

Kansas Register

Ron Thornburgh, Secretary of State

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In this issue . . .	Page
Department of Commerce and Housing	
Notice to private activity bond applicants.....	2
Secretary of State	
Usury rate for January	3
Code mortgage rate for January	3
Department of Administration—Division of Purchases	
Notice to bidders for state purchases	3
Kansas Department of Health and Environment	
Request for comments on proposed air quality permit.....	3
Notice concerning Kansas water pollution control permits.....	4
Kansas Department of Transportation	
Notice to contractors.....	5
Notice of Bond Sale	
City of Kingman.....	6
City of Hoisington.....	7
City of Wichita.....	7
City of Burlington.....	10
Pooled Money Investment Board	
Notice of investment rates.....	10
Attorney General	
2001 update to guidelines for takings of private property	11
Kansas Development Finance Authority	
Notice of hearing on proposed revenue bonds	12
Permanent Administrative Regulations	
Department of Agriculture—Division of Weights and Measures	12
Office of the State Bank Commissioner	18
Animal Health Department.....	26
Index to administrative regulations.....	28

State of Kansas

**Department of Commerce
and Housing**

Notice to Private Activity Bond Applicants

Applications for allocation of 2002 Private Activity Bond (PAB) authority are now being accepted for qualified uses, as defined by the Internal Revenue Code of 1986, and amendments thereto.

The State of Kansas is projected to receive \$187,500,000 of federal authority for the issuance of PABs in calendar year 2002. Historically, the primary uses of this federal authority have included "qualified small issue bonds" used for construction and equipping of manufacturing facilities and beginning farmer programs; "exempt facility bonds" used by for-profit entities providing a public benefit, i.e., certain waste treatment facilities, qualified residential rental facilities, etc.; and "qualified mortgage bonds" issued to benefit first-time homebuyers. Allocations awarded by the Secretary of Commerce and Housing are subject to the provisions of K.S.A. 74-5060 et seq. and the limitations of the state volume cap.

Fees associated with PAB application and issuance are as follows:

(1) Application fee—A nonrefundable fee must accompany the application before the request can be processed. The application fee is determined as follows:

- \$250 for allocation requests up to \$5,000,000
- \$500 for allocation requests from \$5,000,001 to \$10,000,000

- \$1,000 for allocation requests of \$10,000,001 and above

(2) Issuance Fee—An issuance fee for allocation amounts utilized, other than "Qualified Mortgage Bonds" issued, shall be due and payable to the Kansas Department of Commerce and Housing at bond closing. Issuance fees shall be determined as follows:

Allocation Used	Fee
• To \$2,000,000	5 basis points (.05%)
• \$2,000,001 and above	10 basis points (.10%)

"Qualified Mortgage Bond" programs will be assessed a fee, upon issuance of each mortgage loan assisted through the program, equal to .5% of the PAB allocation used.

Issuance fees shall be remitted within 30 days of bond closing. Checks for both the application and issuance fees should be made payable to the Kansas Department of Commerce and Housing Bond Fee Fund.

For more information or to obtain application materials, contact Mary Gerstner or Steve Kelly, Kansas Department of Commerce and Housing, 1000 S.W. Jackson, Suite 100, Topeka, 66612-1354, (785) 296-5298 or TTY (785) 296-3487.

Gary Sherrer
Secretary of Commerce
and Housing

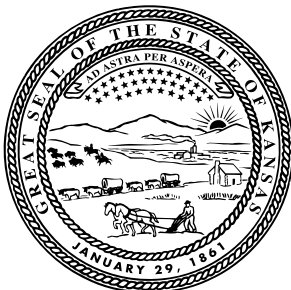
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State of Kansas

Secretary of State

Usury Rate for January

Pursuant to the provisions of K.S.A. 16-207, the maximum effective rate of interest per annum for notes secured by all real estate mortgages and contracts for deed for real estate (except where the note or contract for deed permits adjustment of the interest rate, the term of the loan or the amortization schedule) executed during the period of January 1, 2002 through January 31, 2002, is 8.64 percent.

Ron Thornburgh
Secretary of State

Doc. No. 027422

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, 66612, until 2 p.m. on the date indicated and then will be publicly opened. Interested bidders may call (785) 296-2377 for additional information:

Wednesday, January 16, 2002

01006-R

Statewide—Facsimile Equipment

04392

Statewide—Ethanol Alcohol

Tuesday, January 22, 2002

04380

Statewide—Daily Vehicle Rental (Statewide Except Topeka)

04390

Department of Administration—Division of Facilities Management—Fire Extinguishers

Thursday, January 24, 2002

A-9397

Kansas State University—Veterinary Medicine Radiation-Isolation Room, Mosier Hall

Tuesday, January 29, 2002

A-9220

Department of Wildlife and Parks—Marais des Cygnes Wildlife Area, Marsh Improvement, Linn County

A-9395

Kansas School for the Deaf—Renovation of Exterior Concrete Stairs and Sidewalk

Monday, February 4, 2002

04446

Kansas Veterans' Home—Lease of Farmland (Cowley County), Winfield

John T. Houlihan
Director of Purchases

Doc. No. 027430

State of Kansas

Secretary of State

Code Mortgage Rate for January

Pursuant to the provisions of K.S.A. 2000 Supp. 16a-1-301, Section 11, the code mortgage rate during the period of January 1, 2002 through January 31, 2002, is 12.14 percent.

Ron Thornburgh
Secretary of State

Doc. No. 027423

State of Kansas

Department of Health
and Environment

Request for Comments

The Kansas Department of Health and Environment is soliciting comments regarding a proposed air quality construction permit. Sharpe Generating Station has applied for an air quality construction permit in accordance with the provisions of K.A.R. 28-19-300 for a power plant. Emissions of nitrogen oxides (NOx), sulfur dioxide (SO2), carbon monoxide (CO), volatile organic compounds (VOCs) and particulate matter (PM) were evaluated during the permit review process.

KEPCO, Topeka, owns and operates Sharpe Generating Station located near 17th Road and Oxen Lane, Sharpe, at which the 10 unmanned reciprocating engines generating electricity are to be installed.

A copy of the proposed permit, permit application, all supporting documentation and all information relied upon during review of the permit application is available for public inspection for a period of 30 days from the date of publication during normal business hours at the KDHE, Bureau of Air and Radiation, 1000 S.W. Jackson, Suite 310, Topeka, and at the KDHE Southeast District Office, 1500 W. 7th, Chanute. To obtain or review the proposed permit and supporting documentation, contact Rick Bolfig, (785) 296-1576, at the KDHE central office, or Lynelle Stranghoner, (620) 431-2390, at the KDHE Southeast District Office. The standard departmental cost will be assessed for any copies requested.

Direct written comments or questions regarding the proposed permit to Rick Bolfig, KDHE, Bureau of Air and Radiation, 1000 S.W. Jackson, Suite 310, Topeka, 66612-1366. In order to be considered in formulating a final permit decision, written comments must be received by the close of business February 4.

A person may request a public hearing be held on the proposed permit. The request for a public hearing shall be in writing and set forth the basis for the request. The written request must be submitted to Connie Carreno, Bureau of Air and Radiation, not later than the close of business February 4 in order for the Secretary of Health and Environment to consider the request.

Clyde D. Graeber
Secretary of Health
and Environment

Doc. No. 027420

State of Kansas

Department of Health
and EnvironmentNotice Concerning Kansas
Water Pollution Control Permits

In accordance with Kansas Administrative Regulations 28-16-57 through 63, 28-18-1 through 15, 28-18a-1 through 32, 28-16-150 through 154, 28-46-7, and the authority vested with the state by the administrator of the U.S. Environmental Protection Agency, draft permits have been prepared and/or permit applications have been received for discharges to the waters of the United States and the State of Kansas for the class of discharges described below.

The determinations for permit content are based on staff review, applying the appropriate standards, regulations and effluent limitations of the State of Kansas and the EPA, and when issued will result in a State Water Pollution Control Permit and National Pollutant Discharge Elimination System Authorization subject to certain conditions.

All Kansas Department of Health and Environment district office addresses and telephone numbers are listed below.

Public Notice No. KS-AG-02-01
Pending Permits for Confined Feeding Facilities

Name and Address of Applicant	Legal Description	Receiving Water
Premium Feeders, Inc. P.O. Box 130 Scandia, KS 66966	NE/4, SW/4, & NW/4 of Section 18, T3S, R4W, Republic County	Lower Republican River Basin

Kansas Permit No. A-LRRP-C001 Federal Permit No. KS0116459

This permit is for a modification and renewal of an existing facility for 25,000 head (25,000 animal units) of cattle. The proposed modification consists of constructing an auxiliary holding structure to facilitate wastewater storage capabilities, located in the southeast area of the facility. The auxiliary structure is 9.0 feet deep and provides 31.5 acre-feet of additional storage.

Wastewater will be impounded for subsequent application to agricultural land for beneficial use. Wastewater storage capacity is provided that meets or exceeds KDHE minimum requirements.

Compliance Schedule: Permeability tests shall be conducted on the earthen wastewater retention structure(s). Should any structure not meet the permeability requirements, additional sealing will be required. The manure/waste management plan developed by the designer and approved by the department shall be adhered to as a condition of the permit.

Persons wishing to comment on or object to the draft permits and/or permit applications must submit their comments in writing to the Kansas Department of Health and Environment if they wish to have the comments or objections considered in the decision making process. Comments or objections should be submitted to the attention of Shonda Domme for agricultural permits or applications, or to the permit clerk for all other permits, at the Kansas Department of Health and Environment, Division of Environment, Bureau of Water, 1000 S.W. Jackson, Suite 420, Topeka, 66612-1367.

All comments regarding the draft permit or application notice postmarked or received on or before February 2 will be considered in the formulation of final determinations regarding this public notice. Please refer to the appropriate Kansas permit number (KS-AG-02-01) and name of applicant/application as listed when preparing comments.

If no objections are received during the public notice period regarding any proposed permit, the Secretary of Health and Environment will issue the final determination regarding issuance or denial of the proposed permit. If response to this notice indicates significant public interest, a public hearing may be held in conformance with K.A.R. 28-16-61 (28-46-21 for UIC). Media coordination for publication and/or announcement of the public notice or public hearing is handled by the Kansas Department of Health and Environment.

For agricultural permits and applications, a copy of the permit application, supporting documentation and a KDHE-developed fact sheet, if appropriate, is available for review at the appropriate district office:

Northwest District Office, 2301 E. 13th,
Hays, 67601-2651, (785) 625-5664

North Central District Office, 2501 Market Place,
Salina, 67401-7699, (785) 827-9639

Northeast District Office, 800 W. 24th,
Lawrence, 66046-4417, (785) 842-4600

Southwest District Office, 302 W. McArtor Road,
Dodge City, 67801-6098, (620) 225-0596

South Central District Office, 130 S. Market, 6th Floor,
Wichita, 67202-3802, (316) 337-6020

Southeast District Office, 1500 W. 7th,
Chanute, 66720, (620) 431-2390

Application information and components of plans and specifications for all new facilities and for expansions of existing swine facilities may be reviewed on the Internet at <http://www.kdhe.state.ks.us/feedlots/stindex.html>.

