitless well adapter or unit is being installed, the grouting shall start below the junction of the pitless well adapter or unit where it attaches to the well casing and shall continue to at least 10 feet below this junction.

(2) To facilitate grouting, the upper 10 feet of the well bore shall be drilled to a minimum diameter at least three inches greater than the maximum outside diameter of the well casing. If a pitless well adapter or unit is being installed on the well's casing, the well bore shall be a minimum diameter of at least three inches greater than the outside maximum diameter of the well casing to a distance of at least 10 feet below the junction of the pitless well adapter or unit where it attaches to the well casing.

(c) If groundwater is encountered at a depth less than the minimum grouting requirement, the grouting requirement may be modified to meet local conditions if approved by the department.

(d) Confined waters shall be separated from each other and from unconfined waters encountered in the same bore hole with grout or other approved materials in areas designated by the department.

(e) The well casing shall terminate not less than one foot above the finished ground surface. No casing shall be cut off below the ground surface except to install a pitless well adapter unit which shall extend at least 12 inches above the ground surface. No opening shall be made through the well casing except for installation of a pitless well adapter so designed and fabricated to prevent soil, subsurface and surface water from entering the well.

(f) Well vents shall be used and shall terminate not less than one foot above ground surface and shall be screened with not less than 16-mesh, brass, bronze, copper screen or other screen materials approved by the department and turned down in a full 180 degree return bend so as to prevent the entrance of contaminating materials.

(g) Prior to completion of a constructed or reconstructed well, the well shall be cleaned of mud, drill cuttings and other foreign matter so as to make it suitable for pump installations.

(h) Casing. All wells shall have durable watertight casing from at least one foot above finished ground surface to the top of the producing zone of the aquifer. In no event shall the watertight casing extend less than 10 feet below the ground level. Exceptions to either of the above may be granted by the department if warranted by local conditions. The casing shall be clean and serviceable and of a type to guarantee reasonable life so as to insure adequate protection to the aquifer or aquifers supplying the groundwaters. Used, reclaimed, rejected, or contaminated pipe shall not be used for casing any well. All water well casing shall be approved by the department.

(i) All wells, when unattended during construction, reconstruction, treatment or repair, or during use as cased test holes, observation or monitoring wells, shall have the top of the well casing securely capped in a watertight manner to prevent contaminating or polluting materials from gaining access to the groundwater aquifer.

(j) During construction, reconstruction, treatment or repair and prior to initiation of use, all wells producing water for human consumption or food processing, shall be disinfected according to K.A.R. 28-30-10.

(k) The top of the well casing shall be sealed by installing a sanitary well seal.

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(l) All groundwater producing zones that are known or suspected to contain natural or man-made pollutants shall be adequately cased and grouted off during completion of the well to prevent the movement of the polluted groundwater to either overlying or underlying fresh groundwater zones.

(m) Toxic materials shall not be used in the construction, reconstruction, treatment or plugging of a water well unless those materials are thoroughly flushed from the well prior to use.

(n) Any pump pit shall be constructed at least two feet away from the water well. The pipe from the pump or pressure tank in the pump pit to the water well shall be sealed in a watertight manner where it passes through the wall of the pump pit.

(o) Water wells constructed, reconstructed, or abandoned and plugged in a basement shall conform to these rules and regulations except that the finished grade of the basement floor shall be considered ground level. Grouting of the well casing shall extend a minimum of 10 feet below the basement floor.

(p) All drilling waters used during the construction or reconstruction of any water well shall be initially disinfected by mixing with the water enough sodium or calcium hypochlorite to produce at least 100 milligrams per liter (mg/l) of available chlorine.

(q) Natural organic or nutrient producing material shall not be used during the construction, reconstruction or treatment of a well unless it is thoroughly flushed from the well and the groundwater aquifer or aquifers before the well is completed. Natural organic or nutrient producing material shall not be added to a grout mix used to grout the well's annular space.

(r) Pump mounting.

(1) All pumps installed directly over the well casing shall be so installed that an airtight and watertight seal is made between the top of the well casing and the gear head, pump foundation or pump stand.

(2) When the pump is not mounted directly over the well casing and the pump column pipe or pump suction pipe emerges from the top of the well casing, a sanitary well seal shall be installed between the pump column pipe or pump suction pipe and the well casing. An airtight and watertight seal shall be provided for the cable conduit when submersible pumps are used. (Authorized by K.S.A. 1981 Supp. 82a-1205; implementing K.S.A. 1981 Supp. 82a-1202, 82a-1205; effective, E-74-34, July 2, 1974; modified, L. 1975, ch. 481, May 1, 1975; amended May 1, 1980; amended May 1, 1983.)

28-30-7. Plugging of abandoned wells, cased and uncased test holes. (a) All water wells abandoned by the landowner on or after July 1, 1979, and all water wells that were abandoned prior to July 1, 1979 which pose a threat to groundwater supplies, shall be plugged or caused to be plugged by the landowner. In all cases, the landowner shall perform the following as minimum requirements for plugging abandoned wells.

(1) The casing shall be cut off three feet below ground surface and removed.

(2) All wells shall be plugged from bottom to top using volumes of material equaling at least the inside volume of the well.

(3) Plugging top of well:

(A) For cased wells a grout plug shall be placed from six to three feet below ground surface.

(B) For all dug wells, their lining (rock, brick, boards, mortar or other type of lining material) shall be removed to at least five feet below ground surface, and then sealed at five feet with at least six inches of concrete or other materials approved by the department. Compacted surface silts and clays shall be placed over the concrete seal to ground surface.

(4) Any groundwater displaced upward inside the well casing during the plugging operation shall be removed before additional plugging materials are added.

(5) From three feet below ground level to ground level, the plugged well shall be covered over with compacted surface silts or clays.

(6) Compacted clays or grout shall be used to plug all wells from the static water level to six feet below surface.

(7) All sand and gravel used in plugging an abandoned domestic or public water supply well shall be chlorinated prior to introduction of the sand and gravel into a well.

(b) Abandoned wells formerly producing groundwater from a unconfined aquifer shall be plugged in accordance with the foregoing and in addition shall have washed sand, and gravel or other material approved by the department placed from the bottom of the well to the static water level.

(c) Abandoned wells, formerly producing groundwater from confined and unconfined aquifers or in confined aquifers only, shall be plugged according to K.A.R. 28-30-7(a) and by using one of the following additional procedures:

(1) The entire well column shall be filled with grout, or other material approved by the department, by use of a grout tremie pipe.

(2) A 10 foot grout plug shall be placed opposite the impervious formation (confining layer) above each confined aquifer or aquifers by use of a grout tremie pipe; and

(A) The space between plugs shall be filled with clays, silts, sand and gravel or grout and shall be placed inside the well so as to prevent bridging.

(B) A grout plug at least 20 feet in length shall be placed with a grout pipe so at least 10 feet of the plug extends below the base of the well casing and at least 10 feet of the plug extends upward inside the bottom of the well casing.

(C) A grout plug at least 10 feet in length shall be placed from at least 13 feet below ground level to the top of the cut off casing.

(3) Wells that have an open bore hole below the well casing, and where the casing was not grouted into the well bore when the well was constructed, shall be plugged by (1) or (2) above except that the top 10 feet of well casing shall be removed or perforated with a casing ripper or similar device prior to plugging. If the well is plugged according to part (2) of this subsection,

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the screened or perforated intervals below the well casing shall be grouted the entire length by use of a rout tremie pipe.

(d) Uncased test holes shall be plugged by the contractor before the job is terminated by using applicable methods described in K.A.R. 28-30-7 (b) and (c).

(e) Cased test holes shall be plugged by the contractor within three days after completion of testing by using methods described in K.A.R. 28-30-7(a) and (b), or (a) and (c), whichever applies. (Authorized by K.S.A. 1981 Supp. 82a-1205; implementing K.S.A. 1981 Supp. 82a-1202, 82a-1205, 82a-1212, 82a-1213; effective, E-74-34, July 2, 1974; modified, L. 1975, ch. 481, May 1, 1975; amended May 1, 1980; amended May 1, 1983.)

28-30-9. Appeals. (a) Requests for exception to any of the foregoing rules and regulations shall be submitted to the bureau of oil field and environmental geology of the department in writing and shall contain all information relevant to the request.

(1) Those requests shall specifically set forth why such exception should be considered.

(2) The bureau of oil field and environmental geology may grant exceptions when geologic or hydrologic conditions warrant an exception and when such an exception is in keeping with the purposes of the Kansas groundwater exploration and protection act.

(b) Appeals from the decision of the bureau of oil field and environmental geology shall be made to the secretary, who after due consideration may affirm, reverse or modify the decision of the bureau. (Authorized by K.S.A. 1981 Supp. 82a-1205; implementing K.S.A. 1981 Supp. 82a-1202, 82a-1205; effective, E-74-34, July 2, 1974; effective May 1, 1975; amended May 1, 1980; amended May 1, 1983.)

Article 36.—FOOD SERVICE ESTABLISHMENTS, FOOD VENDING MACHINE COMPANIES AND LODGING ESTABLISHMENTS

28-36-25. Sanitary facilities and controls. (a) Water supply.

(1) General requirements. Enough potable water for the needs of the food service establishment shall be provided from a source constructed and operated according to K.S.A. 65-163.

(2) Transportation. All potable water not provided directly by pipe to the food service establishment from the source shall be transported in a bulk water transport system and shall be delivered to a closed water system. Both of these systems shall be constructed and operated according to methods approved by the regulatory authority.

(3) Bottled water. Bottled and packaged potable water shall be obtained from an approved source and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water shall be dispensed from the original container.

(4) Water under pressure. Water under pressure at the required temperatures shall be provided to all fixtures and equipment that use water.

(5) Steam. Steam used in contact with food or food contact surfaces shall be free from any materials or additives other than those allowed by the regulatory authority.

(b) Sewage. General requirements. All sewage shall be disposed of by a public sewer system or by a sewage disposal system constructed and operated according to K.S.A. 65-164 *et seq.* Nonwater-carried sewage disposal facilities shall be prohibited, except as permitted by K.A.R. 28-36-28 (1) through (8), or as permitted by the regulatory authority.

(c) Plumbing.

(1) General requirements. Plumbing shall be sized, installed and maintained according to applicable local plumbing codes. In the absence of such a code, the requirements set forth in the uniform plumbing code, published by International Association of Plumbing and Mechanical Officials, as in effect on September, 1969, shall apply. There shall be no cross connection between the potable water supply and any nonpotable or questionable water supply, nor any source of pollution through which the potable water supply might become contaminated.

(2) Nonpotable water system. A nonpotable water system shall be permitted only if the nonpotable water does not contact food, potable water, or equipment that contacts food or utensils. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

(3) Backflow. The potable water system shall be installed to preclude the possibility of backflow. If an air gap at least twice the diameter of the water supply inlet is not provided between the water supply inlet and the fixture's flood level rim, devices shall be installed to protect against backflow and back siphonage at all fixtures and equipment. A hose shall not be attached to a faucet unless a backflow prevention device is installed.

(4) Grease traps. If used, grease traps shall be easily accessible for necessary cleaning and maintenance. Toilet wastes shall not be discharged through grease traps.

(5) Garbage grinders. If used, garbage grinders shall be properly installed and maintained. Garbage grinders shall be installed in all new and newly constructed establishments unless this requirement is waived by the regulatory authority.

(6) Drains. Except for properly trapped open sinks, there shall be no direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment, or utensils are placed.

(d) Toilet facilities.

(1) Toilet installation. Toilet facilities shall be installed according to applicable state and local requirements or as approved by the regulatory authority. Toilet facilities shall be conveniently located, and shall be accessible to employees and patrons at all times. Separate toilet facilities shall be provided for each sex in all new, newly constructed, or extensively remodeled facilities which offer food consumption arrangements for 10 or more persons on the premises.

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(2) Toilet design. Toilets and urinals shall be designed to be easily cleanable.

(3) Toilet rooms. Toilet rooms shall be completely enclosed and shall have tight fitting, self closing, solid doors, which shall be closed except during cleaning or maintenance.

(4) Toilet fixtures. Toilet fixtures shall be kept clean, in good repair, and free of objectionable odors. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials. Toilet rooms used by women shall have at least one covered waste receptacle.

(e) Hand washing lavatory facilities.

(1) Lavatory installation.

(A) Hand washing lavatories shall be properly installed and located in or immediately adjacent to food preparation areas to permit convenient use by all employees working in food preparation areas or utensil washing areas, or both.

(B) Hand washing lavatories shall be accessible to employees at all times.

(C) Hand washing lavatories shall also be located in or immediately adjacent to toilet rooms or vestibules. Sinks used for food preparation or for washing equipment or utensils shall not be used for hand washing.

(2) Lavatory faucets. Each lavatory shall be provided with hot and cold water tempered by means of a mixing valve or combination faucet. Any self closing, slow closing, or metering faucet used shall be designed to provide a flow of water for at least 15 seconds without the need to reactivate the faucet. Steam mixing valves are prohibited.

(3) Lavatory supplies. A supply of hand cleansing soap or detergent shall be available at each lavatory. A supply of sanitary towels or a hand drying device providing heated air shall be conveniently located near each lavatory. Common towels are prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the hand washing facilities.

(4) Lavatory maintenance. Lavatories, soap dispensers, hand drying devices and all related fixtures shall be kept clean and in good repair.

(f) Garbage and refuse.

(1) Containers.

(A) Garbage and refuse shall be kept in durable, easily cleanable, insect proof and rodent proof containers that do not leak and do not absorb liquids. Plastic bags and wet strength paper bags may be used to line these containers, and they may be used for storage inside the food service establishment.

(B) Containers used in food preparation and utensil washing areas shall be kept covered after they are filled.

(C) Containers stored outside the establishment, dumpsters, compactors and compactor systems shall be easily cleanable, shall be provided with tight fitting lids, doors or covers, and shall be kept covered when not in actual use. In containers designed with drains, drain plugs shall be in place at all times, except during cleaning.

(D) There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.

(E) Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils or food preparation areas. Suitable facilities, including hot water and detergent or steam, shall be provided and used for washing containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage.

(2) Storage.

(A) Garbage and refuse on the premises shall be stored in a manner to make them inaccessible to insects and rodents. Outside storage of unprotected plastic bags or wet strength paper bags or baled units containing garbage or refuse shall be prohibited.

(B) Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect proof and rodent proof and shall be large enough to store the garbage and refuse containers that accumulate.

(C) Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Garbage and refuse containers, dumpsters and compactor systems located outside shall be stored on or above a smooth surface of nonabsorbent material such as concrete or machine laid asphalt that is kept clean and maintained in good repair.

(3) Disposal.

(A) Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.

(B) If garbage or refuse is burned on the premises, it shall be burned by controlled incineration methods meeting the requirements of K.S.A. 65-3001, *et seq.* Areas around incineration facilities shall be clean and orderly.

(g) Insect and rodent control.

(1) General requirements. Effective measures intended to minimize the presence of rodents, flies, cockroaches, and other insects on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents.

(2) Openings. Openings to the outside shall be effectively protected against the entrance of rodents. Outside openings shall be protected against the entrance of insects by tight fitting, self closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self closing, and screens for windows, doors, skylights, transoms, intake and exhaust air ducts, and other openings to the outside shall be tight fitting and free of breaks. Screening material shall not be less than 16 mesh to the inch. (Authorized by K.S.A. 36-507; implementing K.S.A. 36-508, K.S.A. 1982 Supp. 36-503; effective E-79-29, Oct. 24, 1978; effective May 1, 197 amended, T-83-47, Dec. 8, 1982; amended May 1, 1983.)

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28-36-29. Inspections; violations; plan reviews; diseases; waivers. (a) Inspections. Whenever an inspection of a food service establishment or commissary is made, the findings shall be recorded on an inspection report form devised or prescribed by the secretary. A copy of the completed inspection report form shall be furnished to the person in charge of the establishment at the conclusion of the inspection. A copy of the inspection report may be obtained by the owner of the establishment upon written request.

(b) Correction of violations.

(1) The completed inspection report form shall specify a definite period of time for the correction of the violations found; and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions.

(A) All violations of four or five point weighted items not constituting an imminent health hazard shall be corrected as soon as possible, but no later than 10 days following inspection unless extended by the regulatory authority. The person in charge of the facility, if required by the regulatory authority, shall notify the regulatory authority within the specified time period, stating compliance or noncompliance with cited regulations.

(B) All one or two point weighted items shall be corrected as soon as possible, but no later than the time of the next routine inspection. Repeated identical violations of one or two point weighted items shall be corrected within 30 days following inspection.

(C) When the rating score of the establishment is less than 70, the establishment shall immediately cease food service operations.

(c) Plan review. Whenever a food service establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food service establishment, properly prepared plans and specifications for the construction, remodeling, or conversion shall be submitted to the regulatory authority for functional review and approval before construction, remodeling or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, and construction materials or work areas, and the type and model of proposed fixed equipment and facilities. The regulatory authority shall approve the plans and specifications if they meet the requirements of K.A.R. 28-36-20 through 28-36-29, and any amendments to those rules and regulations. No food service establishment shall be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the regulatory authority. Approval of plans by the regulatory authority shall not negate the liability of the applicant to comply with the requirements of these rules and regulations.

(d) Procedure when infection is suspected.

(1) If the regulatory authority has reasonable causes to suspect possible disease transmission by an employee of a food service establishment, it may secure a morbidity history of the suspected employee or make any other investigation as indicated and shall take appropriate action. The regulatory authority may require any or all of the following measures:

(A) The immediate exclusion of the employee from employment in the food service establishment;

(B) the immediate closing of the food service establishment concerned until, in the opinion of the regulatory authority, no further danger of disease transmission exists;

(C) restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease; or

(D) adequate medical and laboratory examination of the employee and of other employees and of their body discharges.

(e) Waiver. The regulatory authority shall waive individual requirements of K.A.R. 28-36-20 through 28-36-29, if the regulatory authority determines that the objectives of these regulations can be maintained. Such waiver shall be specified on the inspection report. (Authorized by K.S.A. 36-507; implementing K.S.A. 36-508, K.S.A. 1982 Supp. 36-515a; effective, E-79-29, Oct. 24, 1978; effective May 1, 1979; amended, T-83-47, Dec. 8, 1982; amended May 1, 1983.)

28-36-46. Water supply. Sufficient potable water to meet the needs of any lodging establishment shall be provided from a source constructed and operated according to K.S.A. 65-163. (Authorized by and implementing K.S.A. 36-506; effective May 1, 1983.)

28-36-47. Sewage. All sewage generated by any lodging establishment shall be disposed of by a public sewer system or by a sewage disposal system constructed and operated according to K.S.A. 65-164 *et seq.* Nonwater carried sewage disposal facilities shall be permitted only as approved by the regulatory authority in response to emergency occurrences. (Authorized by and implementing K.S.A. 36-506; effective May 1, 1983.)

28-36-48. Bedding. Clean bed linens, unused by any other person since the last laundering, shall be furnished on all beds available for use by any guest or patron. Beds, mattresses, bed coverings and pillows shall be kept clean, free from dust, dirt and vermin. No bedding shall be used which is badly worn or unfit for further use. (Authorized by and implementing K.S.A. 36-507; effective May 1, 1983.)

