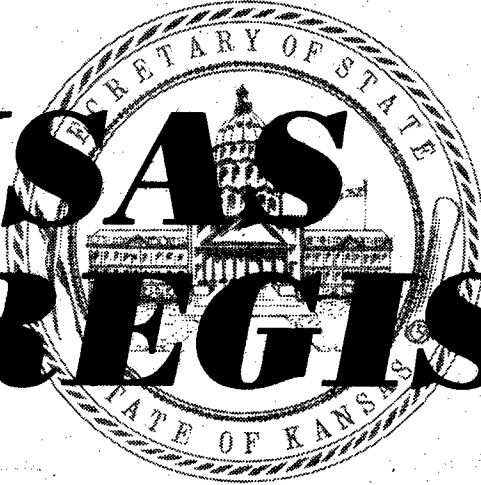


KANSAS REGISTER



State of Kansas

**BILL GRAVES
Secretary of State**

Vol. 9, No. 52

December 27, 1990

Pages 1863-1904

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State of Kansas

Secretary of State

Executive Appointments

Executive appointments made by the Governor, and in some cases by other state officials, are filed with the Secretary of State's office.

Complete listings of state agencies, boards and commissions are included in the *Kansas Directory*. County officers are listed in the *Directory of County Officers*. Both directories are published by the Secretary of State's office.

The following appointments were filed December 1-21:

**District Judge, 8th Judicial District,
Division 1**

James C. Johnson, 307 Summit Drive, Abilene 67410. Effective January 14, 1991. Term expires when a successor is elected and qualifies according to law. Succeeds John Christner.

**District Judge, 10th Judicial District,
Division 4**

Gerald T. "Terry" Elliott, 12821 W. 101st, Lenexa 66215. Term expires when a successor is elected and qualifies according to law. Succeeds William G. Gray, resigned.

**District Judge, 18th Judicial District,
Division 20**

Clark V. Owens II, 940 N. Main, Wichita 67203. Term expires when a successor is elected and qualifies according to law. Succeeds Robert Helsel, resigned.

Atchison County Sheriff

Dennis G. Parker, 912 S. 7th, Atchison 66002. Term expires when a successor is elected and qualifies according to law. Succeeds Mark D. Long.

Rice County Attorney

Dwight D. Radke, Rice County Courthouse, Lyons 67554. Term expires when a successor is elected and qualifies according to law. Succeeds Granville M. Bush IV.

State Board of Accountancy

Richard I. Dodson, 56 S.W. Peppertree Lane, Topeka 66611. Term expires October 31, 1991. Succeeds Mark Allen, resigned.

Advisory Council on Aging

Deidre F. Garnand, 206 E. Pine, Garden City 67846. Term expires November 30, 1992. Succeeds Paul Rodriguez, resigned.

Education Commission of the States

Denise Apt, 810 Meadowbrook Road, Iola 66749. Effective January 1, 1991. Term expires December 31, 1992. Reappointment.

Office of the Governor

Marcia A. McCulloch, Secretary to the Governor, 1310 N.W. Mandell, Topeka 66618. Serves at the pleasure of the Governor.

John D. Pinegar, Chief of Staff to the Governor, P.O. Box 555, Topeka 66601. Serves at the pleasure of the Governor.

Douglas E. Smith, Executive Assistant for Governmental Affairs to the Governor, 2409 S.W. Morningside, Topeka 66614. Serves at the pleasure of the Governor.

Bill Graves
Secretary of State

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PUBLISHED BY
Bill Graves
Secretary of State
2nd Floor, State Capitol
Topeka, KS 66612-1594
(913) 296-2236



Register Office:
235-N, State Capitol
(913) 296-3489

State of Kansas

University of Kansas

Notice to Bidders

Sealed bids for items listed below will be received by the University of Kansas Purchasing Office, Lawrence, until 2 p.m. local time on the date indicated and then will be publicly opened. Interested bidders may call (913) 864-3416 for additional information.

Monday, January 7, 1991

RFQ 91 0615

48-channel portable digital seismograph

RFQ 91 0624

Graphic workstations

Gene Puckett, L.C.P.M.
Director of Purchasing

Doc. No. 010085

State of Kansas

Department of Health
and Environment

Notice Concerning Proposed Permit Action

The secretary of the Kansas Department of Health and Environment is proposing to issue a permit in accordance with K.A.R. 28-19-14 (permits required) and K.A.R. 28-19-17 (new source permit requirements for designated attainment and unclassified area) to the National Cooperative Refinery Association (NCRA), McPherson, to install and operate new indirect heating equipment at the McPherson refinery.

Written materials, including the permit application and information relating to the application submitted by NCRA, draft permit, permit summary and analysis of KDHE describing the basis for the proposed permit are available for public inspection during normal business hours through January 28 by contacting David Butler at the KDHE office, 1919 N. Amidon, Wichita 67203, (316) 838-1071. This material also can be reviewed at the KDHE office in Building 740, Forbes Field, Topeka. Questions concerning this proposed permit should be directed to L.C. Hinthner, KDHE, (913) 296-1576.

K.S.A. 65-3008 provides that any person affected by the issuance of a permit can request a public hearing prior to issuance of the permit. The request for hearing must be in writing and addressed to the secretary. If the secretary determines there is sufficient reason in the request, a public hearing will be conducted—the place, date and time of the hearing will be announced in this publication. A request for hearing or written comments on the proposed permit must be submitted to the Secretary, KDHE, Landon Office Building, 900 S.W. Jackson, Topeka 66612, before January 28.

Stanley C. Grant
Secretary of Health
and Environment

Doc. No. 010088

State of Kansas

Kansas State University

Notice to Bidders

Sealed bids for items listed below will be received by the Kansas State University Purchasing Office, Manhattan, until 2 p.m. local time on the date indicated and then will be publicly opened. Interested bidders may call (913) 532-6214 for additional information.

Monday, January 7, 1991

#10095

Computers

William H. Sesler
Director of Purchasing

Doc. No. 010089

State of Kansas

Social and Rehabilitation Services

Request for Comments

Rehabilitation Services invites public comment and participation in planning and developing services for Kansans with disabilities. A forum will be conducted in Hays to obtain public comments regarding the scope of agency services, eligibility for vocational rehabilitation services, methods of administration, development and utilization of rehabilitation facilities, and development and utilization of centers for independent living.

Information received through the forum will be used to guide preparation of program and budget priorities for Rehabilitation Services and to contribute to development of state plans submitted to the Rehabilitation Services Administration, U.S. Department of Education.

Interested individuals are invited to attend this forum to share their comments and suggestions. The forum will be conducted from 7 to 9 p.m. Tuesday, January 8, at LINK, Inc., 1310 Walnut, Hays. Contact Ralph Kasselman, (913) 625-3489, for further information.

For purposes of scheduling, presenters should notify the contact person of their intention to present a statement. Presenters should provide written copies of their comments at the forum. To permit participation by as many individuals as possible, presenters should limit their comments to five minutes. The forum will include an opportunity for feedback on comments presented, as well as general discussion.

If you are not able to attend the forum, you may submit written comments to Gabriel R. Faimon, Commissioner, Rehabilitation Services, 1st Floor, Biddle Building, 300 S.W. Oakley, Topeka 66606. Written comments should be received by Rehabilitation Services no later than 5 p.m. January 7.

To request copies of this announcement in Braille, large print or audio tape, please call (913) 296-3911 voice or (913) 296-7029 TDD.

Gabriel R. Faimon
Commissioner

Doc. No. 010097

State of Kansas

Kansas Arts Commission

Notice of Major Grant
Application Deadline

Non-profit organizations and public or government agencies in Kansas may apply until February 1 for funding support during fiscal year 1992 from the Major Grant Program of the Kansas Arts Commission.

The Kansas Arts Commission is a state agency funded through appropriations from the Kansas Legislature and grants from the National Endowment for the Arts, a federal agency.

Applicants are required to meet all pertinent federal requirements regarding civil rights, equality, non-discrimination, education, and access for persons with disabilities. Not-for-profit organizations must be incorporated with the Kansas Secretary of State and must have applied for tax-exempt status with the federal Internal Revenue Service.

Applicants may request an amount up to 50 percent of their proposed budget in one of the four major grant categories. The grant request must be matched with cash and in-kind services by the applicant.

The grant categories are:

- * Project Support, for one-time or stand-alone arts events that do not require ongoing support. Non-arts organizations may apply to support arts events.
- * Basic Program Support, to assist arts organizations with operating expenses such as programming, administration, and marketing.
- * Local Arts Agency Support, to assist local arts agencies with operating and programming expenses.
- * Regional/Statewide Arts Service Organization Support, to assist arts service organizations that serve an intrastate, regional or statewide arts constituency.

The applications are evaluated on such criteria as adherence to the guidelines, past performance of prior applicants, broad-based community support, artistic quality, community need, and evidence that services extend to all constituencies, including culturally diverse populations, people with physical and mental disabilities, institutionalized persons, and older citizens.

The amounts of the grants awarded in relation to the amounts requested may vary in relation to such factors as total funds available, allocations to each category, the number of applicants in each category, and the applicants' financial need.

Guidelines and application forms for the Major Grant Program may be obtained by contacting the Kansas Arts Commission, 700 Jackson, Suite 1004, Topeka 66603-3714, (913) 296-3335.

Dorothy L. Ilgen
Executive Director

Doc. No. 010092

State of Kansas

Department of Commerce

Notice of Hearing

A public hearing on the proposed final statement of community development objectives and projected use of funds for the Kansas Small Cities Community Development Block Grant (CDBG) Program for 1991 will be conducted at 9 a.m. Wednesday, January 9, in Room 529-S, State Capitol, Topeka.

Copies of the proposed final statement are available during working hours at the KDOC Small Cities CDBG Program offices, 400 W. 8th, Suite 500, Topeka. Written comments on the proposed final statement will be received for consideration in preparation of the final statement by the Kansas Small Cities CDBG Program through January 9.

Harland Priddle
Secretary of Commerce

Doc. No. 010098

State of Kansas

Kansas Arts Commission

Notice of Advisory Panel Meetings

The three Literature Fellowship Advisory Panels for the Kansas Artists Fellowship Program of the Kansas Arts Commission will meet in the Forbes Room at the Park Inn International, 3802 S.W. Topeka Blvd., Topeka, to consider applications received for fiscal year 1991. The categories, number of applications received, dates, and times are as follows:

- * Poetry; 36 applicants; Monday, January 14, 9 a.m.
- * Fiction; 27 applicants; Tuesday, January 15, 9 a.m.
- * Playwriting; 13 applicants; Wednesday, January 16, 9 a.m.

Based upon the recommendations of these panels, the Kansas Arts Commission will award up to three fellowships of \$5,000 each during its quarterly business meeting February 10 in Topeka. The application deadline was October 15.

Meetings of the Kansas Arts Commission, a state agency, and of its advisory panels are open to public observation.

For more information about the Kansas Artists Fellowship Program, contact the Kansas Arts Commission, 700 Jackson, Suite 1004, Topeka 66603-3714, (913) 296-3335.

Dorothy L. Ilgen
Executive Director

Doc. No. 010093

State of Kansas

Kansas Arts Commission

Notice Concerning
Kansas Touring Program

Applications are being accepted by the Kansas Arts Commission for grant support from the Kansas Touring Program during the fiscal year 1992 funding cycle, beginning July 1, 1991.

Not-for-profit organizations and public agencies that present programs by Kansas Touring Program artists may apply for grants in the amount of 40 percent of the artists' performance fees, up to a maximum of \$10,000 per presenter. Grants are awarded on a first-come, first-served basis until reserved funds are gone.

The Kansas Touring Program (KTP) maintains a roster of professional music, theatre, and dance artists who are available for performances in communities other than their home sites throughout the state. A brochure describing the programs and fees of the solo artists, duos and ensembles currently on the roster will be available early in 1991.

These artists include storytellers, children's and music theatre companies, modern and folk dance groups, and symphonic, classical, traditional and jazz music offerings. All KTP artists are residents of Kansas or are members of companies based in the state.

Guidelines and grant application forms for KTP presenters may be obtained by contacting the Kansas Arts Commission, 700 Jackson, Suite 1004, Topeka 66603-3714, (913) 296-3335.

Dorothy L. Ilgen
Executive Director

Doc. No. 010091

State of Kansas

Kansas Arts Commission

Notice of Arts in Education
Application Deadline

Artists from Kansas and other states have until February 1 to apply to the Kansas Arts Commission to be considered for Arts in Education residencies in Kansas schools and other non-profit organizations and institutions during 1991-92. Institutions, organizations and communities interested in sponsoring Arts in Education residencies must apply by March 1 to qualify for grant support. Grants must be matched dollar-for-dollar, and overmatching is encouraged.

The Kansas Arts in Education (AIE) Program is administered by the Kansas Arts Commission, a state agency, with cooperation from the Kansas Department of Education. Funding is provided by the Kansas Legislature and by the National Endowment for the Arts, a federal agency.

Residencies may last from two weeks up to one semester, one nine-month school year, or up to three school years. Opportunities are available in the visual arts, folk arts, music, theatre, dance, creative writing, architecture, film and video.

Qualified artists are chosen by KAC panels and remain eligible for three years. Selections are based upon the quality of each applicant's work, educational background, experience in classroom situations, and professional background.

Residency sponsors will be selected by the KAC Arts Education Panel. Qualified sponsors will meet and select the artists for their residencies during an annual conference May 2-3 at the Baden Square Arts Center, Winfield.

Guidelines and application forms for Arts in Education artists and sponsors may be obtained by contacting the Kansas Arts Commission, 700 Jackson, Suite 1004, Topeka 66603-3714, (913) 296-3335.

Dorothy L. Ilgen
Executive Director

Doc. No. 010094

State of Kansas

Kansas Arts Commission

Notice of Dance On Tour Program
Application Deadline

Non-profit organizations or public agencies in Kansas have until January 18 to apply to the Kansas Arts Commission for grants offered through the Kansas Dance on Tour Program. Three grants will be awarded from the Dance On Tour Program (DOT) to three communities to support single-day residencies by the Garth Fagan Dance Company, an internationally known group that will be in residence in Kansas during two weeks in late March and early April 1992.

Dance On Tour is a one-year program made possible by a \$20,000 grant to the Kansas Arts Commission by the National Endowment for the Arts, a federal agency.

Each one-day dance residency will cost a total of \$5,000, with DOT providing a \$3,500 grant and the host organization contributing \$1,500 to cover the touring company's performance fees.

The one-day residencies will be offered as outreach activities from two or three multi-day residencies sponsored by other Kansas organizations that present performing arts programs but will receive no DOT grant support from the commission.

The federal grant also will support educational and audience development components including a mentor program, during which major Kansas presenters and representatives of the dance company will provide assistance to the hosts of the one-day residencies, prior to those events.

The Dance On Tour Program guidelines and application forms may be obtained by contacting the Kansas Arts Commission, 700 Jackson, Suite 1004, Topeka 66603-3714, (913) 296-3335.

Dorothy L. Ilgen
Executive Director

Doc. No. 010095

State of Kansas

Legislature

Interim Committee Schedule

The following committee meetings have been scheduled from December 31 through January 13:

Date	Room	Time	Committee	Agenda
January 3	529-S	10:00 a.m.	SRS Task Force—Medical Services Subcommittee	Agenda not available.
January 3	519-S	10:00 a.m.	Joint Committee on State Building Construction	Agenda not available.
January 4	519-S	9:00 a.m.		
January 7	514-S	10:00 a.m.	SRS Task Force	Review of subcommittee reports. Direction to staff on final report.
January 8	514-S	9:00 a.m.		

Emil Lutz
Director of Legislative
Administrative Services

Doc. No. 010090

(Published in the *Kansas Register*, December 27, 1990.)

**Notice of Redemption
Industrial Development Revenue Bonds
(Retirement Apartment Facility)
Series A-1976, Dated August 1, 1976
of the
City of Mt. Hope, Kansas**

Subject to the provisions of the second paragraph of this notice, notice is hereby given that pursuant to Section 6 of Ordinance No. 76-9-21 of the city of Mt. Hope, Kansas, all of the outstanding Industrial Development Revenue Bonds (Retirement Apartment Facility), Series A-1976, of the city of Mt. Hope, Kansas, maturing on and after August 1, 1990, will be redeemed and prepaid on February 1, 1991 (the redemption date), prior to their respective maturities subject to the provisions and limitations set forth herein.

Bond Numbers	Maturity Date	Interest Rate
48 - 64	08/01/91	8.50%
65 - 70	08/01/92	8.75%
71 - 85	08/01/93	8.75%
86 - 93	08/01/94	9.00%
94 - 109	08/01/95	9.00%
110 - 142	08/01/96	9.00%

This notice of redemption, and the payment of the principal of and interest on the aforesaid 1976 bonds on the specified redemption date, are subject to the issuance and delivery of the city of its refunding revenue bonds on or before such redemption date in an amount sufficient to provide funds to pay the specified redemption price of the 1976 bonds. In the event such refunding bonds have not been issued by the redemption date, this notice shall be null and void and of no force and effect, the 1976 bonds delivered for redemption shall be returned to the respective owners thereof, and the 1976 bonds shall remain outstanding as though this notice of redemption had not been given.

The principal amount of the above-described 1976 bonds shall become due and payable on February 1, 1991, at a redemption price equal to the principal amount thereof plus accrued interest thereon to said redemption date, together with a premium of 4 percent of the principal amount of the bonds so called for redemption and payment.

On February 1, 1991, provided that funds are on hand to pay the specified redemption price, all the 1976 bonds will be due and payable at the principal office of The First National Bank of Hutchinson, Hutchinson, Kansas, and from and after February 1, 1991, all interest on the 1976 bonds will cease to accrue. All coupons maturing subsequent to February 1, 1991, must be attached to and surrendered with the 1976 bonds.

Under the provisions of the Interest and Dividend Tax Compliance Act of 1978, paying agents making payments of interest or principal on corporate securities or making payments of principal on municipal securities may be obligated to withhold a 20 percent tax remittance to individuals who have failed to furnish the paying agent with a valid taxpayer identification number. Holders of the 1976 bonds who wish to avoid the imposition of this tax should submit certified taxpayer identification numbers when presenting their bonds for payment.

Dated December 12, 1990.

The First National Bank
of Hutchinson
One N. Main
P.O. Box 913
Hutchinson, KS 67504
As Fiscal Agent

Doc. No. 010087

State of Kansas
 Department of Administration
 Division of Purchases

Notice to Bidders

Sealed bids for the following items will be received by the Director of Purchases, Landon State Office Building, 900 S.W. Jackson, Room 102, Topeka, until 2 p.m. C.S.T. on the date indicated and then will be publicly opened. Interested bidders may call (913) 296-2377 for additional information.

Monday, January 7, 1991

86485

Department of Human Resources—Portable computer systems

86487

Department of Social and Rehabilitation Services—Window envelopes

Tuesday, January 8, 1991

86508

University of Kansas Medical Center—HDS DASD controllers

86512

Kansas Bureau of Investigation—Radio headsets

86514

Kansas State University—Corn

86519

University of Kansas Medical Center—Plain paper photocopier

Wednesday, January 9, 1991

86525

Department of Wildlife and Parks—Loader and trucking service, Cheney State Park

86528

Department of Transportation—Spectrum analyzer, various locations

Friday, January 11, 1991

A-6558

Department of Social and Rehabilitation Services/
 Kansas Rehabilitation for the Blind—Ceiling, light fixture and HVAC replacement

Tuesday, January 15, 1991

A-6574

Kansas State University—Bramlage Coliseum curtain supports

Wednesday, January 16, 1991

A-6459

Youth Center at Atchison—Mechanical projects, various buildings

Thursday, January 17, 1991

A-6566

Kansas State University—Handicap access; improvements to Fairchild Hall, Phase I

Tuesday, January 22, 1991

86541

State Corporation Commission—GIS workstation

Nicholas B. Roach
 Director of Purchases

State of Kansas
 Department of Transportation

Notice of Public Auction

At Site

Southwest quadrant of Harrison Street (K-7 Highway) and Old U.S. 56 Highway in the city of Olathe.

Alternate Site

If weather conditions are bad, the auction will be held in the basement of the Kansas Highway Patrol Office on Rogers Road in Olathe.