For all other proposed permits, the draft permit(s), including proposed effluent limitations and special conditions, fact sheets as appropriate, comments received and other information, are on file and may be inspected at the offices of the Kansas Department of Health and Environment, Bureau of Water.

Division of Environment offices are open from 8 a.m. to 5 p.m. Monday through Friday, excluding holidays. These documents are available upon request at the copying cost assessed by KDHE. Additional copies of this public notice also may be obtained at the Division of Environment.

Clyde D. Graeber
Secretary of Health
and Environment

Doc. No. 027421

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 Bureau of Construction and Maintenance, KDOT, Topeka, or at the Capitol Plaza Hotel, Topeka, until 2 p.m. January 16, and then publicly opened:

District One - Northeast

Brown—7 C-3774-01 - County road 3.5 miles (5.6 kilometers) west and 8 miles (12.9 kilometers) north of Horton, 1 mile (1.6 kilometers), grading and surfacing. (Federal Funds)

District—106 K-8655-01 - Various locations in District One, 58.6 miles (94.3 kilometers), milling. (State Funds)

Shawnee—70-89 K-6358-01 - Interstate 70, 0.5 mile (0.8 kilometer) west of the Wabaunsee-Shawnee county line east to 0.3 mile (0.5 kilometer) west of Valencia Road, 4.2 miles (6.8 kilometers), pavement reconstruction. (Federal Funds)

Wabaunsee—70-99 K-6357-01 - Interstate 70, 0.4 mile (0.6 kilometer) east of the junction of K-30 east to 0.5 mile (0.8 kilometer) west of the Wabaunsee-Shawnee county line, 4.1 miles (6.6 kilometers), pavement reconstruction. (Federal Funds)

Wyandotte—69-105 K-8639-01 - U.S. 69 bridge over I-35, bridge repair. (State Funds)

District Two - Northcentral

Geary—70-31 K-8580-01 - Eastbound Interstate 70 safety rest area, 1 mile (1.6 kilometers) west of the U.S. 77 interchange, sewer line improvement. (State Funds)

McPherson—56-59 K-8216-01 - U.S. 56 and Kansas Avenue south of Canton, 0.18 mile (0.3 kilometer), intersection improvement. (State Funds)

District Three - Northwest

Ellis-Republic—106 K-8659-01 - U.S. 81, from 3.2 miles (5.2 kilometers) northeast of U.S. 36 northeast to approximately 0.5 mile (0.8 kilometer) south of the Kansas-Nebbraska state line; I-70 from the Trego-Ellis county line east to the U.S. 183 interchange, 25.7 miles (41.4 kilometers), milling. (State Funds)

Phillips—74 C-3644-01 - County road 4 miles (6.4 kilometers) west and 2.5 miles (4 kilometers) north of Kirwin, 0.2 mile (0.3 kilometer), grading and bridge. (Federal Funds)

Thomas—25-97 U-1855-01 - K-25 and Davis/Zelpher Road in Colby, 0.18 mile (0.3 kilometer), intersection improvement. (Federal Funds)

Trego—70-98 K-8683-01 - Interstate 70 from the west junction of U.S. 283 east to the Trego-Ellis county line, 16.8 miles (27 kilometers), recycled asphalt pavement sampling. (State Funds)

District Four - Southeast

Allen—169-1 K-4419-03 - Elm Creek bridge on old U.S. 169, 0.9 mile (1.4 kilometers) south of U.S. 54, bridge repair. (State Funds)

Cherokee—160-11 K-6429-01 - U.S. 160 bridges over Cherry Creek east to the Labette- Cherokee county line, bridge replacement. (Federal Funds)

Greenwood—99-37 K-6386-01 - K-99 bridge 37, Slate Creek, 8.9 miles (14.6 kilometers) north of the east junction of U.S. 54, bridge replacement. (Federal Funds)

Labette—166-50 K-6388-01 - U.S. 166 bridge over the Neosho River, 0.2 mile (0.4 kilometer) east of the east junction of U.S. 59, bridge replacement. (Federal Funds)

Montgomery—63 K-1427-06 - Elk City State Park, 2 miles (3.2 kilometers), state park road improvements. (State Funds)

Wilson—39-103 K-7983-01 - K-39 Verdigris River bridge, 8.5 miles (13.6 kilometers) east and northeast of the junction of U.S. 400, bridge deck. (State Funds)

Wilson—39-103 K-8632-01 - K-39 bridge over Snake Creek, 7.1 miles (11.5 kilometers) east of the junction of U.S. 400, bridge repair. (State Funds)

District Five - Southcentral

District—106 K-8678-01 - Various locations in District Five, 102 miles (164.2 kilometers), milling. (State Funds)

District—106 K-5928-02 - Various locations in District Five, 185.8 miles (299.1 kilometers), signing. (State Funds)

Kingman—14-48 K-6380-01 - K-14 bridge over the Chickaskia River and the Chickaskia River drainage, bridge replacement. (Federal Funds)

Rush—83 C-3801-01 - County road 2 miles (3.2 kilometers) west and 3 miles (4.8 kilometers) south of Nekoma, 0.2 mile (0.4 kilometer), grading, bridge and surfacing. (Federal Funds)

Sedgwick—87 K-8195-01 - Wichita metropolitan area (I-135, I-235, U.S. 54 and K-96) intelligent transportation system. (State Funds)

District Six - Southwest

District—106 K-8635-01 - Various locations within District Six, 56.8 miles (91.4 kilometers), milling. (State Funds)

Ford—50-29 X-2171-02 - U.S. 50, from St. Andrews Street south to Casey Jones Street in Wright, grading and surfacing. (Federal Funds)

Gray—50-35 K-7181-01 - Ash Street east to 2nd Street in Cimarron, 0.2 mile (0.3 kilometer), grading and surfacing. (State Funds)

Morton—27-65 K-5753-01 - K-27 from the north city limits of Elkhart, north to the south junction of K-51 and the northeast bypass, 9.8 miles (15.8 kilometers), grading, bridge and surfacing. (Federal 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 corpora-

(continued)

tion 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 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 KDOT district office responsible for the work.

E. Dean Carlson
Secretary of Transportation

Doc. No. 027412

(Published in the Kansas Register January 3, 2002.)

**Summary Notice of Bond Sale
City of Kingman, Kansas
\$675,000**

**General Obligation Bonds, Series 2002
(General obligation bonds payable from
unlimited ad valorem taxes)**

Bids

Subject to the notice of bond sale dated December 13, 2001, written bids will be received by the clerk of the City of Kingman, Kansas (the issuer), on behalf of the governing body at 324 N. Main, P.O. Box 168, Kingman, KS 67068, until 5 p.m. January 10, 2002, for the purchase of \$675,000 principal amount of General Obligation Bonds, Series 2002. No bid of less than 100 percent of the principal amount of the bonds and accrued interest thereon to the date of delivery will be considered.

Bond Details

The bonds will consist of fully registered bonds in the denomination of \$5,000 or any integral multiple thereof. The bonds will be dated January 15, 2002, and will become due on September 1 in the years as follows:

Year	Principal Amount
2003	\$ 5,000
2004	25,000
2005	25,000
2006	25,000
2007	25,000
2008	30,000
2009	30,000
2010	30,000
2011	30,000
2012	30,000
2013	35,000
2014	35,000
2015	35,000
2016	40,000
2017	40,000

2018	45,000
2019	45,000
2020	45,000
2021	50,000
2022	50,000

The bonds will bear interest from the date thereof at rates to be determined when the bonds are sold as hereinafter provided, which interest will be payable semiannually on March 1 and September 1 in each year, beginning March 1, 2003.

Optional Book-Entry-Only System

The successful bidder may elect to have the bonds registered under a book-entry-only system administered through DTC.

Paying Agent and Bond Registrar

Kansas State Treasurer, Topeka, Kansas.

Good Faith Deposit

Each bid shall be accompanied by a good faith deposit in the form of a cashier's or certified check drawn on a bank located in the United States or a qualified financial surety bond in the amount of \$13,500 (2 percent of the principal amount of the bonds).

Delivery

The issuer will pay for printing the bonds and will deliver the same properly prepared, executed and registered without cost to the successful bidder on or about January 24, 2002, to DTC for the account of the successful bidder or at such bank or trust company in the contiguous United States as may be specified by the successful bidder, or elsewhere at the expense of the successful bidder.

Assessed Valuation and Indebtedness

The equalized assessed tangible valuation for computation of bonded debt limitations for the year 2001 is \$14,763,017. The total general obligation indebtedness of the issuer as of the date of delivery of the bonds, including the bonds being sold but excluding temporary notes to be retired in conjunction therewith, is \$3,390,000.

Approval of Bonds

The bonds will be sold subject to the legal opinion of Gilmore & Bell, P.C., Wichita, Kansas, bond counsel, whose approving legal opinion as to the validity of the bonds will be furnished and paid for by the issuer, printed on the bonds and delivered to the successful bidder when the bonds are delivered.

Additional Information

Additional information regarding the bonds may be obtained from the clerk at the address set forth above, (620) 532-3111, fax (620) 532-2147.

Dated December 13, 2001.

City of Kingman, Kansas

Doc. No. 027419

(Published in the Kansas Register January 3, 2002.)

**Summary Notice of Bond Sale
City of Hoisington, Kansas
\$915,000
General Obligation Bonds, Series 2002
(General obligation bonds payable from
unlimited ad valorem taxes)**

Bids

Subject to the notice of bond sale dated December 27, 2001, bids will be received by the city clerk of the City of Hoisington, Kansas, on behalf of the governing body at 109 E. 1st St., Hoisington, KS 67544, until 5 p.m. Monday, January 14, 2002, for the purchase of \$915,000 principal amount of General Obligation Bonds, Series 2002. No bid of less than the entire par value of the bonds and accrued interest to the date of delivery will be considered.

Bond Details

The bonds will consist of fully registered bonds in the denomination of \$5,000 or any integral multiple thereof. The bonds will be dated February 1, 2002, and will become due on September 1 in the years as follows:

Maturity September 1	Principal Amount
2003	\$ 5,000
2004	30,000
2005	30,000
2006	35,000
2007	35,000
2008	35,000
2009	40,000
2010	40,000
2011	40,000
2012	45,000
2013	45,000
2014	50,000
2015	50,000
2016	55,000
2017	55,000
2018	60,000
2019	60,000
2020	65,000
2021	70,000
2022	70,000

The bonds will bear interest from that date at rates to be determined when the bonds are sold as provided, which interest will be payable semiannually on March 1 and September 1 in each year, beginning March 1, 2003.

Paying Agent and Bond Registrar

Kansas State Treasurer, Topeka, Kansas.

Good Faith Deposit

Each bid shall be accompanied by a cashier's or certified check drawn on a bank located in the United States or a financial surety bond in a form that complies with the requirements set forth in the notice of sale in the amount of \$18,300 (2 percent of the principal amount of the bonds).

Delivery

The city will pay for preparation of the bonds and will deliver the same properly prepared, executed and registered without cost to the successful bidder on or about

February 5, 2002, through the offices of the Depository Trust Company, New York, New York, or at such bank or trust company in the State of Kansas or Kansas City, Missouri, as specified by the successful bidder.