28-36-49. Soap and towels. Soap and clean towels and wash cloths, unused by any other person since the last laundering, shall be furnished daily to each guest. (Authorized by and implementing K.S.A 36-507; effective May 1, 1983.)

Article 38.—LICENSURE OF ADULT CARE HOME ADMINISTRATORS

28-38-17. General definitions. Whenever used in these rules and regulations, the following words and phrases shall have the meanings respectively ascribed to them: (a) "Institutional administration" means the actions of persons designated by the owner or owners of adult care homes in performing any act or making any decision involved in the planning, organizing,

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directing, and control of the operation of an adult care home.

(b) "Administrator-in-training (A-I-T)" means a person serving a board-approved internship within an adult care home under the supervision of a board-approved preceptor on a 40-hour week basis for a period of not less than six months.

(c) "Preceptor" is a person coordinating the training of an administrator-in-training (A-I-T) who is currently licensed as a Kansas adult care home administrator with a minimum of three years' full-time licensed experience in adult care home administration during the last five years. The preceptor shall have met the minimum educational requirement prescribed in K.A.R 28-38-19(a) or may substitute each year of full-time experience in "institutional administration" beyond the minimum three years' experience required above for 20 college credit semester hours. (Authorized by and implementing K.S.A 65-3503; effective May 1, 1981; amended May 1, 1983.)

28-38-19. Qualification for examination. (a) A candidate for initial licensure as an adult care home administrator shall pay a fee of $100.00 and shall submit verification of having accumulated not less than 60 college credit semester hours from an accredited college or university and of having completed at least 120 clock hours of board-approved education within the "core of knowledge," to be accumulated as follows:

(1) Applicable standards of environmental health and safety—five clock hours;

(2) Local health and safety regulations—five clock hours;

(3) General administration—30 clock hours;

(4) Psychology of resident care—five clock hours;

(5) Principles of medical care—five clock hours;

(6) Personal and social care—five clock hours;

(7) Therapeutic and supportive care—five clock hours;

(8) Departmental organization and management—10 clock hours;

(9) Community interrelationships—five clock hours; and

(10) Electives—45 clock hours (may be "core of knowledge" areas or health-related fields).

(b) Approved educational requirements within the "core of knowledge" applicable toward qualification for examination shall be acquired within the 24-month period, July 1 to June 30, in which the examination is taken.

(c) Candidates holding associate, baccalaureate, or master's degrees from an accredited institution of higher learning in nursing home administration, or an equivalent degree in a related health care field, shall be exempt from the 120 clock hours of education required in (a) of this section.

(d) A candidate having practical full-time experience in the field of adult care home administration may substitute each year of qualified experience for 20 college credit semester hours. Practical experience in adult care home administration shall include service as administrative assistant, director of nursing services, or administrative trainee in a long-term care facility.

(e) Candidates satisfactorily completing a six-month internship shall earn 60 clock hours of board-approved educational credit. Preceptors and trainees shall obtain board approval of these programs prior to beginning the training period. A preceptor may not supervise more than two trainees at a time.

(f) Fifteen clock hours of educational credit shall be awarded for each college semester credit hour earned within the 24-month period, July 1 to June 30, in which the examination is taken. Ten clock hours of educational credit shall be awarded for each board-approved continuing education unit (CEU).

(g) Should a candidate choose to attend an educational offering not submitted to the board for prior approval and accreditation for continuing education credit, educational credit may be granted subject to the following conditions: within three months after attendance, the candidate shall make application on forms provided by the board and shall submit verification of attendance and a copy of the educational program objectives and content for approval by the board. The subject matter of the educational program shall be related to the "core of knowledge" or be health related. (Authorized by K.S.A. 65-3503; implementing K.S.A. 65-3504; effective May 1, 1981; amended, E-82-12, June 17, 1981; amended May 1, 1982; amended May 1, 1983.)

28-38-20. Application for examination. (a) A candidate for examination for licensure as an adult care home administrator shall make application in writing on forms provided by the board and shall furnish evidence satisfactory to the board of having met the qualifying requirements of K.A.R. 28-38-19. A candidate for examination shall include on the application four references who can certify to the good moral character and suitability of the applicant.

(b) To establish suitability and fitness to qualify for a license, the candidate shall file with the board certification of sound physical and mental health and evidence of the absences of contagious and infectious diseases; such certification shall be by a physician with a license to practice medicine in one of the states in the United States or the District of Columbia.

(c) The board may designate a time and place at which a candidate may be required to be present for inquiry as to suitability, as provided for in this regulation, at the discretion of the board.

(d) Applications shall be filed with the board not later than 60 days prior to the date of the examination. The examination and licensure fee of $100.00 shall accompany the application. The licensure fee may be payable by check or money order to the "department of health and environment." The application shall also be accompanied by the required documentation of having met the required educational qualifications set forth in K.A.R. 28-38-19.

(e) Licensure examinations shall be held at least two times each year at such times and places as the board shall designate. (Authorized by K.S.A. 65-3503; im-

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plementing K.S.A. 65-3504; effective May 1, 1981; amended, E-82-12, June 17, 1981; amended May 1, 1982; amended May 1, 1983.)

28-38-21. Temporary license. (a) If a facility documents in writing to the board the unavailability of licensed, qualified applicants, the board shall deem this to be an emergency and may issue a temporary license to a person who:

(1) Has made application on the board-prescribed forms;

(2) Is at least 18 years of age;

(3) Is endorsed in writing to be the most qualified applicant by the board of directors, corporation, or ownership of the facility where the person is to be employed;

(4) Is of good moral character and suitability as determined by the board;

(5) Pays a $100.00 fee;

(6) Has accumulated not less than 60 college credit hours;

(7) Has accumulated not less than 50 of the required 120 clock hours of education set forth in K.A.R. 28-38-19; and

(8) Has passed an examination on state rules and regulations with a score of at least 70 percent correct answers.

(b) No person whose license has been revoked or suspended shall be issued a temporary license.

(c) No person who has failed the licensure examination for Kansas adult care home administrators shall be issued a temporary license. (Authorized by and implementing K.S.A. 65-3502; effective May 1, 1981; amended, E-82-12, June 17, 1981; amended May 1, 1982; amended May 1, 1983.)

Article 39.—LICENSURE OF ADULT CARE HOMES

28-39-104. Physical environment; existing facilities; general requirements standard. (a) The facility shall contain the units, areas, and rooms prescribed by this rule and regulation. If minimum space requirements are not specified for a required unit, area, or room, the unit, area, or room shall be sufficient in size to accommodate or accomplish the function or activity to be performed in the unit, area, or room.

(b) Nursing unit. A nursing unit shall contain the following rooms and areas.

(1) Resident rooms. Each resident room shall:

(A) Accommodate a maximum of no more than four residents;

(B) Have a minimum square footage, exclusive of toilet rooms, closets, lockers, wardrobes, other built-in fixed items, alcoves, or vestibules, of 100 square feet (9.29 square meters) in one-bed rooms and 80 square feet (7.43 square meters) per bed in multi-bed rooms. Notwithstanding the other requirements of this section, facilities licensed prior to January, 1963 shall provide a minimum floor area per bed as follows: one-bed rooms, 90 square feet (8.5 square meters) per bed; two-bed rooms, 80 square feet (7.43 square meters) per bed; three- to four-bed rooms, 70 square feet (6.4 meters) per bed;

(C) Provide the resident access to toilet and bathing facilities from the general corridor or direct access from the resident room to toilet and bathing facilities;

(D) Provide a fixed closet or wardrobe with a shelf and hanging rod; and

(E) Provide visual privacy for each resident in multi-bed rooms, with cubicle curtains suspended on a ceiling-mounted track or on a wall-mounted telescoping device. Visual screening shall be provided between each bed and between the corridor door viewpoint and each bed. Curtain material shall be launderable and shall be flame retardant.

(2) Service areas or rooms. The service areas or rooms required in this rule and regulation shall be located in each nursing unit and shall be accessible directly from the general corridor without passage through an intervening room or area, except medicine preparation rooms. A service area or room shall not serve more than one nursing unit, except as otherwise indicated. The service areas and rooms specified below shall provide space and equipment as prescribed in this rule and regulation.

(A) A nurses' station shall provide space for charting, records, a telephone, and a nurses' call system signal register.

(B) A medicine preparation room shall be provided, with work counter, lavatory or countertop sink, refrigerator, and shelf space for separate storage and maintenance of residents' medications. The door to the medication preparation room shall be under the visual control of the nurses' station, except in facilities licensed before January, 1963, and shall be equipped with locking hardware and automatic closure. A separate locked compartment shall be provided within the room for controlled drug and narcotic storage unless the unit dose system is utilized. One medicine preparation room may serve more than one nursing unit.

(C) A clean workroom shall be provided for preparation, handling, storage, and distribution of clean or sterile materials and supplies. The room shall contain a work counter with sink or separate handwashing lavatory and adequate shelving and cabinets for storage. A sterilizer shall be provided unless sterile disposables are used or unless a contractual agreement exists between the facility and another licensed facility for sterilization services. One sterilizer may serve more than one nursing unit.

(D) A soiled workroom shall be provided for disposal of wastes, collection of contaminated material, and the cleaning and sanitizing of resident care utensils. This soiled workroom shall contain a flushing rim clinic sink with bedpan rinsing device, a work counter, a sink, a storage cabinet with lock for sanitizing solutions and cleaning supplies, a waste receptacle, and a soiled linen receptacle. Clean supplies and material shall not be stored in this room.

(E) An area for the storage of clean linen shall be provided, with adequate shelving, cabinets or cart space, and may be located in the clean workroom required by subsection (b)(2)(C) of this rule and regulation.

(F) Resident bathing facilities shall be provided at

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the rate of one for each 15 beds which are not otherwise served by bathing facilities within resident rooms. Bathing facilities shall include showers, tubs, or approved mechanical bathing systems. Bathing facilities shall be located in rooms or areas which have direct access to a toilet and lavatory, without entering the general corridor system. The toilet and lavatory shall be accessible to and usable by the physically handicapped and may serve handicapped visitors. Each bathing facility and toilet shall be located within a visually enclosed area for privacy. Showers shall be designed to permit use by a wheelchair resident. A cabinet, with a lock, shall be provided in the bathing area for storage of supplies.

(c) Living, dining, and recreation areas. Living, dining, and recreation areas shall be provided for residents. Space for living, dining, and recreation areas shall be provided at a rate of 20 square feet (1.8 square meters) per resident capacity of the facility. At least half of this space shall be utilized as dining area.

(d) Physical therapy room. A room for the administration and implementation of a physical therapy program shall be provided in each facility. One physical therapy room may serve more than one nursing unit. Provision shall be made for a lavatory and an enclosed storage area for therapeutic devices.

(e) Activities room. An activities room or area shall be provided for crafts and occupational therapy. One activities room or area may serve more than one nursing unit. The room or area shall be provided with a work counter and storage cabinet. A handwashing facility shall be accessible to residents who use this room or area.

(f) Personal care room. A separate room or area shall be provided for hair care and grooming of residents. At least one shampoo sink, space for one hair dryer, and work space shall be provided.

(g) Administration and public areas. The facility shall provide the following administration and public areas:

(1) Entrance at grade level able to accommodate the handicapped in wheelchairs;

(2) One public toilet and lavatory;

(3) One toilet and lavatory accessible and usable by physically handicapped visitors;

(4) A public telephone accessible to wheelchair use; and

(5) A general office for administration.

(h) General storage. A general storage room or rooms shall be provided for resident care equipment, bulk supplies and resident belongings.

(i) Outside storage. If tools, supplies, and equipment used for yard and exterior maintenance are stored at the facility, a room shall be provided which opens to the outside or which is located in a detached building.

(j) Dietary areas. Dietary areas shall be provided which are adequate to the needs of the residents and nonresidents served by the facility. A facility shall provide the following elements in size and location appropriate for the food service system employed:

(1) A control area for receiving food supplies;

(2) Storage space adequate for four days' food supply, including cold storage;

(3) A food preparation area, which includes space and equipment for preparing, cooking, baking, and serving;

(4) A sink for vegetable preparation;

(5) Handwashing facilities in the food preparation area;

(6) Space for resident meal service, tray assembly and distribution;

(7) Warewashing facilities located to prevent contamination of food preparation and serving areas. The area shall include commercial-type dishwashing equipment. Space shall be provided for receiving, scraping, sorting, and stacking soiled tableware and for transferring clean tableware to the areas for use or storage;

(8) A three-compartment sink for potwashing;

(9) A waste storage area in a separate room or an outside area which is readily accessible for direct pickup or disposal;

(10) An office or workspace for the dietetic service supervisor; and

(11) A toilet and lavatory accessible to the dietary staff.

(k) Laundry facilities. The facility shall provide or provide for laundry areas and equipment appropriate to the needs of residents and nonresidents served by the facility as follows:

(1) On site laundry. If laundry is to be processed on the site, the following shall be provided:

(A) Laundry processing room with space for receiving, holding, and sorting soiled laundry, with equipment capable of processing seven days' laundry needs within a regularly scheduled work week. Functional separation shall be provided between soiled and clean laundry;

(B) Space for holding soiled laundry. This space shall be exhausted to the outside;

(C) Handwashing facilities within the laundry area; and

(D) Clean laundry holding and storage rooms.

(2) Off site laundry. If laundry is to be processed off the site, the following shall be provided:

(A) A soiled laundry holding room that is exhausted to the outside; and

(B) Clean laundry processing and storage rooms.

(l) Janitors' closets. A janitors' closet shall contain a floor receptor or service sink, and storage space for janitorial equipment and supplies.

(m) Waste processing services. Space and equipment shall be provided for the sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization, removal, or by a combination of these techniques. (Authorized by and implementing K.S.A. 39-932; effective, T-83-4, Jan. 7, 1982; effective May 1, 1982; amended, T-83-15, July 1, 1982; amended May 1, 1983.)

28-39-105. Physical environment; existing facilities; details and finishes standard. (a) The facility shall contain details and finishes which minimize the risk of accidents.

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(b) Details.

(1) If rooms containing bathing facilities, toilets, or lavatories are furnished with doors having locking hardware, the doors shall be capable of being opened from the outside.

(2) Doors on all openings between corridors and rooms or spaces subject to occupancy, except elevator doors, shall be swing type.

(3) A maximum of five percent of doors from resident bedrooms to the corridor may be "dutch door" cut for physician-prescribed restraint of residents. A manual bolt lock shall be mounted on the corridor side of the lower section and shall be operable without a key. A positive latch shall be provided to connect both top and bottom sections to function as a single section. The joint between the two sections shall be equipped with a steel astragal of a minimum 12 gauge thickness.

(4) Windows and outer doors which may be left in an open position shall be provided with insect screens. Windows shall be designed to prevent accidental falls when open or shall be provided with security screens.

(5) Doors shall not swing into corridors in a manner that might obstruct traffic flow or reduce the required corridor width, except doors to spaces such as small closets which are not subject to occupancy. Large walk-in closets shall be considered as occupiable spaces.

(6) Doors, sidelights, borrowed lights, and windows in which the glazing is within 18 inches (46 centimeters) of the floor shall be glazed with safety glass, wire glass, or plastic glazing material that will resist breaking and will not create dangerous cutting edges if broken. If glazing in any area does not meet the above requirement, protective barriers or railings shall be provided. Safety glass or plastic glazing materials as described above shall be used for shower doors and bath enclosures.

(7) Grab bars shall be provided at all residents' toilets, showers, tubs, and sitz baths. The bars shall have 1½ inch (3.8 centimeters) clearance to walls and shall have sufficient strength and anchorage to sustain a concentrated load of 250 pounds (113.4 kilograms).

(8) Handrails shall be provided on both sides of corridors used by residents. A clear distance of 1½ inches (3.8 centimeters) shall be provided between the handrail and the wall. Ends of handrails and grab bars shall be returned to the wall at each termination. Handrails shall not be considered an obstruction in measuring the clear width of corridors.

(9) Paper towel dispensers or mechanical hand drying devices shall be provided at all handwashing facilities except those located in resident care areas.

(10) Suspended tracks, rails, and pipes located in the path of normal traffic shall be not less than six feet eight inches (2.03 meters) above the floor.

(11) Rooms containing heat producing equipment (such as boiler or heater rooms and laundries) shall be insulated and ventilated to prevent any floor surface above the area from exceeding a temperature of 10° F. (6° C.) above the ambient room temperature.

(c) Finishes.

(1) Wall bases in kitchens, soiled workrooms, and other areas which are frequently subject to wet cleaning methods shall be tightly sealed and constructed without voids that can harbor insects.

(2) Wall finishes shall be washable and, in the immediate area of plumbing fixtures, shall be smooth and moisture resistant. Finish, trim, wall, and floor constructions in dietary and food preparation areas shall be free from spaces that can harbor rodents and insects.

(3) Floor and wall penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.

(4) Ceilings in the dietary, food preparation and food storage areas shall be cleanable by dustless methods such as vacuum cleaning or wet cleaning. These areas shall not have exposed or unprotected sewer lines. (Authorized by and implementing K.S.A. 39-932; effective, T-83-4, Jan. 7, 1982; effective May 1, 1982; amended, T-83-15, July 1, 1982; amended May 1, 1983.)

28-39-106. Physical environment; existing facilities; mechanical requirements standard. (a) The facility shall meet mechanical requirements which insure the safety and comfort of residents and other occupants.

(b) Thermal insulation. Thermal insulation shall be provided in areas and on equipment as follows:

(1) Thermal insulation shall be provided on all ducts, pipes, and equipment having outside surface temperatures below ambient dew point when in use and shall include an exterior vapor barrier.

(2) Insulation shall be installed on all hot water and steam condensate piping that is subject to contact by residents.

(c) Heating, air-conditioning, and ventilating systems. Heating, air-conditioning, and ventilation system design specifications shall be as follows:

(1) The system shall be designed to maintain a year-round indoor temperature range in resident care areas of 70° F. (21° C.) to 85° F. (29° C.) with a relative humidity range of 30 to 60 percent. The winter outside design temperature of the facility shall be -10° F. (-23° C.) dry bulb and the summer outside design temperature of the facility shall be 100° F. (38° C.) dry bulb.

(2) All central ventilation or air-conditioning systems shall be equipped with filters having a minimum efficiency of 25 percent.

(3) Hoods over cooking ranges shall be equipped with grease filters and fire extinguishing systems.

(d) Plumbing and piping systems. Plumbing and piping systems shall meet the following requirements.

(1) Shower bases and tubs shall provide nonslip surfaces.

(2) Backflow prevention devices (vacuum breakers) shall be installed on bedpan flushing attachments and on fixtures to which hoses or tubing can be attached.

(3) Water distribution systems shall be arranged to provide hot water at hot water outlets at all times. The temperature of hot water shall range between 98° F. (36° C.) and 115° F. (46° C.) at shower, bathing, and handwashing facilities throughout the system.

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(4) Hot water heating equipment shall have sufficient capacity to supply hot water at the temperatures indicated below. Water temperature shall be taken at the hot water point of use or the inlet to processing equipment.

	Clinical	Dietary	Laundry
Temperature (° F.)	115 (Maximum)	140 (Minimum)	160 (Minimum)
Temperature (° C.)	46	60	71

(5) Building sewers shall discharge into a community sewerage system or a sewerage system having a permit from the department of health and environment. (Authorized by and implementing K.S.A. 39-932; effective, T-83-4, Jan. 7, 1982; effective May 1, 1982; amended, T-83-15, July 1, 1982; amended May 1, 1983.)