The Kansas Secretary of Transportation will offer for sale at public auction at 10 a.m. February 7 the following tract of land located in Johnson County described as follows:

A tract of land in the Northeast Quarter of the Northeast Quarter of Section 2, Township 14 South, Range 23 East of the 6th P.M., described as follows: BE-GINNING at a point 675.1 feet South and 100.0 feet West of the Northeast corner of said Quarter Section; FIRST COURSE, thence West, 578.7 feet to a point 675.6 feet South of said Northeast corner; Second Course, thence Southeasterly, 548.0 feet to a point 988.5 feet South and 228.8 feet West of said Northeast corner; Third Course, thence Southeasterly, 124.4 feet to a point 1,101.4 feet South and 176.6 feet West of said Northeast corner; Fourth Course, thence East, 76.6 feet to a point 1,101.4 feet South and 100.0 feet West of said Northeast corner; FIFTH COURSE, thence North parallel to the East line of said Quarter Section to the place of beginning. The above contains 2.81 acres, more or less.

The party of the first part hereby retains any and all abutters' rights of access to Kansas Highway #7 over ALL of said "FIRST" and "FIFTH" courses. The above described land is subject to easements for the right of ingress and egress, reconstruction, and maintenance of all existing utilities and appurtenances thereto.

The Kansas Department of Transportation ensures the acceptance of any bid pursuant to this notice will be without discrimination on the grounds of sex, race, color, religion, physical handicap, or national origin.

Terms of the Sale

Money order, certified or cashier's check for full price. Make check payable to "Secretary of Transportation." Purchaser will receive a quitclaim deed.

Option

Money order, certified or cashier's check for 10 percent of the purchase price the day of the sale. The balance of the purchase price will be paid by money order, certified or cashier's check on or before March 7, 1991. If the balance is paid on or before said date, a quitclaim deed will be given to the successful bidder. If the balance of the purchase price is not paid on or before said date, the 10 percent down payment will be forfeited to the seller. Make checks payable to "Secretary of Transportation."

The seller reserves the right to reject any and all bids. For additional information, contact Beverly Lee or Pa-

(continued)

mela Wolf, Bureau of Right of Way, Kansas Department of Transportation, (913) 296-3501.

Horace B. Edwards
Secretary of Transportation

Doc. No. 010096

**State of Kansas
Department of Transportation**

Notice to Contractors

Sealed proposals for the construction of road and bridge work in the following Kansas counties will be received at the office of the Chief of Construction and Maintenance, K.D.O.T., Topeka, until 10 a.m. C.S.T. January 17, 1991, and then publicly opened:

District One—Northeast

Geary/Riley—106 K-4464-01—U.S. 77, from the Morris-Geary county line east through Geary County to the west junction of U.S. 24 in Riley County, 37.0 miles, overlay. (State Funds)

Jackson/Nemaha—62-106 K-4383-01—K-62, from the junction of K-16 in Jackson County north to the junction of K-9 in Nemaha County, 13.3 miles, overlay. (State Funds)

Johnson—69-46 K-3726-02—U.S. 69, from the Miami-Johnson county line north to north of K-150, north and south lanes, 11.4 miles, seeding. (State Funds)

Johnson—46 C-2688-01—County road, 2.3 miles east of DeSoto, then east, 0.1 mile, grading, surfacing and bridge. (Federal Funds)

Lyon—56-56 K-3681-01—U.S. 56, Elm Creek bridge 35, 1.6 miles east of the Kansas Turnpike, bridge replacement. (Federal Funds)

Marshall—99-58 K-4149-01—K-99, from the south junction of K-9 north to the junction of U.S. 36, 9.7 miles, overlay. (State Funds)

Marshall—58 C-2538-01—County road, 6.8 miles east and 2.5 miles south of Blue Rapids, then east, 0.3 mile, grading and bridge. (Federal Funds)

Nemaha—66 K-4384-01—K-71, from the junction of K-63 east to the south city limits of Bern and K-178, from the junction of U.S. 36 north to St. Benedict, 8.1 miles, overlay. (State Funds)

Osage—70 C-2089-01—County road, 0.8 mile north of Burlingame, then north, 0.2 mile, bridge replacement. (State Funds)

Pottawatomie—63-75 K-4142-01—K-63, from the north city limits of St. Marys north to the south junction of K-16, 18.3 miles, overlay. (State Funds)

Riley—18-81 U-1313-01—K-18 and Westwood in Manhattan, intersection improvement. (Federal Funds)

Riley-Wabaunsee—106 K-4379-01—K-18, from the south junction of K-177 in Riley County east to the junction of K-99 in Wabaunsee County; K-113 from the junction of K-18 north to the junction of U.S. 24 in Riley County, 19.8 miles, overlay. (State Funds)

Shawnee—70-89 K-3343-01—I-70 and I-470 new ramps

and I-70 and Wanamaker Road (U.S. 75) interchange, 0.8 mile, grading and bridge. (State Funds)

Shawnee—470-89 K-3831-01—I-470, from the junction of I-70 southeast to the junction of Wanamaker Road (U.S. 75), 1.3 miles; grading, surfacing and bridge. (Federal Funds)

Wyandotte—70-105 M-1618-01—I-70 westbound entrance ramp at 4th Street in Kansas City, slope repair. (State Funds)

District Two—Northcentral

Chase—50-9 K-4181-01—U.S. 50, from the junction of K-150 east to west of the junction of K-57 and K-177, 6.7 miles, recycling. (State Funds)

Chase—50-9 K-4182-01—U.S. 50, from the west city limits of Strong City east to 1.7 miles west of the Chase-Lyon county line, 8.5 miles, sealing. (State Funds)

Clay—14 C-2795-01—County road, 3.5 miles south and 7.0 miles east of Clay Center, then east, 1.0 mile, surfacing. (Federal Funds)

Clay—14 C-2796-01—County road, 3.5 miles south and 6.0 miles east of Clay Center, then north, 4.5 miles, surfacing. (State Funds)

Dickinson/Morris/Geary—106 K-4386-01—K-4, from the south city limits of Hope in Dickinson County east to the east junction of K-149 in Morris County; U.S. 77, from the junction of U.S. 56 in Dickinson County north through Morris County to the Geary County line; K-149, from the junction of U.S. 56 north to the junction of K-4; K-209, from the east city limits of Woodbine east to the junction of U.S. 77; K-218, from the junction of K-4 to the north city limits of Herington, 47.0 miles, overlay. (State Funds)

Ellsworth—4-27 M-1600-01—K-4, stockpile bituminous mix, one mile west of the junction of K-4 and K-141. (State Funds)

Ellsworth—156-27 M-1601-01—U.S. 156, stockpile bituminous mix, one mile south of Ellsworth on K-156. (State Funds)

Geary—18-31 M-1612-01—K-18, stockpile bituminous mix 4 miles west of Junction City. (State Funds)

Geary—77-31 M-1613-01—U.S. 77, stockpile bituminous mix one mile south of the I-70 junction. (State Funds)

Marion—77-57 K-4185-01—U.S. 77, from the Butler-Marion county line north to the junction on U.S. 56, 20.5 miles, recycling. (State Funds)

Marion—77-57 M-1602-01—U.S. 77, stockpile bituminous mix at the junction of U.S. 77 and U.S. 50. (State Funds)

Morris—56-64 K-4320-01—U.S. 56, from the east city limits of Council Grove east to the Morris-Lyon county line, 6.5 miles, recycling. (State Funds)

Morris—4-64 M-1611-01—K-4, stockpile bituminous mix one mile south of White City. (State Funds)

Rice/Ellsworth—14-106 K-4388-01—K-14, from the junction of K-4 in Rice County north to the south city limits of Ellsworth in Ellsworth County, 15.5 miles, overlay. (State Funds)

Rice/Ellsworth/McPherson—106 K-4387-01—K-4, from

the west city limits of Geneseo in Rice County east through Ellsworth County to the west city limits of Lindsborg in McPherson County; K-175, from the north city limits of Marquette, north to the junction of K-4 in McPherson County, 27.9 miles, overlay. (State Funds)

District Three—Northwest

Thomas—24-97 K-4113-01—U.S. 24, from the east city limits of Colby east to the junction of U.S. 83, 8.5 miles, recycling. (State Funds)

Thomas—25-97 K-4117-01—K-25, from the north city limits of Colby north to the Thomas-Rawlins county line, 11.5 miles, recycling. (State Funds)

Thomas—24-97 M-1620-01—U.S. 24, stockpile bituminous mix at KDOT strip along U.S. 24 0.5 mile west of Colby. (State Funds)

District Five—Southcentral

Barber—4 C-2293-01—County road, 1.4 miles east of Lake City, then southeast, bridge replacement. (Federal Funds)

Barber—4 C-2294-01—County road, 2.5 miles southeast of Lake City, then southeast, grading and culvert. (Federal Funds)

Barber—4 C-2305-01—County road, 1.6 miles southeast of Lake City, then southeast, 0.1 mile, grading and culvert. (Federal Funds)

Barton—281-5 K-4218-01—U.S. 281, from the east junction of K-4 west to the west junction of K-4, 4.5 miles, recycling. (State Funds)

Barton/Rice—106 K-4404-01—K-4, from the junction of K-156 in Barton County east to the west city limits of Geneseo in Rice County and K-171 from the north city limits of Bushton north to the junction of K-4, 19.3 miles, recycling. (State Funds)

Edwards/Pawnee—56-106 K-4407-01—U.S. 56, from the north city limits of Kinsley in Edwards County northeast to the east city limits of Garfield in Pawnee County, 13.8 miles, recycling. (State Funds)

Harper—2-39 K-4201-01—K-2, from 1.3 miles northeast of the north junction of U.S. 160 northeast 7.3 miles, recycling. (State Funds)

Harvey—50-40 K-4206-01—U.S. 50, from the four lane/two lane divided northeast to the Harvey-Marion county line, 11.9 miles, recycling. (State Funds)

Pawnee—73 K-4409-01—U.S. 183, from the junction of U.S. 56 north to the junction of K-156 and K-264, Larned State Hospital north to the junction of K-156, 13.3 miles, recycling. (State Funds)

Pratt—61-76 K-4210-01—K-61, from the junction of U.S. 54 north to 0.3 mile north of the four lane/two lane, 1.3 miles, overlay. (State Funds)

Reno—50-78 K-4455-01—U.S. 50, from the Reno-Stafford county line east 4.7 miles, shoulders. (State Funds)

Reno—50-78 K-4456-01—Old U.S. 50, east to 6.6 miles east of K-14, 18.9 miles, shoulders. (State Funds)

Reno—96-78 K-1708-01—K-96, from the west city limits of Nickerson, southeast to the north city limits of Hutchinson, 9.1 miles, recycling. (State Funds)

Rice—80 C-2657-01—County road, 15.0 miles east and

2.0 miles south of Sterling, then north, 5.0 miles, surfacing. (Federal Funds)

Sedgwick—87 C-1546-01—County road, from Colwich, then south, 7.9 miles, surfacing. (Federal Funds)

Sedgwick—87 U-1293-01—Broadway and MacArthur in Wichita, traffic signal. (Federal Funds)

District Six—Southwest

Finney—50B-28 K-3897-01—U.S. 50 Business, from north of the north city limits of Garden City north to the junction of U.S. 50, 0.9 mile, recycling. (State Funds)

Finney—83-28 K-3801-01—U.S. 83, from the junction of U.S. 50 and U.S. 50 Business, north to the Finney-Scott county line, 18.2 miles, recycling. (State Funds)

Finney—156-28 M-1605-01—K-156, stockpile bituminous mix 0.5 mile northeast of the junction of U.S. 50 and U.S. 83. (State Funds)

Ford—56-29 K-3696-01—Intersection of U.S. 56 and K-154 in Dodge City, 0.1 mile, intersection improvement. (State Funds)

Haskell—41 C-1681-01—County road, from the junction of K-190 at Satanta, then north, 3.3 miles, surfacing. (Federal Funds)

Scott—83-86 K-3340-01—U.S. 83, from the Finney-Scott county line north to the south city limits of Scott City, 14.3 miles, recycling. (State Funds)

Scott—95-86 K-4098-01—K-95, from the south junction of U.S. 83 north and east to the north junction of U.S. 83, 6.6 miles, recycling. (State Funds)

Stanton—160-94 K-3633-01—U.S. 160, from the west city limits of Manter northeast to the east city limits, 0.5 mile, grading and surfacing. (State Funds)

Proposals will be issued upon request to all prospective bidders who have been prequalified by the Kansas Department of Transportation on the basis of financial condition, available construction equipment, and experience. Also, a statement of unearned contracts (Form No. 284) must be filed. There will be no discrimination against anyone because of race, age, religion, color, sex, handicap, or national origin in the award of contracts.

Each bidder shall file a sworn statement executed by or on behalf of the person, firm, association or corporation submitting the bid, certifying that such person, firm, association or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. This sworn statement shall be in the form of an affidavit executed and sworn to by the bidder before a person who is authorized by the laws of the state to administer oaths. The required form of the affidavit will be provided by the state to each prospective bidder. Failure to submit the sworn statement as part of the bid-approval package will make the bid nonresponsive and not eligible for award consideration.

Plans and specifications for the projects may be examined at the office of the respective county clerk or at the K.D.O.T. district office responsible for the work.

Horace B. Edwards
Secretary of Transportation

State of Kansas

Department of Health
and EnvironmentPermanent Administrative
Regulations

Article 1.—GENERAL

47-1-1. Title. These rules shall be known as rules of practice and procedures of the surface mining section of the Kansas department of health and environment. (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended Feb. 11, 1991.)

47-1-3. Communication. All applications for surface mining permits required to be filed with the secretary shall be filed in the office of the surface mining section within the time limits for such filing. All documents so addressed or filed shall be deemed to be officially received by the secretary when actually delivered at the office of the surface mining section. All applications shall be accompanied by appropriate fees. (Authorized by K.S.A. 1989 Supp. 49-405, 49-406 as amended by L. 1990, Ch. 194, sec. 1; implementing K.S.A. 1989 Supp. 49-405; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended Feb. 11, 1991.)

47-1-4. Sessions. (a) Meetings will be scheduled as needed by the chief of the surface mining section pursuant to the notice requirements of K.A.R. 47-1-10.

(b) Special meetings will be called by the chief of the surface mining section with the approval of the secretary.

(c) An operator with communications and documents requiring discussion or the secretary's approval shall be notified of the meetings.

(d) These meetings shall be open to the operators and the public. (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended May 1, 1980; amended May 1, 1986; amended Feb. 11, 1991.)

47-1-8. Petitions to initiate rulemaking. (a) Any person may petition the secretary to initiate a proceeding for the issuance, amendment, or repeal of any regulation under the state act. The petition shall be submitted to the chief of the surface mining section.

(b) The petition shall be a concise statement of the facts, technical justification, and law which requires issuance, amendment, or repeal of a regulation and shall indicate whether the petitioner desires a public hearing.

(c) Whether the petition sets forth facts, technical justification, and law which may provide a reasonable basis for conducting a hearing to consider issuance, amendment, or repeal of a regulation shall be determined by the secretary or secretary's designee. Facts, technical justification or law previously considered in a petition or in rulemaking on the same issue shall not provide a reasonable basis.

(d) If the secretary or secretary's designee determines that the petition has a reasonable basis, a notice shall be published seeking comments from the public on the proposed change. A public hearing, an investigation or other

necessary action may be taken by the secretary or secretary's designee to determine whether the petition should be granted.

(e) A written decision either granting or denying the petition shall be issued by the secretary or secretary's designee within 90 days of its receipt by the surface mining section.

(1) If the petition is granted, the rulemaking process shall be initiated by the secretary.

(2) If the petition is denied, the petitioner shall be notified in writing by the secretary, setting forth the reasons for denial. (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991.)

47-1-9. Notice of citizen suits. (a) A person who intends to initiate a civil action on their own behalf under K.S.A. 1989 Supp. 49-426(a)(2) shall give notice of this intent as follows:

(1) by certified mail to the chief of the surface mining section and the secretary.

(2) a copy of the notice by first class mail to the field office director of the office of surface mining, United States department of the interior.

(3) by certified mail to the alleged violator if the complaint alleges a violation of the state act or any regulation, order, or permit issued under the state act.

(b) Service of such notice shall be complete upon receipt by person being notified.

(c) A person giving notice regarding an alleged violation shall state, the following to the extent known:

(1) Sufficient information to identify the provision of the state act, rule or regulation, order, or permit allegedly violated;

(2) the act or omission constituting the alleged violation;

(3) the name, address, and telephone numbers of the person or persons responsible for the alleged violation;

(4) the date, time, and location of the alleged violation;

(5) the name, address, and telephone number of the person giving notice; and

(6) the name, address, and telephone number of legal counsel, if any, of the person giving notice.

(d) A person giving notice of an alleged failure by the secretary to perform a mandatory act or duty under the state act shall state, the following to the extent known:

(1) the provision of the state act containing the mandatory act or duty allegedly not performed;

(2) sufficient information to identify the omission constituting the alleged failure to perform a mandatory act or duty;

(3) the name, address, and telephone number of the person giving notice; and

(4) the name, address, and telephone number of legal counsel, if any, of the person giving notice. (Authorized by K.S.A. 1989 Supp. 49-405, 49-426; implementing K.S.A. 1989 Supp. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991.)

47-1-10. General notice requirement. (a) Notice of scheduled surface mining section meetings shall be published in:

(1) The Kansas Register; and

(2) a newspaper of general circulation in the locality of the surface mining section's meeting place.

(b) The notice required by subsection (a) of this regulation shall be published at least 10 days before the date of the meeting, except as otherwise provided in this regulation.

(c) If a special meeting is deemed necessary and if time will not allow compliance with subsections (a) and (b) of this regulation, notice of such a special meeting shall be published as soon as possible in a newspaper of general circulation in the locality of the meeting place for that special meeting. (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective May 1, 1984; amended Feb. 11, 1991.)

47-1-11. Permittee; preparation and submission of reports. The secretary or secretary's designee may require any permittee to:

- (a) establish and maintain appropriate records;
- (b) make appropriate monthly reports;
- (c) install, use, and maintain any necessary monitoring equipment or methods;
- (d) evaluate results in accordance with those methods, at the locations, intervals, and in the manner prescribed; and
- (e) provide any other information relative to surface coal mining and reclamation operations that is deemed reasonable and necessary. (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective May 1, 1985; amended Feb. 11, 1991.)

Article 2.—MEANING OF TERMS

47-2-14. "Complete and accurate application" defined. "Complete and accurate application" means an application, consisting of documents and other information required to be filed with the department, which contains all information required under state law and these rules and regulations. (Authorized by K.S.A. 1989 Supp. 49-405, and K.S.A. 1989 Supp. 49-406; as amended by L. 1990, Ch. 194, sec. 1; implementing K.S.A. 1989 Supp. 49-405; effective May 1, 1980; amended Feb. 11, 1991.)

47-2-21. Employee defined. Employee means any person employed by the department of health and environment, 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. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-404; effective May 1, 1980; amended May 1, 1983; amended Feb. 11, 1991.)

47-2-53. "Regulatory authority" or "state regulatory authority" defined. "Regulatory authority" or "state regulatory authority" means the department of health and environment, surface mining section, or the secretary's designee. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-405 and K.S.A. 1989 Supp. 49-406, as amended by L. 1990, Ch. 194, sec. 1; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991.)

47-2-53a. "Regulatory program" defined. "Regulatory program" means the state act and the rules and regulations adopted by the department of health and en-

vironment and approved by the United States office of surface mining. (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective May 1, 1986; amended Feb. 11, 1991.)

47-2-67. "Surety bond" defined. "Surety bond" means an indemnity agreement, in a sum certain payable to the department of health and environment, surface mining section and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the state of Kansas. (Authorized by K.S.A. 1989 Supp. 49-405, and K.S.A. 1989 Supp. 49-406, as amended by L. 1990, Ch. 194, sec. 1; implementing K.S.A. 1989 Supp. 49-405; effective May 1, 1980; amended Feb. 11, 1991.)

47-2-75. Definitions; adoption by reference. (a) The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted by reference as rules and regulations of the secretary, as they existed on July 1, 1990, with exceptions as indicated:

- (1) Definitions, 30 CFR 700.5, except:
- (2) "Regulatory authority" and "state regulatory authority" are defined in K.A.R. 47-2-53;
- (3) "Surface coal mining operations" is defined in K.S.A. 1989 Supp. 49-403(r); and
- (4) "Surface coal mining and reclamation operations" is defined in K.S.A. 1989 Supp. 49-403(g).
- (5) The following shall be deleted from the definition of "anthracite":

"Notices of changes made to this publication will be periodically published by the Office of Surface Mining in the Federal Register. This ASTM standard is on file and available for inspection at the OSM office, U.S. Department of the Interior, South Interior Building, Washington, D.C. 20240, at each OSM Regional Office, District Office and Field Office, and at the central office of the applicable State Regulatory Authority, if any. Copies of this publication may also be obtained by writing to the above locations. A copy of this publication will also be on file for public inspection at the Federal Register library, 1100 L St., N.W. Washington, D.C. Incorporation by reference provisions approved by the Director of the Federal Register February 7, 1979. The Director's approval of this incorporation by reference expires on July 1, 1981."