Assessed Valuation and Indebtedness

The equalized assessed tangible valuation of the city for computation of bonded debt limitations for the year 2001 is \$9,320,517. The total general obligation indebtedness of the city as of the date of the bonds, including the bonds being sold, is \$1,140,000.

Approval of Bonds

The bonds will be sold subject to the legal opinion of Logan Riley Carson & Kaup, L.C., Overland Park, Kansas, bond counsel, whose approving legal opinion as to the validity of the bonds will be furnished and paid for by the city and delivered to the successful bidder when the bonds are delivered.

Additional Information

Additional information regarding the bonds may be obtained from the city clerk, (620) 653-4125; from the city's financial advisor, Cooper Malone McClain, Inc., 7701 E. Kellogg, Suite 700, Wichita, KS 67207, Attention: Dave Malone, (316) 685-5777; or from the city's bond counsel, Logan Riley Carson & Kaup, L.C., 9200 Indian Creek Parkway, Suite 230, Overland Park, KS 66210, (913) 661-0399.

Dated December 27, 2001.

City of Hoisington, Kansas
By Donita Crutcher, City Clerk
109 E. 1st St.
Hoisington, KS 67544

Doc. No. 027429

(Published in the Kansas Register January 3, 2002.)

**Summary Notice of Bond Sale
City of Wichita, Kansas
\$16,060,000
Aggregate Principal Amount
General Obligation Bonds
Series 768, Series 769
(General obligation bonds payable from
unlimited ad valorem taxes)**

**\$46,000,000
General Obligation Sales Tax Bonds
Series 2002
(General obligation sales tax bonds payable
from a pledge of a portion of the revenues received
from a county-wide retailers' sales tax and
from unlimited ad valorem taxes)**

Subject to the terms and conditions of the complete official notice of sale dated December 11, 2001, of the City of Wichita, Kansas, in connection with the city's hereinafter described general obligation bonds (collectively, the bonds) and certain general obligation temporary notes of the city, sealed, facsimile and electronic bids for the purchase of the bonds shall be received at the office of the Department of Finance, 12th Floor, City Hall, 455 N.

(continued)

Main, Wichita, Kansas, until 10:30 a.m. Tuesday, January 15, 2002. All bids shall be publicly read and tabulated on said date and at said time and place. The bids will be considered and the bonds will be awarded by the city council in the council chamber at City Hall, at their earliest convenience following the bid opening.

No oral or auction bid for the bonds shall be considered, and no bid for less than the entire principal amount of a series of bonds shall be considered. Sealed and facsimile bids will be accepted only on the official bid forms that have been prepared for each series of bonds, which may be obtained from the city's Department of Finance. Bids may be submitted by mail or delivered in person to the address stated above, may be submitted by telefacsimile at (316) 219-6269, or may be electronically bid through PARITY Electronic Bid Submission System (PARITY). To the extent any instruction or directions set forth in PARITY conflict with the official notice of sale, the terms of the official notice of sale shall control. The city shall not be responsible for any failure, misdirection or error in the means of transmission selected by any bidder. For further information about the electronic bidding services of PARITY, potential bidders may contact PARITY at 95 Hudson St., New York, NY 10014, (212) 806-8304. All bids must be received at the place and not later than the date and time herein specified. Each bid shall be accompanied by a good faith deposit in the form of a certified or cashier's check drawn on a bank located within the United States and made payable to the order of the city, or in the form of a financial surety bond payable to the order of the city and meeting requirements therefor as set forth in the official notice of sale, and shall be in an amount equal to 2 percent of the principal amount of the series of bonds for which the bid is submitted.

Description of the Bonds

The Series 768 Bonds will be issued in the aggregate principal amount of \$6,390,000; shall be issued as fully registered bonds in the denomination of \$5,000, or any integral multiple thereof not exceeding the principal amount maturing in each year; shall bear a dated date of February 1, 2002; and shall mature serially on September 1 in each of the years and principal amounts as follows:

Maturity Schedule - Series 768 Bonds

Principal Amount	Maturity Date
\$305,000	09/01/03
320,000	09/01/04
330,000	09/01/05
350,000	09/01/06
365,000	09/01/07
380,000	09/01/08
400,000	09/01/09
420,000	09/01/10
440,000	09/01/11
460,000	09/01/12
480,000	09/01/13
500,000	09/01/14
525,000	09/01/15
545,000	09/01/16
570,000	09/01/17

The Series 768 Bonds shall bear interest at the rates specified by the successful bidder, and interest shall be payable semiannually on March 1 and September 1 of each year, commencing March 1, 2003.

The Series 769 Bonds will be issued in the aggregate principal amount of \$9,670,000; shall be issued as fully registered bonds in the denomination of \$5,000, or any integral multiple thereof not exceeding the principal amount maturing in each year; shall bear a dated date of February 1, 2002; and shall mature serially on June 1 in each of the years and principal amounts as follows:

Maturity Schedule - Series 769 Bonds

Principal Amount	Maturity Date
\$965,000	06/01/03
965,000	06/01/04
965,000	06/01/05
965,000	06/01/06
965,000	06/01/07
965,000	06/01/08
970,000	06/01/09
970,000	06/01/10
970,000	06/01/11
970,000	06/01/12

The Series 769 Bonds shall bear interest at the rates specified by the successful bidder, and interest shall be payable semiannually on June 1 and December 1 of each year, commencing December 1, 2002.

The Series 2002 Bonds will be issued in the aggregate principal amount of \$46,000,000; shall be issued as fully registered bonds in the denomination of \$5,000, or any integral multiple thereof not exceeding the principal amount maturing in each year; shall bear a dated date of February 1, 2002; and shall mature serially on April 1 in each of the years and principal amounts as follows:

Maturity Schedule - Series 2002 Bonds

Principal Amount	Maturity Date
\$2,165,000	04/01/03
2,270,000	04/01/04
2,375,000	04/01/05
2,490,000	04/01/06
2,610,000	04/01/07
2,735,000	04/01/08
2,865,000	04/01/09
3,005,000	04/01/10
3,150,000	04/01/11
3,300,000	04/01/12
3,460,000	04/01/13
3,625,000	04/01/14
3,800,000	04/01/15
3,980,000	04/01/16
4,170,000	04/01/17

The Series 2002 Bonds shall bear interest at the rates specified by the successful bidder, and interest shall be payable semiannually on April 1 and October 1 of each year, commencing October 1, 2002.

Form of Bonds

The bonds will be issued in book-entry-only form.

**Paying Agent and Bond Registrar;
Payment of Principal and Interest**

JP Morgan, New York, New York, shall serve as bond registrar and paying agent for the bonds. The principal amount of and the interest on the bonds shall be paid by the paying agent from funds made available by the city by wire transfer of same day funds to Cede & Co., nominee for the Depository Trust Company, New York, New York (DTC). The transfer of principal and interest payments to the participants of DTC will be the responsibility of DTC, and the transfer of principal and interest payments to beneficial owners by participants of DTC will be the responsibility of such participants and other nominees of beneficial owners. Reference is made to the official notice of sale for additional information regarding payment of principal and interest to owners of the bonds.

Redemption

Certain of the bonds are subject to redemption as set forth in the official notice of sale.

Delivery

The bonds shall be delivered at the expense of the city on or about February 21, 2002. As a condition to delivery, the successful bidders shall be required to deposit the bonds with DTC. Reference is made to the official notice of sale for additional information regarding delivery.

Legal Opinion

Hinkle Elkouri Law Firm L.L.C., Wichita, Kansas. All fees and expenses of bond counsel shall be paid by the city. Reference is made to the official notice of sale and the city's preliminary official statement for additional information regarding legal matters.

Security

The Series 768 Bonds and Series 769 Bonds and the interest thereon constitute general obligations of the city, and the full faith, credit and resources of the city will be pledged to the payment thereof. Reference is made to the official notice of sale and the city's preliminary official statement for a further discussion of the security for the Series 768 Bonds and Series 769 Bonds.

The Series 2002 Bonds and the interest thereon constitute general obligations of the city, and the full faith, credit and resources of the city will be pledged to the payment thereof. Payment of the principal and interest on the Series 2002 Bonds is additionally secured by a pledge of certain sales tax revenues. The city has irrevocably pledged 50 percent of the revenues allocated to the city from a county-wide retailers' sales tax to the payment of the principal and interest on the Series 1992 Bonds, the Series 1996 Bonds and the Series 2002 Bonds and any future additional sales tax bonds, and is obligated to levy ad valorem taxes without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the city in order to pay any part of said principal and interest on the Series 2002 Bonds not paid from such sales tax revenues. Reference is made to the official notice of sale and the city's preliminary official statement for a further discussion of the security for the Series 2002 Bonds.

Ratings

The city's outstanding general obligation bonds issued since 1975 have been rated by Moody's Investors Service, Inc. and by Standard & Poor's, a Division of the McGraw-Hill Companies. The most recent ratings given to the city's general obligation bonds (dated August 1, 2001) by such rating agencies were "Aa 2" and "AA" respectively. The city has applied to both of said rating services for ratings on the bonds described herein.

Financial Matters

The city's equalized assessed tangible valuation for computation of bonded debt limitations is \$2,496,566,184. The total outstanding general obligation bonded indebtedness of the city, at February 1, 2002, will be \$341,887,307. This amount includes the within described bonds and the following described pending indebtedness.

Pending Indebtedness

Concurrently with the public sale of the bonds described herein, the city will offer at public sale \$53,355,000 principal amount of General Obligation Renewal and Improvement Temporary Notes, Series 205.

Official Statement

The city has authorized and directed preparation of a preliminary official statement in connection with the bonds herein described. Said preliminary official statement is in a form "deemed final" by the city for purposes of Securities and Exchange Commission Rule 15c2-12(b)(1), but is subject to revision, amendment and completion in the final official statement. Not later than seven business days after the date of the sale of the bonds, the city shall furnish the successful bidder with a reasonable number of copies of the final official statement, without cost.

Continuing Disclosure

The city has adopted an ordinance establishing a master undertaking to provide ongoing disclosure concerning the city in connection with its general obligation bonds for the benefit of owners of the bonds, as required under Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-12. A copy of that ordinance is included as an appendix to the official statement.

Additional Information

Copies of the official notice of sale, official bid forms and preliminary official statement may be obtained from the city's Department of Finance, City Hall, 12th Floor, 455 N. Main, Wichita, KS 67202-1679 (Kristi McMinville, Debt Coordinator, 316-268-4143).

City of Wichita, Kansas
by Pat Burnett, City Clerk

Doc. No. 027410

State of Kansas
Pooled Money Investment Board

Notice of Investment Rates

The following rates are published in accordance with K.S.A. 75-4210. These rates and their uses are defined in K.S.A. 2000 Supp. 12-1675(b)(c)(d), and K.S.A. 75-4201(l) and 75-4209(a)(1)(B).

Effective 12-31-01 through 1-6-02

Table with 2 columns: Term, Rate. Rows include 1-89 days (1.67%), 3 months (1.65%), 6 months (1.73%), 1 year (2.12%), 18 months (2.64%), 2 years (3.03%).

Derl S. Treff
Director of Investments

Doc. No. 027417

(Published in the Kansas Register January 3, 2002.)