28-39-130. Physical environment; existing facilities. The personal care home shall provide a physical environment that promotes the health, safety, and well-being of residents and employees and which meets the physical environment requirements prescribed in K.A.R. 28-39-104 to K.A.R. 28-39-107, inclusive, with the exception of K.A.R. 28-39-104(d). (Authorized by and implementing K.S.A. 39-932; effective, T-83-4, Jan. 7, 1982; effective May 1, 1982; amended, T-83-15, July 1, 1982; amended May 1, 1983.)

28-39-132. One- and two-bed adult care home; licensure procedure. (a) A completed application form, prescribed by the licensing agency, shall be submitted to the licensing agency.

(b) The determination of the capabilities of the facility and the ability of the applicant to provide care and services shall be based on information provided in the application and an onsite evaluation by the licensing agency.

(c) The applicant and all employees shall have a physical examination which shall consist of appropriate examinations, including a chest x-ray or tuberculosis skin test. Documentation of the examination, signed by a physician, shall be on file in the facility. Subsequent physical examinations or health assessments shall be given at least every three years.

(d) The licensee shall apply for renewal of an existing license on forms prescribed by the licensing agency not less than 120 days before the existing license expires.

(e) The renewal of a license shall be contingent upon evidence of substantial compliance with all applicable statutes and rules and regulations.

(f) Initial application for license and renewal applications shall be accompanied by a license fee as required by K.S.A. 39-930 or amendments of this statute. (Authorized by K.S.A. 39-932; implementing K.S.A. 39-932, K.S.A. 1982 Supp. 39-927, 39-930; effective, T-83-4, Jan. 7, 1982; effective May 1, 1982; amended, T-83-28, Sept. 22, 1982; amended May 1, 1983.)

28-39-134. Administration; management. (a) The licensee shall have full authority and responsibility for the operation of the one-bed and two-bed adult care home and for compliance with licensing requirements.

(b) The licensee shall admit and retain only those persons whose health needs can be met.

(c) The facility shall provide services in compliance with the requirements of K.S.A. 39-923 for the class of care prescribed by the attending physician.

(d) Each resident shall have a physical examination report and diagnosis available and on file in the home prior to admission.

(e) The facility shall not admit any person with an infection or disease in a communicable stage.

(f) Before admission, the prospective resident or the legal guardian of the resident shall be informed in writing of the rates and charges and the resident's obligations regarding payment, including the refund policy of the facility.

(g) At the time of admission, the facility shall ensure that each resident becomes familiar with the evacuation procedure.

(h) At the time of admission, the licensee shall execute a written agreement with the resident or the legal guardian of the resident which describes in detail the goods and services which the resident shall receive and which sets forth the obligations which the resident has toward the facility.

(i) When a resident develops a communicable disease or infection that cannot be managed in the facility, immediate arrangements shall be made for the transfer of the resident to an appropriate hospital or other facility. The development of a communicable disease or infection after admission shall be reported to the local health department.

(j) A written inventory of each resident's personal possessions, signed by the resident, or by the resident's legal guardian, shall be completed at the time of admission and shall be updated annually.

(k) If the resident deposits personal possessions with the facility for safekeeping, a written record shall be maintained and a receipt given to the resident.

(l) If the facility accepts a resident's funds for safekeeping or assumes responsibility for a resident's financial affairs, the resident shall agree in writing to transfer the responsibility to the facility, and the facility shall provide the resident with a written quarterly accounting of transactions and shall advise the resident of the current balance of the resident's funds. (Authorized by and implementing K.S.A. 39-932; effective, T-83-4, Jan. 7, 1982; effective May 1, 1982; amended, T-83-28, Sept. 22, 1982; amended May 1, 1983.)

28-39-135. Resident care. (a) Residents admitted shall be under the care of a physician licensed to practice in Kansas.

(b) Resident records shall be maintained with pertinent information regarding care of the resident. The record shall include as a minimum: name, date of admission, birthdate, nearest relative, attending physician, whom to notify in case of illness or accident, and physical examination report.

(c) Personnel shall be available to residents to assure prompt, necessary action in case of injury, illness, fire, or other emergency.

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(d) Medication.

(1) Residents shall self-administer medications unless otherwise indicated in writing by the attending physician.

(2) When medication is administered to a resident, the licensee shall:

(A) Ensure that all medications are administered to residents in a safe and accurate manner.

(B) Assure that all medications are obtained pursuant to a written order issued by the resident's attending physician.

(C) Assure that prescription medications are obtained from a licensed pharmacist and are labeled in compliance with K.A.R. 68-7-14.

(D) Maintain an individual medication record. The record shall include date and time of administration, the name and dose of the medication, and the name of the person who gave the medication.

(3) The facility shall provide locked storage area for medications administered by the facility and for medications of residents who self-administer and who choose to keep their medication in the locked area.

(4) Medications shall be disposed of or destroyed when: the label is mutilated or indistinct; it has exceeded the expiration date; or unused portions remain due to death, discharge, or discontinuance.

(e) Residents shall be assisted with baths, oral hygiene, hair care, manicure, pedicure, and shaving to maintain comfort, and personal hygiene.

(f) Restraints.

(1) There shall be a signed physician's order for any restraint including justification, type of restraint, and duration of application. A resident shall not be restrained unless in the written opinion of the attending physician it is required to prevent injury to resident or to others, and alternative measures have failed.

(2) Restraints shall not be used or applied in such a manner as to cause injury to the resident.

(g) The resident's physician, family, or legal guardian shall be immediately notified of any change in the resident's condition or in the event of an accident. If the resident cannot be managed, immediate arrangements shall be made by the physician for the transfer of the resident to an appropriate facility.

(h) The facility shall make arrangement with the local health department to provide professional consultations on matters of personal and environmental health.

(i) The facility shall arrange home health care service or services of a licensed nurse for residents when available and when requested by the resident's physician.

(j) Residents shall be encouraged to participate in community activities and personal relationships of their choice. (Authorized by and implementing K.S.A. 39-932; effective, T-83-4, Jan. 7, 1982; effective May 1, 1982; amended, T-83-28, Sept. 22, 1982; amended May 1, 1983.)

28-39-136. Dietary. (a) Nutrition and menu planning.

(1) Menus shall be planned and followed to meet the nutritional needs of residents in accordance with physicians' orders and, to the extent medically possible, the current recommended daily allowances of the food and nutrition board of the national research council, national academy of sciences, as in effect on July 1, 1981.

(2) Menus for therapeutic diets shall be planned by a dietitian.

(3) Menus shall be written at least one week in advance.

(b) Storage.

(1) Food shall be stored, prepared, transported, and served under safe and sanitary conditions.

(2) A three-day supply of food shall be available to meet the requirements of the planned menus.

(3) Containers of poisonous compounds or cleaning supplies shall be kept in areas separate from those used for food storage, preparation, or serving.

(c) All tableware, kitchenware, and equipment shall be washed in a two-compartment sink, two-compartment container, or by use of a domestic dishwashing machine. (Authorized by and implementing K.S.A. 39-932; effective, T-83-4, Jan. 7, 1982; effective May 1, 1982; amended, T-83-28, Sept. 22, 1982; amended May 1, 1983.)

28-39-137. Environmental sanitation and safety. The facility shall provide a physical environment that promotes the health, safety, and well-being of residents. (a) Housekeeping and maintenance.

(1) The facility shall be kept free from insects, rodents, and vermin.

(2) The grounds shall be free from accumulation of rubbish and other health or safety hazards.

(3) The interior and exterior of the facility shall be maintained in good repair and in a clean, safe, and orderly manner.

(4) Provisions shall be made for the sanitary disposal and storage of waste.

(5) All electrical and mechanical equipment shall be maintained in good repair and safe operating condition.

(b) Laundry services shall be provided for the residents.

(c) Safety.

(1) A smoking policy shall be provided which includes a provision prohibiting smoking in bed.

(2) The facility shall have procedures for evacuation to be followed in emergency situations such as fire, tornado, flood, explosion, or other disaster.

(3) A telephone shall be provided for resident and emergency use.

(4) The telephone numbers of the fire department, ambulance, and police shall be posted in a conspicuous place near the telephone.

(5) House numbers shall be posted on the exterior of the facility using at least three-inch numbers. Box numbers shall be posted on the mailbox if the home is located in a rural area.

(d) Physical environment.

(1) Each resident shall be provided with his or her own bed.

(2) Visual privacy shall be provided for each bed in a multi-bed room.

(continued)

(3) Space shall be provided for resident personal items.

(4) The facility shall maintain a year-round indoor temperature that is between 70° F. (21° C.) to 85° F. (29° C.) in resident sleeping areas. (Authorized by and implementing K.S.A. 39-932; effective, T-83-4, Jan. 7, 1982; effective May 1, 1982; amended, T-83-28, Sept. 22, 1982; amended May 1, 1983.)

28-39-138. Three- and four-bed boarding care home; licensure procedure. (a) A completed application form as prescribed by the licensing agency shall be submitted to the licensing agency.

(b) The determination of the capabilities of the facility and the ability of the applicant to provide care and services shall be based on information provided in the application and an onsite evaluation by the licensing agency.

(c) The applicant and all employees shall have a physical examination which shall consist of appropriate examinations, including a chest x-ray or tuberculosis skin test. Documentation of the examination, signed by a physician, shall be on file in the facility. Subsequent physical examinations or health assessments shall be given at least every three years.

(d) The licensee shall apply for renewal of an existing license on forms prescribed by the licensing agency not less than 120 days before the existing license expires.

(e) The renewal of a license shall be contingent upon evidence of substantial compliance with all applicable statutes and rules and regulations.

(f) Initial application for license and renewal applications shall be accompanied by a license fee as required by K.S.A. 39-930 or amendments of this statute. (Authorized by K.S.A. 39-932; implementing K.S.A. 1982 Supp. 39-927, 39-930; effective, T-83-28, Sept. 22, 1982; effective May 1, 1983.)

28-39-139. Administration. The three- or four-bed boarding care home shall be operated in a manner to ensure the delivery of all services which are necessary to meet the needs of the residents. (Authorized by and implementing K.S.A. 39-932; effective, T-83-28, Sept. 22, 1982; effective May 1, 1983.)

28-39-140. Administration; management. (a) The licensee shall have full authority and responsibility for the operation of the three- or four-bed boarding care home and for compliance with licensing requirements.

(b) The facility shall accommodate a maximum of four residents.

(c) The licensee shall admit and retain only those persons whose needs can be met.

(d) The licensee shall not admit any person with an infection or disease in a communicable stage.

(e) Each resident shall have a physical examination report and diagnosis available and on file in the home prior to admission.

(f) Before admission, the prospective resident or the legal guardian of the resident shall be informed in writing of the rates and charges, and the resident's obligations regarding payment, including the refund policy of the facility.

(g) At the time of admission, the facility shall ensure that each resident becomes familiar with the evacuation procedure.

(h) At the time of admission, the licensee shall execute a written agreement with the resident or the legal guardian of the resident which describes in detail the goods and services which the resident shall receive and which sets forth the obligations which the resident has toward the facility.

(i) When a resident develops a communicable disease or infection that cannot be managed in the facility, immediate arrangements shall be made for the transfer of the resident to an appropriate hospital or other facility. The development of a communicable disease or infection after admission shall be reported to the local health department.

(j) A written inventory of each resident's personal possessions, signed by the resident or by the resident's legal guardian, shall be completed at the time of admission and shall be updated annually.

(k) If the resident deposits personal possessions with the facility for safekeeping, a written record shall be maintained and a receipt given to the resident.

(l) If the facility accepts a resident's funds for safekeeping or assumes responsibility for a resident's financial affairs, the resident shall agree in writing to transfer the responsibility to the facility and the facility shall provide the resident a written quarterly accounting of transactions and shall advise the resident of the current balance of the resident's funds. (Authorized by and implementing K.S.A. 39-932; effective, T-83-28, Sept. 22, 1982; effective May 1, 1983.)

28-39-141. Resident care. (a) Residents admitted shall be under the care of a physician licensed to practice in Kansas.

(b) Resident records shall be maintained with pertinent information regarding care of the resident. The record shall include as a minimum: name, date of admission, birthdate, nearest relative or legal guardian, attending physician, whom to notify in case of illness or accident, and physical examination report.

(c) Personnel shall be available to residents to assure prompt, necessary action in case of injury, illness, fire, or other emergency.

(d) Residents shall self-administer medications.

(e) The facility shall provide locked storage area for medications for residents who choose to keep their medications in the locked area.

(f) Residents shall be assisted as needed with baths, oral hygiene, hair care, manicure, pedicure, and shaving to maintain comfort and personal hygiene.

(g) Restraints shall not be used.

(h) The resident's physician, family, or legal guardian shall be immediately notified of any change in the resident's condition or in the event of an accident. If the resident cannot be managed, immediate arrangements shall be made for the transfer of the resident to an appropriate facility.

(i) The facility shall make arrangements with the local health department or other appropriate agency to

(continued)

provide professional consultations as needed on matters of personal and environmental health.

(j) Residents shall be allowed to participate in activities of their choice. (Authorized by and implementing K.S.A. 39-932; effective, T-83-28, Sept. 22, 1982; effective May 1, 1983.)

28-39-142. Dietary. (a) Nutrition and menu planning.

(1) Menus shall be planned and followed to meet the nutritional needs of residents in accordance with physicians' orders and, to the extent medically possible, the current recommended daily allowances of the food and nutrition board of the national research council, national academy of sciences, as in effect on July 1, 1981.

(2) Menus for therapeutic diets shall be planned by a dietitian.

(3) Menus shall be written at least one week in advance.

(b) Storage.

(1) Food shall be stored, prepared, transported, and served under safe and sanitary conditions.

(2) A three-day supply of food shall be available to meet the requirements of the planned menus.

(3) Containers of poisonous compounds or cleaning supplies shall be kept in areas separate from those used for food storage, preparation, or serving.

(c) All tableware, kitchenware, and equipment shall be washed in a two-compartment sink, two-compartment container, or by use of a domestic dishwashing machine. (Authorized by and implementing K.S.A. 39-932; effective, T-83-28, Sept. 22, 1982; effective May 1, 1983.)

28-39-143. Environmental sanitation and safety. The facility shall provide a physical environment that promotes the health, safety, and comfort of the residents. (a) Housekeeping and maintenance.

(1) The facility shall be kept free from insects, rodents, and vermin.

(2) The grounds shall be free from accumulation of rubbish and other health or safety hazards.

(3) The interior and exterior of the facility shall be maintained in good repair and in a clean, safe, and orderly manner.

(4) Provisions shall be made for the sanitary disposal and storage of waste.

(5) All electrical and mechanical equipment shall be maintained in good repair and safe operating condition.

(b) Laundry services shall be provided for the residents.

(c) Safety.

(1) A smoking policy shall be provided which includes a provision prohibiting smoking in bed.

(2) The facility shall have procedures for evacuation to be followed in emergency situations such as fire, tornado, flood, explosion, or other disaster.

(3) A telephone shall be provided for resident and emergency use.

(4) The telephone numbers of the fire department, ambulance, and police shall be posted in a conspicuous place near the telephone.

(5) House numbers shall be posted on the exterior of the facility using at least three-inch numbers. Box numbers shall be posted on the mailbox if the home is located in a rural area.

(d) Physical environment.

(1) Each resident shall be provided with his or her own bed.

(2) Visual privacy shall be provided for each bed in a multi-bed room.

(3) Space shall be provided for resident personal items.

(4) The facility shall maintain a year-round indoor temperature that is between 70° F. (21° C.) to 85° F. (29° C.) in resident sleeping areas. (Authorized by and implementing K.S.A. 39-932; effective, T-83-28, Sept. 22, 1982; effective May 1, 1983.)

28-39-144 to 28-39-199. Reserved.

Article 46.—UNDERGROUND INJECTION CONTROL REGULATIONS

28-46-2. Definitions. (a) 40 CFR Part 122.3; 40 CFR Part 124.21 and 40 CFR Part 146.3, as in effect on October 1, 1982, are adopted by reference.

(b) "Fracture pressure" means that wellhead pressure which may cause vertical or horizontal fracturing of rock along a well bore.

(c) "Injection well" means a well designed for the purpose of the subsurface emplacement of fluids.

(d) "Injection well facility" means all land, structures, appurtenances or improvements on which one or more injection wells are located, and that are within the same well field or project.

(e) "Major facility" means a facility capable of producing hazardous waste identified or listed by the secretary under K.A.R. 28-31-3.

(f) "Major permit" means a permit for the underground injection of wastes produced by or stored on a major facility.

(g) "Maximum allowable injection pressure" means the maximum wellhead pressure not to be exceeded as a permit condition, as opposed to fracture pressure.

(h) "Secretary" means the secretary of the Kansas department of health and environment or duly authorized designee. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended, May 1, 1983.)

28-46-3. Classification of injection wells. 40 CFR Part 122.32 and 40 CFR Part 146.5, as in effect on October 1, 1982, are adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-5. Application for injection well permits. 40 CFR Part 122.4 and 40 CFR Part 122.38, as in effect on October 1, 1982, are adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-6. Conditions applicable to all permits. 40

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CFR Part 122.7 and 40 CFR Part 122.41, as in effect on October 1, 1982, are adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-7. Draft permits. 40 CFR Part 124.6, as in effect on October 1, 1982, is adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-8. Fact sheets. 40 CFR Part 124.8, as in effect on October 1, 1982, is adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-9. Establishing permit conditions. 40 CFR Part 122.8 and 40 CFR Part 122.42, as in effect on October 1, 1982, are adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-10. Term of permits. (a) Class I and class V permits shall be effective for a term of 10 years. A new permit application must be filed for each 10 year term.

(b) Class II and III permits shall be issued for the operating life of the facility.

(c) The secretary shall review each permit at least once every five years to determine whether it should be modified, revoked and reissued, or terminated.

(d) Modification of permits shall not include extension of the maximum duration specified in (a). At the end of the permit term, application shall be filed for a new permit. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-11. Schedules of compliance. 40 CFR Part 122.10, as in effect on October 1, 1982, is adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-12. Requirements for recording and reporting of monitoring results. 40 CFR Part 122.11, as in effect on October 1, 1982, is adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-13. Effect of a permit. 40 CFR Part 122.13, as in effect on October 1, 1982, is adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-14. Transfer of permits. 40 CFR Part 122.14, as in effect on October 1, 1982, is adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-15. Modification or revocation and reissuance of permits. 40 CFR Part 122.15, as in effect on October 1, 1982, is adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-16. Termination of permits. 40 CFR Part 122.16, as in effect on October 1, 1982, is adopted by reference. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-165; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-17. Minor modifications of permits. 40 CFR Part 122.17, as in effect on October 1, 1982, is adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-18. Area permits. 40 CFR Part 122.39, as in effect on October 1, 1982, is adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-19. Emergency permits. 40 CFR Part 122.40, as in effect on October 1, 1982, is adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-20. Corrective action. 40 CFR Part 122.44, as in effect on October 1, 1982, is adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-21. Public notice of permit actions and public comment period; public comments and request for hearings; public hearings; response to comments. (a) 40 CFR Part 123.7; 40 CFR Part 124.10 through 40 CFR Part 124.12; and 40 CFR Part 124.17, as in effect on October 1, 1982, are adopted by reference.