- (5) "Regulatory program" is defined in K.A.R. 47-2-53a.
- (6) "Director" means the director, office of surface mining reclamation and enforcement in K.A.R. 47-3-42(a) (36), adopting by reference 30 CFR 785.13; All other references to the director shall be replaced by the secretary of the department of health and environment.
- (7) "Department" means the Kansas department of health and environment.
- (8) "Secretary" means secretary of the Kansas department of health and environment.
- (b) Definitions, 30 CFR 701.5, except:
 - (1) "Imminent danger to the health and safety of the public" is defined in K.S.A. 49-403(m);
 - (2) "Operator" is defined in K.S.A. 1989 Supp. 49-403(c);

(continued)

- (3) "Permit" is defined in K.S.A. 1989 Supp. 49-403(n);
- (4) "Permit area" is defined in K.S.A. 1989 Supp. 49-403(o);
- (5) "Significant, imminent environmental harm to land, air or water resources" is defined in K.A.R. 47-2-58; and
- (6) The following federal definitions are deleted entirely:
- (A) "Agricultural activities or farming";
- (B) "Alluvial valley floors";
- (C) "Arid and semiarid area";
- (D) "Essential hydrologic functions";
- (E) "Flood irrigation";
- (F) "Materially damage the quality and quantity of water";
- (G) "Rangeland";
- (H) "Special bituminous coal mines";
- (I) "Subirrigation";
- (J) "Undeveloped rangeland"; and
- (K) "Upland areas."
- (c) Definitions, 30 CFR 705.5, except:
- (1) "Employee" is defined in K.A.R. 47-2-21; and
- (2) "State regulatory authority" is defined in K.A.R. 47-2-53.
- (d) All definitions, 30 CFR 773.5.
- (e) Definitions, 30 CFR 846.5, except
- (1) "Federal program" shall be replaced by state program.
- (2) "Section 521" shall be replaced by K.S.A. 1989 Supp. 49-405.
- (3) "Act" shall be replaced by state act.
- (4) "Secretary" shall be replaced by secretary of the Kansas department of health and environment.
- (5) "Section 518(b)" shall be replaced by K.S.A. 1989 Supp. 49-416a.
- (6) "Section 703" shall be replaced by 77-501 *et seq.*
- (7) "Federal lands program. Federal enforcement pursuant to section 502 of the act and Federal enforcement of a state program pursuant to Section 521 of the act" shall be deleted. (Authorized by K.S.A. 1989 Supp. 49-404, 49-405; implementing K.S.A. 49-401 *et seq.*; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991.)

Article 3.—APPLICATION FOR MINING PERMIT

47-3-1. Application for mining permit. Each person who conducts or expects to conduct surface or underground coal mining and reclamation operations shall file an original and four copies of a complete and accurate application for a permit for those operations with the secretary at least 90 days prior to permit decision. (Authorized by K.S.A. 1989 Supp. 49-405, and K.S.A. 1989 Supp. 49-406, as amended by L. 1990, Ch. 194, sec. 1; implementing K.S.A. 1989 Supp. 49-405; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended May 1, 1975; amended May 1, 1980; amended Feb. 11, 1991.)

47-3-2. Application for mining permit; adoption by reference. (a) A permit application submitted with a request for variances from the applicable regulations shall contain an outline of the proposed variances. This outline shall be indexed to the regulations and be placed at the beginning of the application documents.

(b) The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted as rules and regulations of the secretary, as they existed on July 1, 1990, except as otherwise indicated:

- (1) Format and contents, 30 CFR 777.11;
- (2) Reporting of technical data, 30 CFR 777.13;
- (3) Maps and plans; general requirements, 30 CFR 777.14. The phrase "in accordance with section 710.12 of this chapter" shall be deleted; and
- (4) Completeness, 30 CFR 777.15.

(c) The following terms shall be replaced wherever they appear:

- (1) "This chapter" or "this subchapter" shall be replaced by "these rules and regulations."
- (2) "Parts 778, 779, and 780 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(1) to (35), inclusive."
- (3) "Part 785 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(36) to (41), inclusive."
- (4) "Parts 778, 783, and 784 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(1) to (8), inclusive, and K.A.R. 47-10-1." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-406, as amended by L. 1990, Ch. 194, sec. 1; effective May 1, 1980; amended May 1, 1986; amended Feb. 11, 1991.)

47-3-3(a). Application for mining permit; maps. (a) Any maps, plans, and cross sections required for a permit application shall be certified by a qualified, licensed engineer and shall be updated as required by the secretary or secretary's designee.

(b) Any change in a facility or feature that would be caused by the proposed mining operations shall be shown in the maps and plans accompanying the permit application.

(1) A color code, or other method approved in writing by the secretary or secretary's designee, shall be used to indicate critical features of the permit area as follows:

- (A) green for coal removal;
- (B) red for the boundary of the land affected, including access roads and haulageways;
- (C) brown access roads and haulageways; and
- (D) blue for watercourses, impoundments, drainageways, and other water areas.

(2) A color code, or other method approved, in writing, by the secretary or secretary's designee shall be used to indicate critical features of any reclamation plan as follows:

- (A) green for areas of proposed grassland;
- (B) red for the permit boundaries;
- (C) brown for any roads to be left through the disturbed area;
- (D) blue for proposed water impoundment and drainage;

(E) yellow for proposed cropland; and

(F) orange for proposed woodland. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-406, as amended by L. 1990, Ch. 194, sec. 1, K.S.A. 1989 Supp. 49-410; effective May 1, 1986; amended Feb. 11, 1991.)

47-3-42. Application for mining permit; adoption by reference. (a) The following parts and sections of the

federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted as rules and regulations of the secretary as they existed on July 1, 1990, except as otherwise indicated:

- (1) Identification of interests, 30 CFR 778.13;
- (2) Violation information, 30 CFR 778.14;
- (3) Right of entry, 30 CFR 778.15;
- (4) Status of unsuitability claims, 30 CFR 778.16;
- (5) Permit term information, 30 CFR 778.17(a);
- (6) Insurance, 30 CFR 778.18;
- (7) Newspaper advertisement and proof of publication, 30 CFR 778.21;
- (8) Facilities or structures used in common, 30 CFR 778.22;
- (9) Responsibilities, 30 CFR 779.4. The phrase "this part" shall be replaced by "K.A.R. 47-3-42(a)(9) to (17), inclusive";
- (10) General requirements, 30 CFR 779.11;
- (11) General environmental resources information, 30 CFR 779.12;
- (12) Climatological information, 30 CFR 779.18;
- (13) Vegetation information, 30 CFR 779.19;
- (14) Soil resources information, 30 CFR 779.21;
- (15) Land-use information, 30 CFR 779.22. The phrase "this part" shall be replaced by "K.A.R. 47-3-42(a)(9) to (17), inclusive";
- (16) Maps: general information, 30 CFR 779.24;
- (17) Cross sections, maps, and plans, 30 CFR 779.25;
- (18) Operation plan: general requirements, 30 CFR 780.11;
- (19) Operation plan: existing structures, 30 CFR 780.12;
- (20) Operation plan: blasting, 30 CFR 780.13;
- (21) Operation plan: maps and plans, 30 CFR 780.14;
- (22) Air pollution control plan, 30 CFR 780.15;
- (23) Fish and wildlife plan, 30 CFR 780.16;
- (24) Reclamation plan: general requirements, 30 CFR 780.18;
- (25) Hydrologic information, 30 CFR 780.21;
- (26) Geologic information, 30 CFR 780.22;
- (27) Reclamation plan: postmining land uses, 30 CFR 780.23;
- (28) Reclamation plan: ponds, impoundments, banks, dams, and embankments, 30 CFR 780.25;
- (29) Reclamation plan: surface mining near underground mining, 30 CFR 780.27;
- (30) Diversions, 30 CFR 780.29;
- (31) Protection of public parks and historic places, 30 CFR 780.31;
- (32) Relocation or use of public roads, 30 CFR 780.33;
- (33) Disposal of excess spoil, 30 CFR 780.35;
- (34) Transportation facilities, 30 CFR 780.37;
- (35) Support facilities, 30 CFR 780.38;
- (36) Experimental practices mining, 30 CFR 785.13;
- (37) Prime farmlands, 30 CFR 785.17. The last sentence in 30 CFR 785.17(c)(1)(i) shall be deleted;
- (38) Variances for delay in contemporaneous reclamation requirement in combined surface and underground mining operations, 30 CFR 785.18;
- (39) Augering, 30 CFR 785.20;

(40) Coal preparation plants not located within the permit area of a specified mine, 30 CFR 785.21;

(41) In situ processing activities, 30 CFR 785.22;

(42) Public participation in permit processing, 30 CFR 773.13. The phrase "with section 503(a)(6) or section 504(h) of the act or" shall be deleted;

(43) Review of permit applications, 30 CFR 773.15;

(44) Permit issuance and right of renewal, 30 CFR 773.19. The phrase, "unless the requirements of 778.17 of this chapter are met" shall be deleted;

(45) Improvidently issued permits; general procedure, 30 CFR 773.20;

(46) Improvidently issued permits; rescission procedures, 30 CFR 773.21;

(47) Applicability, 30 CFR 701.11 subsection (e) only, subsections (a), (b), (c), (d) and (f) shall be deleted; and

(48) Regulatory coordination with requirements under other laws, 30 CFR 773.12.

(b) The following terms shall be replaced wherever they appear:

(1) "Subchapter K" or "subchapter K of this chapter" shall be replaced by "K.A.R. 47-9-1."

(2) "This chapter," "this subchapter" or "subchapter G of this chapter" shall be replaced by "these rules and regulations."

(3) "Act" shall be replaced by "state act."

(4) "Section 515," "section 515(b)," or "section 515(b)(22)" shall be replaced by "K.S.A. 1989 Supp. 49-405a, 49-408 to 49-413, inclusive, and 49-429."

(5) "Subchapter J of this chapter" or "part 800 of this chapter" shall be replaced by "article 8 of chapter 47 of the Kansas administrative rules and regulations."

(6) "Section 502" and "section 508" shall be replaced by "K.S.A. 1989 Supp. 49-406."

(7) "Section 515(b)(16)" or "section 516" shall be replaced by "K.S.A. 1989 Supp. 49-429."

(8) "Subchapter R of this chapter" shall be replaced by "the office."

(9) "Subchapter B of this chapter" shall be replaced by "K.A.R. 47-9-4."

(10) "Part 775 of this chapter" shall be replaced by "K.S.A. 1989 Supp. 49-407(d), 49-416a, 1989 Supp. 49-422a, and article 4 of chapter 47 of the Kansas administrative rules and regulations."

(11) "Parts 762, 764, and 769 of this chapter" or "parts 764 and 769 of this chapter" shall be replaced by "K.A.R. 47-12-4."

(12) "Part 816" or "part 816 of this chapter" shall be replaced by "K.A.R. 47-9-1(c)."

(13) "Section 775.13" shall be replaced by "K.S.A. 1989 Supp. 49-422a."

(14) "Section 775.11" shall be replaced by "K.S.A. 1989 Supp. 49-407(d), 49-416a, and article 4 of chapter 47 of the Kansas administrative regulations."

(15) "Part 785 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(36) to (41), inclusive." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-405, 49-406, as amended by L. 1990, Ch. 194, sec. 1, 49-407, 49-427; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991.)

(continued)

Article 4.—PUBLIC HEARINGS

47-4-14. (Authorized by K.S.A. 49-404, 49-405; implementing K.S.A. 49-404, 49-405, 49-407, 49-416a; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986, revoked Feb. 11, 1991.)

47-4-14a. Administrative hearing procedure. (a) The following shall be the regulations which govern the procedure used in all administrative hearings resulting from:

(1) petitions for review of proposed civil penalty assessments issued by the secretary;

(2) applications for review of notices of violation and orders of cessation or modification, vacation or termination of them;

(3) applications for review of the secretary's decision to disapprove, suspend, or revoke a permit;

(4) applications for temporary relief;

(5) applications for review of alleged discriminatory acts;

(6) petitions for award of costs and expenses;

(7) appeals from initial orders or decisions of presiding officers; and

(8) all other appeals and review procedures authorized by the act.

(b) Definitions. As used in this act:

(1) "Party" means:

(A) the person to whom an order, notice of violation, civil penalty assessment, suspension of permit, revocation of permit, petition for award of costs and expenses, is specifically directed; or

(B) a person named or allowed to intervene as a party to a state agency proceeding or allowed to intervene as a party in a proceeding;

(2) "Person" means an individual, partnership, corporation, association, political subdivision or unit of them or public or private organization or entity of any character;

(c) Rules of procedure:

(1) Hearings shall be held in the location designated by the presiding officer, giving due consideration to the convenience of the parties, their representatives and witnesses;

(2) All documents which are to be filed in a proceeding governed by this section shall be filed in the office of legal services, suite 904, Landon state office building, Topeka, Kansas 66612.

(3) A person who has initiated a proceeding under this section shall file a proof of service in the form of a registered receipt if by certified or registered mail, or acknowledgement by the party served or verified return where service is made personally. A certificate of service shall be contained in all other documents filed by a party.

(4) The effective filing date of a notice of appeal or petition for review shall be the date of receipt by the office of legal services if filed personally, or the postmark date if filed by mail. The burden of establishing the date of mailing shall be on the person filing the document.

(5) All documents shall be captioned with the name of the party, name of the facility, mine, or site to which the document pertains, if appropriate the number of the notice, order, or other agency decision or action to which the appeal pertains, the case number assigned to the original agency action, any other identifying information such as permit number.

(6) Service.

(A) Copies of documents which initiate a proceeding shall be served upon all statutory parties by registered or certified mail, return receipt requested.

(B) Copies of all subsequent documents shall be served personally or by first class mail.

(C) Service of all documents is complete at the time of personal service, or if by mail, upon receipt.

(D) When an attorney has entered an appearance on behalf of a party, thereafter service shall be made upon the attorney.

(7) Intervention. Any person shall petition for leave to intervene in a proceeding. Said petition shall set out the interest of the petitioner and why his/her interest would be adversely affected.

(A) The presiding officer shall grant intervention if the petitioner:

(i) had a statutory right to initiate the proceeding into which he/she seeks intervention.

(ii) has an interest which would be adversely affected by the outcome of the proceeding.

(B) The presiding officer shall consider the following to determine if intervention is appropriate:

(i) the nature of the issues;

(ii) the adequacy of the representation of petitioner's interest provided by the existing parties;

(iii) the ability of the petitioner to present relevant evidence and argument;

(iv) the effect of intervention on the agency's implementation of its statutory duties.

(C) Any person granted leave to intervene shall participate as a party.

(D) The presiding officer shall determine the extent and terms of limited participation by an intervenor.

(8) Voluntary dismissal. Any party who initiated a proceeding shall withdraw it by moving to dismiss. The presiding officer shall grant such a motion.

(9) Pleadings, motions, briefs; service.

At appropriate stages of the proceeding, all parties shall be given full opportunity to file pleadings, motions and objections.

(A) All pleadings and motions shall be in writing and state concisely the supporting grounds.

(B) Any party shall have 15 days from the date of service of the pleading in which to file a response, unless otherwise ordered by the presiding officer:

(C) Failure to make a timely motion or response shall be construed as a waiver of objection.

(D) All motions shall be ruled upon expeditiously.

(E) At appropriate stages, all parties, shall be given full opportunity to file briefs, proposed findings of fact and conclusions of law and proposed initial and final orders.

(F) All documents filed pursuant to this subsection shall be served on all parties by mail or any other means prescribed in this regulation.

(10) Consolidation. When pending proceedings involve a common question of fact or law, they shall be consolidated pursuant to a motion by a party or the presiding officer.

(11) Waiver of hearing. Any person entitled to a hearing shall waive such right in writing. Any person required to file a responsive pleading and fails to do so by the re-

quired time, shall be deemed to have waived his right to a hearing.

(d) Formal hearings. When a statute provides for a hearing in accordance with this act, the hearing shall be governed by this subsection, and amendments thereto except as otherwise provided by subsections (e), (f), and (g).

(1) Participation and representation.

(A) Any party shall participate in the hearing in person or, if the party is a corporation or other artificial person, by a duly authorized representative.

(B) Whether or not participating in person, any party shall be represented at the party's own expense by counsel or, if permitted by law, other representative.

(C) The department shall require a corporation or other artificial person to participate by counsel.

(2) Presiding officer.

(A) The agency head or one or more other persons designated by the agency head shall be the presiding officer.

(B) Any person serving or designated to serve alone or with others as presiding officer is subject to disqualification for administrative bias, prejudice or interest.

(C) Any party shall petition for the disqualification of a presiding officer promptly after receipt of notice indicating that the person will preside or promptly upon discovering facts establishing grounds for disqualification, whichever is later.

(D) A presiding officer whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

(E) If a substitute is required for a presiding officer who is disqualified or becomes unavailable for any reason, any action taken by a duly appointed substitute for a disqualified or unavailable person is as effective as if taken by the latter.

(F) The department shall enter into agreements with another state agency to provide hearing officers to conduct proceedings under this act or for other agency proceedings.

(3) Prehearing conference; notice. The presiding officer designated to conduct the hearing shall conduct a prehearing conference. If the conference is conducted:

(A) The department shall assign a presiding officer for the prehearing conference, exercising the same discretion as is provided by subsection (d)(1)(B) and amendments thereto concerning the selection of a presiding officer for a hearing.

(B) The presiding officer for the prehearing conference shall set the time and place of the conference and give reasonable notice to all parties and to all persons who have filed written petitions to intervene in the matter.

(4) The prehearing conference notice shall include:

(A) the names and mailing addresses of all parties and other persons to whom notice is being given by the presiding officer;

(B) the name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the state agency;

(C) the official file or other reference number, the name of the proceeding, and a general description of the subject matter;

(D) a statement of the time, place, and nature of the prehearing conference;

(E) a statement of the legal authority and jurisdiction under which the prehearing conference and hearing are to be held;

(F) the name, official title, mailing address and telephone number of the presiding officer for the prehearing conference;

(G) a statement that at the prehearing conference proceeding, without further notice, may be converted into a conference hearing or a summary proceeding for disposition of the matter as provided by this act; and

(H) a statement that any party who fails to attend or participate in a prehearing conference, hearing or other stage of an adjudicative proceeding shall be held in default; and

(I) The notice shall include any other matters that the presiding officer considers desirable to expedite the proceedings.

(5) Prehearing conference procedure; prehearing order.

(A) The presiding officer may conduct all or part of the prehearing conference by telephone or other electronic means if each participant in the conference has an opportunity to participate in the entire proceeding while it is taking place.

(B) The presiding officer shall conduct the prehearing conference, as shall be appropriate, to deal with such matters as

(i) conversion of the proceeding to another type;

(ii) exploration of settlement possibilities;

(iii) preparation of stipulations;

(iv) clarification of issues;

(v) rulings on identity and limitation of the number of witnesses;

(vi) objections to proffers of evidence;

(vii) determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone or other electronic means will be used as a substitute for proceedings in person;

(viii) order of presentation of evidence and cross-examination;

(ix) rulings regarding issuance of subpoenas;

(x) discovery orders and protective orders; and

(xi) such other matters as will promote the orderly and prompt conduct of the hearing.

(C) The presiding officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

(D) If a prehearing conference is not held, the presiding officer for the hearing shall issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

(6) Notice of administrative hearing.

(A) The department shall set the time and place of the hearing and give reasonable written notice at least 10 days prior to the hearing to all parties and to all persons who have filed written petitions to intervene in the matter. Service of notices shall be made in accordance with subsection (18) as amended.

(B) The notice shall include a copy of any prehearing order rendered in the matter.

(continued)

(C) To the extent not included in a prehearing order accompanying it, the notice shall include:

(i) the names and mailing addresses of all parties and other persons to whom notice is being given by the presiding officer;

(ii) the name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the state agency;

(iii) the official file or other reference number, the name of the proceeding and a general description of the subject matter;

(iv) the time, place, and nature of the hearing;

(v) the legal authority and jurisdiction under which the hearing is to be held;

(vi) the name, official title, mailing address, and telephone number of the presiding officer;

(vii) the issues involved and, to the extent known to the presiding officer, the matters asserted by the parties; and

(viii) a statement that any party who fails to attend or participate in a prehearing conference, hearing or other stage of an adjudicative proceeding shall be held in default.