Summary Notice of Bond Sale
City of Burlington, Kansas
\$495,000
General Obligation Bonds, Series 2002
(General obligation bonds payable from unlimited ad valorem taxes)

Bids

Subject to the notice of bond sale dated January 7, 2002, bids will be received by the city clerk of the City of Burlington, Kansas, on behalf of the governing body at City Hall, 301 Neosho, Burlington, KS 66839, until 1 p.m. Wednesday, January 16, 2002, for the purchase of \$495,000 principal amount of General Obligation Bonds, Series 2002. No bid of less than the entire par value of the bonds and accrued interest to the date of delivery will be considered.

Bond Details

The bonds will consist of fully registered bonds in the denomination of \$5,000 or any integral multiple thereof. The bonds will be dated January 1, 2002, and will become due on September 1 in the years as follows:

Table with 2 columns: Maturity September 1, Principal Amount. Rows list years from 2002 to 2012 with corresponding principal amounts.

The bonds will bear interest from that date at rates to be determined when the bonds are sold as provided, which interest will be payable semiannually on March 1

and September 1 in each year, beginning September 1, 2002. A bidder may elect to have all or a portion of the bonds scheduled to mature in consecutive years issued as term bonds subject to the requirements set forth in the notice of sale.

Paying Agent and Bond Registrar

Kansas State Treasurer, Topeka, Kansas.

Good Faith Deposit

Each bid shall be accompanied by a cashier's or certified check drawn on a bank located in the United States or a financial surety bond in a form that complies with the requirements set forth in the notice of sale in the amount of \$9,900 (2 percent of the principal amount of the bonds).

Delivery

The city will pay for preparation of the bonds and will deliver the same properly prepared, executed and registered without cost to the successful bidder on or about January 31, 2002, at the offices of the Depository Trust Company, New York, New York, if the successful bidder elects to have the bonds in book-entry form, or at such bank or trust company in the State of Kansas or Kansas City, Missouri.

Assessed Valuation and Indebtedness

The equalized assessed tangible valuation for computation of bonded debt limitations for the year 2001 is \$11,393,423. The total general obligation indebtedness of the city as of the date of the bonds, including the bonds being sold, is \$1,185,000. (Of that amount, temporary notes in the amount of \$525,000 will be redeemed with the proceeds of the bonds.)

Approval of Bonds

The bonds will be sold subject to the legal opinion of Logan Riley Carson & Kaup, L.C., Overland Park, Kansas, bond counsel, whose approving legal opinion as to the validity of the bonds will be furnished and paid for by the city and delivered to the successful bidder when the bonds are delivered.

Additional Information

Additional information regarding the bonds may be obtained from the city clerk or from bond counsel, Logan Riley Carson & Kaup, L.C., 9200 Indian Creek Parkway, Suite 230, Overland Park, KS 66210, (913) 661-0399.

Dated January 7, 2002.

City of Burlington, Kansas
By Daniel K. Allen
City Clerk
301 Neosho
Burlington, KS 66839
(620) 364-5334

Doc. No. 027427

State of Kansas

Attorney General

2001 Update to Guidelines for Takings of Private Property

The following cases contain analysis of issues relating to government takings of privately-owned real property. Pursuant to K.S.A. 77-704 of the Private Property Protection Act, this summary of decisions constitutes the 2001 update to the Attorney General's Guidelines. The original Guidelines may be found in Volume 14, Number 51 of the Kansas Register, published on December 15, 1995. Annual updates may be found in the Kansas Register at Volume 16, Number 1, published January 2, 1997; Volume 16, Number 52, published December 25, 1997; Volume 17, Number 53, published December 31, 1998; Volume 18, Number 52, published December 30, 1999; and Volume 20, No. 1, published January 4, 2001.

Palazzolo v. State of Rhode Island, 121 S.Ct. 2448, 150 L.Ed.2d 592 (2001).

The issues in this case include whether a landowner's claim is ripe if he has not exhausted his state or local remedies. The plaintiff landowner sought permission from the state's Coastal Resources Management Council to utilize his land along the Atlantic seaboard in Westerly, Rhode Island. Upon denial of his requests, he sued for compensation in a takings action. The Rhode Island Supreme Court affirmed the lower court's decision that compensation was not due because the government's action did not deny the owner of all economic use of the property, and that he had no reasonable investment-backed expectations that were affected by the government's regulations because he acquired title to the property subsequent to enactment of those regulations. The Rhode Island Court also determined that the plaintiff's claim was not ripe because he had not applied for approval of less intrusive development plans.

While much of this case deals with the procedural issues of ripeness and whether acquiring title to the property subsequent to enactment of the pertinent regulations barred the claim, the Court offered a helpful summary of the takings analysis:

"The Takings Clause of the Fifth Amendment, applicable to the States through the Fourteenth Amendment, prohibits the government from taking private property for public use without just compensation. The clearest sort of taking occurs when the government encroaches upon or occupies private land for its own proposed use. Our cases establish that even a minimal 'permanent physical occupation of real property' requires compensation under the Clause. In *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 43 S.Ct. 158, 67 L.Ed. 322 (1922), the Court recognized that there will be instances when government actions do not encroach upon or occupy the property yet still affect and limit its use to such an extent that a taking occurs. In Justice Holmes' well-known, if less than self-defining, formulation, 'while property may be

regulated to a certain extent, if a regulation goes too far it will be recognized as a taking.' *Id.*, at 415, 43 S.Ct. 158.

"Since *Mahon*, we have given some, but not too specific, guidance to courts confronted with deciding whether a particular government action goes too far and effects a regulatory taking. First, we have observed, with certain qualifications, that a regulation which 'denies all economically beneficial or productive use of land' will require compensation under the Taking Clause. Where a regulation places limitations on land that fall short of eliminating all economically beneficial use, a taking nonetheless may have occurred, depending on a complex of factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action. These inquiries are informed by the purpose of the Takings Clause, which is to prevent the government from 'forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.'" *Palazzolo*, 121 S.Ct. at 2457-2458 (internal citations omitted).

The majority held: 1) The claims in this case were ripe because the state agency's denial of the landowners application for development approval was a final decision making clear the extent of development permitted, and there was no contention that the landowner failed to comply with reasonable state law exhaustion or pre-permit processes; 2) acquisition of title to the property after the enactment of the land use restrictions is not *ipso facto* fatal to a regulatory takings challenge of those restrictions (direct condemnation, or physical invasion of property without first filing suit, present different considerations, 121 S.Ct. at 2463); but that 3) all economically beneficial use of the property was not deprived because a portion of the property was eligible for improvement. The court remanded the case for further analysis of whether the land use restrictions interfere with reasonable investment-backed expectations.

Tahoe-Sierra Preservation Council, Inc., v. Tahoe Regional Planning Agency, No. 00-1167.

The United States Supreme Court has granted certiorari, limited to the following question: "Whether the Court of Appeals properly determined that a temporary moratorium on land development does not constitute a taking of property requiring compensation under the Takings Clause of the United States Constitution?" 121 S.Ct. 2589, 150 L.Ed.2d 749 (2001).

Creason v. The Unified Government of Wyandotte County, Kansas, No. 85,469 (Nov. 2, 2001).

This case involves the method for determining just compensation for the taking of private real property.

M.S.W., Inc. v. Board of Zoning Appeals of Marion County, ___ Kan.App.2d, ___, 24 P.3d 175 (May 11, 2001).

(continued)

The Kansas Court of Appeals held that issuance of a conditional use permit in lieu of creating a nonconforming use when enacting zoning regulations did not constitute an unconstitutional taking of property.

Carla J. Stovall
Attorney General

Doc. No. 027402

State of Kansas

Kansas Development Finance Authority

Notice of Hearing

A public hearing will be conducted at 9 a.m. Thursday, January 17, in the offices of the Kansas Development Finance Authority, 555 S. Kansas Ave., Suite 202, Topeka, on the proposal for the Kansas Development Finance Authority to issue its Agricultural Development Revenue Bond for the project numbered below in the respective maximum principal amount. The bond will be issued to assist the respective borrower named below (who will be the owner and operator of the project) to finance the cost in the amount of the bond of acquiring the project or for the purpose of refunding a bond previously issued to finance the project. The project shall be located as shown:

Project No. 000513—Maximum Principal Amount: \$76,385.79. Owner/Operator: Darryl G. and Tamela L. Becker. Description: Acquisition of 160 acres of agricultural land and related improvements and equipment to be used by the owner/operator for farming purposes. The project is located at the Northeast Section 34, Capioma Township, Nemaha County, Kansas, approximately 8 miles north of Wetmore on Wetmore/Sabetha Road.

The bond, when issued, will be a limited obligation of the Kansas Development Finance Authority and will not constitute a general obligation or indebtedness of the State of Kansas or any political subdivision thereof, including the Authority, nor will it be an indebtedness for which the faith and credit and taxing powers of the State of Kansas are pledged. The bond will be payable solely from amounts received from the respective borrower, the obligation of which will be sufficient to pay the principal of, interest and redemption premium, if any, on the bond when it becomes due.

All individuals who appear at the hearing will be given an opportunity to express their views, and all written comments previously filed with the Authority at its offices at 555 S. Kansas Ave., Suite 202, Topeka, 66603, will be considered. Additional information regarding the project may be obtained by contacting the Authority.

Any individual affected by the above-described project may, at or prior to the hearing, file a written request with the Authority that a local hearing be held on the proposal to issue a bond to finance said project. A local hearing, if requested, would be conducted in the county where the project in question is located.

Jack H. Brier
President

Doc. No. 027428

State of Kansas

Department of Agriculture Division of Weights and Measures

Permanent Administrative Regulations

Article 8.—PACKAGE LABELING; EXEMPTIONS, MARKINGS, VARIATIONS

99-8-8. (Authorized by K.S.A. 83-207; implementing K.S.A. 83-211 and 83-213; effective May 1, 1982; amended May 1, 1988; amended Oct. 21, 1991; revoked Jan. 18, 2002.)

99-8-9. (Authorized by K.S.A. 83-207; implementing K.S.A. 83-211 and 83-213; effective May 1, 1988; amended Oct. 21, 1991; revoked Jan. 18, 2002.)

Article 9.—MEAT, POULTRY AND SEAFOOD

99-9-1. (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; revoked Jan. 18, 2002.)

Article 10.—EXEMPTIONS FOR CERTAIN PACKAGES

99-10-1. (Authorized by K.S.A. 83-124a; effective Jan. 1, 1966; revoked Jan. 18, 2002.)

Article 25.—TECHNICAL REQUIREMENTS FOR WEIGHING AND MEASURING DEVICES

99-25-1. **Adoption by reference, exceptions; availability of copies.** (a) Except for the codes pertaining to grain moisture meters, secs. 5.56(a) and 5.56(b), and the use requirements for ticket printers on vehicle-tank meters, sec. 3.31.UR.2, the "specifications, tolerances, and other technical requirements for weighing and measuring devices, as adopted by the 85th national conference on weights and measures 2000," published by the national institute of standards and technology, Washington, D.C., as the 2001 edition of the national institute of standards and technology handbook 44 and issued in November, 2000, is hereby adopted by reference and shall apply to commercial, data-gathering, and weighing and measuring devices in the state.