(b) Any provisions of Kansas law which provide additional opportunity for public comment or public hearing shall control over the provisions of the federal regulations. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-22. Signatories to permit applications and reports. 40 CFR Part 122.6; 40 CFR Part 122.38; and 40 CFR Part 123.7, as in effect on October 1, 1982, are adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-24. Requirements for wells injecting hazardous wastes. 40 CFR Part 122.45, as in effect on October 1, 1982, is adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-26. Authorization to continue to inject into wells which carry existing state permits and into class V wells. (a) All injection wells which carry valid state

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permits on the effective date of these regulations may continue to operate for a maximum period of four years if all program elements listed in 40 CFR 122.37 are satisfied. All existing permits shall be terminated at that time, and continued operation of injection wells shall be allowed only upon application to and approval of an underground injection control permit by the secretary.

(b) Class V injection wells shall be authorized to operate until the time that regulations concerning that class of injection wells are adopted. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-27. Prohibition of movement of fluid into underground sources of drinking water. 40 CFR Part 122.34 and 40 CFR Part 123.7, as in effect on October 1, 1982, are adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-29. Construction requirements. 40 CFR Part 146.12, governing Class I wells; 40 CFR Part 146.22, governing Class II wells; and 40 CFR Part 146.32, governing Class III wells, as in effect on October 1, 1982, are adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-30. Operating, monitoring and reporting requirements. 40 CFR Part 146.13, regulating Class I wells; 40 CFR Part 146.23, regulating Class II wells; and 40 CFR Part 146.33, regulating Class III wells, as in effect on October 1, 1982, are adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-31. Information to be considered by the secretary. 40 CFR Part 146.14, for Class I wells; 40 CFR Part 146.24, for Class II wells; and 40 CFR Part 146.34, for Class III wells, as in effect on October 1, 1982, are adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-33. Mechanical integrity testing. (a) A downhole mechanical integrity test shall be required of each permittee on each injection well every five years. The test shall be conducted in accordance with 40 CFR Part 146.08, as in effect on October 1, 1982.

(b) The secretary shall notify the permittee 30 days in advance that a mechanical integrity test must be performed; or a permittee may notify the secretary that a voluntary mechanical integrity test will be performed at least 14 days in advance of the test.

(c) When the secretary believes that, due to an apparent downhole problem, the continued use of an injection well constitutes a threat to human health or to waters of the state, the permittee shall be required to cease injection operations immediately and to conduct a mechanical integrity test. Injection operations shall not be resumed until such a test is conducted.

(d) The secretary shall provide for a qualified state inspector to witness at least 25 percent of the mechanical integrity tests performed.

(e) The permittee shall submit results of all mechanical integrity tests to the secretary, in writing, within 30 days after conducting the test. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-34. Plugging and abandonment. 40 CFR Part 122.41(e); 40 CFR Part 122.42(f), and 40 CFR Part 146.10, as in effect on October 1, 1982, are adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-36. Waiver of requirements by secretary. 40 CFR Part 122.43, as in effect on October 1, 1982, is adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-37. Non-compliance reporting by the secretary. 40 CFR Part 122.18, as in effect on October 1, 1982, is adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-38. Inventory and assessment of Class V injection wells. 40 CFR Part 146.52, as in effect on October 1, 1982, is adopted by reference. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-39. Mid-course evaluation reports. The secretary shall submit reports to the regional administrator of the United States environmental protection agency at six month intervals during the first two years of operation of the underground injection control program. The data submitted shall be in accordance with that required by 40 CFR Parts 146.15, 146.25, and 146.35, as in effect on October 1, 1982. (Authorized by, and implementing, K.S.A. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-41. Sharing of information. 40 CFR Part 123.10, as in effect on October 1, 1982, is adopted by reference. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-170g; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983.)

28-46-42. Exclusion of oil and gas related wells. On and after May 1, 1983, class II injection wells which inject fluids brought to the surface in connection with the production of oil or natural gas or which inject fluids to enhance the recovery of oil or natural gas shall be exempted from the provisions contained in article 46. (Authorized by, and implementing, K.S.A

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65-171d; effective, T-83-7, April 29, 1982; effective May 1, 1983.)

Article 47.—USE OF OIL AND GAS FIELD SALT WATER IN ROAD CONSTRUCTION AND MAINTENANCE PROJECTS

28-47-1. Scope. This article regulates the spreading of salt water, originating from the production of oil and gas, in road construction and maintenance projects. (Authorized by and implementing K.S.A 1982 Supp. 55-904; effective, T-83-50, Dec. 22, 1982; effective May 1, 1983.)

28-47-2. Definitions. (a) "Person" means any state, county, township or municipal governing body, and any individual, firm, corporation, partnership, or other association of persons.

(b) "Road" means any highway, county road, township road, or oil or gas company lease road, or any private road under jurisdiction of the applicant.

(c) "Road construction" means any activity connected with developing a subgrade or base during the construction of a road or segment of road.

(d) "Road maintenance" means any activity related to stabilization of the surface of any publicly traveled road or segment of road after construction activities have ceased.

(e) "Lease road" means any formally maintained access road to wells, tank batteries and petroleum and oil field and salt water storage facilities areas under control and operation of a company actively engaged in the production, storage or transportation of oil, gas, or disposal of salt water. (Authorized by and implementing K.S.A. 1982 Supp. 55-904; effective, T-83-50, Dec. 22, 1982; effective May 1, 1983.)

28-47-3. Request for the use of salt water in road construction or maintenance. Any person desiring to use salt water, brought to the surface during the production of oil and gas, for purposes of road maintenance or road construction shall submit a request for the approval of such activity to the department of health and environment. The request shall be submitted 10 days prior to the time work is to begin and shall be accompanied by a plan meeting the requirements of K.A.R. 28-47-4. The request for approval may be submitted to the appropriate district office of the department. (Authorized by and implementing K.S.A. 1982 Supp. 55-904; effective, T-83-50, Dec. 22, 1982; effective May 1, 1983.)

28-47-4. Plan for use of salt water. A plan shall be submitted to the department prior to using salt water for road maintenance or road construction. The department shall, in writing, approve, deny or require any modification the department deems necessary in order to assure that the maintenance or construction operation will not cause surface or subsurface water pollution or soil pollution. A plan shall not be required for individual lease road maintenance projects which are limited to stabilizing lease roads. Each plan shall include at least the following: (a) A map outlining the roads included in the maintenance or construction project;

(b) a description of the method to be used in salt water spreading or incorporation;

(c) the amount of salt water estimated to be used per mile or fraction of a mile;

(d) the frequency of salt water use for each route described in (a);

(e) security methods to be used by the applicant to prevent unauthorized spraying, dumping, or discharge of salt water;

(f) a copy of any local or county regulation which also affects the applicant's activities; and

(g) the name of each authorized salt water hauler. (Authorized by and implementing K.S.A. 1982 Supp. 55-904; effective, T-83-50, Dec. 22, 1982; effective May 1, 1983.)

28-47-5. Notification to department. Any authorized person spreading salt water in connection with road construction or maintenance shall notify the department, in writing, when any of the following situations arise: (a) The person ceases to use salt water in maintaining any or all of the roads designated on the plan submitted in fulfilling requirements set forth in K.A.R. 28-47-4(a);

(b) the person desires to amend the plan submitted under K.A.R. 28-47-4(a) to include additional roads not covered in the original plan;

(c) the person desires to use a salt water hauler other than the one designated in the original plan;

(d) upon completion of any designated phase of road construction during which the use of salt water was approved;

(e) upon discovery that an illegal act of salt water dumping, spraying, or discharge has occurred on or adjacent to the road or road right-of-way covered under the plan; or

(f) when an accidental discharge of salt water occurs during road construction or road maintenance operations. In such a case, the applicant or contractor shall provide the appropriate district office of the department of health and environment with a written report of the incident. (Authorized by and implementing K.S.A. 1982 Supp. 55-904; effective, T-83-50, Dec. 22, 1982; effective May 1, 1983.)

28-47-6. Discontinuance of salt water spreading. The secretary may order the discontinuance of salt water spreading if:

(a) A violation of the provisions of K.A.R. 28-47-5 occurs; or

(b) the potential exists for water pollution, due to conditions which were not apparent at the time the request to spread salt water was made. (Authorized by and implementing K.S.A. 1982 Supp. 55-904; effective, T-83-50, Dec. 22, 1982; effective May 1, 1983.)

28-47-7. Waiver of specific requirements. The secretary may grant an exception to a requirement provided in these regulations if a person desiring a waiver can show good cause for the granting of such an exception, and the person presents an alternative to the requirements which will insure that the objectives of these regulations will be achieved. Requests for an

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exception shall be made, in writing, to the secretary. The secretary shall grant or deny the request within 15 days from the receipt of the request and shall notify the person requesting the exception, in writing, of the decision. If the request is denied, the secretary shall specify in the notice the reasons for the denial of the request. (Authorized by and implementing K.S.A. 1982 Supp. 55-904; effective, T-83-50, Dec. 22, 1982; effective May 1, 1983.)

BARBARA J. SABOL
Secretary

Doc. No. 000997

(Published in the *KANSAS REGISTER* April 14, 1983.)

HOUSE BILL No. 2288

AN ACT concerning notice and hearing procedures of the state corporation commission in regulation of motor carriers; amending K.S.A. 1982 Supp. 66-1,112b and 66-1,114 and repealing the existing sections; also repealing K.S.A. 1982 Supp. 66-1,112i and 66-1,114a.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1982 Supp. 66-1,112b is hereby amended to read as follows: 66-1,112b. The commission, upon the filing of an application for contract-carrier permit, shall fix a time and place for hearing thereon, which shall be not less than 20 days nor more than 60 days after ~~such filing. The commission shall give notice of such hearing at least 10 days prior thereto to parties of interest as required by rules and regulations adopted by the commission~~ *the filing. Notices of hearings shall be published bimonthly in the first and third issues of the Kansas register. Hearings shall be held no earlier than 10 days after publication of notice.* Any other common carrier or *any* interested party is hereby declared to be an interested party to ~~said~~ *the* proceedings and may offer testimony for or against the granting of ~~such~~ *a* permit at the hearing. If the commission finds that the proposed service or any part thereof is proposed to be performed by the applicant and that the applicant is fit, willing and able to perform such service, the commission shall issue the permit, except that if the commission finds that evidence shows that the proposed service is inconsistent with the public convenience and necessity, the commission shall not issue the permit. The commission may attach to the exercise of the privilege granted by ~~such~~ *the* permit such terms and conditions as in its judgment will carry out the purposes of this act. Application for ~~such~~ *a* permit shall be made in writing, stating the ownership, financial condition, equipment to be used and physical property of the applicant, and contain such other information as the commission may require.

Sec. 2. K.S.A. 1982 Supp. 66-1,114 is hereby amended to read as follows: 66-1,114. Except as hereinafter provided, it shall be unlawful for any public motor carrier to operate as a carrier of intrastate commerce within this state without first having obtained from the corporation commission a certificate of convenience and necessity. The corporation commission, upon the filing of an application for such a certificate, shall fix a time and place for hearing thereon, which shall be not less than 20 and not more than 60 days after ~~such~~ *the* filing. The corporation commission shall give notice of hearing at least 10 days prior ~~thereto~~ *to the hearing* to parties of interest as required by rules and regulations adopted by the commission. *Notices of hearings shall be published bimonthly in the first and third issues of the Kansas register.* Any person may offer testimony at such hearing.

If the commission finds that the proposed service or any part thereof is proposed to be performed by the applicant and that the applicant is fit, willing and able to perform such service, the commission shall issue the certificate, except that if the commission finds that evidence shows that the proposed service is inconsistent with the public convenience and necessity, the commission shall not issue the certificate.

Prior to a formal hearing, and upon the filing of an application and showing of an immediate and urgent need for service to afford relief, temporary authority to a point or points within a territory having no carrier service capable of meeting such immediate need, may be granted, in the discretion of the commission. ~~Such~~ *The* temporary authority, unless suspended or revoked, shall be valid for such time as the commission shall specify but for not more than 60 days~~, except that such~~. *The* temporary authority may be extended or renewed for such time as the commission shall specify, but ~~in no event shall such temporary authority~~ *shall not* be extended or renewed for a period of time which exceeds the date on which an order granting or denying permanent authority shall become final. The granting of temporary authority shall create no presumption that corresponding permanent authority will be granted thereafter. The service rendered under ~~such~~ *the* temporary authority shall be subject to all applicable provisions of law and the rules and regulations of the commission pertaining to such motor carrier operations.

Sec. 3. K.S.A. 1982 Supp. 66-1,112b, 66-1,112i, 66-1,114 and 66-1,114a are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body March 3, 1983.

MIKE HAYDEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

Passed the SENATE March 30, 1983.

ROSS O. DOYEN
President of the Senate.
LU KENNEY
Secretary of the Senate.

APPROVED April 11, 1983.

JOHN CARLIN
Governor.

STATE OF KANSAS

Office of Secretary of State

I, JACK H. BRIER, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 11th day of April, 1983.

JACK H. BRIER
(SEAL) *Secretary of State.*

(Published in the *KANSAS REGISTER* April 14, 1983.)

HOUSE BILL No. 2023

AN ACT relating to taxation of gross earnings derived from money, notes and other evidence of debt; concerning the administration and enforcement thereof; amending K.S.A. 12-1,101, 12-1,104, 12-1,107, 12-1,108 and 12-1,109 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 12-1,101 is hereby amended to read as follows: 12-1,101. (a) In the year 1982 or in any year thereafter, the board of county commissioners of any county is hereby authorized to adopt a resolution imposing a tax for the benefit of such county upon the gross earnings derived from money, notes and other evidence of debt having a tax situs in such county. The rate of tax shall be in the amount of 1/8 of 1% of the total gross earnings, or any multiple thereof not exceeding an amount equal to 3/4 of 1% of the total gross earnings derived from such money, notes and other evidence of debt during the taxable year of the taxpayer ending during the last preceding calendar year.

(b) In the year 1982 or in any year thereafter, the governing body of any city is hereby authorized to pass an ordinance imposing a tax for the benefit of such city upon the gross earnings derived from money, notes and other evidence of debt having a tax situs in such city. The rate of tax shall be in the amount of 1/8 of 1% of the total gross earnings, or any multiple thereof not exceeding an amount equal to 2 1/4% of the total gross earnings derived from such money, notes and other evidence of debt during the taxable year of the taxpayer ending during the last preceding calendar year. ~~A copy of an ordinance levying a tax under the authority of this subsection shall be certified to the county treasurer of the county or counties in which such city is located.~~

(c) In the year 1982 or in any year thereafter, the township board of any township is hereby authorized to adopt a resolution imposing a tax for the benefit of such township upon the gross earnings derived from money, notes and other evidence of debt having a tax situs in such township *and outside the corporate limits of any city of the third class*. The rate of tax shall be in the amount of 1/8 of 1% of the total gross earnings, or any multiple thereof not exceeding an amount equal to 2 1/4% of the total gross earnings derived from such money, notes and other evidence of debt during the taxable year of the taxpayer ending during the last preceding calendar year. ~~A copy of a resolution levying a tax under the authority of this subsection shall be certified to the county treasurer of the county in which such township is located.~~

(d) ~~No county, city or township shall adopt any resolution or pass any ordinance on or after June 15, 1982, which will impose any tax pursuant to this act in the year 1982.~~ For the purpose of authorizing taxes commencing in the year 1983 and thereafter the county, city or township shall adopt a resolution or pass an ordinance on or before September 1 of the year preceding the year in which the levy of such taxes will commence. *A certified copy of any resolution or ordinance adopted or passed imposing, reimposing or eliminating a tax pursuant to this section shall be submitted to the county clerk of the county or counties in which the taxing subdivision is located. On or before July 15, 1983, and July 15 of each year thereafter, the clerk of each county shall transmit to the director of taxation of the state department of revenue a list showing the tax rate, if any, imposed on money, notes and other evidence of debt for the following year by the county and every city or township situated within such county.*

(e) On or after January 1, 1983, upon submission of a petition *which is in conformance with the provisions of article 36 of chapter 25 of the Kansas Statutes Annotated, and amendments thereto, and is* signed by not less than 5% of the qualified electors of a county, city or township levying a tax under the provisions of this act requesting the same, the governing body of such taxing subdivision shall be required to submit to the electors of such taxing subdivision at the next ~~primary or~~ *state general election or* general election held ~~in~~ *for the election of officers of* such taxing subdivision a proposition which shall be placed on the ballot in substantially the following form: "Shall _____ (county) (city) (township) eliminate the tax on gross earnings derived from money, notes and other evidence of debt and be authorized to impose and levy property taxes, in addition to any aggregate levy amount limitation on the taxing subdivision's ad valorem tax levy authority, as may be necessary to offset the revenue lost from elimination of the tax on gross earnings derived from money, notes and other evidence of debt?" Any such election shall be noticed, called and conducted in the manner prescribed in the general bond law. *Any election which was otherwise conducted in accordance with the provisions of this subsection but which was held on April 5, 1983, on any proposition which is submitted to the electors of a township by the governing body of such township pursuant to a petition submitted under this subsection is hereby declared valid.* If a majority of the electors voting thereon at such election shall vote in favor of such proposition, the board of county commissioners or the township board shall provide by resolution or the governing body of any city shall pr[illegible]e by ordinance that no tax shall be levied upon gross earnings derived from money, notes and other evidence of debt as follows: When such election is held prior to August in any year, the resolution or ordinance shall provide that no such tax shall be levied thereon in the calendar year following the year of such election and in each year thereafter, and when such election is held in August or thereafter of any year, the resolution or ordinance shall provide that no such tax shall be levied thereon in the second calendar year following the year of such election or in any year thereafter. The governing body of the taxing subdivision shall thereupon be authorized to offset the loss in revenue from the elimination of such tax by the imposition and levying of any other taxes as may be authorized by law or by increasing its ad valorem tax levy for the general fund for any year in which revenue is not received from the tax on gross earnings derived from money, notes and other evidence of debt in an amount not to exceed the amount of such tax received in the year prior to elimination of such tax. *With respect to townships*, the increase in the amount of such ad valorem tax authorized herein shall be in addition to any aggregate levy amount which may be fixed by any existing state law or any law which may hereafter be enacted. *With respect to cities and counties, any such levy shall be exempt from the limitation imposed under the provisions of K.S.A. 79-5001 to 79-5016, inclusive. Notwithstanding the provisions of this subsection to the contrary, the governing body of a county, city or township may either reimpose or submit to the electors of such subdivision a proposition to reimpose a tax on gross earnings derived from money, notes and other evidence of debt in the manner and at the rate prescribed by this section.*

(f) On or after January 1, 1983, upon submission of a petition *which is in conformance with the provisions of article 36 of chapter 25 of the Kansas Statutes Annotated, and amendments thereto, and is* signed by not less than 5% of the qualified electors of a county, city or township not levying a tax under the provisions of this act requesting the same, the governing body of such taxing subdivision shall be required to submit to the electors of such taxing subdivision at the next ~~primary or~~ *state general election or* general election held ~~in~~ *for the election of officers of* such taxing subdivision a proposition to impose a tax pursuant to this act in an amount not exceeding the limitations prescribed in this section. Such proposition shall be in substantially the following form: "Shall _____ (county) (city) (township) impose a tax on gross earnings derived from money, notes and other evidence of debt at a rate of _____ pursuant to ~~1982 H.B. No. 3142~~ *K.S.A. 12-1,101, et seq.* to reduce property taxes?" Any such election shall be noticed, called and conducted in the manner prescribed by the general bond law. *Any election which was otherwise conducted in accordance with the provisions of this subsection but which was held on April 5, 1983, on any proposition which is submitted to the electors of a township by the governing body of such township pursuant to a petition submitted under this subsection is hereby declared valid.* If a majority of the electors voting thereon at such election vote in favor of the proposition the board of county

(continued)

commissioners or the township board shall provide by resolution or the governing body of any city shall provide by ordinance for the imposition of such taxes in the manner prescribed by this act. Such taxes shall be effective for all taxable years commencing after December 31 of the year in which such proposition is approved by the electors of the taxing subdivision.