(D) The notice may include any other matters the presiding officer considers desirable to expedite the proceedings.

(E) Any other person entitled to notice under any other provision of law shall be notified:

(i) Notice shall be given in the manner specified by such provision of law or, if no such manner is specified, in a manner determined by the agency.

(ii) If any person other than the agency is directed to give notice under this subsection, the agency shall require that the person furnish proof of service.

(iii) Notice under this subsection shall include all types of information provided in subsections (C) (i) through (iv) or of a brief statement of the subject matter, parties, time, place and nature of the hearing, manner in which notice to the parties may be inspected and copied, and the name and telephone number of the presiding officer.

(7) Default.

(A) If a party fails to attend or participate in a prehearing conference, hearing or other adjudicative proceeding, the presiding officer shall serve all parties with notice of the proposed default order, including the grounds for default.

(B) Within seven days after service of a proposed default order, the party against whom it was issued may file a written motion requesting that the proposed default order be vacated stating the grounds relied upon. During this period, the presiding officer may adjourn the proceedings or conduct them without the participation of the defaulting party, with due regard for the interests of justice and the orderly and prompt conduct of the proceedings.

(C) The proposed default order shall become effective seven days after service unless vacated by the presiding officer.

(D) Once a default order becomes effective, the presiding officer may conduct any proceedings necessary to complete the adjudication and determine all issues in the adjudication, including those affecting the defaulting party without that party's participation. In lieu of determining

the issues affecting the defaulting party, the presiding officer may dismiss that party's application for an adjudicative proceeding, unless otherwise prohibited by law.

(8) Certification of interlocutory ruling. On the presiding officer's or a party's motion, a ruling may be certified to the secretary if that ruling presents a controlling question of law and immediate appeal would materially advance the ultimate disposition of the case.

(9) Summary judgment. Any party may move for summary decision, in whole or in part, after a proceeding has begun.

(A) The moving party shall verify all allegations of fact with supporting affidavits, unless reliance is upon depositions, answers to interrogatories, admissions, or documents produced upon request to verify such allegations.

(B) The presiding officer shall grant such a motion if the record, including pleadings, depositions, answers to interrogatories, admissions, and affidavits, show that:

(i) there is not disputed issue as to any material fact; and

(ii) the moving party is entitled to a summary decision as a matter of law.

(C) If complete summary decision is not granted, and an evidentiary hearing is necessary, the presiding officer shall, if practicable, examine all relevant evidence and documents in the record, ascertain what material facts are controverted in good faith and issue an order specifying those facts which are not substantially controverted and directs such further proceedings as determined necessary.

(10) The presiding officer:

(A) Shall regulate the proceedings;

(B) Shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, to the extent necessary for full disclosure of all relevant facts and issues, except as restricted by a limited grant of intervention or by the prehearing order.

(C) May, and when required by statute shall, give nonparties an opportunity to present oral or written statements. When the presiding officer proposes to consider a statement by a nonparty:

(i) all parties shall have an opportunity to challenge or rebut the statement; and,

(ii) any party may, by motion, require the statement to be given under oath or confirmation.

(D) May conduct all or part of the hearing by telephone or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding.

(E) Shall cause the hearing to be recorded at the state agency's expense. The state agency is not required, at its expense to prepare a transcript, unless required to do so by a provision of law. Any party, at the party's expense and subject to such reasonable conditions as the state agency shall establish, shall cause a person other than the state agency to prepare a transcript from the state agency's record, or cause additional recordings to be made during the hearing.

(F) May close parts of the hearing from public observation only where a provision of the law expressly authorizes closure.

(11) Proposed findings of fact and conclusions of law. The presiding officer shall allow the parties to submit

proposed findings of fact and conclusions of law with a supporting brief therefor at a time set forth by the presiding officer.

(12) Evidence; official notice.

(A) A presiding officer is not bound by the statutory rules of evidence, but shall give the parties reasonable opportunity to be heard and to present evidence, and the presiding officer shall act reasonably without partiality. The presiding officer shall give effect to the rules of privilege recognized by law. Evidence need not be excluded solely because it is hearsay.

(B) All testimony of parties and witnesses shall be made under oath or affirmation and the presiding officer shall have the power to administer an oath or affirmation for that purpose.

(C) Statements presented by nonparties in accordance with (d)(10)(C) above, shall be received as evidence.

(D) Any part of the evidence shall be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party.

(E) Documentary evidence shall be received in the form of a copy or excerpt. Upon request, parties shall be given an opportunity to compare the copy with the original if available;

(F) Official notice shall be taken of:

(i) any matter that could be judicially noticed in the courts of this state;

(ii) the record of other proceedings before the state agency;

(iii) technical or scientific matters within the state agency's specialized knowledge; and

(iv) codes of standards that have been adopted by an agency of the United States, of this state or of another state or by a nationally recognized organization or association. Parties shall be notified before or during the hearing, or before the issuance of any initial or final order that is based in whole or in part on matters or material noticed, of the specific matters or material noticed and the source of them, including any staff memoranda and data, and be afforded an opportunity to contest and rebut the matters or material so noticed.

(13) Orders, initial and final.

(A) If the presiding officer is the agency head, the presiding officer shall render a final order.

(B) If the presiding officer is not the agency head, the presiding officer shall render an initial order, which becomes a final order unless reviewed in accordance with subsection (14) below, and amendments.

(C) A final order or initial order shall include, separately stated, findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration, administrative review or other administrative relief. An initial order shall include a statement of any circumstances

under which the initial order, without further notice, shall become a final order.

(D) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding.

(E) If a substitute presiding officer is appointed, the substitute presiding officer shall use any existing record and shall conduct any further proceedings appropriate in the interests of justice.

(F) The presiding officer shall allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(G) A final order or initial order pursuant to this section shall be rendered in writing and served within 30 days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (f) unless this period is waived or extended with the written consent of all parties or for good cause shown.

(H) The presiding officer shall cause copies of the order to be served on each party and, if the order is an initial order, the agency head in the manner prescribed by subsection (18) and amendments thereto.

(14) Review of initial order; exceptions to reviewability.

(A) The agency head, upon its own motion shall, and upon petition by any party or when required by law shall, review an initial order, except to the extent that:

(i) A provision of law precludes or limits review of the initial order; or

(ii) the agency head determines to review some but not all issues, or not to exercise any review, or delegates its authority to review the initial order to one or more persons, unless such delegation is expressly prohibited by law, or authorizes one or more persons to review the initial order, subject to further review by the agency head.

(B) A petition for review of an initial order must be filed with the agency head, or with any person designated for this purpose by rule and regulation of the state agency, within 15 days after service of the initial order. If the agency head on its own motion decides to review an initial order, the agency head shall give written notice of its intention to review the initial order within 15 days after its service. If the agency head determines not to review an initial order in response to a petition for review, the agency head shall, within 20 days after filing of the petition for review, serve on each party an order stating that review will not be exercised.

(C) The petition for review shall state its basis. If the agency head on its own motion gives notice of its intent to review an initial order, the agency head shall identify the issues that it intends to review.

(D) In reviewing an initial order, the agency head or designee shall exercise all the decision-making power that the agency head or designee would have had to render a final order had the agency head or designee presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the agency head or designee upon notice to all parties.

(E) The agency head or designee shall afford each party an opportunity to present briefs and shall afford each party an opportunity to present oral argument.

(F) The agency head or designee shall render a final order disposing of the proceeding or remand the matter

(continued)

for further proceedings with instructions to the person who rendered the initial order. Upon remanding a matter, the agency head or designee shall order such temporary relief as is authorized and appropriate.

(G) A final order or an order remanding the matter for further proceedings shall be rendered in writing and served within 30 days after receipt of briefs and oral argument unless that period is waived or extended with written consent of all parties or for good cause shown.

(H) A final order or an order remanding the matter for further proceedings under this section shall identify any difference between this order and the initial order and shall include, or incorporate by express reference to the initial order, all the matters required by subsection (13) (C) and amendments thereto.

(I) The agency head shall cause copies of the final order or order remanding the matter for further proceedings to be served on each party in the manner prescribed by subsection (18) and amendments.

(15) Stay. A party shall submit to the presiding officer or agency head a petition for stay of effectiveness of an initial or final order until the time at which a petition for judicial review would no longer be timely, unless otherwise provided by statute or stated in the initial or final order. The presiding officer or agency head shall take action on the petition for stay, either before or after the effective date of the initial or final order.

(16) Reconsideration.

(A) Any party, within 15 days after service of a final order, shall file a petition for reconsideration with the agency head, stating the specific grounds upon which relief is requested. The filing of the petition is not a prerequisite for seeking administrative or judicial review.

(B) The agency head shall render a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further proceedings. The petition shall be granted, in whole or in part, only if the agency head states, in the written order, findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, to justify the order. The petition is deemed to have been denied if the agency head does not dispose of it within 20 days after the filing of the petition.

An order under this section shall be served on the parties in the manner prescribed by subsection (18) hereunder and amendments thereto.

(17) Orders, when effective.

(A) Unless a later date is stated in a final order or a stay is granted, a final order is effective upon service.

(B) Unless a later date in an initial order or a stay is granted, an initial order shall become effective and shall become the final order:

(i) When the initial order is served, if administrative review is unavailable;

(ii) when the agency head serves an order stating, after a petition for review has been filed, that review will not be exercised, or

(iii) 30 days after service if no party has filed a petition for review by the agency head, the agency head has not given written notice of its intention to exercise review and review by the agency head is not otherwise required by law.

(C) This section does not preclude the department from taking immediate action to protect the public interest in accordance with subsection (f), and amendments thereto.

(18) Service of order. Service of an order or notice shall be made upon the party and the party's attorney of record, if any, by delivering a copy of the order or notice to the person to be served or by mailing a copy of the order or notice to the person at the person's last known address. Delivery of a copy of an order or notice means handing the order or notice to the person or leaving the order or notice at the person's principal place of business or residence with a person of suitable age and discretion who works or resides therein. Service shall be presumed if the presiding officer, or a person directed to make service by the presiding officer, makes a written certificate of service. Service by mail is complete upon mailing. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or order and the notice or order is served by mail, three days shall be added to the prescribed period.

(19) Record.

(A) The department shall maintain an official record of each formal hearing.

(B) The record consists only of:

(i) Notices of all proceedings;

(ii) any prehearing order;

(iii) any motions, pleadings, briefs, petitions, requests, and intermediate rulings;

(iv) evidence received or considered;

(v) a statement of matters officially noticed;

(vi) proffers of proof and objections and rulings on them;

(vii) proposed findings, requested orders and exceptions;

(viii) the record prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding;

(ix) any final order, initial order, or order on reconsideration; and

(x) staff memoranda or data submitted to the presiding officer.

(C) Except to the extent that this act or another statute provides otherwise, the state agency record, excluding matters under paragraph (x) of subsection (B), constitutes the exclusive basis for state agency action in formal hearings and for judicial review of them.

(e) Conference hearing; use, when.

(1) A conference hearing shall be used if its use in the circumstances does not violate any provision of law and where there is:

(A) A matter in which there is no disputed issue of material fact; or

(B) A matter in which there is a disputed issue of material fact and the parties agree to a conference hearing.

(2) Procedure. The procedures of this act pertaining to formal hearings apply to a conference hearing, except to the following extent:

(A) If a matter is initiated as a conference hearing, no prehearing conference shall be held.

(B) The provisions of K.A.R. 47-4-15 and amendments thereto do not apply to conference hearings insofar as

those provisions authorize the issuance and enforcement of subpoenas and discovery orders but do not apply to conference hearings insofar as those provisions authorize the presiding officer to issue protective orders at the request of any party or upon the presiding officer's motion.

(C) Paragraphs (10) (A), (B) and (C) of amendments thereto do not apply; but (i) the presiding officer shall regulate the course of the proceedings; (ii) only the parties shall testify and present written exhibits; and (iii) the parties shall offer comments on the issues.

(3) Disclosure of material or essential facts.

(A) If during a conference hearing the presiding officer has reason to believe that material facts are in dispute, the presiding officer shall require any party to state the identity of the witnesses or other sources through whom the party would propose to present proof if the proceeding were converted to a formal hearing, but if disclosure of any fact, allegation or source is privileged or expressly prohibited by any provision of law, the presiding officer shall require the party to indicate that confidential facts, allegations or sources are involved but not to disclose the confidential facts, allegations or sources.

(B) If during a conference hearing a party has reason to believe that essential facts must be obtained in order to permit an adequate presentation of the case, the party shall inform the presiding officer regarding the general nature of the facts and the sources from whom the party would propose to obtain those facts if the proceeding were converted to a formal hearing.

(f) Emergency proceedings. Use when; procedure.

(1) A state agency shall use emergency proceedings;

(A) In a situation involving an immediate danger to the public health, safety or welfare requiring immediate state agency action or

(B) as otherwise provided by law.

(2) the department shall take only such action as is necessary:

(A) To prevent or avoid the immediate danger to the public health, safety or welfare that justifies use of emergency adjudication or

(B) to remedy a situation for which use of emergency adjudication is otherwise provided by law.

(3) the department shall render an order, including a brief statement of findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, to justify the department's decision to take the specific action and the determination of:

(A) An immediate danger or

(B) the existence of a situation for which use of emergency adjudication is otherwise provided by law.

(4) The department shall give such notice as is practicable to persons who are required to comply with the order. The order is effective when rendered. Notice under this subsection shall constitute service for the purposes of the act for judicial review and civil enforcement of agency actions.

(5) After issuing an order pursuant to this section, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not justify the use of emergency proceedings under subsection (1).

(6) The administrative record consists of any documents

regarding the matter that were considered or prepared by the state agency. The department shall maintain these documents as its official record.

(7) Unless otherwise required by a provision of law, the state agency record need not constitute the exclusive basis for in emergency proceedings or for judicial review of them.

(g) Summary proceedings. Use, when; right to request hearing; orders, contents.

(1) The department shall use summary proceedings, subject to a party's request for a hearing on the order, if:

(A) The use of those proceedings in the circumstances does not violate any provision of law; and

(B) the protection of the public interest does not require the state agency to give notice and an opportunity to participate to persons other than the parties.

(2) The department shall serve each party with a copy of the order in a summary proceeding in the manner prescribed by subsection (d) (18) and amendments thereto.

(3) The order shall include at least:

(A) A statement of the department's action and, if unfavorable action is taken, a brief statement of the reasons for the action;

(B) notice of the time and manner for requesting a hearing on the order; and

(C) notice that, if a hearing is not requested, the order shall become effective upon the expiration of the time for requesting a hearing.

(4) Record.

(A) The administrative record for a summary proceeding consists of any documents regarding the matter that were considered or prepared by the state agency. The department shall maintain these documents as its official record.

(B) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in summary proceedings or for judicial review of them. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-405, 49-407, 49-416a; effective Feb. 11, 1991.)

47-4-15. Administrative hearings; discovery.

(a) Requests for discovery shall be made in writing to the presiding officer and a copy of each request for discovery shall be served on the party or person against whom discovery is sought. The presiding officer may specify the times during which the parties may pursue discovery and respond to discovery requests. The presiding officer may issue subpoenas, discovery orders and protective orders in accordance with the rules of civil procedure.

(b) Subpoenas issued by the presiding officer shall be served by a person designated by the presiding officer or any other person who is not a party and is not less than 18 years of age. Service shall be in person and at the expense of the requesting party. Proof of service shall be shown by affidavit.

(c) Subpoenas and orders issued by the presiding officer may be enforced pursuant to the provisions of the act for judicial review and civil enforcement or agency actions K.S.A. 77-601 *et seq.*

(continued)

(d) Discovery methods. Parties may obtain discovery by one or more of the following methods:

(1) Depositions upon oral examination or upon written interrogatories;

(2) Written interrogatories;

(3) Production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and

(4) Requests for admission.

(e) Time for discovery. Following the initiation of a proceeding, the parties may initiate discovery at any time as long as it does not interfere with the conduct of the hearing.

(f) Scope of discovery.

(1) Unless otherwise limited by order of the presiding officer in accordance with these rules, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

(2) It is not grounds for objection that information sought will not be admissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(3) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (1) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his/her attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his/her case and that he/she is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the presiding officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

(g) Protective Order. Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) The discovery not be had;

(2) The discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) Certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters;

(5) Discovery be conducted with no one present except persons designated by the presiding officer; or

(6) A trade secret or other confidential research, development or commercial information may not be disclosed or be disclosed only in a designated way.

(h) Sequence and timing of discovery. Unless the pre-

siding officer upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(i) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his/her response to include information thereafter acquired, except as follows:

(A) A party is under a duty to timely supplement his/her response with respect to any question directly addressed to:

(i) the identity and location of persons having knowledge of discoverable matters; or

(ii) the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he/she is expected to testify and the substance of his/her testimony.

(B) A party is under a duty to timely amend a prior response if he/she later obtains information upon the basis of which

(i) He/she knows the response was incorrect when made; or

(ii) He/she knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(C) A duty to supplement responses may be imposed by order of the presiding officer or agreement of the parties.

(j) Motion to compel discovery.

(1) If a deponent fails to answer a question propounded, or a party upon whom a request is made pursuant to subsection (d)(3) or a party upon whom answers to interrogatories are served fails to adequately respond or objects to the request, or any part thereof, or fails to permit inspection as requested, the discovering party may move the presiding officer for an order compelling a response or inspection in accordance with the request.

(2) The motion shall set forth:

(A) The nature of the questions or request;

(B) The response or objection of the party upon whom the request was served; and

(C) Arguments in support of the motion.

(3) For purposes of this section, an evasive answer or incomplete answer or response shall be treated as a failure to answer or respond.

(4) In ruling on a motion made pursuant to this section, the presiding officer may make such a protective order as he/she is authorized to make on a motion made pursuant to K.A.R. 47-4(f)(4) above.

(k) Failure to comply with orders compelling discovery. If a party or an officer, director, or other agent of a party fails to obey an order to provide or permit discovery, the presiding officer before whom the action is pending may make such orders in regard to the failure as are just, including but not limited to the following:

(1) An order that the matters sought to be discovered or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him/her from introducing designated matters into evidence; or

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(l) Depositions upon oral examination or upon written questions.

(1) Any party desiring to take the testimony of any other party or other person by deposition upon oral examination or written questions shall, without leave of the presiding officer, give reasonable notice in writing to every other party, to the person to be examined and to the presiding officer of:

(A) The proposed time and place of taking the deposition;

(B) The name and address of each person to be examined, if known, or if the name is not known, a general description sufficient to identify him/her or the particular group or class to which he/she belongs;

(C) The matter upon which each person will be examined; and

(D) The name or descriptive title and address of the officer before whom the deposition is to be taken.

(2) A deposition may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(3) The actual taking of the deposition shall proceed as follows:

(A) The deposition shall be on the record;

(B) The officer before whom the deposition is to be taken shall put the witness under oath or affirmation;

(C) Examination and cross-examination shall proceed as at a hearing;

(D) All objections made at the time of the examination shall be noted by the officer upon the deposition;

(E) The officer shall not rule on objections to the evidence, but evidence objected to shall be taken subject to the objections.

(4) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature, unless examination and signature is waived by the deponent. The officer shall certify the deposition or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign.

(5) Where the deposition is to be taken upon written questions, the party taking the deposition shall serve a copy of the questions, showing each question separately and consecutively numbered, on every other party with a notice stating the name and address of the person who is to answer them, and the name, description, title, and address of the officer before whom they are to be taken. Within 30 days after service, any other party may serve cross-questions. The questions, cross-questions, and answers shall be recorded and signed, and the deposition certified, as in the case of a deposition on oral examination.

(6) A deposition will not become a part of the record in the hearing unless received in evidence. If only part

of a deposition is offered in evidence by a party, any other party may introduce any other parts.

(7) A deponent whose deposition is taken and the officer taking a deposition shall be entitled to the same fees as are paid for like services in the district courts of the United States, to be paid by the party at whose instance the deposition is taken.

(8) The deponent may be accompanied, represented, and advised by legal counsel.