(b) Vehicle-mounted metering systems manufactured on or after January 1, 1995 shall be equipped with a ticket printer. A copy of the ticket issued by the vehicle-mounted metering system shall be given to the customer at the time of delivery or as otherwise specified by the customer.

(c) Copies of the handbook adopted by this regulation or pertinent portions from it shall be available from the office of weights and measures, Kansas department of agriculture, Topeka, Kansas. (Authorized by K.S.A. 83-207 and K.S.A. 2000 Supp. 55-442; implementing K.S.A. 2000 Supp. 55-442, K.S.A. 2000 Supp. 83-304, as amended by L. 2001, Ch. 175, Sec. 6, K.S.A. 83-215, and K.S.A. 83-404, as amended by L. 2001, Ch. 175, Sec. 7; effective May 1, 1979; amended May 1, 1981; amended May 1, 1986;

amended Aug. 14, 1989; amended Oct. 21, 1991; amended March 6, 1998; amended March 5, 1999; amended Jan. 18, 2002.)

99-25-3. Certificate of conformance. (a) No person shall use a weighing or measuring device for commercial purposes within the state of Kansas unless a certificate of conformance has been obtained for the weighing or measuring device before its use for commercial purposes within the state of Kansas.

(b) For the purpose of this regulation, a "certificate of conformance" means a document issued by the national institute of standards and technology, national conference on weights and measures, or other authorized laboratory establishing that the weight or measure or weighing or measuring instrument or device meets the requirements of the national institute of standards and technology handbook 44 as adopted by reference in K.A.R. 99-25-1.

(c) Any certificate of performance issued by the national bureau of standards or other authorized laboratory establishing that the weighing or measuring device meets the requirements of the national bureau of standards handbook 44 as previously adopted by reference in K.A.R. 99-25-1 on and after May 1, 1986 may be accepted in lieu of the certificate of conformance required in subsection (b) of this regulation.

(d) This regulation shall not apply to a weighing or measuring device manufactured and installed in the state before May 1, 1986. This regulation shall not apply to a one-of-a-kind device or type of weighing and measuring device for which there are no weighing and measuring devices that are traceable to a certificate of conformance if the weighing or measuring device complies with the applicable requirements, including permanence, of the national institute of standards and technology handbook 44 as adopted by reference in K.A.R. 99-25-1. (Authorized by and implementing K.S.A. 83-207; effective May 1, 1986; amended Aug. 14, 1989; amended Oct. 21, 1991; amended Jan. 18, 2002.)

99-25-4. Continuing education requirements for technical representatives. (a) Before the license of a technical representative is issued or renewed by the Kansas department of agriculture, the technical representative shall complete a minimum of four clock-hours of verifiable continuing education for each category of weighing or measuring devices. The continuing education shall consist of educational seminars regarding the following topics:

- (1) The installation, calibration, or repairing of a weighing or measuring device;
- (2) the applicable state weights and measures laws or regulations;
- (3) the applicable handbooks adopted by reference in these regulations;
- (4) the information required on testing and reporting forms; and
- (5) the proper method for testing weights and measures and weighing and measuring devices.

(b) All training or continuing education not conducted by the Kansas department of agriculture or representatives of the department shall be approved by the secretary

before the training or continuing education is applied toward the requirements for continuing education. (Authorized by K.S.A. 83-207 and K.S.A. 2000 Supp. 55-442; implementing K.S.A. 2000 Supp. 55-442, K.S.A. 83-302, as amended by L. 2001, Ch. 5, Sec. 483, and K.S.A. 83-402, as amended by L. 2001, Ch. 5, Sec. 484; effective March 6, 1998; amended Jan. 18, 2002.)

99-25-6. Notification of nonconforming weighing or measuring device. (a) Each service company shall notify the weights and measures office by telephone, facsimile, mail, or e-mail within 48 hours of any attempt to calibrate, repair, or adjust a measuring or weighing device that cannot be certified as conforming with all applicable tolerances, specifications, and requirements. The notification shall contain the following information:

- (1) The location of the weighing or measuring device;
- (2) the weighing or measuring device's serial number, identification number, or any other identifying number;
- (3) the name of the technical representative or representatives who attempted to calibrate, repair, or adjust the device;
- (4) the date on which the calibration, repair, or adjustment was attempted; and
- (5) a description of the factors that the technical representative determined were preventing the device from being repaired or adjusted in order to meet all applicable tolerances, specifications, and requirements.

(b) If a service company sends in a report by a telephone, facsimile, or e-mail, the service company shall mail a hard copy of the same information to the weights and measures office within seven days of the date of the attempt to repair, adjust, or calibrate the weighing and measuring device.

(c) Each report mailed to the administrator shall be considered timely if it is postmarked by the second business day following the unsuccessful attempt to calibrate, repair, or adjust the weighing and measuring device described in the report. (Authorized by K.S.A. 83-207 and K.S.A. 2000 Supp. 55-442; implementing K.S.A. 2000 Supp. 55-442, K.S.A. 83-222, and K.S.A. 83-404, as amended by L. 2001, Ch. 175, Sec. 7; effective March 6, 1998; amended Jan. 18, 2002.)

99-25-7. Reporting requirements. The service company or the city or county department of public inspections of weights and measures shall send a copy of the appropriate report to the weights and measures office within 10 days after a test or inspection in which any of the following devices is found to be within applicable tolerances, standards, and requirements:

- (a) Large capacity scale;
- (b) small capacity scale;
- (c) vehicle tank meter; or
- (d) LPG meter.

Each report shall be submitted on a form obtained from the office of weights and measures, Kansas department of agriculture. (Authorized by K.S.A. 83-207 and K.S.A. 2000 Supp. 55-442; implementing K.S.A. 2000 Supp. 55-442, K.S.A. 2000 Supp. 83-304, as amended by L. 2001, Ch. 172, Sec. 6, K.S.A. 83-215, and K.S.A. 83-404, as amended

(continued)

by L. 2001, Ch. 175, Sec. 7; effective March 6, 1998; amended Jan. 18, 2002.)

99-25-9. **Adoption by reference.** The following uniform regulations published by the national institute of standards and technology, Washington, D.C., in the 2001 edition of national institute of standards and technology handbook 130 titled "uniform laws and regulations in the areas of legal metrology and engine fuel quality, as adopted by the 85th national conference on weights and measures 2000," and issued in November 2000, are hereby adopted by reference and shall apply to weighing and measuring devices in the state:

- (a) "Uniform packaging and labeling regulation";
- (b) "uniform regulation for the method of sale of commodities"; and
- (c) "uniform engine fuels, petroleum products, and automotive lubricants regulation."

Copies of this material or the pertinent portions of it shall be available from the office of weights and measures, Kansas department of agriculture, Topeka, Kansas. (Authorized by K.S.A. 83-207 and K.S.A. 2000 Supp. 55-442; implementing K.S.A. 2000 Supp. 55-442, K.S.A. 2000 Supp. 83-304, as amended by L. 2001, Ch. 175, Sec. 6, K.S.A. 83-215, and K.S.A. 83-404, as amended by L. 2001, Ch. 175, Sec. 7; effective Jan. 18, 2002.)

Article 26.—FEES

99-26-1. **Fees.** (a) The following fees and other necessary and incidental expenses incurred shall be charged for requested services rendered by the secretary or the secretary's authorized representative in conjunction with the testing, proving, or evaluation of weights, measures, and devices, at the following rates:

- (1) The testing and proving of mass, volume, length, and other standards by the metrology laboratory at the rate of \$50.00 per hour or fraction thereof;
- (2) the testing and proving of a grain hopper scale and any weights, measures, and other devices that are used in conjunction with it at the rate of \$50.00 per hour or fraction thereof; and
- (3) conducting or assisting with an evaluation for a national conference on weights and measures certificate of conformance at the rate of \$75.00 per hour or fraction thereof.

(b) In addition to the hourly rates specified in subsection (a), expenses incurred by personnel, including meals, lodging, transportation, and mileage to and from their duty station to the point of testing, equipment, and other incidentals, may be charged. (Authorized by K.S.A. 83-207; implementing K.S.A. 83-214, as amended by L. 2001, Ch. 5, Sec. 482; effective, T-83-25, Sept. 1, 1982; effective May 1, 1983; amended, T-99-11-14-90, Nov. 14, 1990; amended Jan. 14, 1990; amended June 9, 2000; amended Jan. 18, 2002.)

Article 27.—CIVIL PENALTY

99-27-2. **Civil penalty; complaint.** (a) Each complaint that assesses a civil penalty shall include the following elements:

- (1) A statement reciting each subsection of the act authorizing the assessment of a civil penalty;
- (2) a specific reference to each provision of the act or implementing regulation that the respondent is alleged to have violated;
- (3) a concise statement of the factual basis for each alleged violation;
- (4) the amount of the proposed civil penalty; and
- (5) a notice of the respondent's right to request a hearing on any material fact contained in the complaint or on the appropriateness of the amount of the proposed civil penalty. This notice may be incorporated within the complaint or set forth in a separate document.

(b) Each respondent who requests a hearing shall be served a notice of a prehearing conference in accordance with the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto. (Authorized by K.S.A. 83-403 and K.S.A. 2000 Supp. 55-442; implementing K.S.A. 2000 Supp. 55-443, as amended by L. 2001, Ch. 5, Sec. 195, K.S.A. 83-501, as amended by L. 2001, Ch. 5, Sec. 485, and K.S.A. 83-502, as amended by L. 2001, Ch. 5, Sec. 486; effective March 6, 1998; amended Jan. 18, 2002.)

99-27-3. **Answer to complaint.** (a) If a respondent contests any material fact upon which a complaint is based, contends that the amount of the civil penalty proposed in the complaint is inappropriate, or contends that the respondent is entitled to judgment as a matter of law, the respondent may file a written answer to the complaint. If an answer is filed, the answer shall be filed with the designated hearing officer within 20 days after service of the complaint.

(b) If an answer is filed, the respondent's answer shall be in writing and shall address the following topics.

- (1) The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the complaint of which the respondent has any knowledge.
- (2) If the respondent states that the respondent has no knowledge of a particular factual allegation, the allegation shall be deemed denied.

(3) The answer shall also state any circumstances or arguments that are alleged to constitute grounds for defense, and any facts that the respondent disputes and intends to place at issue. (Authorized by K.S.A. 83-403 and K.S.A. 2000 Supp. 55-442; implementing K.S.A. 2000 Supp. 55-443, as amended by L. 2001, Ch. 5, Sec. 195, K.S.A. 83-501, as amended by L. 2001, Ch. 5, Sec. 485 and K.S.A. 83-502, as amended by L. 2001, Ch. 5, Sec. 486; effective March 6, 1998; amended Jan. 18, 2002.)

99-27-4. **Informal settlement.** (a) The respondent may request a settlement conference. The request may be either contained in the respondent's answer to the complaint, if an answer is filed, or presented at the pre-hearing conference.