(g) For purposes of submitting a petition or voting at an election held pursuant to the provisions of this section, electors of a township shall not include any person residing within the corporate limits of a city of the third class.

Sec. 2. K.S.A. 12-1,104 is hereby amended to read as follows: 12-1,104. (a) Every taxpayer receiving earnings which are taxable under the provisions of this act shall file a return on or before ~~August 1 in the year 1982, and on or before~~ July 1 *in the year 1983,* ~~of each year thereafter~~ with the county clerk of the county in which the gross earnings has acquired situs *and on or before April 15 of each year thereafter with the director of taxation of the state department of revenue.* Such return shall contain such information and be made upon forms prescribed and provided by the ~~state~~ director of taxation. *On or before June 30 of each year, the director of taxation shall certify to the county clerk of each county the amount of taxable earnings received by each taxpayer during the taxable year of the taxpayer ending in the preceding calendar year. The county clerk shall compute the tax due and payable on such taxable earnings of each taxpayer and shall certify such amount to the county treasurer.* The director of taxation shall include forms for the making of such return *and a current listing of each taxing subdivision imposing a tax on gross earnings derived from money, notes and other evidence of debt for which the listing has been received pursuant to subsection (d) of K.S.A. 12-1,101 by July 15 of the year preceding the year of imposition of the tax* with each state income tax return distributed by the state department of revenue.

(b) A return listing the gross earnings of every resident conservatee which are taxable pursuant to this act shall be filed by the conservator of such conservatee. The return of every resident minor shall be filed by the minor's father, if living and of sound mind, but if such father is not living or is an incapacitated person, by the minor's mother or if neither the father or mother is living, by the person having possession or control of the minor's property.

A return listing the gross earnings of a resident trustee or cotrustee of a revocable trust created by a resident settlor which are taxable pursuant to this act shall be filed by the resident settlor. A return listing the gross earnings of a resident trustee or cotrustee of an irrevocable or testamentary trust created by a resident settlor or a resident decedent which are taxable pursuant to this act shall be filed by any beneficiary residing in this state who receives earnings from such trust, to the extent of such earnings, otherwise a return listing such gross earnings shall be filed by the resident trustee to the extent that such earnings are not distributed. A nonresident beneficiary shall not be obligated to file a return listing earnings taxable pursuant to this act nor shall the trustee be obligated to file a return listing the same to the extent they were distributed to a nonresident beneficiary. Where a resident trustee or cotrustee is acting under a revocable, irrevocable or testamentary trust of a nonresident settlor or nonresident decedent, the trustee shall not be required to file a return listing earnings taxable pursuant to this act, but any beneficiary of such trust, residing in this state, who receives or is entitled to receive such earnings from such trust shall be required to file a return. Any resident of this state including the settlor of a revocable trust who receives or is entitled to receive earnings taxable pursuant to this act from a trust, not having a situs in this state, shall file a return listing such resident's share of such earnings.

For the purposes of this act, a settlor of a revocable trust shall be deemed to be entitled to the gross earnings on money, notes and other evidence of debt of such trust whether or not such settlor actually receives the same and a beneficiary shall be deemed to be entitled to a share of such earnings if all or a specific part or percentage of the net income of the trust must be distributed to such beneficiary or if the beneficiary may withdraw all or a specific part of the net income. If such beneficiary may receive earnings only on the exercise of discretion by the trustee or on the occurrence of an event outside of the beneficiary's sole control such beneficiary shall not be deemed to have received the earnings and shall file a return listing only earnings actually received. If earnings of a trust which are taxable pursuant to this act are accumulated and subsequently distributed in a different calendar year than the year in which received by the trust and if the same are reported as income under the revenue laws of Kansas and regulations promulgated thereunder, and if a return listing such earnings has not been filed by the trustees in the year in which earned, then a return listing such earnings shall be filed by such beneficiary in the year in which the same are reported under the revenue laws of Kansas, but otherwise a return listing the same shall not be filed. Where the beneficiary of any trust is required to file a return listing earnings which are taxable pursuant to this act and which are held in trust, such beneficiary for purposes of this act shall be deemed to have received or to be entitled to receive such beneficiary's pro-rata share of the earnings without specific allocation, unless the trust provides otherwise, and based upon the proportion which the beneficiary's share of the earnings bears to the total earnings of the trust. A return listing gross earnings taxable under this act which belong to the estate of a resident decedent shall be filed by the executor or administrator. If the decedent is a nonresident, such executor or administrator shall not be required to file a return listing such gross earnings.

A return listing the gross earnings of persons, companies or corporations which are taxable pursuant to this act, whose assets are in the hands of receivers shall be filed by such receivers and a return listing the gross earnings belonging to a corporation, and subject to this act, shall be filed by some person designated for that purpose by such corporation.

A return listing the gross earnings which are taxable pursuant to this act which belong to a corporation, association or a partnership shall be listed by an agent or partner. Unless subject to tax by reason of K.S.A. 12-1,103 no return listing the gross earnings from money, notes and other evidence of debt collected or received by any agent or representative of any person, company, or corporation, which is to be transmitted immediately to such person, company or corporation, shall be filed by such agent or representative, but such agent or representative shall, upon request, state under oath the amount of such money or credits and to whom the same has been or is to be transmitted.

Taxes levied pursuant to this act shall be paid by the person or fiduciary required to file such return.

Sec. 3. K.S.A. 12-1,107 is hereby amended to read as follows: 12-1,107. *(a) Except as provided in subsection (b),* the proceeds of all taxes levied pursuant to this act shall be credited to the general fund of the county, city or township levying the same.

(b) In counties which have adopted the county unit road system, the amount credited to a township shall be limited to an amount which when added to all other amounts of revenue for the general fund and all other funds of the township will not exceed the amount of the adopted budget for such funds, and all moneys exceeding such amount shall be credited as follows: (1) One-half to the county general fund and (2) one-half to the county road and bridge fund.

Sec. 4. K.S.A. 12-1,108 is hereby amended to read as follows: 12-1,108. Any list or statement filed with or as a part of any return *or any statement of tax liability* shall only be open to inspection by the *director of taxation and the* county clerk *and treasurer* of the county wherein the same is ~~filed~~ *computed,* and such *director's,* clerk's *or treasurer's* assistants and clerks, except upon order of a court of competent jurisdiction, and it is hereby made unlawful to exhibit, disclose or publish any such list or statement or any part of the same or any of the items of the same. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than $100 and not more than $500 and shall be adjudged to have forfeited their office or appointment.

(continued)

Sec. 5. K.S.A. 12-1,109 is hereby amended to read as follows: 12-1,109. Gross earnings derived from the following shall be exempt from taxes levied by counties, cities and townships pursuant to this act:

(a) Notes secured by mortgages on real estate, which mortgages have been recorded in this state and the registration fee or tax thereon paid, as otherwise provided by law;

(b) all moneys, notes and other evidences of indebtedness held by the trustee of a qualified trust described in section 401, 408 or 501(c)(4), (5), (9), (17) or (18) of the internal revenue code of 1954, as amended (26 U.S.C. 401, 408 or 501(c)(4), (5), (9), (17) or (18)) which is part of a stock bonus, pension or profit-sharing plan of an employer for the exclusive benefit of employees or their beneficiaries or health and welfare plan;

(c) (1) for the taxable year commencing after December 31, 1981, money, notes and other evidence of debt, to the extent of the tax liability hereinafter provided, which is owned by a person who has a disability or was 60 years of age or older on January 1 of the year in which an exemption is claimed hereunder. The exemption allowable under this subsection shall be in an amount equal to the lesser of the following: (A) The amount of the tax liability on the first $3,000 of gross earnings from the money, notes and other evidence of debt; or (B) the amount of the tax liability on the first $3,000 of gross earnings from such money, notes and other evidence of debt reduced by the amount that the owner's income exceeds $12,500, including in such owner's income the income of such person's spouse, in the year next preceding that in which the exemption is claimed under this subsection. No person shall be eligible to claim an exemption hereunder in the same year in which such person's spouse has claimed an exemption hereunder. As used in this subsection, the terms "income" and "disability" shall have the meanings ascribed to them in K.S.A. 1982 Supp. 79-4502, and amendments thereto; and (2) for all taxable years commencing after December 31, 1982, money, notes and other evidences of debt, to the extent of the tax liability hereinafter provided, which is owned by a person who has a disability or was 60 years of age or older on January 1 of the year in which an exemption is claimed hereunder. The exemption allowable under this subsection shall be in an amount equal to the lesser of the following: (A) The amount of the tax liability on the first $5,000 of gross earnings from the money, notes and other evidences of debt; or (B) the amount of the tax liability on the first $5,000 of gross earnings from said money, notes and other evidences of debt reduced by the amount that the owner's income exceeds $15,000, including in such owner's income the income of such person's spouse, in the year next preceding that in which the exemption is claimed under this subsection. No person shall be eligible to claim an exemption hereunder in the same year in which such person's spouse has claimed an exemption hereunder. As used in this subsection, the terms "income" and "disability" shall have the meanings ascribed to them in K.S.A. 1982 Supp. 79-4502, and amendments thereto;

(d) money, notes and other evidence of debt owned by any credit union, national banking association, state bank, trust company or federal or state-chartered savings and loan association;

(e) bonds or other evidence of indebtedness issued by the state, county, city, school district or other municipal or taxing subdivision of the state;

(f) except for distributions made from earnings or profits of any small business corporation, as defined by section 1371 of the internal revenue code as enacted in 1954 (26 U.S.C. 1371), accumulated by that corporation prior to the time that it has made the election under section 1372 of the internal revenue code of 1954 (26 U.S.C. 1372), all earnings or profit distributed by any such small business corporation having such an election in effect to a person who was a shareholder of such corporation at the time of the distribution;

(g) for all taxable years commencing after December 31, 1982, notes, other than notes described in subsection (a), to the extent that such earnings are a reimbursement of interest paid on another note the proceeds of which was the source of funds for the first note;

(h) ~~all intangible property including~~ money, notes and other evidence of debt belonging exclusively to a hospital or a psychiatric hospital, as defined by K.S.A. 59-2902 and 65-425, and amendments thereto, operated by a not for profit corporation, and used exclusively for hospital or psychiatric hospital purposes;

(i) ~~all intangible property including~~ money, notes and other evidence of debt belonging exclusively to an adult care home as defined by K.S.A. 39-923, and amendments thereto, operated by a not for profit corporation, and used exclusively for adult care home purposes;

(j) ~~all intangible property including~~ money, notes and other evidence of debt belonging exclusively to a private children's home as defined by K.S.A. 75-3329, and amendments thereto, operated by a not for profit corporation, and used exclusively for children's home purposes;

(k) ~~all intangible property including~~ money, notes and other evidence of debt belonging exclusively to a corporation organized not for profit which operates housing for elderly persons having a limited or low income, which property and the income therefrom is used exclusively for housing for such elderly persons;

(l) ~~money, notes and other evidence of debt of every national banking association, state bank, trust company and federal or state-chartered savings and loan associations located or doing business within the state which are taxed under the provisions of K.S.A. 79-1107 and 79-1108, and amendments thereto;~~

~~(m)~~ shares, shares of stock or other evidence of ownership of national banking associations, state banks and federal or state-chartered savings and loan associations located or doing business within the state and shares of stock or other evidence of ownership of corporations holding stock of a national banking association, state bank and federal or state-chartered savings and loan associations located or doing business in Kansas, to the extent the income of such corporation is attributable to dividends received on such stock;

~~(n)~~ *(m)* money, notes and other evidence of debt of individuals, associations, groups of unincorporated persons or domestic or foreign corporations constituting the average capital employed in business and taxed under the provisions of K.S.A. 79-1103 and 79-1105a; and

~~(o)~~ *(n)* shares of stock issued by a corporation classified as a regulated investment company under the provisions of the federal internal revenue code of 1954, as amended.

Sec. 6. K.S.A. 12-1,101, 12-1,104, 12-1,107, 12-1,108 and 12-1,109 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body January 28, 1983.

HOUSE concurred in SENATE amendments March 28, 1983.

MIKE HAYDEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

Passed the SENATE as amended March 23, 1983.

ROSS O. DOYEN
President of the Senate.
LU KENNEY
Secretary of the Senate.

APPROVED April 8, 1983.

JOHN CARLIN
Governor.

STATE OF KANSAS
Office of Secretary of State

I, JACK H. BRIER, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 11th day of April, 1983.

JACK H. BRIER
Secretary of State.

(SEAL)

(Published in the *KANSAS REGISTER* April 14, 1983.)

HOUSE BILL No. 2037

AN ACT relating to property taxation; concerning apportionment of valuation and taxes of certain real property; prescribing duties and authority for county appraisers relating thereto.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) Whenever a tract of land which has been assessed shall thereafter be divided into tracts owned by different persons, any one or more of such persons, after giving 10 days' written notice to the other persons at their respective mailing addresses, may make application to the county appraiser for an apportionment of the assessed valuation of such tract among the several tracts, and the county appraiser is authorized to apportion such valuation among the owners of such tracts according to the value of their respective interests as shown by evidence available at a time designated by the county appraiser. Upon the apportionment of the assessed valuation among the several tracts and the levying of tax against each such tract, the county treasurer, upon payment of such tax on any such tract, shall issue a receipt therefor and, in any case where such tax is not paid on any of such tracts, it shall be sold for delinquent taxes in the same manner prescribed by law for sale of real estate for delinquent taxes. If taxes levied on a tract of land prior to its division are delinquent, the owner of any divided portion of such tract may have that portion released from the tax lien by paying to the county treasurer the share of the delinquent tax attributable to such divided portion as shown by the apportionment made of the whole tract's assessed valuation among the divided portions by the county appraiser.

(b) Any person aggrieved by the application of the provisions of subsection (a) may, within 10 days after the apportionment decision of the county appraiser, appeal to the state board of tax appeals, and the board shall have the power, upon a showing that such decision was erroneous, to substitute an apportionment of the assessed valuation of a tract of land for that of the county appraiser.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body February 2, 1983.

MIKE HAYDEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

Passed the SENATE March 24, 1983.

ROSS O. DOYEN
President of the Senate.
LU KENNEY
Secretary of the Senate.

APPROVED April 6, 1983.

JOHN CARLIN
Governor.

STATE OF KANSAS
Office of Secretary of State

I, JACK H. BRIER, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 8th day of April, 1983.

(SEAL)

JACK H. BRIER
Secretary of State.

(Published in the *KANSAS REGISTER* April 14, 1983.)

HOUSE BILL No. 2165

AN ACT concerning oaths of office; relating to the administration and filing thereof; amending K.S.A. 75-4310, 75-4311 and 75-4313 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 75-4310 is hereby amended to read as follows: 75-4310. Oaths required hereunder shall be administered before the officers and in the manner prescribed by K.S.A. 54-101, 54-102 and 54-103. All oaths administered under the provisions of this act shall be filed in writing with the governing body of the county, city or any municipality or such governing body's duly authorized agent, or in the case of public schools with the superintendent of any such school district, but in the case of the state or any agency thereof such oath shall be filed with the ~~director of accounts and reports~~ *employing state agency.* In the case of private schools receiving public moneys as defined in K.S.A. 75-4308, such oath shall be filed in the office of the chief administrative officer of such school, college or university.

Sec. 2. K.S.A. 75-4311 is hereby amended to read as follows: 75-4311. ~~The director of accounts and reports or the~~ *A state agency officer disbursing payroll warrants or a* treasurer or other ~~fiscal~~ *disbursing* officer of any ~~county, city or other~~ *city, county or any* municipality or of any *public school district or of any* private school, college or university receiving public funds shall not disburse any funds in payment for services to any officer or employee ~~failing within~~ *subject to* the provisions of this act until the *required* oath ~~herein required shall have~~ *has* been duly subscribed and filed by such officer or employee.

Sec. 3. K.S.A. 75-4313 is hereby amended to read as follows: 75-4313. ~~The director of accounts and reports or the~~ *It shall be unlawful for any state agency officer disbursing payroll warrants or any* treasurer or other disbursing officer of any city, county or any municipality or of any public school district or of any private school, college or university receiving public funds as defined in K.S.A. 75-4308 ~~who shall~~ knowingly *to* disburse any funds in payment for services to any officer or employee covered by the provisions of this act, which officer or employee has not subscribed and filed the oath required by this act ~~shall be deemed guilty of a felony and upon conviction thereof shall be punished by confinement and hard labor not exceeding five years or in the county jail not less than six months~~. *Violation of this section shall constitute a class C misdemeanor.*

Sec. 4. K.S.A. 75-4310, 75-4311 and 75-4313 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body February 28, 1983.

MIKE HAYDEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

Passed the SENATE March 30, 1983.

ROSS O. DOYEN
President of the Senate.
LU KENNEY
Secretary of the Senate.

APPROVED April 11, 1983.

JOHN CARLIN
Governor.

STATE OF KANSAS
Office of Secretary of State

I, JACK H. BRIER, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 11th day of April, 1983.

(SEAL)

JACK H. BRIER
Secretary of State.

(Published in the *KANSAS REGISTER* April 14, 1983.)

HOUSE BILL No. 2028

AN ACT concerning zoning; relating to notice thereof; amending K.S.A. 1982 Supp. 19-2920 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1982 Supp. 19-2920 is hereby amended to read as follows: 19-2920. (a) Before any county creates any zoning district or regulates or restricts the use of buildings or land in the county, the board of county commissioners shall require the planning board to recommend to the board of county commissioners the boundaries of districts and appropriate regulations to be enforced in ~~such~~ *the* districts. All ~~such~~ regulations shall be uniform for each class or kind of buildings or land uses throughout each district, but the regulations in one district may differ from those in other districts. The regulations shall be made in accordance with a land use study and shall give reasonable consideration to the existing character of the district, its suitability for particular uses, conserving the value of buildings ~~and of~~, existing development, and encouraging the most appropriate use of land throughout the county. The planning board shall make and develop tentative recommendations and shall hold one or more public hearings on ~~such~~ *the* recommendations as determined by the board of county commissioners. The secretary of the planning board shall publish a notice of each public hearing in the official county newspaper. At least 20 days shall elapse between the date of the publication and the date set for the hearing. ~~Such~~ *The* notice shall fix the time and place for ~~such~~ *the* hearing and shall describe in general terms the regulations and zoning districts proposed, together with a brief statement regarding the purpose of the zoning districts. ~~In addition to the publication notice, written notice shall be mailed to all owners of property located within 1,000 feet of the area affected. Failure to receive such notice shall not invalidate any subsequent action taken. Such~~ *The* hearings may be adjourned from time to time and upon the conclusion of the same, the planning board shall prepare and adopt its recommendations in the form of a proposed zoning resolution and shall submit the same, together with a record of the hearings on ~~such~~ *the* recommendations to the board of county commissioners. If a written protest against the proposed zoning or rezoning of any land lying within three miles of the city limits of any municipality having a zoning ordinance is received from the governing body of the city, the county commissioners shall not adopt the proposed zoning of ~~such~~ *the* land except by a vote of all members which shall be recorded in the minutes of the meeting along with a statement of the reasons for ~~such~~ *the* action.