(m) Use of depositions. At the hearing, any part or all of a deposition, so far as admissible, may be used against any party who was present or represented at the taking of the deposition, or who had reasonable notice thereof, in accordance with any of the following provisions;

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness;

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent or a person designated to testify on behalf of a public or private corporation, partnership, or association or governmental agency which is a party may be used by an adverse party for any purpose; or

(3) The deposition of a witness, whether or not a party, may be used by a party for any purpose if the presiding officer finds that:

(A) The witness is dead;

(B) The witness is at a distance greater than 100 miles from the place of hearing, or is outside the United States, unless it appears that the absence of the witness was procured by the party offering the deposition;

(C) The witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(D) The party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) Such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the hearing, to allow the deposition to be used.

(n) Written interrogatories to parties.

(1) Any party may serve upon any other party written interrogatories to be answered in writing by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories, answers, and all related pleadings shall be served on the presiding officer and upon all parties to the proceeding.

(2) Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answer and objections shall be signed by the person making them. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all parties to the proceeding within 30 days after service of the interrogatories, or within such shorter or longer period as the presiding officer may allow.

(3) Interrogatories may relate to any matters which can be inquired into under subsection (f) above. An interrogatory otherwise proper is not necessarily objectionable

(continued)

merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the presiding officer may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

(o) Production of documents and things and entry upon land for inspection and other purposes.

(1) Any party may serve on any other party a request to:

(A) Produce and permit the party making the request, or a person acting on his/her behalf, to inspect and copy any designated document, or to inspect and copy, test, or sample any tangible things within the scope of subsection (f) above, and which are in the possession, custody, or control of the party upon whom the request is served; or

(B) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property (including the air, water, and soil) or any designated object or operation thereon, within the scope of subsection (f) above.

(2) The request may be served on any party without leave of the presiding officer.

(3) The request shall:

(A) Set forth the items to be inspected either by individual item or by category;

(B) Describe each item or category with reasonable particularity; and

(C) Specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(4) The party upon whom the request is served shall serve on the party submitting the request a written response within 30 days after service of the request.

(5) The response shall state, with respect to each item or category:

(A) That inspection and related activities will be permitted as requested; or

(B) That objection is made in whole or in part, in which case the reasons for objection shall be stated.

(p) Request for Admissions.

(1) A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact.

(2) Each matter of which an admission is requested is admitted unless, within 30 days after service of the request or such shorter or longer time as the presiding officer may allow, the party to whom the request is directed serves on the requesting party:

(A) A sworn statement denying specifically the relevant matters of which an admission is requested;

(B) A sworn statement setting forth in detail the reasons why he/she can neither truthfully admit nor deny them; or

(C) Written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part.

(3) An answering party may not give lack of information

or knowledge as a reason for failure to admit or deny unless he/she states that he/she has made reasonable inquiry and that the information known or readily obtainable by him/her is insufficient to enable him/her to admit or deny.

(4) The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the presiding officer determines that an objection is justified, he/she shall order that an answer be served. If the presiding officer determines that an answer does not comply with the requirements of this section, he/she may order either that the matter is admitted or that an amended answer be served. The presiding officer may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to hearing.

(5) Any matter admitted under this section is conclusively established unless the presiding officer on motion permits withdrawal or amendment of the admission.

(6) Any admission made by a party under this section is for the purpose of the pending action only and is not an admission by him/her for any other purpose nor may it be used against him/her in any other proceeding. (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991.)

47-4-16. Interim orders for temporary relief. An interim order for temporary relief may be issued by the department or a presiding officer, on its own initiative or on written request, when there has been a showing of good cause. An interim order shall not be granted in permit application cases where the relief sought is issuance of a permit, that has been denied in whole or in part by the department.

(b) Unless otherwise specified by statute, an interim order for temporary relief shall be effective for 30 days at most if a hearing is not held on the merits of the issues. (Authorized by K.S.A. 1989 Supp. 49-405, 49-407, 49-416a; implementing K.S.A. 1989 Supp. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991.)

47-4-17. Administrative hearings; award of costs and expenses. (a) Any person may file a petition for award of costs and expenses including attorney fees, reasonably incurred as a result of that person's participation in any administrative proceeding under the state act which results in a final order being issued by the department or its presiding officer. The petition shall be filed within 45 days of receipt of such order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

(b) A petition filed under this section shall include the name of the person from whom costs and expenses are sought and the following shall be submitted in support of the petition:

(1) an affidavit detailing all costs and expenses, including attorney fees, incurred as a result of participation in the proceeding;

(2) receipts or other evidence of the costs and expenses; and

(3) where attorney fees are claimed, the hours expended on the case, the customary commercial rate of

payment for such services in the locality, and evidence of the experience, reputation, and ability of the attorney or attorneys.

(c) Any person served with the petition shall have 30 days from the date of service to file an answer.

(d) Appropriate costs and expenses, including attorney fees, may be awarded as follows:

(1) from the permittee, if the person initiates any administrative proceedings, or participates in such proceedings, upon a finding that a violation of the state act, these rules and regulations, or of the permit has occurred, or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made if the department or its presiding officer determines that the person made a substantial contribution to the full and fair determination of the issues;

(2) from the department to anyone other than the permittee or permittee's representative, if the person initiates or participates in any proceeding under the act upon a finding that the person made a substantial contribution to a full and fair determination of the issues;

(3) from the department to the permittee when the permittee demonstrates that the department issued an order of cessation, a notice of violation or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee;

(4) To a permittee from any person where the permittee demonstrates that the person initiated a proceeding or participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee; or

(5) To the department where it demonstrates that any person applied for review or participated in an administrative proceeding in bad faith and for the purpose of harassing or embarrassing the department or any person employed by the department.

(e) An award may include all costs and expenses, including attorney fees and expert witness fees, reasonably incurred as a result of initiation of or participation in a proceeding under the state act. (Authorized by K.S.A. 1989 Supp. 49-405, 49-416a; implementing K.S.A. 1989 Supp. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991.)

Article 5.—CIVIL PENALTIES

47-5-5a. Civil penalties; adoption by reference. (a) Subject to the provisions of subsection (c), the following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, as they existed on July 1, 1990 are hereby adopted by reference as rules and regulations of the secretary:

(b) The following terms shall be replaced with the indicated terms wherever they appear in the text of the rules and regulations incorporated adopted by reference under this section:

- (1) How assessments are made, 30 CFR 845.11;
- (2) When penalty will be assessed, 30 CFR 845.12;
- (3) Point system for penalties, 30 CFR 845.13;
- (4) Determination of penalty amount, 30 CFR 845.14;
- (5) Assessment of separate violations for each day, 30 CFR 845.15;

(6) Waiver of use of formula to determine civil penalty, 30 CFR 845.16;

(7) Procedures for assessment of civil penalties, 30 CFR 845.17;

(8) Procedures for assessment conference, 30 CFR 845.18;

(9) Request for a hearing, 30 CFR 845.19; and

(10) Individual civil penalties, 30 CFR part 846.

(c) Review of proposed assessments of civil penalties. In the event a request for hearing is made pursuant to subsection (a)(9), the procedure set forth in K.A.R. 47-4-14 and the following shall apply.

(1) Time for filing petition.

(A) A petition for review of a proposed assessment of a civil penalty must be filed within 30 days of receipt of the proposed assessment; or

(B) If a timely request for a conference has been made pursuant to subsection (7) above, a petition for review must be filed within 15 days from service of notice by the presiding officer that the conference is completed.

(C) No extension of time shall be granted for filing a petition for review of a proposed assessment of a civil penalty as required by paragraph (A) or (B) of this section. If a petition for review is not filed within the time period provided in paragraph (A) or (B) of this section, the appropriateness of the amount of the penalty, and the fact of the violation if there is no proceeding pending under K.S.A. 1989 Supp. 49-416(a) to review the notice violation or cessation order involved, shall be admitted, the petition shall be dismissed, and the civil penalty assessed shall become a final order of the secretary.

(2) Contents of petition; payment required.

(A) The petition shall include:

(i) a short and plain statement indicating the reasons why either the amount of the penalty or the fact of the violation is being contested;

(ii) if the amount of penalty is being contested based upon a misapplication of the civil penalty formula, a statement indicating how the civil penalty formula contained in K.A.R. adopting 30 CFR Part 723 was misapplied, along with a proposed civil penalty utilizing the civil penalty formula.

(iii) identification by number of all violations being contested.

(iv) the identifying number of the cashier's check, certified check, bank draft, personal check, or bank money order accompanying the petition; and

(v) a request for a hearing site.

(B) The petition shall be accompanied by:

(i) full payment of the proposed assessment in the form of a cashier's check, certified check, bank draft, personal check or bank money order made payable to surface mining section, to be placed in an escrow account pending final determination of the assessment; and

(ii) on the face of the payment an identification by number of the violations for which payment is being tendered.

(C) As required by K.S.A. 1989 Supp. 49-416(a), failure to make timely payment of the proposed assessment in full shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(D) No extension of time will be granted for full payment of the proposed assessment. If payment is not made

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within the time period provided in (b)(1) (A) or (B), the appropriateness of the amount of the penalty, and the fact of the violation, if there is no review proceeding, the notice of violation or cessation order involved shall be deemed admitted, the petition shall be dismissed, and the civil penalty assessed shall become a final order of the secretary.

(3) Answer: The surface mining section shall have 30 days from receipt of a copy of the petition within which to file an answer.

(4) Review of waiver determination:

(A) Within 10 days of the filing of a petition, petitioner may move the presiding officer to review the granting or denial of a waiver of the civil penalty formula pursuant to subsection (a)(6) above.

(B) The motion shall contain a statement indicating all alleged facts relevant to the granting or denial of a waiver;

(C) Review shall be limited to the written determination of the section granting or denying the waiver, the motion and responses to the motion. The standard of review shall be abuse of discretion.

(D) If the presiding officer finds that the section abused its discretion in granting or denying the waiver, the presiding officer shall hold a hearing on the petition for review of the proposed assessment and make a determination pursuant to subsection (7) hereunder.

(5) Burden of proof in civil penalty proceedings: In civil penalty proceedings, the surface mining section shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the fact of violation and as to the amount of the penalty.

(6) Summary disposition:

(A) In a civil penalty proceeding where the person against whom the proposed civil penalty is assessed fails to comply on time with any prehearing order of a presiding officer, the presiding officer shall issue an order to show cause why:

(i) that person should not be deemed to have waived his/her right to a hearing; and

(ii) the proceedings should not be dismissed and the assessment become final.

(B) If the order to show cause is not satisfied as required, the presiding officer shall order the proceedings summarily dismissed and issue a final order.

(C) Where the person against whom the proposed civil penalty is assessed fails to appear at a hearing, that person will be deemed to have waived his/her right to a hearing and the presiding officer may assume for purposes of the assessment:

(i) that each violation listed in the notice of violation or order occurred; and

(ii) the truth of any facts alleged in such notice or order.

(D) In order to issue an initial order assessing the appropriate penalty when the person against whom the proposed civil penalty is assessed fails to appear at the hearing, a presiding officer shall either conduct an ex parte hearing or require surface mining section to furnish proposed findings of fact and conclusions of law.

(E) Nothing in this section shall be construed to deprive the person against whom the penalty is assessed of his/her opportunity to have the surface mining section prove the violations charged in open hearing with confrontation and cross-examination of witnesses, except

where that person fails to comply with a prehearing order or fails to appear at the scheduled hearing.

(7) Initial order of presiding officer:

(A) The presiding officer shall incorporate in his/her decision concerning the civil penalty, findings of fact on each of the four criteria set forth in K.A.R. 47-5-5a(a)(3) above and conclusions of law.

(B) If the presiding officer finds that:

(i) a violation occurred or that the fact of violation is uncontested, he/she shall establish the amount of the penalty, but in so doing, he/she shall adhere to the point system and conversion table contained in 30 CFR 845.14 adopted in K.A.R. 47-5-5(3) and (4) above, except that the presiding officer may waive the use of such point system where he/she determines that a waiver would further abatement of violations of the surface mining act. However, the presiding officer shall not waive the use of the point system and reduce the proposed assessment on the basis of an argument that a reduction in the proposed assessment could be used to abate other violations of the act; or

(ii) no violation occurred, he/she shall issue an order that the proposed assessment be returned to the petitioner.

(C) If the presiding officer makes a finding that no violation occurred or if the presiding officer reduces the amount of the civil penalty below the proposed assessment and a timely petition for review of his/her decision is not filed with the secretary or the secretary refuses to grant such a petition, to remit the appropriate amount to the person who made the payment.

(D) If the presiding officer increases the amount of the civil penalty about that of the proposed assessment, the presiding officer shall order payment of the appropriate amount within 30 days of receipt of the decision.

(8) Appeals:

(A) Any party may petition the secretary to review and/or reconsider the initial order of a presiding officer concerning an assessment pursuant to K.A.R. 47-4-14(d) (14) and (16) respectively.

(B) Any party may appeal the final order of the secretary pursuant to the Kansas judicial review act K.S.A. 77-602 *et seq.*

(1) "Act" shall be replaced by "state act."

(2) "Director" or "director or his designee" shall be replaced by "secretary or secretary's designee."

(3) "Secretary" shall be replaced by "secretary."

(4) "Section 521(a)" shall be replaced by "K.S.A. 1989 Supp. 49-405(m)(2)."

(5) "Section 525(c)" shall be replaced by "K.S.A. 1989 Supp. 49-416a(c)."

(6) "Section 526" and "Section 526(c)" shall be replaced by "K.S.A. 1989 Supp. 49-422a."

(7) "Section 518(e), 518(f), 521(a)(4), or 521(c)" shall be replaced by "K.S.A. 1989 Supp. 49-405c(e), 49-405c(f), 49-405(m)(3), or 49-405(m)(4)."

(8) "Office" or "Office of hearings and appeals" shall be replaced by "department."

(9) "Sections 518, 521(a)(4), and 525" shall be replaced by "K.S.A. 1989 Supp. 49-405c, 49-405(m)(3), and 49-416a."

(10) "30 CFR 845.20" shall be replaced by "K.A.R. 47-5-16."

(11) "43 CFR 4.1300 *et seq.*" and "rule 4 of the federal rules of civil procedure" shall be replaced by "K.A.R. 47-4-14."

(12) "Standard" shall be replaced by "statute, regulation, or standard." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-405, 49-405c, 49-416a; effective May 1, 1985; amended Feb. 11, 1991.)

47-5-16. Civil penalties; final assessment and payment of civil penalty. (a) If any person to whom a notice of violation or cessation order is issued fails to request a hearing, the proposed assessment shall become a final order of the secretary; due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the secretary, the proposed civil penalty assessment shall be held in escrow until completion of the review. Otherwise, subject to subsection (c) of this regulation, the escrowed funds shall be transferred to the department in payment of the civil penalty and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed civil penalty under these regulations, all or part of the escrowed amount shall be refunded to the person assessed within 30 days of receipt of the order and shall include any interest that is accrued from the date of payment into escrow to the date of the refund.

(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the department within 15 days after the order is mailed to that person. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-405c; effective May 1, 1984; amended May 1, 1985; amended Feb. 11, 1991.)

Article 6.—PERMIT REVIEW

47-6-1. Permit review. Each permit issued and outstanding during the term of the permit shall be reviewed by the secretary or secretary's designee not later than the middle of such term. After this review, reasonable revision or modification of the permit provisions may be ordered to ensure compliance with the laws and regulations. A copy of the order and the written findings shall be sent to the operator. The order shall be subject to provisions of K.S.A. 1989 Supp. 49-407(d) and 49-422a. (Authorized by K.S.A. 1989 Supp. 49-405, 49-410, as amended by L. 1990, Ch. 194, sec. 2; implementing K.S.A. 1989 Supp. 49-405; effective May 1, 1980; amended Feb. 11, 1991.)

47-6-2. Permit revision. (a) An application made by an operator to amend or revise an existing permit shall be submitted at least sixty (60) days prior to the date which the operator desires to have the approval by the secretary.

(b) If the application for permit revision contains significant alterations or departures from the method of mining or reclamation operations covered by the original permit, all permit application information, requirements and procedures shall be met. Whether a significant alteration or departure is involved shall be determined by the secretary or secretary's designee on a case-by-case basis upon review unless such a determination is requested in writing by the operator at or before filing the

application. On receiving such a request, the operator shall be advised by the secretary or secretary's designee if a significant alteration or departure is involved for the purpose of submitting an application.

(c) All applications for permit revision shall be accompanied by a map which meets the general map requirements of these rules. The proposed amendment shall be described in detail and supported by the technical data necessary to establish its impact and consequences on the surface coal mining and reclamation operation, the environment, and the public health and safety. Additional information may be requested when necessary to make an evaluation of the impact.

(d) No application for a permit revision shall be approved unless the applicant demonstrates and the regulatory authority finds that:

(1) the reclamation required by the state act and the regulatory program can be accomplished;

(2) applicable requirements under K.A.R. 47-3-42 (a) (43) pertinent to the revision are met; and

(3) the application for revision complies with all requirements of the state act and the regulatory program.

(e) Any extension to the area covered by the permit, except incidental boundary revisions, shall be made through an application for a new permit. (Authorized by K.S.A. 1989 Supp. 49-405, 49-410, as amended by L. 1990, Ch. 194, sec. 2; implementing K.S.A. 1989 Supp. 49-405; effective May 1, 1980; amended Feb. 11, 1991.)

47-6-3. Permit renewals; adoption by reference. The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted as rules and regulations of the secretary, as they existed on July 1, 1990, except as otherwise indicated:

(a) Permit renewals, 30 CFR 774.15, except subsection (c)(3) shall be deleted.

(b) The following terms shall be replaced with the indicated terms wherever they appear:

(1) "Subchapter J of this chapter" shall be replaced by "article 8 of chapter 47 of the Kansas administrative rules and regulations."

(2) "This chapter" shall be replaced by "these rules and regulations."

(3) "Act" shall be replaced by "state act."

(4) "Part 775 of this chapter" shall be replaced by "K.S.A. 1989 Supp. 49-407(d), 49-416a, 49-422a, and article 4 of chapter 47 of the Kansas administrative rules and regulations."

(5) "Section 774.13" shall be replaced by "K.A.R. 47-6-2." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-406, as amended by L. 1990, Ch. 194, sec. 1; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991.)

47-6-4. Permit transfers, sales assignments; adoption by reference. (a) Any application for a new permit required for a person succeeding by transfer, sale, or assignment of rights granted under a permit shall be filed with the secretary not later than 30 days after that succession is approved by the secretary.

(continued)

(b) The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted as rules and regulations of the secretary, as they existed on July 1, 1990:

(c) Transfer, assignment, or sale of permit rights: general requirements, 30 CFR 774.17.

(d) The following terms shall be replaced with the indicated terms wherever they appear:

(1) "This chapter" or "this subchapter" shall be replaced by "these rules and regulations."

(2) "Part 778 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(1) to (8), inclusive."

(3) "Subchapter J of this chapter" shall be replaced by "article 8 of chapter 47 of the Kansas administrative rules and regulations." (Authorized by K.S.A. 1989 Supp. 49-405, implementing K.S.A. 1988 Supp. 49-410, as amended by L. 1990, Ch. 194, sec. 2; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991.)

47-6-6. Permit conditions; adoption by reference. The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted as rules and regulations of the secretary, as they existed on July 1, 1990, except as otherwise indicated:

(a) Permit conditions, 30 CFR 773.17.

(b) The following terms shall be replaced with the indicated terms wherever they appear:

(1) "Subchapter J of this chapter" shall be replaced by "article 8 of chapter 47 of the Kansas administrative rules and regulations."

(2) "This chapter" shall be replaced by "these rules and regulations."

(3) "Act" shall be replaced by "state act."

(4) "Parts 840 and 842" shall be replaced by "K.A.R. 47-15-1a."

(5) "Subchapter B or K of this chapter" shall be replaced by "K.A.R. 47-9-4 or K.A.R. 47-9-1."

(6) "Subchapter R of this chapter" or "that subchapter" shall be replaced by "the office." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-406, as amended by L. 1990, Ch. 194, sec. 1; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991.)

47-6-7. Permit suspension or revocation. (a) A proceeding to suspend or revoke a permit shall begin with a show cause order issued by the secretary to the permittee and shall set forth:

(1) list of the unwarranted or willful violations which contribute to a pattern of violations;

(2) copy of each order or notice containing one or more of the violations listed;

(3) the basis for determining the existence of a pattern of violations; and

(4) the recommendation that the permit be suspended or revoked and the length and terms of the recommended suspension.

(b) Answer. The permittee shall have 30 days from receipt of the order within which to file an answer.