(b) If a settlement is reached, the parties shall reduce the settlement to writing and present the proposed written consent agreement to the secretary or the secretary's designee. The consent agreement shall contain these elements:

- (1) A statement in which the respondent admits the jurisdictional allegations of the complaint;

(2) a statement containing one of the following:

(A) The respondent admits the facts stipulated in the consent agreement; or

(B) the respondent neither admits nor denies specific factual allegations contained in the complaint; and

(3) a statement that the respondent consents to the assessment of a stated civil penalty, if any is assessed. The consent agreement shall include all terms of the agreement and shall be signed by all parties or their counsel or representatives of record. (Authorized by K.S.A. 83-403 and K.S.A. 2000 Supp. 55-442; implementing K.S.A. 2000 Supp. 55-443, as amended by L. 2001, Ch. 5, Sec. 195, K.S.A. 83-501, as amended by L. 2001, Ch. 5, Sec. 485 and K.S.A. 83-502, as amended by L. 2001, Ch. 5, Sec. 486; effective March 6, 1998; amended Jan. 18, 2002.)

99-27-5. Adjusting the amount of the proposed civil penalty. (a) At the settlement conference, each respondent shall present all evidence relating to adjustment of the proposed civil penalty. This evidence may include mitigating factors or new evidence not previously known to the agency at the time the complaint was issued.

(b) If the respondent presents new evidence establishing facts and circumstances that were unknown to the secretary when the complaint was issued, one of the following shall apply:

(1) When the new evidence relates to the gravity of the violation, a new civil penalty may be proposed.

(2) When the new evidence establishes that the respondent did not commit the violation charged, the complaint shall be dismissed.

(3) When the new evidence reveals additional charges that should have been filed, a new complaint containing appropriate additional civil penalties may be filed.

(c) The respondent shall have the burden of presenting evidence of any mitigating factors to support any requested reduction in the amount of the proposed civil penalty. The amount of the civil penalty may be reduced if the reduction serves the public interest.

(d) The amount of a civil penalty shall not be reduced to less than \$100 per offense.

(1) The decision regarding reduction of a proposed civil penalty shall lie solely within the discretion of the secretary or the secretary's designee.

(2) A proposed civil penalty shall not be reduced unless evidence of mitigating factors has been presented by the respondent. (Authorized by 83-403 and K.S.A. 2000 Supp. 55-442; implementing K.S.A. 2000 Supp. 55-443, as amended by L. 2001, Ch. 5, Sec. 195, K.S.A. 83-501, as amended by L. 2001, Ch. 5, Sec. 485, and K.S.A. 83-502, as amended by L. 2001, Ch. 5, Sec. 186; effective March 6, 1998; amended Jan. 18, 2002.)

Article 30.—LARGE CAPACITY SCALES; TESTING AND SERVICE

99-30-2. Registration form. Each application for issuance or renewal of a scale testing and service company license shall provide the following information:

(a) The name and business address of the applicant;

(b) the name, home address, social security number, and date of birth of all technical representatives who repair, calibrate, adjust, or test scales for the applicant;

(c) the signature and title of the applicant or representative;

(d) the date of submission of the application;

(e) a certification that the applicant is fully qualified to install, service, repair, or recondition scales; and

(f) a certification that the applicant has in possession or available for use sufficient standards and equipment adequate to test scales. (Authorized by K.S.A. 83-303; implementing K.S.A. 83-302, as amended by L. 2001, Ch. 5, Sec. 483; effective May 1, 1986; amended Oct. 21, 1991; amended Jan. 18, 2002.)

99-30-3. Conformance with handbook 44. Each scale testing and service company shall conduct each test and make each repair to scales in conformance with the requirements of the national institute of standards and technology handbook 44 as adopted by reference in K.A.R. 99-25-1. Copies of this material or the pertinent portions of it shall be available from the office of weights and measures, Kansas department of agriculture, Topeka, Kansas. (Authorized by and implementing K.S.A. 83-303; effective May 1, 1986; amended Oct. 21, 1991; amended Jan. 18, 2002.)

99-30-4. Minimum required equipment. Each scale testing and service company shall have at each place of business sufficient standards and equipment to adequately test scales as specified in the notes section of the general code and in the scale code contained in the national institute of standards and technology handbook 44, as adopted by reference in K.A.R. 99-25-1. (Authorized by and implementing K.S.A. 83-303; effective May 1, 1986; amended Oct. 21, 1991; amended Jan. 18, 2002.)

99-30-5. Removal of rejection tags. (a) For the purpose of testing or repairing a scale, any licensed scale testing and service company may remove an official rejection tag or other mark placed on a scale by authority of the secretary.

(b) After the test is conducted and necessary repairs are completed, the scale testing and service company shall place the scale in service. If the scale is not repaired properly, the scale testing and service company shall replace the rejection tag or other mark with a substitute rejection tag or other mark supplied by the secretary.

(c) After removing an official rejection tag for the purpose of repairing a scale, the scale testing and service company shall send a completed inspection or test report and the official rejection tag to the weights and measures office within 10 days after the date of removing the official rejection tag. The completed inspection or test report may be submitted by facsimile. The inspection or test report or other attached document shall detail all repairs made, and the testing shall be conducted to ensure that the scale is in compliance with Kansas law and K.A.R. 99-25-1.

(d) Any licensed scale testing and service company may file reports required by this regulation by means of facsimile. If the reports are sent to the weights and measures office by facsimile, the original shall be mailed to the weights and measures office within 10 days after the date of the test or inspection. Notifications mailed to the administrator shall be considered timely if they are post-

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marked on or before the 10th day following the calibration, repair, or adjustment described in the notification.

(e) This regulation shall apply to new and used scales. (Authorized by K.S.A. 83-207, 83-303 and K.S.A. 2000 Supp. 55-442; implementing K.S.A. 2000 Supp. 55-442, K.S.A. 83-222 and K.S.A. 83-404, as amended by L. 2001, Ch. 175, Sec. 7; effective May 1, 1986; amended Oct. 21, 1991; amended March 6, 1998; amended Jan. 18, 2002.)

99-30-6. **Placed-in-service report.** Each scale testing and service company shall submit to the secretary a placed-in-service report, also referred to as the DI-701 report, within 10 days after a scale has been restored to service or placed in service. The placed-in-service report shall be executed in triplicate. The scale testing and service company shall mail to the secretary the original report and each official rejection tag removed from the device. A duplicate copy of the report shall be delivered to the owner or operator of the device. The scale testing and service company shall retain the third copy of the report. (Authorized by and implementing K.S.A. 83-303; effective May 1, 1986; amended Oct. 21, 1991; amended March 6, 1998; amended Jan. 18, 2002.)

Article 31.—MOTOR-VEHICLE FUEL MEASURING DEVICES

99-31-2. **Registration form.** Each application for issuance or renewal of a testing service company license shall provide the following information: (a) The name and business address of the applicant;

(b) the name, home address, social security number, and date of birth of all technical representatives who repair, calibrate, adjust, or test dispensing devices for the applicant;

(c) the signature and title of the applicant or representative;

(d) the date of submission of the application;

(e) a certification that the applicant is fully qualified to install, service, repair, or recondition dispensing devices; and

(f) a certification that the applicant has in its possession or available for use sufficient standards and equipment adequate to test dispensing devices. (Authorized by K.S.A. 83-403; implementing K.S.A. 83-402, as amended by L. 2001, Ch. 5, Sec. 484; effective May 1, 1986; amended Dec. 26, 1988; amended Jan. 18, 2002.)

99-31-3. **Conformance with handbook 44.** Each testing service company shall conduct each test and make each repair to dispensing devices in conformance with the requirements of the national institute of standards and technology handbook 44 as adopted by reference in K.A.R. 99-25-1. Copies of this material or the pertinent portions of it shall be available from the office of weights and measures, Kansas department of agriculture, Topeka, Kansas. (Authorized by and implementing K.S.A. 83-403; effective May 1, 1986; amended Dec. 26, 1988; amended Oct. 21, 1991; amended Jan. 18, 2002.)

99-31-4. **Minimum required equipment.** Each testing service company shall have at each place of business sufficient standards and equipment to adequately test dispensing devices as specified in the notes section of the

general code, and in the liquid-measuring device code, vehicle-tank meter code, and LPG liquid-measuring device code contained in the national institute of standards and technology handbook 44, as adopted by reference in K.A.R. 99-25-1. (Authorized by and implementing K.S.A. 83-403; effective May 1, 1986; amended Dec. 26, 1988; amended Oct. 21, 1991; amended Jan. 18, 2002.)

99-31-5. **Removal of rejection tags.** (a) For the purpose of testing or repairing a dispensing device, any licensed testing service company may remove an official rejection tag or other mark placed on a dispensing device by authority of the secretary.

(b) After the test is conducted and necessary repairs are completed, the testing service company shall place the dispensing device in service until examination by the secretary. If the dispensing device is not repaired properly, the testing service company shall replace the rejection tag or other mark with a substitute rejection tag or other mark supplied by the secretary.

(c) After removing an official rejection tag for the purpose of repairing a device, the service company shall send a completed inspection or test report and the official rejection tag to the weights and measures office within 10 days from the date of removing the official rejection tag. The completed inspection or test report may be submitted by means of facsimile. The inspection or test report or other attached document shall detail all repairs made, and the testing shall be conducted to ensure that the device is in compliance with Kansas law and K.A.R. 99-25-1.

(d) Any licensed testing service company may file notifications or reports required by this regulation by means of facsimile. Notifications or reports mailed to the administrator shall be considered timely if they are postmarked on or before the 10th day following the calibration, repair, or adjustment described in the notification or report.

(e) This regulation shall apply to new and used dispensing devices. (Authorized by K.S.A. 2000 Supp. 55-442, K.S.A. 83-207, and K.S.A. 83-403; implementing K.S.A. 2000 Supp. 55-442, K.S.A. 83-207, 83-222, 83-403, and 83-404, as amended by L. 2001, Ch. 175, Sec. 7; effective May 1, 1986; amended Dec. 26, 1988; amended March 6, 1998; amended Jan. 18, 2002.)

99-31-6. **Placed-in-service report.** Each testing service company shall submit to the secretary a placed-in-service report, also referred to as the DI-701 report, within 10 days after a dispensing device has been restored to service or placed in service. The placed-in-service report shall be executed in triplicate. The testing service company shall mail to the secretary the original of the properly executed report, together with any official rejection tag removed from the device. A duplicate copy of the report shall be delivered to the owner or operator of the dispensing device while the third copy of the report shall be retained by the testing service company. (Authorized by and implementing K.S.A. 83-403; effective May 1, 1986; amended Dec. 26, 1988; amended March 6, 1998; amended Jan. 18, 2002.)

Article 40.—PETROLEUM MEASUREMENT

99-40-1. (Authorized by K.S.A. 1989 Supp. 55-429 and K.S.A. 83-207; implementing K.S.A. 1989 Supp. 55-424

and K.S.A. 83-206; effective Jan. 14, 1991; revoked Jan. 18, 2002.)

99-40-3. Invoice disclosure requirements for wholesalers and distributors of gasolines. (a) Each distributor or wholesaler of gasoline shall provide the following information to the purchaser at the time of delivery:

(1) The minimum octane of the product as determined by the $(R+M)/2$ method;

(2) for diesel fuel, the grade, minimum flash point, and American petroleum institute gravity of the product;

(3) the terminal of origin of the product;

(4) the destination of the product;

(5) the name of the wholesaler, if different from the distributor or point of origin; and

(6) the quantity of each type of product delivered.