Upon the receipt of the recommendations of the planning board, the board of county commissioners may adopt the same with or without change or refer it back to the planning board for further consideration~~, and~~. After adoption of regulations by the *board of* county commissioners, ~~they~~ *it* may from time to time thereafter amend, supplement or change the boundaries or regulations contained in ~~such~~ *the* zoning resolution.

The procedure for the extension of the application of any ~~such~~ zoning regulations to any additional township, or the area lying adjacent to any city or impoundment of water shall be the same as that for the adoption of the original zoning resolution. A proposal for an amendment or change in zoning may be initiated by the board of the county commissioners, the planning board or upon application of the owner of property affected. The board of county commissioners may establish a scale of reasonable fees to be paid in advance to the secretary of the planning board by the owner of any property at the time of making application for a change in zoning of the same. All proposed changes shall first be submitted to the planning board for recommendation and report, and no amendment or change shall be made without a hearing before the planning board~~,~~. Public notice of ~~which~~ *the hearing* shall be given and the procedure for the consideration and adoption of ~~which~~ *the amendment or change* shall be in ~~like~~ *the same* manner ~~as that~~ required for the consideration and adoption of the original zoning resolution. In addition to the publication notice, *if the proposed amendment is not a general revision of an existing zoning resolution and will affect specific property, such property shall be designated by legal description and* written notice shall be mailed to all owners of property, *whether within or without the county, which is* located within 1,000 feet of the area affected. Failure to receive ~~such~~ *the* notice shall not invalidate any subsequent action taken. If ~~such~~ *the* amendment affects the boundaries of any zoning district and the county has made provision for the fixing of the same upon an official map which has been incorporated by reference, the amending resolution shall define the change or boundary as amended, shall order the official map to be changed to reflect ~~such~~ *the* amendment and shall amend the section of the resolution incorporating the same and shall reincorporate ~~such~~ *the* map as amended. ~~If, however, a protest against such amendment, supplement or change is filed in the office of the county clerk~~ within 14 days after the date of the conclusion of the hearing ~~duly~~, *a petition* signed ~~and acknowledged~~ by the owners of 20% or more of any property proposed to be rezoned, or by the owners of 20% of the total area, ~~excepting~~ *except* public streets and ways ~~which is~~, located within 1,000 feet of the boundaries of the property proposed to be rezoned~~, such~~ *is filed in the office of the county clerk, the* amendment shall not be passed except by unanimous vote of the board of county commissioners.

(b) If the board of county commissioners of Franklin county determines it is necessary to zone within the unincorporated areas of the county, the board of county commissioners shall submit the question of ~~such~~ *the* initial zoning for approval by a majority of the qualified electors of the unincorporated areas of ~~such~~ *the* county voting at an election called and held on ~~such~~ *the* question. The election shall be called and held in the manner prescribed by the general bond law. If ~~such~~ *the* question of initial zoning is approved as provided in this subsection, any amendment or change in zoning shall be made as otherwise provided by law without requiring an election on the amendment or change.

Sec. 2. K.S.A. 1982 Supp. 19-2920 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body March 1, 1983.

HOUSE concurred in SENATE amendments March 28, 1983.

MIKE HAYDEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

Passed the SENATE as amended March 23, 1983.

ROSS O. DOYEN
President of the Senate.
LU KENNEY
Secretary of the Senate.

APPROVED April 8, 1983.

JOHN CARLIN
Governor.

STATE OF KANSAS

Office of Secretary of State

I, JACK H. BRIER, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 11th day of April, 1983.

(SEAL)

JACK H. BRIER
Secretary of State.

(Published in the *KANSAS REGISTER* April 14, 1983.)

HOUSE BILL No. 2194

AN ACT relating to vehicles; traffic regulation on certain highways; amending K.S.A. 8-1524 and repealing the existing section; also repealing K.S.A. 1982 Supp. 68-1906.

Be it enacted by the Legislature of the State of Kansas:

Sec. 1. K.S.A. 8-1524 is hereby amended to read as follows: 8-1524., ~~Whenever any highway, other than interstate systems, roads under the jurisdiction of the turnpike authority, and other fully controlled access highways, has been divided into two or more roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right hand roadway unless directed or permitted to use another roadway by official traffic control devices or police officers. No vehicle shall be driven over, across or within any such dividing space, barrier or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection as established, unless specifically prohibited by public authority. Every such opening, which is not intended for such crossovers, shall have signs so designating placed by the public authority.~~

No person shall:

(a) Drive a vehicle over, upon or across any intervening space, physical barrier or a clearly indicated dividing section so constructed as to impede vehicular traffic between roadways on divided highways;

(b) make a left turn or a semicircular or "U" turn on the interstate system;

(c) make a left turn or a semicircular or "U" turn over, across or within any intervening space, physical barrier or a clearly indicated dividing section so constructed as to impede vehicular traffic between roadways on a divided highway, except this subsection (c) does not prohibit making a left turn or a semicircular or "U" turn through an opening provided and surfaced for the purpose of public use for such turning movement;

(d) make a left turn or a semicircular or "U" turn on a divided highway wherever such turn is specifically prohibited by a sign or signs placed by the authority having jurisdiction over that highway;

(e) drive any vehicle on a divided highway except on the proper roadway provided for that purpose and in the proper direction and to the right of the intervening space, physical barrier or a clearly indicated dividing section so constructed as to impede vehicular traffic between roadways unless directed or permitted to use another roadway by official traffic-control devices or police officers;

(f) drive any vehicle onto or from any controlled-access highway except at such entrances and exits as are established by the authority having jurisdiction over such highway;

(g) use controlled-access highway right of way for parking vehicles or mobile equipment, or stacking of materials or equipment, for the purpose of servicing adjacent property; or

(h) stop, stand or park vehicles on the right of way of controlled-access highways except for:

(1) Stopping of disabled vehicles;

(2) stopping to give aid in an emergency;

(3) stopping in compliance with directions of a police officer or other emergency or safety official;

(4) stopping due to illness or incapacity of driver; or

(5) parking in designated parking or rest areas.

Sec. 2. K.S.A. 8-1524 and K.S.A. 1982 Supp. 68-1906 are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body February 25, 1983.

MIKE HAYDEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

Passed the SENATE March 24, 1983.

ROSS O. DOYEN
President of the Senate.
LU KENNEY
Secretary of the Senate.

APPROVED April 7, 1983.

JOHN CARLIN
Governor.

STATE OF KANSAS
Office of Secretary of State

I, JACK H. BRIER, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 8th day of April, 1983.

(SEAL)

JACK H. BRIER
Secretary of State.

(Published in the *KANSAS REGISTER* April 14, 1983.)

SENATE BILL No. 56

AN ACT relating to savings and loan associations; concerning the appointment of a special deputy savings and loan commissioner; amending K.S.A. 17-5614 through 17-5622 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 17-5614 is hereby amended to read as follows: 17-5614. If an association shall refuse or neglect to comply with such order within the time specified therein, or if it shall appear to the commissioner that any association is in an unsafe condition or is conducting its business in an unsafe manner, or if ~~he~~ *the commissioner* shall find that an impairment of capital exists to such an extent that it threatens loss to the members, or if any association refuses to submit its books, papers, and accounts to the inspection of the commissioner or ~~his~~ *the commissioner's* representative, the commissioner may appoint a ~~trustee~~ *special deputy savings and loan commissioner* to take charge of the association and manage its business until the commissioner shall permit the board of directors to resume management of the business or shall reorganize the association, or until a receiver shall be appointed by the commissioner to liquidate its affairs. The commissioner shall fix the compensation of such ~~trustee~~ *special deputy commissioner.*

Sec. 2. K.S.A. 17-5615 is hereby amended to read as follows: 17-5615. Any ~~trustee~~ *special deputy commissioner* appointed by the commissioner shall have all the rights, powers and privileges possessed by the officers, board of directors and members of the association.

Sec. 3. K.S.A. 17-5616 is hereby amended to read as follows: 17-5616. The ~~trustee~~ *special deputy commissioner* shall not retain special counsel or other experts, incur any expenses other than normal operating expenses, or liquidate assets except in the ordinary course of operations without written approval of the commissioner.

Sec. 4. K.S.A. 17-5617 is hereby amended to read as follows: 17-5617. The directors and officers shall remain in office and the employees shall remain in their respective positions, but the ~~trustee~~ *special deputy commissioner* may remove any director, officer or employee provided the order of removal of a director or officer shall be approved in writing by the commissioner.

Sec. 5. K.S.A. 17-5618 is hereby amended to read as follows: 17-5618. While the association is in charge of a ~~trustee~~ *special deputy commissioner*, members of such association shall continue to make payments to the association in accordance with the terms and conditions of their contracts, and the ~~trustee~~ *special deputy commissioner*, in ~~his~~ *the special deputy commissioner's* discretion, may permit shareholders to repurchase their shares from the association pursuant to the provisions of this act, or under, and subject to, such rules and regulations as the commissioner may prescribe. The ~~trustee~~ *special deputy commissioner* shall have power to accept payments upon such shares and such

(continued)

payments when received by the ~~trustee~~ *special deputy commissioner* may be segregated if the commissioner shall so order in writing; if so ordered, such payments shall not be subject to offset~~;~~ and shall not be used to liquidate any indebtedness of such association existing at the time the ~~trustee~~ *special deputy commissioner* was appointed for it or any subsequent indebtedness incurred for the purpose of liquidating the indebtedness of any such association existing at the time such ~~trustee~~ *special deputy commissioner* was appointed. All expenses of the association including salary and expenses of the ~~trustee during such trusteeship~~ *special deputy commissioner* shall be paid by the association.

Sec. 6. K.S.A. 17-5619 is hereby amended to read as follows: 17-5619. The appointment of a ~~trustee~~ *special deputy commissioner* shall be evidenced by the commissioner issuing a certificate under the seal of ~~his~~ *the commissioner's* office delivered to the board of directors of the association, certifying that a ~~trustee~~ *special deputy commissioner* has been appointed pursuant to this act and such certificate shall state the compensation to be received by such ~~trustee~~ *special deputy commissioner*.

Sec. 7. K.S.A. 17-5620 is hereby amended to read as follows: 17-5620. Within ~~twelve~~ *12* months from the date upon which the ~~trustee~~ *special deputy commissioner* shall take charge of an association the commissioner shall determine whether or not ~~he~~ *the commissioner* shall restore the management of the association to the board of directors.

Sec. 8. K.S.A. 17-5621 is hereby amended to read as follows: 17-5621. In the event the commissioner determines to restore the management such determination shall be evidenced by the commissioner's certificate under ~~his~~ *the commissioner's* seal delivered to the board of directors of the association reciting that the ~~trustee forthwith~~ *special deputy commissioner* is redelivering the management of the association to the board of directors of the association then in office.

Sec. 9. K.S.A. 17-5622 is hereby amended to read as follows: 17-5622. After the management of the association shall have been redelivered to the board of directors of an association, the association shall ~~thenceforth~~ be managed and operated as if no ~~trustee~~ *special deputy commissioner* had been appointed.

Sec. 10. K.S.A. 17-5614 through 17-5622 are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body February 3, 1983.

ROSS O. DOYEN
President of the Senate.
LU KENNEY
Secretary of the Senate.

Passed the HOUSE March 29, 1983.

MIKE HAYDEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

APPROVED April 7, 1983.

JOHN CARLIN
Governor.

STATE OF KANSAS
Office of Secretary of State

I, JACK H. BRIER, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 8th day of April, 1983.

JACK H. BRIER
Secretary of State.

(SEAL)

(Published in the *KANSAS REGISTER* April 14, 1983.)

SENATE BILL No. 57

AN ACT relating to savings and loan associations; concerning the powers of the commissioner; amending K.S.A. 17-5225 and 17-5630 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 17-5225 is hereby amended to read as follows: 17-5225. No home office or branch of an association shall be established, opened, moved or relocated without first applying for and obtaining from the savings and loan board~~,~~ written approval ~~thereof~~, *except that a home office or branch established by a savings and loan association located at the home office or branch of a liquidated association, shall not be required to obtain written approval from the board, if the commissioner certifies in writing that such action is in the best interest of the members of the liquidated association.*

Sec. 2. K.S.A. 17-5630 is hereby amended to read as follows: 17-5630. Upon such recordation of such order all the property of the association including its rights, titles and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action and every right, privilege, interest and asset of any conceivable value, or benefit, then existing or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer and without any further act or deed, becomes vested in and ~~continue~~ *continues* to be the property of the receiver of such association who shall have, hold and enjoy the same as receiver as fully and to the same extent as the same was possessed, held and enjoyed by the association of which ~~he~~ *such person* was appointed receiver. *The receiver, upon written order of the commissioner, in accordance with the provisions of K.S.A. 17-5225, and amendments thereto, may authorize the operation of a home office or branch of another association at the office or offices of the association for which the receiver was appointed.*

New Sec. 3. If upon the liquidation of a savings and loan association, the commissioner is of the opinion that in the best interest of the members of the liquidated association and the public interest of its community, the commissioner may issue a certificate of incorporation to applicants for the organization and establishment of a successor association, subject to confirmation and subsequent approval by the savings and loan board. Upon approval of a petition for a certificate of incorporation for the organization and establishment of any such successor association, the commissioner shall no later than the next regular meeting of the board submit such petition to the board for its confirmation and approval.

Sec. 4. K.S.A. 17-5225 and 17-5630 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body February 3, 1983.

ROSS O. DOYEN
President of the Senate.
LU KENNEY
Secretary of the Senate.

Passed the HOUSE March 29, 1983.

MIKE HAYDEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

APPROVED April 7, 1983.

JOHN CARLIN
Governor.

STATE OF KANSAS
Office of Secretary of State

I, JACK H. BRIER, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 8th day of April, 1983.

JACK H. BRIER
Secretary of State.

(SEAL)

(Published in the *KANSAS REGISTER* April 14, 1983.)

SENATE BILL No. 341

AN ACT concerning the secretary of health and environment; relating to administrative hearings and procedures; amending K.S.A. 1982 Supp. 39-931 and 65-504 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1982 Supp. 39-931 is hereby amended to read as follows: 39-931. Whenever the licensing agency finds a substantial failure to comply with the requirements, standards, or rules and regulations established under this act or that a receiver has been appointed under K.S.A. 39-958 *and amendments thereto*, it shall make an order denying, suspending, or revoking the license, and the order shall set forth the particular reasons for the action taken. Such order shall be served upon the licensee or the applicant by personal service or by certified mail, return receipt requested. Unless appealed from as hereinafter provided, the order shall become final and effective 20 days from the date of its issuance.

Any applicant or licensee who is aggrieved by the order may appeal within 20 days after its issuance by filing with the licensing agency a written notice of appeal which shall specify wherein the order is unreasonable, unjust or illegal. Upon receipt of such notice, the licensing agency shall fix a date for hearing which shall not be later than 30 days after the date of receipt of the notice of appeal. The licensing agency shall prescribe by rule and regulation the procedure for hearing all appeals and may designate a hearing officer to conduct the hearing. The hearing officer shall have authority to subpoena witnesses, compel their attendance, administer oaths, take testimony, require the production of books, papers, records, correspondence or other documents which the secretary or the hearing officer deem relevant and render decisions. In case of the refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter which the person may be lawfully questioned, the district court of any county on application of the licensing agency may issue an order requiring such person to comply with the subpoena and to testify, and any failure to obey the order of the court may be punished by the court as a contempt thereof. On the basis of any such hearing or upon default of the applicant or licensee, the hearing officer shall make ~~a determination specifying~~ findings of fact and, where indicated, conclusions of law. *A copy of the report of the hearing officer shall be forwarded to the secretary of health and environment and sent by certified mail, return receipt requested, or served personally upon the applicant or licensee. On the basis of such hearing or upon default of the applicant or licensee, and after consideration of the report of the hearing officer, the secretary of health and environment shall make a final determination specifying findings of fact and, where indicated, conclusions of law.*

A copy of such determination shall be sent by certified mail, return receipt requested, or served personally upon the applicant or licensee. Pending the appeal a license previously issued shall remain in force. In case the decision at the hearing sustains the decision of the licensing agency in denying, suspending or revoking the license, the applicant or licensee shall be given 15 days after the decision is mailed or served to comply with the decision made at the appeal hearing. Nothing herein shall be construed to prevent the licensing agency from commencing immediately an action for injunction or other process to restrain or prevent the operation of any licensed home which the licensing agency, upon investigation, finds to be operated or maintained in such a manner as to constitute a clear and immediate threat to the lives or health of its residents. Any such action shall be brought in the district court in the county in which the home is located and shall be filed by the county attorney or district attorney of such county or the attorney general. Any applicant or licensee aggrieved by the order of the licensing agency in denying, suspending or revoking a license may appeal therefrom by filing a petition specifying the action of the licensing agency appealed from in the district court of the county in which the applicant or licensee resides, within 15 days after receipt of a copy of the order of the licensing agency, and the court shall have jurisdiction to affirm, reverse, modify or vacate the order complained of if the court is of the opinion that the order was arbitrary, unlawful or unreasonable.

Within seven days after the petition has been filed in the district court, notice of the appeal shall be given to the licensing agency by mailing certified copies of the petition, by certified mail. Upon receipt of such notice, the licensing agency shall make available, for examination and inspection, to the applicant and the applicant's attorney all its records pertaining to such matter. From the judgment of the district court, appeal may be taken as in other civil actions. An appeal to the district court or an appellate court shall not operate to stay the effect of an order of the licensing agency, unless the judge or the court shall specifically allow such a stay.

Sec. 2. K.S.A. 1982 Supp. 65-504 is hereby amended to read as follows: 65-504. *(a)* The secretary of health and environment shall have the power to grant a license to a person, firm, corporation or association to maintain a maternity hospital or home, or a boarding home for children under 16 years of age. The license shall state the name of the licensee, describe the particular premises in or at which the business shall be carried on, whether it shall receive and care for women or children, and the number of women or children that may be treated, maintained, boarded or cared for at any one time. No greater number of women or children than is authorized in the license shall be kept ~~or disposed of~~ *in those premises and the business shall not be carried on* in a building or place not designated in the license. The license shall be kept posted in a conspicuous place in the hospital or house in which the business is conducted. No license shall be granted for a term exceeding one year. The secretary of health and environment shall grant no license in any case until careful inspection of the maternity hospital or home, or home for children shall have been made according to the terms of this act and until such maternity hospital or home, or home for children has complied with all the requirements of this act. No license shall be granted without the approval of the secretary of social and rehabilitation services.