(c) Contents of answer. The permittee's answer to a show cause order shall set forth:

(1) the reasons, in detail, why a pattern of violations does not exist or has not existed, including all reasons for contesting:

(A) the fact of any violation alleged by surface mining section;

(B) the willfulness of any violation; or

(C) whether any violation was caused by the unwarranted failure of the permittee;

(2) all mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension;

(3) any other alleged relevant facts; and

(4) whether a hearing on the show cause order is desired.

(d) Burden of proof in suspension or revocation proceedings. In proceedings to suspend or revoke a permit, the surface mining section shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

(e) Procedure. The procedure set forth in K.A.R. 47-4-14(d) shall be followed.

(f) Decision by the presiding officer.

(1) After determining that a pattern of violations exists or has existed, the presiding officer shall order the permit either suspended or revoked. The presiding officer need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern.

(2) The minimum suspension period imposed shall be three working days, except where the presiding officer finds that this would result in manifest injustice and not further the purposes of the act. The presiding officer may impose preconditions to lifting the suspension.

(3) The decision of the presiding officer shall be issued within 20 days:

(A) of the closing date of the hearing record; or

(B) of receipt of the answer, if no hearing is requested by any party and the presiding officer determines that no hearing is necessary.

(4) At any stage of a suspension or revocation proceeding, the parties may enter into a settlement, subject to the approval of the presiding officer.

(g) Summary judgment. Where the permittee fails to appear at a hearing:

(1) The permittee shall be deemed to have waived his right to a hearing.

(2) The presiding officer may assume for purposes of the proceeding that:

(A) each violation listed in the order occurred;

(B) all violations were willfully or negligently caused by the permittee; and

(C) a pattern of violations exists.

(3) The presiding officer shall either conduct an ex-parte hearing or require the surface mining section to furnish proposed findings of fact and conclusions of law in order to issue an initial decision.

(h) Appeals.

(1) Any party may appeal the initial order by filing a notice of appeal with the secretary within five days from receipt of the order.

(2) This appeal shall follow the procedure in K.A.R. 47-4-14(a)(d)(14). The secretary shall act immediately to issue an expedited briefing schedule. The decision of the secretary shall be issued within 60 days of the date the record is closed by the secretary or, the date the answer is filed.

(2) Any further appeal from the secretary's final order shall be taken pursuant to the Kansas judicial review act K.S.A. 77-601 *et seq.* (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-406, as amended by L. 1990, Ch. 194, sec. 1; effective Feb. 11, 1991.)

47-6-8. Termination of jurisdiction; adoption by reference. The following section of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, is hereby adopted as a rule and regulation of the secretary, as it existed on July 1, 1990, except as otherwise indicated: Applicability, 30 CFR 700.11, except subsections (a)(1) and (b) shall be deleted.

(b) The following terms shall be replaced with the indicated terms wherever they appear:

(1) "the State or Federal program counterpart to Part 800 of this chapter" shall be replaced by "article 8 of chapter 47 of the Kansas administrative rules and regulations."

(2) "This chapter" shall be replaced by "these rules and regulations."

(3) "Subchapter B of this chapter" shall be replaced by "K.A.R. 47-9-4."

(4) "Part 707 of this chapter" shall be replaced by "K.A.R. 47-6-8." (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective Feb. 11, 1991.)

47-6-9. Exemption for coal extraction incident to government financed highway or other construction; adoption by reference. (a) The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted as rules and regulations of the secretary, as they existed on July 1, 1990, except as otherwise indicated:

(1) Responsibility, 30 CFR 707.4.

(2) Definitions, 30 CFR 707.5.

(3) Applicability, 30 CFR 707.11.

(4) Information to be maintained on site, 30 CFR 707.12.

(b) The following terms shall be replaced with the indicated terms wherever they appear;

(1) "Act" shall be replaced by "state act."

(2) "This chapter" shall be replaced by "these rules and regulations."

(4) "Parts 707.12" shall be replaced by "K.A.R. 47-6-9 (d)." (Authorized and implementing K.S.A. 1989 Supp. 49-405; effective Feb. 11, 1991.)

47-6-10. Exemption for coal extraction incidental to the extraction of other minerals; adoption by reference.

(a) The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted as rules and regulations of the secretary, as they existed on July 1, 1990, except as otherwise indicated:

(1) Scope, 30 CFR 702.1.

(2) Definitions, 30 CFR 702.5.

(3) Information collection, 30 CFR 702.10.

(4) Application requirements and procedures, 30 CFR 702.11.

(5) Contents of application for exemption, 30 CFR 702.12.

(6) Public availability of information, 30 CFR 702.13.

(7) Requirements for exemption, 30 CFR 702.14.

(8) Conditions of exemption and right of inspection and entry, 30 CFR 702.15.

(9) Stockpiling of minerals, 30 CFR 702.16.

(10) Revocation and enforcement, 30 CFR 702.17.

(11) Reporting requirements, 30 CFR 702.18.

(b) The following terms shall be replaced with the indicated terms wherever they appear:

(1) "Act" shall be replaced by "state act."

(2) "This chapter" shall be replaced by "these rules and regulations."

(4) "43 CFR 4.1280" shall be replaced by "K.A.R. 47-4-14a."

(5) "Section 701(28)" shall be replaced by "K.S.A. 1989 Supp. 49-431." (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective Feb. 11, 1991.)

Article 7.—COAL EXPLORATION

47-7-2. Coal exploration; adoption by reference. (a) The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted by reference as rules and regulations of the secretary, as they existed on July 1, 1990:

(1) Notice requirements for exploration removing 250 tons of coal or less, 30 CFR 772.11;

(2) Permit requirements for exploration removing more than 250 tons of coal, 30 CFR 772.12;

(3) Coal exploration compliance duties, 30 CFR 772.13;

(4) Requirements for commercial sale, 30 CFR 772.14; and

(5) Public availability of information, 30 CFR 772.15.

(b) The following terms shall be replaced with the indicated terms wherever they appear:

(1) "Part 815 of this chapter" shall be replaced by "K.A.R. 47-9-1(b)."

(2) "This chapter" shall be replaced by "these rules and regulations."

(3) "Subchapter F of this chapter" shall be replaced by "article 12 of chapter 47 of the Kansas administrative rules and regulations."

(4) "Part 775" shall be replaced by "K.S.A. 1989 Supp. 49-407(d), 49-416a, 49-422a, and article 4 of chapter 47 of the Kansas administrative rules and regulations."

(5) "Section 518 of the act" shall be replaced by "K.S.A. 1989 Supp. 49-405c."

(continued)

(6) "Subchapter 1" shall be replaced by "articles 5 and 15 of chapter 47 of the Kansas administrative rules and regulations."

(7) "Parts 773-785 of this chapter" shall be replaced by "articles 3, 4, 6, and 10 of chapter 47 of the Kansas administrative rules and regulations, K.S.A. 1989 Supp. 49-407(d), 49-416a, and 49-422a."

(8) "Section 518 of the act, and subchapter 1 of this chapter," shall be replaced by "K.S.A. 1989 Supp. 49-405c and article 5 of chapter 47 of the Kansas administrative rules and regulations."

(9) "This part" shall be replaced by "K.A.R. 47-7-2." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-427; effective, E-81-30, Oct. 8, 1980, effective May 1, 1981; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991.)

Article 8.—BONDING PROCEDURES

47-8-9. Bonding procedures; adoption by reference.

(a) The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted by reference as rules and regulations of the secretary as they existed on July 1, 1990.

- (1) Regulatory responsibilities, 30 CFR 800.4;
- (2) Definitions, 30 CFR 800.5;
- (3) Requirement to file a bond, 30 CFR 800.11, deleting subsection (e);
- (4) Form of the performance bond, 30 CFR 800.12;
- (5) Period of liability, 30 CFR 800.13;
- (6) Determination of bond amount, 30 CFR 800.14;
- (7) Adjustment of amount, 30 CFR 800.15;
- (8) General terms and conditions of bond, 30 CFR 800.16;
- (9) Bonding requirements for underground coal mines and long-term coal-related surface facilities and structures, 30 CFR 800.17;
- (10) Surety bonds, 30 CFR 800.20;
- (11) Collateral bonds, 30 CFR 800.21;
- (12) Replacement of bonds, 30 CFR 800.30;
- (13) Requirement to release performance bonds, 30 CFR 800.40;
- (14) Forfeiture of bonds, 30 CFR 800.50;
- (15) Terms and conditions for liability insurance, 30 CFR 800.60, deleting subsection (d);

(b) The following terms shall be replaced with the indicated terms wherever they appear:

- (1) "Act" shall be replaced by "state act";
- (2) "(Under parts 780 and 784 of this chapter)" shall be replaced by "[under K.A.R. 47-3-42(a)(18) through (35), inclusive, and K.A.R. 47-10-1]";
- (3) "This chapter" or "subchapter G of this chapter" shall be replaced by "these rules and regulations";
- (4) "This subchapter" shall be replaced by "article 8 of chapter 47 of the Kansas administrative rules and regulations";
- (5) "Section 515 of the act" or "section 515(b)(10)" shall be replaced by "K.S.A. 1989 Supp. 49-405a, K.S.A. 1989 Supp. 49-408 through K.S.A. 1989 Supp. 49-413, inclusive, K.S.A. 1989 Supp. 49-429, and the regulations promulgated thereunder";
- (6) "Subchapter K of this chapter" shall be replaced by

"article 9 of chapter 47 of the Kansas administrative rules and regulations";

(7) "Section 507(b)(16) of the act" shall be replaced by "K.S.A. 1989 Supp. 49-407(c)";

(8) "Part 823 of this chapter" shall be replaced by "K.A.R. 47-9-1(f)"; and

(9) "Section 513(b) of the act" shall be replaced by "K.S.A. 1989 Supp. 49-407(d) and the regulations promulgated thereunder."

(10) "Application" shall be replaced by "complete and accurate application." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-407, 49-429, K.S.A. 1989 Supp. 49-406, as amended by L. 1990, Ch. 194, sec. 1; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended Feb. 11, 1991.)

47-8-11. Use of forfeited bond funds. Funds collected from any bond forfeiture may only be used to:

(a) complete only the reclamation plan on the permit area on which bond was made for the surface mining operation for coal,

(b) cover associated administrative expenses. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-420, as amended by L. 1990, Ch. 194, sec. 3; effective May 1, 1983; amended Feb. 11, 1991.)

Article 9.—PERFORMANCE STANDARDS

47-9-1. Adoption by reference. The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted by reference as rules and regulations of the secretary as the performance standards to be maintained by surface and underground coal mining and reclamation operations. The adoption by reference shall cover the parts and sections in effect on July 1, 1990, except as otherwise indicated:

(a) Permanent program performance standards—general provisions, 30 CFR 810.2;

(1) Objective, 30 CFR 810.2, except "subchapter" shall be replaced by "K.A.R. 47-9-1(a);

(2) Responsibility, 30 CFR 810.4, delete part "a";

(3) Applicability, 30 CFR 810.11; and

(4) "subchapter" shall be replaced by "K.A.R. 47-9-1(a)."

(b) permanent program performance standards—coal exploration, 30 CFR Part 815;

(1) Required documents, 30 CFR 815.13;

(2) performance standards for coal exploration, 30 CFR 815.15.

(c) permanent program standards—surface mining activities, 30 CFR Part 816;

(1) Signs and markers, 30 CFR 816.11; a subsection (g) shall be added to 30 CFR 816.11 which reads: "Increment boundary markers. As deemed appropriate by the secretary or secretary's designee to ascertain increment boundaries, increment boundary markers shall be placed on each portion of a permit area on which a performance bond or other equivalent guarantee was or will be posted as provided by K.S.A. 1988 Supp. 49-406(h)";

(2) "subchapter" shall be replaced by "K.A.R. 47-9-1(c)";

- (3) casing and sealing of drilled holes: general requirements, 30 CFR 816.13;
- (4) casing and sealing of drilled holes: temporary, 30 CFR 816.14;
- (5) casing and sealing of drilled holes: permanent, 30 CFR 816.15;
- (6) topsoil and subsoil, 30 CFR 816.22; The first paragraph of subsection (d) of 30 CFR 816.22 shall be replaced by the following:
Absent an approved schedule, topsoil and subsoil materials removed under paragraph (a) of this section shall be redistributed within 120 days following rough backfilling and grading in a manner that complies with the following:
- (7) hydrologic balance: protection, 30 CFR 816.41;
- (8) hydrologic balance: water quality standards and effluent limitations, 30 CFR 816.42;
- (9) diversion, 30 CFR 816.43;
- (10) hydrologic balance: sediment control structures, 30 CFR 816.45;
- (11) hydrologic balance: siltation structures, 30 CFR 816.46;
- (12) hydrologic balance: discharge structures, 30 CFR 816.47;
- (13) impoundments, 30 CFR 816.49;
- (14) postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities, 30 CFR 816.56;
- (15) hydrologic balance: stream buffer zones, 30 CFR 816.57;
- (16) coal recovery, 30 CFR 816.59;
- (17) use of explosives: general requirements, 30 CFR 816.61;
- (18) use of explosives: preblasting survey, 30 CFR 816.62;
- (19) use of explosives: blasting schedule, 30 CFR 816.64;
- (20) use of explosives: blasting signs, warnings, and access control, 30 CFR 816.66;
- (21) use of explosives: control of adverse effects, 30 CFR 816.67;
- (22) use of explosives: records of blasting operations, 30 CFR 816.68;
- (23) disposal of excess spoil: general requirements, 30 CFR 816.71;
- (24) disposal of excess spoil: preexisting benches, 30 CFR 816.74;
- (25) protection of underground mining, 30 CFR 816.79;
- (26) coal mine waste: general requirements, 30 CFR 816.81;
- (27) coal mine waste: refuse piles, 30 CFR 816.83;
- (28) coal mine waste: impounding structures, 30 CFR 816.84;
- (29) coal mine waste: burning and burned waste utilization, 30 CFR 816.87;
- (30) disposal of noncoal mine waste, 30 CFR 816.89;
- (31) stabilization of surface areas, 30 CFR 816.95;
- (32) protection of fish, wildlife, and related environmental values, 30 CFR 816.97;
- (33) slides and other damage, 30 CFR 816.99;
- (34) contemporaneous reclamation, 30 CFR 816.100;
- (35) backfilling and grading: general requirements, 30

CFR 816.102. The first paragraph of subsection (a) of 30 CFR 816.102 shall be replaced by the following:

Absent an approved schedule, backfilling and grading will be completed within 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. Disturbed areas shall be backfilled and graded to comply with the following:

- (36) backfilling and grading: thin overburden, 30 CFR 816.104;
- (37) backfilling and grading: thick overburden, 30 CFR 816.105;
- (38) backfilling and grading: previously mined area, 30 CFR 816.106;
- (39) revegetation: general requirements, 30 CFR 816.111;
- (40) revegetation: timing, 30 CFR 816.113;
- (41) revegetation: mulching and other soil stabilizing practices, 30 CFR 816.114;
- (42) revegetation: standards for success, 30 CFR 816.116, delete editorial note "3", subsection (c)(2) will read, "in areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than five full years. Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year." A subsection (i) will be added to 816.116 (c)(4). Subsection (c)(4)(i) will read "(i) The regulatory authority may allow 90 days from the issuance of a notice of violation for the repair of any rills and/or gullies which may occur. If the rills and/or gullies are repaired using normal husbandry practices, approved by the regulatory agency in consultation with the state conservationist or his designated representative, and the repairs are approved by the regulatory authority, the period of responsibility shall not be restarted. If the rills and/or gullies are not repaired and approved within 90 days, or if augmented seeding, fertilization, or irrigation was utilized to do the repairs, the regulatory authority will restart the period of liability, effective from the date the repair was completed and approved by the regulatory authority."
- (43) cessation of operations: temporary, 30 CFR 816.131;
- (44) cessation of operations: permanent, 30 CFR 816.132;
- (45) postmining land use, 30 CFR 816.133;
- (46) roads: general, 30 CFR 816.150;
- (47) primary roads, 30 CFR 816.151;
- (48) utility installations, 30 CFR 816.180;
- (49) support facilities, 30 CFR 816.181;
- (50) interpretative rules related to general performance standards, 30 CFR 816.200; and
- (51) The following federal regulations are deleted entirely:
- (a) disposal of excess spoil: valley fills/head of hollow fills, 30 CFR 816.72
- (b) disposal of excess spoil: durable rock fills, 30 CFR 816.73; and
- (d) permanent program performance standards—underground mining activities, 30 CFR Part 817;
- (1) Signs and markers, 30 CFR 817.11, a subsection (g) shall be added to 30 CFR 817.11 which reads: "Increment

(continued)

boundary markers. Increment boundary markers shall be placed on each portion of a permit area on which a performance bond or other equivalent guarantee was or will be posted as provided by K.S.A. 1988 Supp. 49-406(h)";

(2) "subchapter" shall be replaced by "K.A.R. 47-9-1(d)";

(3) casing and sealing of exposed underground openings, 30 CFR 817.13;

(4) casing and sealing of underground openings: temporary, 30 CFR 817.14;

(5) casing and sealing of underground openings: permanent, 30 CFR 817.15;

(6) topsoil and subsoil, 30 CFR 817.22;

(7) hydrologic balance: protection, 30 CFR 817.41;

(8) hydrologic balance: water quality standards and effluent limitations, 30 CFR 817.42;

(9) diversions, 30 CFR 817.43;

(10) hydrologic balance: sediment control measures, 30 CFR 817.45;

(11) hydrologic balance: siltation structures, 30 CFR 817.46;

(12) hydrologic balance: discharge structures, 30 CFR 817.47;

(13) impoundments, 30 CFR 817.49;

(14) postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities, 30 CFR 817.56;

(15) hydrologic balance: stream buffer zone, 30 CFR 817.57;

(16) coal recovery, 30 CFR, 817.59;

(17) use of explosives: general requirements, 30 CFR 817.61;

(18) use of explosives: preblasting survey, 30 CFR 817.62;

(19) use of explosives: general performance standards, 30 CFR 817.64;

(20) use of explosives: blasting signs, warnings, and access control, 30 CFR 817.66;

(21) use of explosives: control of adverse effects, 30 CFR 817.67;

(22) use of explosives: records of blasting operations, 30 CFR 817.68;

(23) disposal of excess spoil: general requirements, 30 CFR 817.71;

(24) disposal of excess spoil; preexisting benches, 30 CFR 817.74;

(25) coal mine waste: general requirements, 30 CFR 817.81;

(26) coal mine waste: refuse pile, 30 CFR 817.83;

(27) coal mine waste: impounding structures, 30 CFR 817.84;

(28) coal mine waste: burning and burn waste utilization, 30 CFR 817.87;

(29) disposal of noncoal mine waste, 30 CFR 817.89;

(30) stabilization of surface areas, 30 CFR 817.95;

(31) protection of fish, wildlife, and related environmental values, 30 CFR 817.97;

(32) slides and other damage, 30 CFR 817.99;

(33) contemporaneous reclamation, 30 CFR 817.100;

(34) backfilling and grading: general requirements, 30 CFR 817.102;

(35) backfilling and grading: previously mined areas, 30 CFR 817.106;

(36) revegetation: general requirements, 30 CFR 817.111;

(37) revegetation: timing, 30 CFR 817.113;

(38) revegetation: mulching and other soil stabilizing practices, 30 CFR 817.114;

(39) revegetation: standards for success, 30 CFR 817.116;

(40) subsidence control, 30 CFR 817.121;

(41) subsidence control: public notice, 30 CFR 817.122;

(42) cessation of operations: temporary, 30 CFR 817.131;

(43) cessation of operations: permanent, 30 CFR 817.132;

(44) postmining land use, 30 CFR 817.133;

(45) roads: general, 30 CFR 817.150;

(46) primary roads, 30 CFR 817.151;

(47) utility installations, 30 CFR 816.180;

(48) support facilities, 30 CFR 816.181;

(49) interpretative rules related to general performance standards, 30 CFR 816.200; and

(50) The following federal regulations are deleted entirely:

(a) disposal of excess spoil: valley fills/head-of-hollow fills, 30 CFR 816.72

(b) disposal of excess spoil: durable rock fills, 30 CFR 816.73; and

(c) backfilling and grading: steep slopes; and

(e) Special permanent program performance standards—auger mining 30 CFR Part 819;

(1) Auger mining: general, 30 CFR 819.11;

(2) auger mining: coal recovery, 30 CFR 819.13;

(3) auger mining: hydrologic balance, 30 CFR 819.15;

(4) auger mining: subsidence protection, 30 CFR 819.17;

(5) auger mining: backfilling and grading, 30 CFR 819.19; and

(6) auger mining: protection of underground mining, 30 CFR 819.21.