(b) The information required in subsection (a) shall be provided to the purchaser in writing.

(c) For the purposes of this regulation, the term purchaser means a wholesaler, distributor, or retailer. (Authorized by K.S.A. 2000 Supp. 55-442, and K.S.A. 83-207; implementing K.S.A. 55-424, K.S.A. 2000 Supp. 55-442, and K.S.A. 83-206; effective Jan. 14, 1991; amended Jan. 18, 2002.)

99-40-21. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-22. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-23. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-24. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-25. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-26. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-27. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-28. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-29. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-30. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-31. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-32. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-33. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-34. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-35. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-36. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-37. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-38. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-39. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-40. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-41. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-42. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-43. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-44. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-45. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-46. (Authorized by and implementing K.S.A. 1993 Supp. 55-425; effective Aug. 22, 1994; revoked Jan. 18, 2002.)

99-40-47. (Authorized by K.S.A. 1996 Supp. 83-207 and K.S.A. 1996 Supp. 55-442; implementing K.S.A. 1996 Supp. 83-304, as amended by L. 1997, Ch. 89, Sec. 1, K.S.A. 1996 Supp. 83-215, and K.S.A. 1996 Supp. 83-404; effective March 6, 1998; revoked Jan. 18, 2002.)

99-40-100. (Authorized by and implementing K.S.A. 1993 Supp. 55-443; effective Dec. 12, 1994; revoked Jan. 18, 2002.)

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99-40-101. (Authorized by and implementing K.S.A. 1993 Supp. 55-443; effective Dec. 12, 1994; revoked Jan. 18, 2002.)

99-40-104. (Authorized by and implementing K.S.A. 1993 Supp. 55-443; effective Dec. 12, 1994; revoked Jan. 18, 2002.)

99-40-105. (Authorized by and implementing K.S.A. 1993 Supp. 55-443; effective Dec. 12, 1994; revoked Jan. 18, 2002.)

Jamie Clover Adams
Secretary of Agriculture

Doc. No. 027424

State of Kansas

Office of the State Bank Commissioner

Permanent Administrative Regulations

Article 11.—DOCUMENTATION REQUIREMENTS

17-11-14. **Directors' meetings.** (a) Minutes shall be made of each directors' meeting of a bank or trust company. The minutes shall show any action taken by the directors.

(b) In addition to any other actions the board may take, the following specific actions shall be taken by the board of directors and noted in the minutes:

(1) Election of all officers, showing their titles, salaries, and bonuses, if any;

(2) approval of all loans, including overdrafts. The board may establish a committee with authority to approve loans. The board shall approve a report from the committee summarizing all loans made since the board's last meeting;

(3) review and approval of the directors' examination or audit required under K.S.A. 9-1116, and amendments thereto;

(4) annual approval of all bank policies;

(5) review of all state and federal regulatory examination reports received since the board's last meeting;

(6) annual approval of fidelity bond and bank casualty insurance;

(7) approval of bank income and expenses and securities transactions;

(8) review and ratification of any committee reports; and

(9) approval of dividends and a review that the dividends are in compliance with K.S.A. 9-910, and amendments thereto. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-911, K.S.A. 2000 Supp. 9-1114, K.S.A. 2000 Supp. 9-1115, and K.S.A. 9-1116; effective Jan. 1, 1966; amended Sept. 20, 1996; amended Jan. 18, 2002.)

17-11-18. **Loans; documentation requirements.** (a) Complete and current credit information, not older than 15 months, shall be maintained by the bank or trust company for any loan in excess of \$25,000 unless the loan is adequately secured.

(b) Title security. Unless loan repayment is guaranteed by a governmental program or private insurance company, the following requirements shall be met:

(1) For each real estate loan in excess of \$25,000 but less than \$50,000, the bank or trust company shall complete one of the following tasks.

(A) The bank or trust company shall verify in writing that a lien search of the records of the county register of deed's office was conducted and the bank's or trust company's lien position was determined. This verification of a lien search shall be on file with the bank or trust company.

(B) The bank or trust company shall obtain an attorney's opinion or title insurance policy, and shall maintain the policy on file.

(2) For each real estate loan of \$50,000 or more, an attorney's opinion or a title insurance policy shall be on file with the bank or trust company.

(c) If the value of the improvements on any real estate is necessary for adequate protection of the loan, an insurance policy covering these improvements against fire and windstorm shall be on file with the bank for any loan in excess of \$25,000.

(d) A real estate mortgage or deed of trust, showing the filing information with the county register of deeds, shall be on file for each loan collateralized by real estate.

(e) For any loan collateralized by personal property, if the bank is required by law to file a financing statement to perfect a security interest, the bank or trust company shall retain a copy of the filed financing statement. In other cases, relevant documents shall be maintained. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 2000 Supp. 9-1101, as amended by L. 2001, ch. 87, §5, and 9-2103, as amended by L. 2001, ch. 27, §1; effective Jan. 1, 1966; amended May 1, 1983; amended Jan. 27, 1992; amended Aug. 9, 1996; amended Jan. 18, 2002.)

17-11-19. **Charged-off assets; records.** (a) Each bank or trust company shall maintain a central listing of any assets charged off the books of the bank or trust company. The central listing shall include a subsidiary ledger for each debtor, showing the date of charge-off, the description of the asset, the amount charged off, and any recoveries.

(b) The bank or trust company shall retain the central listing for 10 years after the last payment is received, or 10 years after the date of the charge-off if no payments have been received. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 2000 Supp. 9-1101, as amended by L. 2001, ch. 87, §5, and 9-2103, as amended by L. 2001, ch. 27, §1; effective Jan. 1, 1966; amended Aug. 9, 1996; amended Jan. 18, 2002.)

17-11-21. **Appraisals and evaluations.** (a) Except for those transactions that meet the requirements of subsection (b) or (c) of this regulation, an accurate appraisal of all real estate mortgaged securing principal debt of \$25,000 or more to a bank or trust company shall be made by an appraiser who is licensed or certified by the state in which the property is located and who is independent of the transaction.

(b) Two officers or directors, or a qualified individual who is independent of the bank or trust company and independent of the transaction, may complete an accurate evaluation of real estate mortgaged in the following types of real estate-related transactions:

(1) Real estate mortgaged securing principal debt of \$250,000 or less;

(2) business loans of \$1 million or less secured by real estate, if the primary source of repayment is not dependent upon the sale of, or rental income from, the real estate; or

(3) renewals or refinancing of loans, in any amount, secured by real estate, if either of the following conditions is met:

(A) There is no advancement of new monies other than funds necessary to cover reasonable closing costs; or

(B) there has been no obvious and material change in market conditions or physical aspects of the property that affects the adequacy of the real estate collateral or the validity of an existing appraisal, even with the advancement of new monies.

(c) Neither an appraisal nor an evaluation shall be required for the following types of real estate-related transactions:

(1) Loans that are well supported by income or other collateral if real estate is taken as additional collateral solely in an abundance of caution;

(2) loans to acquire or invest in real estate if a security interest is not taken in real estate;

(3) liens taken on real estate to protect rights to, or control over, collateral other than real estate;

(4) real estate operating leases that are not the equivalent of a purchase or sale; or

(5) real estate-related loans that have met all appraisal requirements necessary to be sold to, or insured by, a federal government, or government-sponsored, agency.

(d) The individual or individuals who conduct an appraisal or evaluation shall view the premises, make a written statement of value, and sign and file the statement with the bank or trust company. The land and improvements shall be appraised separately.

(e) Notwithstanding any other provisions of this regulation, an appraisal or evaluation may be required by the commissioner if it is deemed necessary to address safety and soundness concerns. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 2000 Supp. 9-1101, as amended by L. 2001, ch. 87, §5, and 9-2103, as amended by L. 2001, ch. 27, §1; effective Jan. 1, 1966; amended May 1, 1978; amended Jan. 27, 1992; amended Oct. 19, 1992; amended Jan. 25, 1993; amended Sept. 20, 1993; amended Sept. 19, 1994; amended Aug. 9, 1996; amended Jan. 18, 2002.)

Article 16.—CHARTER APPLICATIONS

17-16-2. **Application; contents.** Each application for a certificate of authority shall contain the following information: (a) The name and address of the proposed bank or trust company;

(b) the names and addresses of the organizers, proposed officers, proposed directors, and shareholders of the proposed bank or trust company;

(c) a detailed financial statement for the organizers, proposed officers, and proposed directors, and for any individual shareholder or group of proposed shareholders acting in concert that will own or control 10% or more of the stock of the proposed bank or trust company. The

financial information shall be fewer than 90 days old and shall be certified by the owners;

(d) a statement of the character, qualifications, and experience of the organizers, proposed officers, and proposed directors, and of any individual shareholder or group of proposed shareholders acting in concert that will own or control 10% or more of the stock of the proposed bank or trust company, including the number and type of any criminal convictions;

(e) a statement of fact by the applicant to support a finding of public need for the proposed bank or trust company in the community where it will be located;

(f) a list of the names and addresses of each state bank, national bank, savings and loan association, credit union or trust company, and their branches, located within a radius of 25 miles of the site of the proposed bank or trust company. If the proposed bank or trust company is to be located in a metropolitan area with a population of 100,000 or more, as defined by the office of the state bank commissioner, the listing required by this subsection may, at the discretion of the commissioner, be limited to a five-mile radius of the site of the proposed bank or trust company; and

(g) an affidavit of publication of notice that the applicant intends to file an application for a certificate of authority. The notice shall meet the following requirements:

(1) Be published in a newspaper of general circulation in the city where the proposed bank or trust company is to be located, or if there is no such official newspaper, in an official newspaper for the county in which the city is located;

(2) be in the form prescribed by the board;

(3) be published on the same day for two consecutive weeks, with the second publication appearing at least 14 calendar days before any action taken by the board; and

(4) contain a statement that any interested party may submit, in writing, comments in support of or opposition to the application. Any comment letter of support or opposition shall be filed with the office of the state bank commissioner not later than 10 calendar days after the second publication. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 2000 Supp. 9-1801, as amended by L. 2001, ch. 87, §13, and K.S.A. 9-1802; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; amended Aug. 9, 1996; amended Jan. 18, 2002.)

Article 23.—TRUST SUPERVISION

17-23-1. **Definitions.** For the purposes of article 23, the following definitions shall apply. (a) "Account" means the trust, estate or other fiduciary relationship that has been established with a bank or trust company.

(b) "Bank" means a corporation as defined in K.S.A. 9-701(a) and amendments thereto. With respect to any fund established pursuant to K.S.A. 9-1609 and amendments thereto, "bank" shall also mean two or more banks or trust companies that are members of the same affiliated group and are cotrustees of the fund.

(c) "Cash management vehicle" means any checking, savings or money market account that is used to accu-

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mulate cash for payments to or for beneficiaries, or is used to accumulate cash for the purpose of making investments.