(b) In all cases where the secretary of social and rehabilitation services deems it necessary, an investigation of the home shall be made under the supervision of the secretary of social and rehabilitation services or other designated qualified agents. For that purpose and for any subsequent investigations they shall have the right of entry and access to the premises of the home and to any information deemed necessary to the completion of the investigation. In all cases where an investigation is made, a report of the investigation of such home shall be filed with the secretary of health and environment. In cases where neither approval or disapproval can be given within a period of 30 days following formal request for such a study, the secretary of health and environment may issue a temporary license without fee pending final approval or disapproval of the home or facility.

(c) Whenever the secretary of health and environment refuses to grant a license to an applicant, the secretary shall issue an order to that effect stating the reasons for such denial and within five days after the issuance of such order shall notify the applicant by certified mail of such refusal by forwarding to such applicant a certified copy of the order. Unless appealed from as provided in this section, the order shall become final and effective 20 days after the date of its issuance.

(d) When the secretary of health and environment finds upon investigation or is advised by the secretary of social and rehabilitation services that any of the provisions of this act are being violated, or such maternity hospital or home, or home for children is maintained without due regard to the health, comfort or morality of the residents, the secretary of health and environment shall after reasonable notice issue an order revoking such license and such order shall clearly state the reason for such revocation. Such revocation shall be noted upon the face of the record and the secretary of health and environment shall give notice in writing of such revocation by forwarding a certified copy of the order to the licensee by registered or certified mail. Unless appealed from as provided in this section, the order shall

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become final and effective 20 days after the date of its issuance.

(e) Any applicant or licensee who is aggrieved by the order of the secretary of health and environment in denying or revoking a license may appeal within 20 days after its issuance by filing with the licensing agency a written notice of appeal which shall specify wherein the order is unreasonable, unjust or illegal. Upon receipt of such notice, the secretary shall fix a date for hearing which shall not be later than 30 days after the date of receipt of the notice of appeal. The secretary shall prescribe by rule and regulation the procedure for hearing all appeals and may designate a hearing officer to conduct the hearing. The hearing officer shall have the same powers in conducting the hearing as the secretary. In conducting the hearing the secretary or the hearing officer may issue subpoenas to compel the attendance of witnesses, administer oaths, take testimony, require the production of books, papers, records, correspondence or other documents which the secretary or the hearing officer deems relevant and render decisions. In case of the refusal of any person to comply with any subpoena issued under this section or to testify with respect to any matter which the person may be lawfully questioned, the district court of any county on application of the secretary may issue an order requiring such person to comply with the subpoena and to testify, and any failure to obey the order of the court may be punished by the court as a contempt thereof. After the hearing the secretary shall issue an order affirming, modifying or reversing the prior order and shall forward a certified copy of the order to the applicant or licensee by certified mail.

(f) Any applicant or licensee aggrieved by ~~the~~ *a final* order of the secretary of health and environment *under subsection (e)* in denying or revoking a license may appeal therefrom by filing a petition specifying the action of the secretary of health and environment appealed from, in the district court of the county in which the applicant or licensee resides, within 30 days after receipt of a copy of the *final* order of the secretary of health and environment *under subsection (e)*. The court shall have the jurisdiction to affirm, reverse, modify or vacate the order complained of if the court is of the opinion that the order was arbitrary, unlawful or unreasonable. Within seven days after the petition has been filed in the district court, notice of the appeal shall be given to the secretary of health and environment and to the secretary of social and rehabilitation services by mailing certified copies of the petition, by certified mail, to the secretary of health and environment and to the secretary of social and rehabilitation services. Upon receipt of such notice, the secretary of health and environment and the secretary of social and rehabilitation services shall forthwith make available for examination and inspection to the applicant and the attorney of the applicant all their records pertaining to such matter.

(g) From the judgment of the district court, appeal may be taken to the court of appeals as in other civil actions. An appeal to the district court or to the court of appeals shall not operate to stay the effect of an order of the secretary of health and environment unless the judge or the court shall specifically allow such a stay.

Sec. 3. K.S.A. 1982 Supp. 39-931 and 65-504 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body March 8, 1983.

ROSS O. DOYEN
President of the Senate.
LU KENNEY
Secretary of the Senate.

Passed the HOUSE March 29, 1983.

MIKE HAYDEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

APPROVED April 8, 1983.

JOHN CARLIN
Governor.

STATE OF KANSAS
Office of Secretary of State

I, JACK H. BRIER, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 11th day of April, 1983.

JACK H. BRIER
Secretary of State.

(SEAL)

(Published in the *KANSAS REGISTER* April 14, 1983.)

HOUSE BILL No. 2464

AN ACT concerning fish and game; relating to hunting licenses; amending K.S.A. 32-401 and K.S.A. 1982 Supp. 32-405 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 32-401 is hereby amended to read as follows: 32-401. It shall be unlawful for any person born on or after July 1, 1957, to procure a hunting license or to hunt in this state on land other than such person's own land, unless the person ~~shall have first~~ *has* been issued~~, and exhibits to the issuing agent at the time of purchasing a hunting license, or, in the case of any such person not required by law to obtain a hunting license, unless such person shall be in possession of, while hunting,~~ a certificate of competency and safety in the handling of firearms. *Persons not required by law to obtain a hunting license shall be in possession of such certificate while hunting unless such person is 18 years of age or older.* Any person who violates any provision of this section shall be ~~punishable~~ *punished* as provided in K.S.A. 32-136, ~~as amended~~ *and amendments thereto.*

Sec. 2. K.S.A. 1982 Supp. 32-405 is hereby amended to read as follows; 32-405. The Kansas fish and game commission shall issue a certificate of competency and safety in the handling of firearms to any resident of this state submitting evidence of successful completion of a course of instruction in safety and competency in the handling of firearms approved by the Kansas fish and game commission prior to July 1, 1973, and other information the commission may request on application forms approved by the commission. *The commission, upon request and payment of a fee established by rule and regulation, may issue a laminated certificate.*

Sec. 3. K.S.A. 32-401 and K.S.A. 1982 Supp. 32-405 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body March 8, 1983.

HOUSE concurred in SENATE amendments March 29, 1983.

MIKE HAYDEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

Passed the SENATE as amended March 24, 1983.

ROSS O. DOYEN
President of the Senate.
LU KENNEY
Secretary of the Senate.

APPROVED April 7, 1983.

JOHN CARLIN
Governor.

STATE OF KANSAS
Office of Secretary of State

I, JACK H. BRIER, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 8th day of April, 1983.

JACK H. BRIER
Secretary of State.

(SEAL)

(Published in the *KANSAS REGISTER* April 14, 1983.)

HOUSE BILL No. 2216

AN ACT relating to city retailers' sales taxes; concerning the effective date for such taxes within areas annexed by cities levying such taxes; amending K.S.A. 12-191 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 12-191 is hereby amended to read as follows: 12-191. All retail transactions consummated within a county or city having a retail sales tax, which transactions are subject to the Kansas retailers' sales tax, shall also be subject to such county or city retail sales tax, except as otherwise expressly provided in K.S.A. 12-190, *and amendments thereto.* All retail sales, for the purpose of this act, shall be considered to have been consummated at the place of business of the retailer. In the event the place of business of a retailer is doubtful the place or places at which the retail sales are consummated for the purposes of this act shall be determined under rules and regulations adopted by the secretary of revenue which rules and regulations shall be considered with state and federal law insofar as applicable. Retail sales involving the use, consumption, or furnishing of gas, water, electricity and heat, for the purposes of this act, 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 therefor. The director of taxation is hereby authorized to request and receive from any retailer or from any city or county levying the tax such information as may be reasonably necessary to determine the liability of retailers for any county or city sales tax. In all cases the collection of any county sales tax or sales tax levied by a class B city shall commence on the first day of the month, except in no case shall collection thereof begin prior to the first day of the month next following the ~~sixtieth~~ *60th* day after the date of the election authorizing the levy of such tax.

A city retailers' sales tax shall not become effective within any area annexed by a city levying such tax until the first day of the month following the 30th day after the date that the governing body of such city provided the state department of revenue with a certified copy of the annexation ordinance and a map of the city detailing the annexed area.

Whenever any sales tax, imposed by any class B city or county under the provisions of this act, shall become effective, at any time prior to the time that revenue derived therefrom may be budgeted for expenditure in such year, such revenue shall be credited to the funds of the taxing subdivision or subdivisions and shall be carried forward to the credit of such funds for the ensuing budget year in the manner provided for carrying forward balances remaining in such funds at the end of a budget year.

Sec. 2. K.S.A. 12-191 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body February 18, 1983.

MIKE HAYDEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

Passed the SENATE March 29, 1983.

ROSS O. DOYEN
President of the Senate.
LU KENNEY
Secretary of the Senate.

APPROVED April 11, 1983.

JOHN CARLIN
Governor.

STATE OF KANSAS

Office of Secretary of State

I, JACK H. BRIER, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 11th day of April, 1983.

JACK H. BRIER
Secretary of State.

(SEAL)

(Published in the *KANSAS REGISTER* April 14, 1983.)

SENATE BILL No. 345

AN ACT authorizing the state board of regents to sell and convey, for and on behalf of Wichita state university, all rights, title and interest in certain property located in Sedgwick county, Kansas.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) The state board of regents is hereby authorized and empowered, for and on behalf of Wichita state university, formerly the university of Wichita, to sell and convey all rights, title and interest in (1) a parcel of land described as the east 140 feet (E 140') of lot 55 on Chautauqua avenue, Hillside Gardens located in Wichita, Sedgwick county, Kansas, (C 24642); and (2) a parcel of land described as lots 22, 24, 26, 28 and 30 on Vassar avenue, in Fairmount, an addition to Wichita, Kansas, (C 4688-1&1A).

(b) The conveyances authorized in subsection (a) shall be made by warranty deed or quitclaim deed, whichever is appropriate, and shall be executed in the name of the state board of regents by its chairperson and executive officer. When the sales are made, the proceeds thereof shall be deposited in the state treasury and the state treasurer shall credit the amounts thereof to the Wichita state university dormitory revenue funds in accordance with directions of the state board of regents, except that 1/2 of the proceeds from the sale of the Chautauqua avenue parcel shall be credited to the state general fund.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body March 8, 1983.

SENATE concurred in HOUSE amendments March 29, 1983.

ROSS O. DOYEN
President of the Senate.
LU KENNEY
Secretary of the Senate.

Passed the HOUSE as amended March 28, 1983.

MIKE HAYDEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

APPROVED April 8, 1983.

JOHN CARLIN
Governor.

STATE OF KANSAS

Office of Secretary of State

I, JACK H. BRIER, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 11th day of April, 1983.

JACK H. BRIER
Secretary of State.

(SEAL)

(Published in the *KANSAS REGISTER* April 14, 1983.)

HOUSE BILL No. 2208

AN ACT relating to oil and gas leases; concerning covenants of reasonable exploration and development of lands covered by such leases; prescribing certain circumstances under which a presumption of a breach and violation of such covenants will arise.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As a matter of Kansas public policy, all oil and gas leases and subleases for the exploration, development and production of oil, gas or other minerals, or any combination thereof, which are held by production shall be presumed to contain, in addition to any expressed covenants therein, an implied covenant to reasonably explore and to develop the minerals which are the subject of such lease. Such implied covenant shall be a burden upon the lessee and any successor in interest.

Sec. 2. In any action in which relief is sought based upon breach or violation by a lessee of an implied or expressed covenant of reasonable exploration or of reasonable development of lands covered by an oil, gas or oil and gas lease held by production, if the party who seeks such relief produces competent evidence that: (a) At the time such action is commenced there is no mineral production pursuant to such lease from a subsurface part or parts of the land covered thereby with respect to which such relief is sought and (b) initial oil, gas or other mineral production on the lease commenced at least 15 years prior to the commencement of such action, a presumption shall arise that the lessee has breached and violated such covenant insofar as it relates to such subsurface part or parts of land.

Sec. 3. The presumption established by section 1 may be overcome by the lessee proving by a preponderance of all relevant evidence that the lessee has fully complied with such covenant.

Sec. 4. If the court determines that the lessee has failed to comply with such covenant, the court may grant the lessee a reasonable time in which to comply, or the court may issue an order terminating the lessee's right to such subsurface part or parts as are the subject of such action. The court may enter such other orders as the interests of the parties and equity may require.

Sec. 5. Nothing in this act shall apply to the depth interval from the surface of the land to the base of the deepest producing formation as of the date of such action.

Sec. 6. As created by this act, it shall be against Kansas public policy to provide for a waiver of the presumption, established by section 1, in any lease or sublease for the exploration, development or production of oil, gas or other mineral, or any combination thereof.

Sec. 7. This act shall not alter or affect substantive rights or remedies under any such mineral leases under the common law or statutes of the state of Kansas. The evidentiary presumption afforded by this act shall be cumulative and in addition to all other substantive rights and remedies in existence under the common law and statutes of this state on the effective date of this act.

Sec. 8. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body March 7, 1983.

HOUSE concurred in SENATE amendments March 31, 1983.
MIKE HAYDEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

Passed the SENATE as amended March 29, 1983.
ROSS O. DOYEN
President of the Senate.
LU KENNEY
Secretary of the Senate.

APPROVED April 8, 1983.
JOHN CARLIN
Governor.

STATE OF KANSAS
Office of Secretary of State

I, JACK H. BRIER, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 11th day of April, 1983.

(SEAL)
JACK H. BRIER
Secretary of State.

(Published in the *KANSAS REGISTER* April 14, 1983.)

HOUSE BILL No. 2455

AN ACT concerning the state board of embalming; providing for examination of a funeral director from another state; amending K.S.A. 1982 Supp. 65-1721 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1982 Supp. 65-1721 is hereby amended to read as follows: 65-1721. (a) The board may, in its discretion, upon payment of the fees herein provided for, issue licenses to funeral directors residing in other states who are funeral directors in good standing in their own states, and whose methods of transacting business do not, in the opinion of the board, violate any of the laws of Kansas or the rules and regulations of the board.

(b) If a funeral director from another state desires to locate and engage in that business in this state, the funeral director shall not be required to serve one year as a licensed assistant funeral director in this state if the funeral director is favorably recommended in writing by the license board of the state of the funeral director's previous residence, and if the funeral director has had at least one full year of actual experience as a funeral director in that state, and if the state of the funeral director's previous residence has educational requirements for funeral directors at least equal to those in Kansas. Such person shall pay the same fees as required of other applicants in this state.

(c) The board may administer a written or oral examination to a funeral director from another state on the statutes, rules and regulations that govern funeral directing in this state.

Sec. 2. K.S.A. 1982 Supp. 65-1721 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body March 7, 1983.
MIKE HAYDEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

Passed the SENATE March 24, 1983.
ROSS O. DOYEN
President of the Senate.
LU KENNEY
Secretary of the Senate.

APPROVED April 6, 1983.
JOHN CARLIN
Governor.

STATE OF KANSAS
Office of Secretary of State

I, JACK H. BRIER, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 8th day of April, 1983.

(SEAL)
JACK H. BRIER
Secretary of State.

(Published in the *KANSAS REGISTER* April 14, 1983.)

HOUSE BILL No. 2484

AN ACT relating to fire departments in certain townships; amending K.S.A. 1982 Supp. 80-1919 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1982 Supp. 80-1919 is hereby amended to read as follows: 80-1919. *(a)* The provisions of this act shall apply only to townships which are located in Barton, Crawford, Douglas, Geary, Leavenworth, Lyon, Montgomery, Reno, Riley and Saline counties, but, *except as otherwise provided by subsection (b),* the provisions of this act shall not apply to any such township unless and until a petition is presented to the township board, signed by not less than 51% of the qualified electors of the township as determined by the vote for secretary of state at the last preceding election. As used in this act, the phrase "township board" means the township trustee, township clerk, and the township treasurer acting as a board.

(b) The township board of any township located in any such county which has been levying a tax for the support of a township fire department for a period of not less than 15 years is hereby authorized to adopt a resolution designating such fire department as the regularly organized fire department of the township without the presentation of a petition. Such fire department shall be operated under the control of the township board in the manner prescribed by K.S.A. 80-1921, and amendments thereto, and the township board is hereby authorized to provide for the organization, operation, equipping and maintenance of such department pursuant to K.S.A. 80-1920 and 80-1921, and amendments thereto, and to levy taxes for such purposes as therein authorized.

Sec. 2. K.S.A. 1982 Supp. 80-1919 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body March 8, 1983.

MIKE HAYDEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

Passed the SENATE March 30, 1983.

ROSS O. DOYEN
President of the Senate.
LU KENNEY
Secretary of the Senate.

APPROVED April 11, 1983.

JOHN CARLIN
Governor.

STATE OF KANSAS
Office of Secretary of State

I, JACK H. BRIER, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 11th day of April, 1983.

JACK H. BRIER
Secretary of State.

(SEAL)

(Published in the *KANSAS REGISTER* April 14, 1983.)

HOUSE BILL No. 2217

AN ACT relating to the payment of certain tax refunds; concerning the establishment and maintenance of refund funds for such purposes; amending K.S.A. 1982 Supp. 79-1112, 79-1579 and 79-41a03 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1982 Supp. 79-1112 is hereby amended to read as follows: 79-1112. (a) The director of taxation shall pay all tax moneys collected under the provisions of this act into the state treasury on or before the first day of each month, less amounts set apart in the privilege tax refund fund in the manner provided in subsection (b) ~~of this section~~, and the state treasurer shall credit the same to the general fund of the state.

(b) A ~~revolving~~ fund designated as the privilege tax refund fund shall be set apart and maintained by the director from the tax moneys collected under the provisions of this act and held by the state treasurer for prompt payment of all "privilege tax" refunds. ~~Said~~ *Such* fund shall be in such amount as the director shall determine is necessary to meet current refunding requirements under this act. *In the event such fund is at any time insufficient to provide for the payment of refunds due claimants thereof, the director shall certify the amount of additional funds required to the director of accounts and reports, who shall promptly transfer the required amount from the state general fund to the privilege tax refund fund and notify the state treasurer, who shall make proper entry in the records.*

(c) If the director discovers from the examination of the return, or upon claim duly filed by the taxpayer or upon final judgment of the court that the tax imposed by this act, or any penalty or interest paid by or credited to any taxpayer is in excess of the amount legally due, the director, shall certify to the director of accounts and reports the name of the taxpayer, the amount of refund and such other information as ~~he or she~~ *the director* may require. Upon receipt of such certification, the director of accounts and reports shall issue ~~his or her~~ *a* warrant on the state treasurer for the payment to the taxpayer out of the fund provided in subsection (b) ~~of this section~~, except that no refund shall be made for a sum less than ~~one dollar ($1)~~ *$1*.