(f) special permanent program performance standards—operations on prime farmland, 30 CFR Part 823;

(1) Responsibilities, 30 CFR 823.4;

(2) applicability, 30 CFR 823.11;

(3) soil removal and stockpiling, 30 CFR 823.12;

(4) soil replacement, 30 CFR 823.14; and

(5) revegetation and restoration of soil productivity, 30 CFR 823.15.

(g) permanent program performance standards—coal preparation plants not located within the permit area of a mine, 30 CFR Part 827;

(1) General requirements, 30 CFR 827.11;

(2) coal preparation plants: performance standards, 30 CFR 827.12; and

(3) coal preparation plants: interim performance standards, 30 CFR 827.13.

(h) special permanent program performance standards—in situ processing, 30 CFR Part 828;

(1) In situ processing: performance standards, 30 CFR 828.11; and

(2) in situ processing: monitoring, 30 CFR 828.12.

(i) The following terms shall be replaced with the indicated terms wherever they appear in the text of rules and regulations adopted by reference under this section:

(1) "Subchapter K" shall be replaced by "K.A.R. 47-9-1."

(2) "Director" or "regional director" shall be replaced by "secretary."

(3) "Subchapter G" shall be replaced by "these rules and regulations."

(4) "Subchapter J" shall be replaced by "article 8 of chapter 47 of the Kansas administrative rules and regulations."

(5) "Subchapter B of this chapter" shall be replaced by "K.A.R. 47-9-4."

(6) "This part" or "30 CFR Parts 816 through 828" shall be replaced by "K.A.R. 47-9-1."

(7) "This chapter" or "subchapter C" shall be replaced by "these rules and regulations." (Authorized by K.S.A. 1988 Supp. 49-405; implementing K.S.A. 1988 Supp. 49-405, 49-408, 49-409, 49-411, 49-413, 49-415, 49-429; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991.)

47-9-2. Revegetation. The permittee may be requested by the secretary or secretary's designee to cut the vegetative cover, remove rocks that are nine inches or larger, or carry out any other measures which promote the control and revegetation of the permit area consistent with the approved postmining land use. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-409; effective May 1, 1985; amended Feb. 11, 1991.)

47-9-4. Interim performance standards; adoption by reference. (a) The following parts and sections of the federal rules and regulations of the office of surfacing mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted, as rules and regulations of the secretary, as they existed on July 1, 1990, except as indicated:

- (1) Definitions, 30 CFR 710.5;
- (2) applicability, 30 CFR 710.11(a);
- (3) signs and markers, 30 CFR 715.12;
- (4) postmining use of land, 30 CFR 715.13;
- (5) backfilling and grading, 30 CFR 715.14;
- (6) disposal of excess spoil, 30 CFR 715.15, deleting subsection (c);
- (7) topsoil handling, 30 CFR 715.16;
- (8) protection of the hydrologic system, 30 CFR 715.17;
- (9) dams constructed of or impounding waste material, 30 CFR 715.18;
- (10) revegetation, 30 CFR 715.20;
- (11) interpretative rules related to general performance standards, 30 CFR 715.200; and
- (12) prime farmland, 30 CFR 716.7;

(b) "This part," "section 716.2 of this chapter," "part 715 of this chapter" or "this chapter" shall be replaced by "these rules and regulations" wherever they appear.

(c) An operator shall comply with the interim performance standards in an interim permit area, unless the secretary has approved, in writing, an operator's request to adhere to an applicable permanent program performance standard or other applicable substantive rule and regulation. (Authorized by and implementing K.S.A. 1989

Supp. 49-405; effective May 1, 1986; amended Feb. 11, 1991.)

Article 10.—UNDERGROUND MINING

47-10-1. Adoption by reference; underground mining. (a) The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted by reference as rules and regulations of the secretary, as they existed in effect on July 1, 1990:

(1) Underground mining permit applications—minimum requirements for information on environmental resources, 30 CFR Part 783, deleting 30 CFR 783.1, 783.2, and 783.10;

(2) Underground mining permit applications—minimum requirements for reclamation and operation plans, 30 CFR Part 784, deleting 30 CFR 784.1, 784.2, and 784.10, and the phrase in 784.20(g)(2) "to the extent required under State Law."

(b) The following terms shall be replaced with the indicated terms wherever they appear:

(1) "Subchapter K of this chapter" or "subchapter K" shall be replaced by "K.A.R. 47-9-1."

(2) "Subchapter B of this chapter" or "subchapter B" shall be replaced by "K.A.R. 47-9-4."

(3) "Section 515 and 516 of the act" shall be replaced by "K.S.A. 1989 Supp. 49-405a, 49-408 to 49-413, inclusive, and 49-429."

(4) "Subchapter J of this chapter" or "subchapter J" shall be replaced by "article 8 of chapter 47 of the Kansas administrative rules and regulations."

(5) "This chapter" shall be replaced by "these rules and regulations."

(6) "30 CFR Parts 773 and 775" shall be replaced by "K.A.R. 47-3-42(a)(42) to (46), and (48) inclusive, K.A.R. 47-6-6, K.S.A. 49-407(d), K.S.A. 1989 Supp. 49-416a, 49-422a, and article 4 of chapter 47 of the Kansas administrative rules and regulations." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-429; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991.)

Article 11.—SMALL OPERATOR ASSISTANCE PROGRAM

47-11-3. Small operator assistance program; adoption by reference. (a) The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted by reference as rules and regulations of the secretary, as they existed on July 1, 1990, except as otherwise indicated:

- (1) Definitions, 30 CFR 795.3;
- (2) eligibility for assistance, 30 CFR 795.6;
- (3) filing for assistance, 30 CFR 795.7;
- (4) application approval and notice, 30 CFR 795.8;
- (5) program services and data requirements, 30 CFR 795.9;

(continued)

- (6) qualified laboratories, 30 CFR 795.10;
- (7) assistance funding, 30 CFR 795.11; and
- (8) applicant liability, 30 CFR 795.12.
- (b) The following terms shall be replaced with the indicated terms, wherever they appear:
 - (1) "Act" shall be replaced by "state act."
 - (2) "This chapter" shall be replaced by "these rules and regulations."
 - (3) "This part" shall be replaced by "K.A.R. 47-11-8." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-406, as amended by L. 1990, Ch. 194, sec. 1; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991.)

Article 12.—LANDS UNSUITABLE FOR SURFACE MINING

47-12-4. Lands unsuitable for surface mining; adoption by reference. (a) The following sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted by reference as rules and regulations of the secretary, as they existed on July 1, 1990:

- (1) Definitions, 30 CFR 761.5;
- (2) areas where mining is prohibited or limited, 30 CFR 761.11, deleting subsection (b);
- (3) procedures, 30 CFR 761.12, deleting subsection (c);
- (4) definitions, 30 CFR 762.5;
- (5) criteria for designating lands as unsuitable, 30 CFR 762.11;
- (6) Additional criteria, 30 CFR 762.12;
- (7) land exempt from designation as unsuitable for surface coal mining operations, 30 CFR 762.13;
- (8) exploration on land designated as unsuitable for surface coal mining operations, 30 CFR 762.14;
- (9) petitions, 30 CFR 764.13;
- (10) initial processing, recordkeeping, and notification requirements, 30 CFR 764.15;
- (11) hearing requirements, 30 CFR 764.17;
- (12) decision, 30 CFR 764.19;
- (13) data base and inventory system requirements, 30 CFR 764.21;
- (14) public information, 30 CFR 764.23;
- (15) regulatory authority responsibility for implementation, 30 CFR 764.25; and

(b) The following terms shall be replaced with the indicated terms wherever they appear:

- (1) Sections 775.11 and 775.13 of this chapter shall be replaced by "K.S.A. 49-407(d), 49-416a, 1989 Supp. 49-422a, and article 4 of chapter 47 of the Kansas administrative regulations."
- (2) "Sections 522(a)(2) and (3)" shall be replaced by "K.S.A. 1989 Supp. 49-405b(a)(1) and (2)."
- (3) "This chapter" shall be replaced by "these rules and regulations."
- (4) "Section 526(e) of the act and Section 775.13 of this chapter" shall be replaced by "K.S.A. 1989 Supp. 49-422a and K.S.A. 49-426."
- (5) "Section 522 of the act" or "section 522(e) of the act" shall be replaced by "K.S.A. 1989 Supp. 49-405b."

(6) "Section 701(28) of the act" shall be replaced by "K.S.A. 1989 Supp. 49-403(s)."

(7) "Part 761, 762, or 764" shall be replaced by "K.A.R. 47-12-4."

(8) "Part 722 of this chapter" shall be replaced by "K.A.R. 47-7-2."

(9) "Act" shall be replaced by "state act."

(10) "This part" or "this subchapter" shall be replaced by "K.A.R. 47-12-4." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-405b, 49-422a and 49-426; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991.)

Article 13.—TRAINING, CERTIFICATION, AND RESPONSIBILITIES OF BLASTERS AND OPERATORS

47-13-4. Training and certification of blasters; adoption by reference. (a) The provisions of the federal rules and regulations of the office of surface mining, United States department of the interior, contained in 30 CFR part 850 and promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted by reference as rules and regulations of the secretary, as it existed on July 1, 1990, except that 30 CFR 850.10 and 850.12 shall be deleted.

(b) The following terms shall be replaced with the indicated terms wherever they appear:

(1) "Act" shall be replaced by "state act."

(2) Definition, 30 CFR 850.5.

(3) Training, 30 CFR 850.13.

(4) For the purposes of 30 CFR 850.15(a) only, "regulatory authority" shall be replaced by "state fire marshal."

(5) For the purposes of 30 CFR 850.14 only, "regulatory authority" shall be replaced by "secretary approved blaster training program director."

(6) The term "secretary approved blaster training program director" means the person who is in charge of a given blaster training program which has been specifically approved by the secretary as being in accordance with the state act, the rules and regulations, and the state program. (Authorized by and implementing K.S.A. 1989 Supp. 49-405 and 49-405a; effective May 1, 1985; amended Feb. 11, 1991.)

47-13-5. Responsibilities of operators and blasters-in-charge. (a) Each operator shall:

(1) designate a blaster-in-charge for each blast to be detonated in surface coal mining and reclamation operations;

(2) ensure that the designated blaster-in-charge is properly certified;

(3) ensure that all employees who perform blasting tasks under the supervision of a blaster-in-charge have adequate training;

(4) limit the size of a blasting crew to 12 persons, supervised by a blaster-in-charge who is continuously and readily accessible to crew members in preparing and executing a blast. A larger blasting crew may be approved by the secretary if:

(A) unusual circumstances or mining methods are involved; and

(B) the operator ensures that the blaster-in-charge can:
 (i) provide adequate, direct supervision to crew members;

(ii) remain in control of blast design, preparation, and execution; and

(iii) assure that blasting complies with the applicable regulations; and

(5) ensure that each blaster-in-charge shall supervise no more than one crew at any given time.

(b) Each blaster-in-charge shall:

(1) be certified by the state fire marshal for all blasting operations conducted in the state of Kansas;

(2) ensure that blast design and execution meet the applicable standards;

(3) directly supervise blast preparation and execution at the blast site to ensure that such standards are met;

(4) be present at the site when the blast is detonated;

(5) ensure that all members of blasting crews have adequate training to perform assigned tasks in compliance with the applicable standards; and

(6) limit to 12 the number of persons being supervised at any given time in preparing and executing a blast at one operational pit at the site.

(c) After instructions from and under the direct supervision of the blaster-in-charge members of the blasting crew may be authorized to:

(i) perform general blasting operations;

(ii) load and unload explosives for use in blasting;

(iii) transport explosives at or near the job site;

(iv) load explosives into drill holes; and

(v) stem or otherwise prepare explosives for detonation.

(d) The blaster-in-charge shall retain full responsibility for all blasting and for the use of explosives. These responsibilities shall include:

(1) keeping blasting logs and records;

(2) supervising the blasting-related activities of the workers in his or her charge; and

(3) ensuring that all persons under his or her supervision have the training necessary to perform their assigned tasks safely and in accordance with the applicable regulations. (Authorized by K.S.A. 1989 Supp. 49-405 and 49-405a; implementing K.S.A. 1989 Supp. 49-405; effective May 1, 1985; amended Feb. 11, 1991.)

47-13-6. Training. (a) Each person seeking a blaster certification pursuant to K.A.R. 47-13-4 shall document successful completion of a department-approved blaster training program.

(b) Proof of completion of an approved blaster training program shall be filed with an applicant's application for certification by the state fire marshal. (Authorized by and implementing K.S.A. 1989 Supp. 49-405 and 49-405a; effective May 1, 1985; amended Feb. 11, 1991.)

Article 14.—EMPLOYEE FINANCIAL INTERESTS

47-14-7. Employee financial interest; adoption by reference. (a) Subject to the provisions of subsection (b), the following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are

hereby adopted by reference as rules and regulations of the secretary, as they existed on July 1, 1990:

(1) Responsibility, 30 CFR 705.4(a) and (c), deleting subsection (b);

(2) Penalties, 30 CFR 705.6(b), deleting subsection (a);

(3) Who shall file, 30 CFR 705.11(a), (b), (c), and (d), deleting subsection (e);

(4) When to file, 30 CFR 705.13;

(5) Where to file, 30 CFR 705.15;

(6) What to report, 30 CFR 705.17;

(7) Gifts and gratuities, 30 CFR 705.18;

(8) Resolving prohibited interests, 30 CFR 705.19(a), deleting subsection (b); and

(9) Appeals procedures, 30 CFR 705.21;

(b) The following terms shall be replaced with the indicated terms wherever they appear:

(1) "Act" shall be replaced by the term "state act"; and

(2) "Head of each state regulatory authority" and "head of the state regulatory authority" shall be replaced by the term "secretary of the Kansas department of health and environment." (Authorized by K.S.A. 1989 Supp. 49-404; implementing K.S.A. 1989 Supp. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991.)

Article 15.—INSPECTIONS AND ENFORCEMENT

47-15-1a. Inspection and enforcement; adoption by reference. (a) The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted by reference as rules and regulations of the secretary, as they existed on July 1, 1990, with exceptions as indicated:

(1) Inspections by state regulatory authority, 30 CFR 840.11;

(2) Availability of records, 30 CFR 840.14;

(3) Definitions, 30 CFR 843.5;

(4) Right of entry, 30 CFR 840.12;

(5) Review of adequacy and completeness of inspections, 30 CFR 842.14;

(6) Review of decision not to inspect or enforce, 30 CFR 842.15, except that the phrase in subsection (b) of 30 CFR 842.15, "or disclosure is required under the freedom of information act or other federal law", shall be deleted;

(7) Cessation orders, 30 CFR 843.11;

(8) Notice of violations, 30 CFR 843.12, except that the phrase in subsection (a) of 30 CFR 843.12, "carried out during the enforcement of a federal program or federal lands program or during federal enforcement of a state program under sections 504(b) or 521(b) of the act and part 733 of this chapter" shall be deleted. Paragraph (a)(2) of 30 CFR 843.12 shall be deleted;

(9) Suspension or revocation of permits, 30 CFR 843.13, except that the phrase in paragraph (a)(4)(i)(A) of 30 CFR 843.13, "or a federal lands program," and paragraphs (a)(4)(i)(B) and (C) of 30 CFR 843.13 shall be deleted;

(10) Informal public hearings, 30 CFR 843.15;

(continued)

- (11) Formal review of citations, 30 CFR 843.16;
- (12) Compliance conference 30 CFR 843.20; and
- (13) Compliance conference, 30 CFR 840.16.
- (b) The following terms shall be replaced with the indicated terms wherever they appear:
- (1) "Act" shall be replaced by "state act."
- (2) "This chapter" shall be replaced by "these rules and regulations."
- (3) "Federal" shall be replaced by "state."
- (4) "Office" shall be replaced by "secretary or secretary's designee."
- (5) "Regional director" shall be replaced by "secretary."
- (6) "43 CFR Part 4" shall be replaced by "K.S.A. 1989 Supp. 49-416a."
- (7) "Office of hearings and appeals" shall be replaced by "department."
- (8) "30 CFR Part 845" shall be replaced by "article 5 of chapter 47 of the Kansas administrative rules and regulations."
- (9) "43 CFR 4.1281" shall be replaced by "K.S.A. 1989 Supp. 49-416a(a)."
- (10) "Section 521(a)(5)" shall be replaced by "K.S.A. 1989 Supp. 49-405(m)(4)."
- (11) "Section 521(a)(2)" shall be replaced by "K.S.A. 49-405(m)(1)."
- (12) "Section 517" shall be replaced by "K.S.A. 1989 Supp. 49-404, 49-405, and 49-405d."
- (13) "Section 518" shall be replaced by "K.S.A. 1989 Supp. 49-405c."
- (14) "Section 521" shall be replaced by "K.S.A. 1989 Supp. 49-405(m)."
- (15) "Section 518(b), 521(a)(4), or 525" shall be replaced by "K.S.A. 1989 Supp. 49-405c(b), 49-405(m)(3), or 49-416a."
- (16) "30 CFR 842.12" or "842.12" shall be replaced by "K.A.R. 47-15-7 and K.A.R. 47-15-8."
- (17) "Section 520" shall be replaced by "K.S.A. 1989 Supp. 49-426."
- (18) "Section 525" shall be replaced by "K.S.A. 49-416a."
- (19) "30 CFR 842.11" or "section 842.11" shall be replaced by "K.A.R. 47-15-1a(a)(1)." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-404, 49-405, 49-405c, 49-405d, 49-406, as amended by L. 1990, Ch. 194, sec. 1, 49-416, 49-416a, 49-427; effective May 1, 1985; amended May 1, 1986; amended Feb. 11, 1991.)

Article 15.—INSPECTION AND ENFORCEMENT

47-15-3. Lack of information; inability to comply.

(a) A notice of violation, cessation order, show cause order, or order revoking or suspending a permit shall not be vacated because it is subsequently determined that the secretary did not have information sufficient to justify an inspection.

(b) A notice of violation or cessation order shall not be vacated because of inability to comply.

(c) Inability to comply shall not be considered in determining whether a pattern of violation exists.

(d) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount

of the civil penalty and the duration of the suspension of a permit. (Authorized by K.S.A. 1989 Supp. 49-405, 49-405c; implementing K.S.A. 1989 Supp. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991.)

47-15-4. Injunctive relief. The attorney general may be requested by the secretary to institute any civil action for relief, including a permanent or temporary injunction, a restraining order or any other order, whenever, in violation of the state act, these rules and regulations, or any condition of an exploration approval or permit anyone does the following:

(a) violates or fails or refuses to comply with any order or decision of the secretary or secretary's designee;

(b) Interferes with, hinders or delays the secretary or secretary's designee in carrying out provisions of the state act or these rules and regulations;

(c) Refuses to:

(1) admit the secretary or secretary's designee to a mine;

(2) permit inspection of a mine by the secretary or secretary's designee;

(3) furnish any required information or report;

(4) permit access to or copying of any required records;

or

(5) Refuses to permit inspection of monitoring equipment. (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991.)

47-15-7. State inspections. (a) Inspection of surface coal mining and reclamation operations shall be conducted by the secretary or secretary's designee as necessary to determine whether the permittee has complied with any notice of violation or cessation order issued during an inspection authorized under this regulation.

(b) A state inspection shall be conducted immediately by the secretary or secretary's designee to enforce any requirement of the state act, these rules and regulations, the regulatory program, or any condition of a permit or an exploration approval:

(c) When the secretary or secretary's designee has reason to believe, on the basis of information available to the department other than information resulting from a previous state inspection, that there exists a violation of the state act, these rules and regulations, the regulatory program, or any condition of a permit or an exploration approval, or that any condition, practice or violation which creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause a significant, imminent environmental harm to land, air or water resources, then the secretary or secretary's designee shall take appropriate action to have the violation abated. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-405, 49-405d; effective May 1, 1984; amended Feb. 11, 1991.)

47-15-8. Citizen's requests for state inspections. (a) Any person may request a state inspection under K.A.R. 47-15-7(b) by furnishing to the secretary or secretary's designee with a signed, written statement or an oral report followed by a signed, written statement. The statement shall include:

(1) the reasons for believing a violation, condition, or practice referred to in K.A.R. 47-15-7(b) exists; and

(2) a phone number and address where the person can be contacted.

(b) Upon request, the identity of any person supplying information to the secretary or secretary's designee relating to a possible violation or imminent danger or harm shall remain confidential, unless that person elects to accompany the inspector on the inspection.

(c) If a state inspection is conducted as a result of information provided to the secretary or secretary's designee as described in subsection (a) of this regulation, the person shall be notified as far in advance as practicable as to when the inspection is to occur. The person shall be allowed to accompany the secretary or secretary's designee. During the inspection, such a person shall have a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which that person supplied information. However, the person shall be in the presence of and under the control, direction and supervision of the secretary or secretary's designee while on the mine property. This right of entry shall not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(d) Within 10 days of the state inspection or, if there is no inspection, within 15 days of receipt of the person's written statement, the secretary or secretary's designee shall send the person the following:

(1) If an inspection was made, a description of the enforcement action taken. This description may consist of copies of the state inspection report and of all notices of violation and cessation orders issued as a result of the inspection or an explanation as to why no enforcement action was taken;

(2) If no state inspection was conducted, an explanation of the reason why an inspection was not considered to be necessary; and

(3) An explanation of the person's right, if any, to informal review of the action or inaction of the secretary or secretary's designee under K.A.R. 47-15-1a(a)(6).

(e) Copies of all materials in paragraphs (d)(1) and (d)(2) of this regulation, shall be given by the secretary or secretary's designee to the person alleged to be in violation within the time limits specified in those paragraphs, except that the name of the person shall be removed unless disclosure of the person's identity is permitted under subsection (b) of this regulation. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-405, 49-405d; effective May 1, 1984; amended May 1, 1985; amended Feb. 11, 1991.)

47-15-15. Service of notices of violation and cessation orders. (a) Promptly after issuance, each notice of violation or cessation order shall be served on the person to whom it is directed or to that person's designated agent, as follows:

(1) A copy of each notice of violation or cessation order may be tendered, at the coal exploration or surface coal mining and reclamation operation, to the designated agent or to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the coal exploration or surface coal mining and reclamation operation referred to in the notice or order. If no one in charge can be found, the copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) In the alternative, service may be made by sending a copy of the notice or order by certified mail or by delivering the copy by hand to the person to whom it is issued or to the person's designated agent. Service shall be complete upon tender of the notice or order or upon certified mailing of the notice or order and service shall not be deemed incomplete because of refusal to accept.

(b) A show cause order may be served on the person to whom it is issued in either manner provided in subsection (a) of this regulation.

(c) Designation by any person of an agent for service of notices and orders shall be made in writing to the secretary or secretary's designee.

(d) The secretary or secretary's designee may furnish copies to any person having an interest in the coal exploration, surface coal mining and reclamation operation, or the permit area, including the owner of the fee, a corporate officer of the permittee or entity conducting coal exploration, or the bonding company. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-405, 49-405d; effective May 1, 1984; amended Feb. 11, 1991.)

47-15-17. Maintenance of permit areas. The secretary or secretary's designee shall require the permittee to cut vegetative growth if necessary to facilitate inspection of all permit areas to insure compliance with the state act and the rules and regulations. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-405, 49-405d; effective May 1, 1985; amended Feb. 11, 1991.)

Article 16.—RECLAMATION

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 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 or a result of bond forfeiture. Bond forfeiture will 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 an unreclaimed or inadequately reclaimed condition" means land and water:

(1) which were mined or affected by such mining, was-

(continued)

tebanks, processing, or other mining processes prior to August 3, 1977, and on which all mining has ceased;

(2) which continue, in their present condition, to substantially degrade the quality of the environmental, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public;

(3) for which there is no continuing reclamation responsibility under state or federal laws. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-428; effective May 1, 1983; amended Feb. 11, 1991.)

47-16-2. Reclamation project evaluation. Proposed reclamation projects and completed reclamation work shall be evaluated using the factors stated in this section 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. 1989 Supp. 49-428. Completed reclamation shall be evaluated using these factors to identify 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 objectives as stated in K.S.A. 1989 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 the reclamation work for the area including, but are not limited to:

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

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

(3) protection of public or private property;

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

(5) improvement of natural resource use, including:

(A) increasing productivity capability of the land;

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

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

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

(6) technologies which can be used to reclaim areas disturbed by mining.

(d) any additional adverse impacts to people or the environment 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) any additional coal or other mineral or material resources within the project area where there is:

(1) a reasonable probability that the desired reclamation could be accomplished in conjunction with future mining; or

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

(g) compatibility of post-reclamation land uses with

(1) land uses in the surrounding area;

(2) applicable state, regional, and local land use plans and laws; and

(3) the needs and desires of the community where the project is located.

(h) the probability that post-reclamation management, maintenance and control of the area will be consistent with the reclamation completed. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-428; effective May 1, 1983; amended Feb. 11, 1991.)

47-16-3. Consent to entry. (a) All reasonable actions to obtain prior written consent from the owner of record of the land or property to be entered shall be taken by the secretary or secretary's designee.

(b) The consent shall consist of a signed statement by the owner or the owner's authorized agent which includes:

(1) a legal description of the land to be entered;

(2) the nature of work to be performed on the lands; and

(3) any special conditions for entry.

(c) This statement shall not include any commitment by the secretary to perform reclamation work or compensate the owner for entry. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-432; effective May 1, 1983; amended Feb. 11, 1991.)

47-16-4. Entry for study or exploration. (a) Any property may be entered by the secretary or secretary's designee for the purpose of conducting studies or exploratory work to determine:

(1) the existence of adverse effects of past coal mining practices; and

(2) the feasibility of restoration, reclamation, abatement, control, or prevention of adverse effects.

(b) If the owner will not give consent to entry; notice shall be given to the owner in writing of the secretary's 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 is 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. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-432; effective May 1, 1983; amended Feb. 11, 1991.)

47-16-5. Entry and consent to reclaim. (a) Notice

shall be given of the secretary's 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. 1989 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.

(b) Any land where an emergency exists and on any other land necessary to gain access to the land where an emergency exists may be entered by the secretary to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices and to do all things necessary to protect the public health, safety, or general welfare.

(1) A written finding shall be made by the secretary with reasons supporting the conclusion that an emergency exists, as defined in section 410 of the United States surface mining control and reclamation act prior to entry.

(2) Notice to the owner shall not be required prior to entry for emergency reclamation. Reasonable efforts to notify the owner and obtain prior consent shall be made by the secretary; consistent with the existing emergency conditions. Proper written notice shall be given to the owner as soon after entry as practical. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-432; effective May 1, 1983; amended Feb. 11, 1991.)

47-16-6. Liens. (a) A lien shall be placed by the secretary on land reclaimed if the reclamation results in a significant increase in the fair market value based on the pre- and post-reclamation appraisals; except that, the lien may be waived by the secretary if:

(1) the lien amount would be less than the cost of filing the lien;

(2) the reclamation work primarily increases the health, safety, or environment of the community or area affected; or

(3) the reclamation is necessitated by an unforeseen occurrence and the work performed to restore the land will not significantly increase the market value of the land as it existed immediately before the occurrence.

(b) No lien shall be placed against land reclaimed if the current owner of the property acquired title prior to May 2, 1977 and did not consent to, participate in, or exercise control over the mining operation which caused or contributed to the unreclaimed conditions.

(c) If a lien is to be filed, within six months after com-

pletion of the reclamation work, a statement shall be filed by the secretary in the office having responsibility under applicable law for recording judgments and placing liens against land. The statement shall include:

(1) an account of monies expended for the reclamation work; and

(2) a notarized summary of the appraisal report.

(d) The increase in the appraised value of the property shall constitute the amount of the lien recorded and shall have priority second only to a real estate tax lien. Provided, the landowner is:

(1) notified prior to the time of filing the lien of the amount of the proposed lien; and

(2) allowed a reasonable time to pay that amount in lieu of filing the lien. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-428; effective May 1, 1983; amended Feb. 11, 1991.)

47-16-7. Appraisals. (a) In order for a lien to be filed under K.A.R. 47-16-1:

(a) A notarized appraisal of the fair market value of the land as it is shall be obtained from an independent professional appraiser before any reclamation activities are started.

(b) A second, notarized appraisal of the fair market value of the land shall be obtained after all reclamation activities have been completed.

(c) The landowner shall receive a statement of any increase in market value, an itemized statement of reclamation expenses and a notice that a lien will be filed against the property. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-428; effective May 1, 1983; amended Feb. 11, 1991.)

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.

(b) The secretary 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. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-428; effective May 1, 1983; amended Feb. 11, 1991.)

Stanley C. Grant
Secretary of Health
and Environment

Doc. No. 010072

INDEX TO ADMINISTRATIVE REGULATIONS

This index lists in numerical order the new, amended and revoked administrative regulations and the volume and page number of the Kansas Register issue in which more information can be found. This cumulative index supplements the index found in the 1990 Index Supplement to the Kansas Administrative Regulations.

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Table with 3 columns: Reg. No., Action, Register. Includes entries for 1-5-30, 1-9-5, 1-16-8, 1-16-18, 1-16-18a, 1-18-1a.

AGENCY 4: BOARD OF AGRICULTURE

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(continued)

AGENCY 68: BOARD OF PHARMACY

Table with 3 columns: Reg. No., Action, Register. Rows include 68-1-1b, 68-2-12a, 68-9-1, 68-20-20.

AGENCY 74: BOARD OF ACCOUNTANCY

Table with 3 columns: Reg. No., Action, Register. Rows include 74-5-202, 74-5-203, 74-5-406, 74-13-1, 74-13-2.

AGENCY 75: CONSUMER CREDIT COMMISSIONER

Table with 3 columns: Reg. No., Action, Register. Rows include 75-6-11, 75-6-24, 75-6-26.

AGENCY 81: OFFICE OF THE SECURITIES COMMISSIONER

Table with 3 columns: Reg. No., Action, Register. Rows include 81-3-2, 81-5-6.

AGENCY 82: STATE CORPORATION COMMISSION

Table with 3 columns: Reg. No., Action, Register. Rows include 82-1-201, 82-1-202, 82-1-204, 82-1-205, 82-1-206, 82-1-207, 82-9-1, 82-9-3, 83-9-5, 82-9-6, 82-9-8, 82-9-14, 82-9-16, 82-9-24, 82-11-3, 82-11-4, 82-11-10.

AGENCY 84: PUBLIC EMPLOYEES RELATIONS BOARD

Table with 3 columns: Reg. No., Action, Register. Rows include 84-1-1, 84-1-2, 84-1-3, 84-1-4, 84-2-1 through 84-2-15, 84-3-1 through 84-4-1, 84-4-5, 84-4-7, 84-5-1.

AGENCY 86: REAL ESTATE COMMISSION

Table with 3 columns: Reg. No., Action, Register. Row includes 86-1-10.

AGENCY 88: BOARD OF REGENTS

Table with 3 columns: Reg. No., Action, Register. Rows include 88-20-1 through 88-20-11.

AGENCY 91: DEPARTMENT OF EDUCATION

Table with 3 columns: Reg. No., Action, Register. Rows include 91-1-27b, 91-1-27c, 91-1-32.

Table with 3 columns: Reg. No., Action, Register. Rows include 91-1-34, 91-1-58, 91-1-62, 91-1-80, 91-1-82, 91-1-101, 91-1-106a through 91-1-106m, 91-1-110, 91-1-123a, 91-1-128b, 91-1-132a, 91-1-153, 91-12-48, 91-12-63, 91-12-70.

AGENCY 92: DEPARTMENT OF REVENUE

Table with 3 columns: Reg. No., Action, Register. Rows include 92-23-40, 92-55-2a.

AGENCY 99: BOARD OF AGRICULTURE—DIVISION OF WEIGHTS AND MEASURES

Table with 3 columns: Reg. No., Action, Register. Rows include 99-26-1, 99-40-1, 99-40-3.

AGENCY 100: BOARD OF HEALING ARTS

Table with 3 columns: Reg. No., Action, Register. Rows include 100-46-5, 100-47-1, 100-49-4, 100-49-4.

AGENCY 102: BEHAVIORAL SCIENCES REGULATORY BOARD

Table with 3 columns: Reg. No., Action, Register. Rows include 102-1-13, 102-2-3, 102-3-2, 102-4-2, 102-4-10.

AGENCY 109: EMERGENCY MEDICAL SERVICES BOARD

Table with 3 columns: Reg. No., Action, Register. Rows include 109-2-5, 109-2-7, 109-8-1, 109-9-1, 109-10-1, 109-12-1.

AGENCY 110: DEPARTMENT OF COMMERCE

Table with 3 columns: Reg. No., Action, Register. Rows include 110-4-1 through 110-4-8.

AGENCY 111: THE KANSAS LOTTERY

Table with 3 columns: Reg. No., Action, Register. Rows include 111-1-2, 111-1-5, 111-2-1, 111-2-2, 111-2-2a, 111-2-6, 111-2-7, 111-2-13, 111-2-14, 111-2-15, 111-3-1, 111-3-9, 111-3-10 through 111-3-31, 111-3-11, 111-3-12, 111-3-13, 111-3-14, 111-3-16, 111-3-19 through 111-3-22.

Table with 3 columns: Reg. No., Action, Register. Rows include 111-3-20, 111-3-21, 111-3-22, 111-3-25, 111-3-27, 111-3-31, 111-3-32, 111-3-33, 111-4-1, 111-4-2, 111-4-4, 111-4-6, 111-4-7, 111-4-8, 111-4-12, 111-4-66 through 111-4-77, 111-4-96 through 111-4-114, 111-4-100, 111-4-101, 111-4-102, 111-4-104, 111-4-105, 111-4-106, 111-4-106a, 111-4-107, 111-4-108, 111-4-111, 111-4-113, 111-4-114, 111-4-153 through 111-4-160, 111-4-177 through 111-4-212, 111-4-213 through 111-4-220, 111-4-217, 111-4-221 through 111-4-224, 111-4-225 through 111-4-228, 111-4-229 through 111-4-236, 111-4-237 through 111-4-240, 111-4-241 through 111-4-244, 111-4-249 through 111-4-252, 111-5-1 through 111-5-23, 111-5-9 through 111-5-15, 111-5-11, 111-5-17, 111-5-18, 111-5-19, 111-6-1 through 111-6-15, 111-6-1, 111-6-3, 111-6-6, 111-6-12, 111-6-13, 111-6-17, 111-7-1 through 111-7-10, 111-7-1, 111-7-3, 111-7-4.

111-7-5	Amended	V. 9, p. 966
111-7-6	Amended	V. 9, p. 967
111-7-9	Amended	V. 9, p. 1569
111-7-11	Amended	V. 9, p. 967
111-7-12 through 111-7-32	New	V. 7, p. 1194-1196
111-7-33 through 111-7-43	New	V. 7, p. 1197, 1198
111-7-33a	New	V. 8, p. 300
111-7-44 through 111-7-54	New	V. 9, p. 1367-1370
111-8-1	New	V. 7, p. 1633
111-8-2	New	V. 7, p. 1633
111-8-3	Amended	V. 9, p. 505
111-8-4	New	V. 7, p. 1714
111-8-4a	New	V. 7, p. 1695
111-8-5 through 111-8-13	New	V. 7, p. 1634
111-9-1 through 111-9-12	New	V. 7, p. 1714-1716
111-9-1 through 111-9-6	Revoked	V. 9, p. 1660
111-9-13 through 111-9-18	Revoked	V. 9, p. 1660
111-9-25 through 111-9-30	New	V. 9, p. 699, 700
111-10-1 through 111-10-9	New	V. 8, p. 136-138
111-10-7	Amended	V. 8, p. 391

AGENCY 112: KANSAS RACING COMMISSION

Reg. No.	Action	Register
112-3-16	Amended	V. 9, p. 153
112-3-19	Amended	V. 9, p. 153
112-5-1	Amended	V. 9, p. 153
112-5-2	Amended	V. 9, p. 154
112-5-3	Amended	V. 9, p. 154
112-5-8	Amended	V. 9, p. 155
112-5-9	Amended	V. 9, p. 155

112-6-6	Amended	V. 9, p. 155
112-9-5	Amended	V. 9, p. 155
112-9-7	Amended	V. 9, p. 156
112-9-8	Amended	V. 9, p. 156
112-9-11	Amended	V. 9, p. 156
112-9-13	Amended	V. 9, p. 156
112-9-18	Amended	V. 9, p. 157
112-9-21	Amended	V. 9, p. 157
112-9-22	Amended	V. 9, p. 158
112-9-23	Amended	V. 9, p. 159
112-9-29	Amended	V. 9, p. 159
112-9-34	Amended	V. 9, p. 159
112-9-37	Amended	V. 9, p. 159
112-10-4	Amended	V. 9, p. 160
112-11-2	Amended	V. 9, p. 160
112-11-3	Amended	V. 9, p. 161
112-11-6	Amended	V. 9, p. 161
112-11-7	Amended	V. 9, p. 161
112-11-9	Amended	V. 9, p. 161
112-11-10	Amended	V. 9, p. 161
112-11-12	Amended	V. 9, p. 162
112-11-14	Amended	V. 9, p. 162
112-11-15	Amended	V. 9, p. 162
112-11-20	Amended	V. 9, p. 162
112-12-2	Amended	V. 9, p. 164
112-12-4	Amended	V. 9, p. 164
112-15-1 through 112-15-7	New	V. 9, p. 1074, 1075
112-15-1 through 112-15-7	New	V. 9, p. 1346, 1347

AGENCY 115: DEPARTMENT OF WILDLIFE AND PARKS

Reg. No.	Action	Register
115-2-1	Amended	V. 9, p. 1564
115-2-3	Amended	V. 9, p. 1815
115-2-4	New	V. 9, p. 951
115-4-3	New	V. 9, p. 366
115-4-5	New	V. 9, p. 367
115-4-6	New	V. 9, p. 368
115-4-7	New	V. 9, p. 390
115-4-9	New	V. 9, p. 1136
115-4-10	Amended	V. 9, p. 1136
115-4-11	New	V. 9, p. 1136
115-5-1	New	V. 9, p. 167
115-5-2	New	V. 9, p. 168
115-6-1	New	V. 9, p. 168

115-7-3	New	V. 9, p. 1135
115-7-5	Amended	V. 9, p. 951
115-7-6	New	V. 9, p. 1135
115-8-2	New	V. 9, p. 391
115-8-9	New	V. 9, p. 169
115-8-21	New	V. 9, p. 169
115-10-1 through 115-10-8	New	V. 9, p. 361, 362
115-16-1 through 115-16-4	New	V. 9, p. 1135-1137
115-17-1 through 115-17-5	New	V. 9, p. 1137-1139
115-17-6 through 115-17-9	New	V. 9, p. 1564, 1565
115-20-1	New	V. 9, p. 951
115-20-2	New	V. 9, p. 1139
115-20-3	New	V. 9, p. 1140
115-21-1	New	V. 9, p. 1815
115-21-2	New	V. 9, p. 1816
115-30-2 through 115-30-8	New	V. 9, p. 1344, 1345
115-30-9	New	V. 9, p. 1816

AGENCY 116: STATE FAIR BOARD

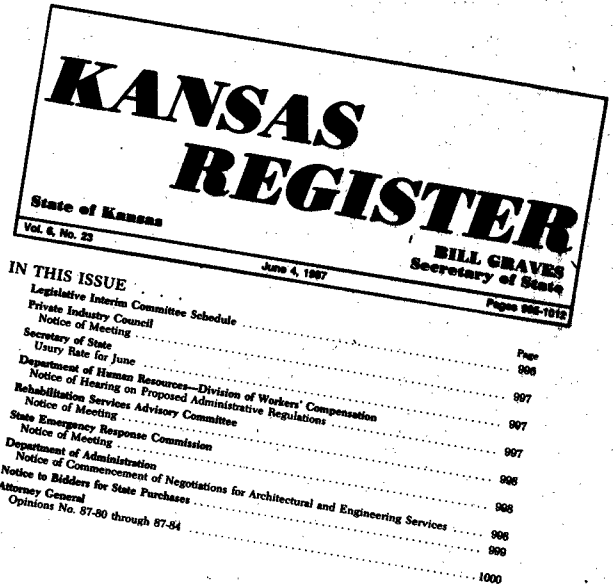
Reg. No.	Action	Register
116-2-1	Amended	V. 9, p. 1662

AGENCY 117: REAL ESTATE APPRAISAL BOARD

Reg. No.	Action	Register
117-1-1	New	V. 9, p. 1786
117-2-1	New	V. 9, p. 1786
117-2-2	New	V. 9, p. 1787
117-3-1	New	V. 9, p. 1787
117-3-2	New	V. 9, p. 1787
117-6-1	New	V. 9, p. 1788
117-6-2	New	V. 9, p. 1788
117-6-3	New	V. 9, p. 1788
117-7-1	New	V. 9, p. 1789

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