Sec. 2. K.S.A. 1982 Supp. 79-1579 is hereby amended to read as follows: 79-1579. A refund clearing fund, designated "inheritance tax abatement refund," not to exceed ~~fifteen thousand dollars ($15,000)~~ *$50,000* shall be set apart and maintained by the director of taxation from inheritance tax collections and held by the state treasurer for the prompt payment of all abatements and refunds. If the director of taxation finds that a claim for refund duly filed by an executor, administrator or deemed executor pursuant to K.S.A. 1982 Supp. 79-1564(d)(4), 79-1574(d) or 79-1575, *and amendments thereto*, should be allowed, or if a court upon a final judgment shall find, that the inheritance tax or interest paid by any executor, administrator or deemed executor is in excess of the amount legally due, then the director of taxation shall issue ~~said~~ *the* director's vouchers to the director of accounts and reports for the refund to the executor, administrator or deemed executor of such tax or interest together with interest provided for hereinafter. Upon receipt of such voucher properly executed and endorsed, the director of accounts and reports shall issue ~~said~~ *the* director's warrants to the state treasurer for the payment to the executor, administrator or deemed executor out of the inheritance tax abatement refund fund. The director of taxation shall ~~keep in said director's files~~ *file* a duplicate of ~~said~~ *such* voucher and also a statement which shall set forth the reasons why such abatement or refund was allowed. Upon the allowance of an abatement or refund of any tax or interest paid, interest shall be allowed and paid on the amount of such abatement or refund at the rate of ~~twelve percent (12%)~~ *12%* per annum from the date such tax or interest was paid to the date the refund or abatement of inheritance taxes is made. No refunds in an amount of less than ~~one dollar ($1)~~ *$1* shall be made.

Sec. 3. K.S.A. 1982 Supp. 79-41a03 is hereby amended to read as follows: 79-41a03. (a) The tax levied and collected pur-

(continued)

suant to K.S.A. 1982 Supp. 79-41a02 shall become due and payable by the club monthly, or on or before the last day of the month immediately succeeding the month in which it is collected, but any club filing an annual or quarterly return under the Kansas retailers' sales tax act, as prescribed in K.S.A. ~~1982 Supp.~~ 79-3607 and amendments thereto, shall, upon such conditions as the secretary of revenue may prescribe, pay the tax required by this act on the same basis and at the same time the club pays such ~~retailer's~~ *retailers'* sales tax. Each club shall make a true report to the department of revenue, on a form prescribed by the secretary of revenue, providing such information as may be necessary to determine the amounts to which any such tax shall apply for all gross receipts derived from the sale of alcoholic liquor by the club for the applicable month or months, which report shall be accompanied by the tax disclosed thereby. Records of gross receipts derived from the sale of alcoholic liquor shall be kept separate and apart from the records of other retail sales made by a club in order to facilitate the examination of books and records as provided herein.

(b) The secretary of revenue or the secretary's authorized representative shall have the right at all reasonable times during business hours to make such examination and inspection of the books and records of a club as may be necessary to determine the accuracy of such reports required hereunder.

(c) For each month, or any part thereof, that any tax provided for by this act remains unpaid after the same becomes due and payable by the club, there shall be added to such tax, as a penalty, (1) ten percent of the amount of such tax for the first month or any part thereof that the same is unpaid, and (2) two percent of the amount of such tax for each month thereafter that the tax remains unpaid. In no case shall the total penalty exceed 30% of the unpaid tax.

(d) The secretary of revenue is hereby authorized to administer and collect the tax imposed hereunder and to adopt such rules and regulations as may be necessary for the efficient and effective administration and enforcement of the collection thereof. Whenever any club liable to pay the tax imposed hereunder refuses or neglects to pay the same, the amount, including any penalty, shall be collected in the manner prescribed for the collection of the retailers' sales tax by K.S.A. 79-3617 and amendments thereto.

(e) The secretary of revenue shall remit daily to the state treasurer all revenue collected under the provisions of this act. The state treasurer shall deposit the entire amount of each remittance in the state treasury ~~and shall credit~~. *Subject to the maintenance requirements of the local alcoholic liquor refund fund created under section 4,* 25% of the remittance *shall be credited* to the state general fund and the balance *shall be credited* to the local alcoholic liquor fund created by K.S.A. 1982 Supp. 79-41a04 and amendments thereto.

(f) Whenever, in the judgment of the secretary of revenue, it is necessary, in order to secure the collection of any tax, penalties or interest due, or to become due, under the provisions of this act, the secretary may require any person subject to such tax to file a bond with the director of taxation under conditions established by and in such form and amount as prescribed by rules and regulations adopted by the secretary.

New Sec 4. There is hereby established in the state treasury the local alcoholic liquor refund fund. The local alcoholic liquor refund fund shall be held by the state treasurer for prompt refunding of all overpayments of the tax levied and collected pursuant to article 41a of chapter 79 of the Kansas Statutes Annotated. The local alcoholic liquor refund fund shall be maintained in an amount determined by the secretary of revenue as necessary to meet current refunding requirements, but such amount shall not exceed $10,000.

Sec. 5. K.S.A. 1982 Supp. 79-1112, 79-1579 and 79-41a03 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body February 24, 1983.

MIKE HAYDEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

Passed the SENATE March 29, 1983.

ROSS O. DOYEN
President of the Senate.
LU KENNEY
Secretary of the Senate.

APPROVED April 11, 1983.

JOHN CARLIN
Governor.

STATE OF KANSAS

Office of Secretary of State

I, JACK H. BRIER, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 11th day of April, 1983.

(SEAL)

JACK H. BRIER
Secretary of State.

(Published in the *KANSAS REGISTER* April 14, 1983.)

HOUSE BILL No. 2036

AN ACT concerning taxation of property; relating to statements of assessment of oil and gas properties; providing penalties for late filing thereof.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) Any person, corporation or association owning oil and gas leases or engaged in operating for oil or gas who fails to make and file a statement of assessment on or before April 1 shall be subject to a penalty as follows:

(1) If the statement of assessment is filed within 15 days following April 1, the appraiser shall, after having ascertained the assessed value of the property of such taxpayer, add 10% thereto as a penalty for late filing.

(2) If the statement of assessment is filed more than 15 days but not more than 30 days following April 1, the appraiser shall, after having ascertained the assessed value of the property of such taxpayer, add 20% thereto as a penalty for late filing.

(3) If the statement of assessment is filed more than 30 days but not more than 45 days following April 1, the appraiser shall, after having ascertained the assessed value of the property of such taxpayer, add 30% thereto as a penalty for late filing.

(4) If the statement of assessment is filed more than 45 days but not more than 60 days following April 1, the appraiser shall, after having ascertained the assessed value of the property of such taxpayer, add 40% thereto as a penalty for late filing.

(5) If the statement of assessment is filed more than 60 days following April 1, the appraiser shall, after having ascertained the assessed value of the property of such taxpayer, add 50% thereto as a penalty for late filing.

(b) For good cause shown the county appraiser may extend the time in which to make and file such statement. Such request for extension of time shall be in writing and shall be received by the county appraiser prior to the due date of the statement of assessment.

(c) Whenever any person, corporation or association owning oil and gas leases or engaged in operating for oil or gas shall fail to make and deliver to the county appraiser of every county wherein the property to be assessed is located, a full and complete statement of assessment relative to such property as required by blank forms prepared or approved for the purpose by the director of property valuation to elicit the information necessary to fix the valuation of the property, the appraiser shall ascertain the assessed value of the property of such taxpayer, and shall add 50% thereto as a penalty for failing to file such statement.

(d) The board of tax appeals shall have the authority to abate

(continued)

any penalty imposed under the provisions of this section and order the refund of the abated penalty, whenever excusable neglect on the part of the person, corporation or association required to make and file the statement of assessment is shown.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body February 2, 1983.

MIKE HAYDEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House

Passed the SENATE March 24, 1983.

ROSS O. DOYEN
President of the Senate.
LU KENNEY
Secretary of the Senate.

APPROVED April 8, 1983.

JOHN CARLIN
Governor.

STATE OF KANSAS

Office of Secretary of State

I, JACK H. BRIER, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 11th day of April, 1983.

(SEAL)

JACK H. BRIER
Secretary of State.

(Published in the *KANSAS REGISTER* April 14, 1983.)

SENATE BILL No. 320

AN ACT concerning the pharmacy act of the state of Kansas; relating to pharmacy interns; concerning the dispensing and administering of drugs by certain persons; amending K.S.A. 1982 Supp. 65-1635 and 65-1643 and repealing the existing sections; and also repealing K.S.A. 1982 Supp. 65-1643a.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1982 Supp. 65-1635 is hereby amended to read as follows: 65-1635. (a) Nothing contained in the pharmacy act of the state of Kansas shall prohibit any duly licensed practitioner from purchasing and keeping drugs, from compounding prescriptions or from administering, supplying or dispensing to such practitioner's patients such drugs as may be fit, proper and necessary. Except as provided in subsection (b) or (c), such drugs shall be dispensed by such practitioner and shall comply with the Kansas food, drug and cosmetic act and be subject to inspection as provided by law.

(b) Nothing contained in the pharmacy act of the state of Kansas shall be construed to prohibit any nurse or other person, acting under the direction of a duly licensed practitioner, from administering drugs to a patient.

(c) Nothing contained in the pharmacy act of the state of Kansas shall be construed to prohibit any registered nurse, acting under the ~~direction~~ *supervision* of a ~~person~~ *person who is* licensed to practice medicine and surgery *as of July 1, 1982,* from dispensing drugs to ~~a patient of the person licensed to practice medicine and surgery~~ *patients of such person* so long as the principal office of ~~the person licensed to practice medicine and surgery~~ *such person* is, *and as of July 1, 1982, was,* located ~~within the boundaries of a city which does not have located within its boundaries a~~ *in a city not having a* registered pharmacy *within its boundaries.* ~~The provisions of this subsection (c) shall expire on July 1, 1983.~~ *For the purposes of this subsection (c), "supervision" means guidance and direction of the dispensing of drugs by the person licensed to practice medicine and surgery who shall be physically present in the general location at which the drugs are being dispensed.*

Sec. 2. K.S.A. 1982 Supp. 65-1643 is hereby amended to read as follows: 65-1643. On and after the effective date of this act, it shall be unlawful:

(a) For any person to operate, maintain, open or establish any pharmacy within this state without first having obtained a registration from the board. Each application for registration of a pharmacy shall indicate the person or persons desiring the registration, including the pharmacist in charge, as well as the location, including the street name and number, and such other information as may be required by the board to establish the identity and exact location of the pharmacy. The issuance of a registration for any pharmacy shall also have the effect of permitting such pharmacy to operate as a retail dealer without requiring such pharmacy to obtain a retail dealer's permit. On evidence satisfactory to the board: (1) That the pharmacy for which the registration is sought will be conducted in full compliance with the law and the rules and regulations of the board; (2) that the location and appointments of the pharmacy are such that it can be operated and maintained without endangering the public health or safety; (3) that the pharmacy will be under the supervision of a registered pharmacist, a registration shall be issued to such persons as the board shall deem qualified to conduct such a pharmacy.

(b) For any person to manufacture within this state any drugs except under the personal and immediate supervision of a registered pharmacist or such other person or persons as may be approved by the board after an investigation and a determination by the board that such person or persons is qualified by scientific or technical training or experience to perform such duties of supervision as may be necessary to protect the public health and safety; and no person shall manufacture any such drugs without first obtaining a registration so to do from the board. Such registration shall be subject to such rules and regulations with respect to requirements, sanitation and equipment, as the board may from time to time adopt for the protection of public health and safety.

(c) For any person to distribute at wholesale any drugs without first obtaining a registration so to do from the board.

(d) For any person to sell or offer for sale at public auction or private sale in a place where public auctions are conducted, any drugs without first having obtained a registration from the board so to do, and it shall be necessary to obtain the permission of the board in every instance where any of the products covered by this section are to be sold or offered for sale.

(e) For any person to in any manner distribute or dispense samples of any drugs without first having obtained a permit from the board so to do, and it shall be necessary to obtain permission from the board in every instance where the samples are to be distributed or dispensed. Nothing in this subsection shall be held to regulate or in any manner interfere with the furnishing of samples of drugs to duly licensed practitioners, to pharmacists or to medical care facilities.

(f) Except as otherwise provided in this subsection(f), for any person operating a store or place of business to sell, offer for sale or distribute any drugs to the public without first having obtained a registration or permit from the board authorizing such person so to do. No retail dealer who sells 12 or fewer different nonprescription drug products shall be required to obtain a retail dealer's permit under the pharmacy act of the state of Kansas or to pay a retail dealer new permit or permit renewal fee under such act. It shall be lawful for a retail dealer who is the holder of a valid retail dealer's permit issued by the board or for a retail dealer who sells 12 or fewer different nonprescription drug products to sell and distribute nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include: (1) A controlled substance; (2) a drug product the label of which is required to bear substantially the statement: "Caution: Federal law prohibits dispensing without prescription"; or (3) a drug product intended for human use by hypodermic injection; but such a retail dealer shall not be authorized to display any of the

(continued)

words listed in subsection (s) of K.S.A. 65-1626 and amendments thereto, for the designation of a pharmacy or drugstore.

(g) For any person to sell any drugs manufactured and sold only in the state of Kansas, unless the label and directions on such drugs shall first have been approved by the board.

(h) For any person to operate an institutional drug room without first having obtained a registration to do so from the board. Such registration shall be subject to the provisions of K.S.A. 65-1637a *and amendments thereto* and any rules and regulations adopted pursuant thereto.

(i) For any person to be a pharmacy intern without first obtaining a registration to do so from the board, in accordance with rules and regulations adopted by the board, and paying a pharmacy intern registration fee of $25 to the board.

Sec. 3. K.S.A. 1982 Supp. 65-1635, 65-1643 and 65-1643a are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body March 9, 1983.

ROSS O. DOYEN
President of the Senate.
LU KENNEY
Secretary of the Senate.

Passed the HOUSE March 29, 1983.

MIKE HAYDEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

APPROVED April 8, 1983.

JOHN CARLIN
Governor.

STATE OF KANSAS

Office of Secretary of State

I, JACK H. BRIER, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 11th day of April, 1983.

(SEAL)

JACK H. BRIER
Secretary of State.

(Published in the *KANSAS REGISTER* April 14, 1983.)

HOUSE BILL No. 2010

AN ACT concerning sewer districts; relating to the assessment of the cost of construction of improvements.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) The governing body of any sewer district may provide, by resolution, for the delay of the assessment of the actual cost incurred in the construction of improvements except for the cost of interest on temporary notes issued therefor. The delay may not exceed a period of 10 years. The resolution shall state the period for which the delay is granted and a certified copy of the resolution shall be filed with the register of deeds. No fee shall be charged for the filing and the register shall record and index the resolution.

(b) During the period of delay, the governing body annually shall levy a special assessment against the tangible taxable property within the district in an amount sufficient to pay the cost of the interest on the temporary notes. The cost of the interest may be assessed equally per square foot against all tracts of land within the district or against the assessed value of the property with or without regard to the buildings or improvements thereon or in any other reasonable manner.

After the governing body determines the cost of the interest and the assessment to be made against each tract of land within the district, it shall prepare an assessment roll. The proposed assessment roll shall be filed with the county clerk and be open for public inspection. The governing body shall publish a notice that it will meet to consider the proposed assessments. The notice shall be published once each week for two consecutive weeks in the official county newspaper. The second notice shall be published at least 10 days prior to the meeting and shall state the date, time and place of the meeting, the cost of the interest, the proposed method of assessment and that written or oral objections will be considered at the hearing. A copy of the notice also shall be mailed by prepaid first class mail at least 10 days prior to the hearing to all landowners made liable to pay the assessments. The failure of any landowner to receive the notice shall not invalidate the proceedings. At the meeting or at any adjournment thereof, the governing body shall hear all objections to each proposed assessment and may amend the proposed assessments as to any tract of land. The governing body shall levy the special assessments against the property described in the assessment roll by the adoption and publication of the appropriate resolution. The assessment shall become a lien on the property against which the assessment is made from the effective date of the resolution. Each year thereafter, the governing body shall determine and apportion the cost of the interest on the basis it determines and shall levy a special assessment therefor. Notice of the assessment shall be published once each week for two consecutive weeks in the official county newspaper.

(c) At the expiration of the period of delay, the governing body of the district shall determine the total amount of the cost of construction of the improvement remaining unpaid and shall assess the cost against the tangible taxable property in the district. The cost may be assessed equally per square foot against all tracts of land within the district or against the assessed value of the property with or without regard to the buildings or improvements thereon or in any other reasonable manner which will result in imposing substantially equal burdens or shares of cost upon property similarly benefited. The governing body shall not be required to assess the cost on the same basis used to assess the cost of interest under subsection (b).

After the governing body determines the amount of the cost of the improvement remaining unpaid and the assessment to be made against each tract of land within the district, it shall prepare an assessment roll. The proposed assessment roll shall be filed with the county clerk and be open for public inspection. The governing body shall call and hold a meeting to consider the proposed assessments. Notice of the meeting shall be given in the same manner provided in subsection (b). At the meeting or at

(continued)

any adjournment thereof, the governing body shall hear all objections to each assessment and may amend the proposed assessments as to any tract of land. The governing body shall levy the special assessments against the property described in the assessment roll by the adoption and publication of the appropriate resolution. The special assessment shall become a lien on the property against which the assessment is made from the effective date of the resolution. The resolution shall be published once each week for two consecutive weeks in the official county newspaper and shall include a notice stating that at any time within 30 days after the final publication of the resolution, the assessments may be paid in full without interest. A copy of the resolution and the notice also shall be mailed by prepaid first class mail to all landowners made liable to pay the assessments at least 10 days prior to the date when the assessments may last be paid in full without interest. The failure of any landowner to receive the notice shall not invalidate the apportionment of the cost. If the assessment is paid in full within the period as to any tract of land, the tract shall be relieved from any further liability for special assessments therefor. If within the period an error in the making of the apportionment is discovered by the governing body, the tract shall be relieved from further liability for the special assessments to the extent of payment made. The governing body shall correct the error and in its discretion may reapportion the cost following the same procedure for apportionment as in the first instance.

After the date on which no more assessments may be paid, the governing body may issue general obligation bonds for the unpaid amount of the assessments. The bonds shall be authorized, issued, registered and sold in the manner provided by the general bond law and shall bear interest at a rate not to exceed the maximum rate prescribed by K.S.A. 10-1009.

(d) No suit to set aside the assessments or otherwise question the validity of the proceedings under this section shall be brought after the expiration of 30 days from the publication of the resolution fixing the assessments.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body March 7, 1983.

MIKE HAYDEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

Passed the SENATE March 30, 1983.

ROSS O. DOYEN
President of the Senate.
LU KENNEY
Secretary of the Senate.

APPROVED April 11, 1983.

JOHN CARLIN
Governor.

STATE OF KANSAS

Office of Secretary of State

I, JACK H. BRIER, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 11th day of April, 1983.

JACK H. BRIER
Secretary of State.

(SEAL)

(Published in the *KANSAS REGISTER* April 14, 1983.)

SENATE BILL No. 359

AN ACT repealing K.S.A. 8-1201 to 8-1211, inclusive; concerning motor vehicles; vehicle equipment safety; rules and regulations.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 8-1201 to 8-1211, inclusive, are hereby repealed.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body March 8, 1983.

ROSS O. DOYEN
President of the Senate.
LU KENNEY
Secretary of the Senate.

Passed the HOUSE March 28, 1983.

MIKE HAYDEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

APPROVED April 6, 1983.

JOHN CARLIN
Governor.

STATE OF KANSAS

Office of Secretary of State

I, JACK H. BRIER, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 8th day of April, 1983.

JACK H. BRIER
Secretary of State.

(SEAL)

KANSAS REGISTER
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