(d) "Collective investment fund" means funds held by a bank or trust company as fiduciary and invested collectively in either of the following:

(1) A common trust fund maintained by the bank or trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as trustee, executor, administrator, conservator, or as custodian under the uniform transfers to minors act, K.S.A. 38-1701 et seq., and amendments thereto, or any state law substantially similar to the uniform gifts to minors act or the uniform transfers to minors act as published by the national conference of commissioners on uniform state laws; or

(2) a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts that are exempt from federal income taxation under the internal revenue code.

(e) "Conservator" means an individual or a corporation who is appointed by the court to act on behalf of a conservatee and who is possessed of some or all of the powers and duties set out in K.S.A. 59-3019 and amendments thereto.

(f) "Custodian under a uniform transfers to minors act" means an account established pursuant to the uniform transfers to minors act, K.S.A. 38-1701 et seq. and amendments thereto, or pursuant to any state law substantially similar to the uniform gifts to minors act or the uniform transfers to minors act as published by the national conference of commissioners on uniform state laws.

(g) "Customer" means any person or account, including any agency, trust, estate, guardianship, committee, or other fiduciary account for which a bank or trust company effects or participates in effecting the purchase or sale of securities, but shall not include a broker, dealer, dealer bank or issuer of the securities that are subject to the transactions.

(h) "Fiduciary" means, unless otherwise defined in the operative agreement between the parties, a bank or trust company undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking, and shall include a trustee, executor, administrator, registrar of stocks and bonds, transfer agent, custodian under any state law substantially similar to the uniform transfers to minors act or the uniform gifts to minors act as published by the national conference of commissioners on uniform state laws, conservator of estates, assignee, receiver, managing agent, custodian or any other similar capacity in which the person or entity has investment authority or investment discretion.

(i) "Fiduciary powers" means the power to act in any fiduciary capacity conveyed by the Kansas uniform powers act.

(j) "Fiduciary records" means all matters that are written, transcribed, recorded, received, or otherwise come into possession of a bank or trust company and are necessary to preserve information concerning the acts and events relevant to the fiduciary activities of the bank or trust company.

(k) "Investment authority" means the responsibility conferred by action of law or a provision of an appropriate governing instrument to make, select or change investments; to review investment decisions made by others; or to provide investment advice or counsel to others.

(l) "Investment discretion," with respect to an account, means that the bank or trust company is authorized to determine what securities or other property will be purchased or sold by or for the account.

(m) "Managing agent" means the fiduciary relationship assumed by a bank or trust company upon the creation of an account that names the bank or trust company as agent and confers investment discretion upon the bank or trust company.

(n) "Periodic plan," including any dividend reinvestment plan, automatic investment plan and employee stock purchase plan, means any written authorization for a bank acting as agent to purchase or sell for a customer a specific security or securities, either in specific amounts, calculated in security units or dollars, or to the extent of dividends and funds available, at specific time intervals and setting forth the commission or charges to be paid by the customer in connection therewith or the manner of calculating them.

(o) "Security" means any interest or instrument commonly known as a "security," whether in the nature of debt or equity, including any stock, bond, note, debenture, evidence of indebtedness or any participation in or right to subscribe to or purchase any of the foregoing. The term "security" shall not include any of the following:

(1) A deposit or share account in a federally or state insured depository institution;

(2) a loan participation;

(3) a letter of credit or other form of bank indebtedness incurred in the ordinary course of business;

(4) currency;

(5) any note, draft, bill of exchange, or bankers acceptance that has a maturity at the time of issuance of not more than nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

(6) units of a collective investment fund;

(7) interests in a variable amount or a note as defined in paragraph (c)(2)(B) of K.A.R. 17-23-11; or

(8) U.S. savings bonds.

(p) "Trust committee" means the board of directors or any committee charged, by the board of directors, with the responsibility for administration and supervision of a bank trust department or the trust activities of a trust company. The "trust committee" may assign responsibility to other committees or individuals, as is necessary and appropriate.

(q) "Trust company" means those companies as defined in K.S.A. 9-701(b) and amendments thereto. With respect to any fund established pursuant to K.S.A. 9-1609 and amendments thereto, "trust company" shall also mean two or more banks or trust companies that are members of the same affiliated group and are cotrustees of the fund.

(r) "Trust department" means that group or groups of officers and employees of a bank or trust company organized under the supervision of officers or employees to whom are designated by the board of directors the per-

formance of the fiduciary responsibilities of the bank or trust company, whether or not the group or groups are so named. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1601, 9-1602, 9-1603, 9-1605, 9-1606, 9-1607, 9-1608, 9-1609, 9-1610, 9-1611, 9-1612, 9-2101, 9-2102, 9-2104, 9-2105, 9-2106, K.S.A. 2000 Supp. 9-1604, 9-2107, as amended by L. 2001, ch. 5, §48, and 9-2111, K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1, and 9-2108, as amended by L. 2001, ch. 5, §49; effective Feb. 28, 1994; amended Jan. 18, 2002.)

17-23-3. Administration of fiduciary powers. (a) The board of directors shall be responsible for the proper exercise of fiduciary powers by the bank or trust company.

(1) All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the bank or trust company in the exercise of its fiduciary powers, shall be the responsibility of the board.

(2) In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of any of the bank's or trust company's fiduciary powers it may consider proper to assign to any of the following designees:

- (A) Director;
- (B) officer;
- (C) employee; or
- (D) committee.

(b) If a trust committee is designated pursuant to paragraph (a) (2), the trust committee shall supervise the fiduciary activities of a bank or trust company and shall meet the following criteria.

(1) The trust committee shall consist of at least three directors, at least one of which shall not be an officer of the bank or trust company.

(2) The trust committee shall keep complete minutes of its actions and make periodic reports to the board of directors of its actions.

(c) A fiduciary account shall not be accepted without the prior approval of the board, or the board's designee. A written record shall be made of each fiduciary account acceptance and of the relinquishment or closing out of any fiduciary account. Upon the acceptance of an account, a prompt verification shall be made to determine that assets received have been properly placed on accounting records and documented. The board shall also ensure that at least once during every calendar year thereafter, and within 15 months of the last review, all the assets held in fiduciary accounts for which the bank or trust company has investment discretion, are reviewed to determine the advisability of retaining or disposing of these assets.

(d) All officers and employees taking part in the operation of a bank trust department or trust company shall be bonded.

(e) Each bank or trust company exercising fiduciary powers shall designate, employ, or retain legal counsel who shall be readily available to render an opinion upon fiduciary matters and to advise the bank or trust company.

(f) Each bank or trust company exercising fiduciary powers shall adopt written policies and procedures to ensure that the federal securities laws are complied with in connection with any decision or recommendation to purchase or sell any security. These policies and procedures, in particular, shall ensure that bank trust departments and trust companies do not use material inside information in connection with any decision or recommendation to purchase or sell any security. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 2000 Supp. 9-1114, K.S.A. 9-1601, K.S.A. 9-1602, and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002.)

17-23-6. Funds awaiting investment or distribution. (a) Funds held by a bank or trust company in a fiduciary capacity that are awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account.

(1) Each bank or trust company exercising fiduciary powers shall adopt and follow written policies and procedures intended to provide that a prudent rate of return, available for trust-quality, short-term investments, is obtained upon funds so held, consistent with the requirements of the governing instrument and local law.

(2) These policies and procedures shall take into consideration all relevant factors, including the following:

- (A) The anticipated return that could be obtained while the cash remains uninvested or undistributed;
- (B) the cost of investing the funds;
- (C) the anticipated need for the funds; and
- (D) the costs and operational complexities of implementing and maintaining the investments for the bank or trust company.

(b) Funds held in trust by a bank, including managing agency accounts, awaiting investment or distribution may, unless prohibited by the instrument creating the trust, be deposited in the commercial or savings or other departments of the bank.

(1) If the deposits, per account, exceed current federal deposit insurance corporation (F.D.I.C.) limits, the bank shall first set aside, under control of the trust department, as collateral security, direct obligations of the United States and other obligations fully guaranteed by the United States as to principal and interest, or any other security available for pledging by commercial banks under Kansas state law.

(2) The securities that are deposited or substituted as collateral shall at all times be at least equal in market value to the amount of trust funds deposited, to the extent that the deposit exceeds F.D.I.C. insurance limits. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-1603, and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002.)

17-23-8. Self-dealing. (a) Unless lawfully authorized by the instrument creating the relationship, by court order or by the laws of the state of Kansas, funds of a fiduciary account for which a bank or trust company has investment discretion shall not be invested in stock or

(continued)

obligations of, or property acquired from any of the following:

(1) The bank or trust company, or its directors, officers, or employees, or individuals with whom there exists such a connection;

(2) organizations in which there exists an interest that might affect the exercise of the best judgment of the bank or trust company in acquiring the property; or

(3) affiliates of the bank or trust company, or their directors, officers or employees.

(b)(1) A bank or trust company shall not lend, sell, or otherwise transfer assets of a fiduciary account for which a bank or trust company has investment discretion to the bank or trust company or any of its directors, officers, or employees, or to affiliates of the bank or trust company or any of their directors, officers, or employees, or to individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the bank or trust company, unless any of the following conditions is met:

(A) The transaction is lawfully authorized by the instrument creating the relationship, by written direction from the person or persons holding the power to amend or terminate the trust, by court order or by the laws of the state of Kansas;

(B) legal counsel advises the bank or trust company in writing that the bank or trust company has incurred, in its fiduciary capacity, a contingent or potential liability, and the bank or trust company desires to relieve itself from the contingent or potential liability. In this case, the bank or trust company, upon the consummation of the sale or transfer of assets, shall make reimbursement in cash at the greater of book or market value of the assets to the fiduciary account;

(C) the transaction is authorized as is provided in paragraph (b)(8)(B) of K.A.R. 17-23-11; or

(D) the transaction is required in writing by the state bank commissioner.

(2) Notwithstanding paragraph (b)(1), a bank or trust company may lend funds held in trust to participants and beneficiaries of employee benefit plans in accordance with the exemptions found in section 408 of the employee retirement income security act of 1974, 29 U.S.C. §1108, as in effect on December 17, 1999, which is hereby adopted by reference.

(c) Except as provided in subsection (b) of K.A.R. 17-23-6, funds of a fiduciary account for which a bank or trust company has investment discretion shall not be invested by the purchase of stock or obligations of the bank or trust company or its affiliates unless authorized by the instrument creating the relationship, by court order, or by the laws of the state of Kansas.

(1) If the retention of stock or obligations of the bank or trust company or its affiliates is authorized by the instrument creating the relationship, by court order, or by the laws of the state of Kansas, it may exercise rights to purchase its own stock, or securities convertible into its own stock, when offered pro rata to stockholders.

(2) If the exercise of rights or receipts of a stock dividend results in fractional share holdings, additional fractional shares may be purchased to complement the fractional shares so acquired.

(d) A bank or trust company may sell assets held by it as fiduciary in one account to itself as fiduciary in another account if the transaction is fair to both accounts and is not prohibited by any governing instrument.

(e) A bank or trust company may make a loan to an account from the funds belonging to another account, if the making of these loans to a designated account is authorized by the instrument creating the account from which the loans are made.

(f) A bank or trust company may make a loan to an account and may take as security assets of the account, if the transaction is fair to the account.

(g) Except with the specific written approval of its board of directors, a bank or trust company shall not permit any of its current officers or employees to retain any compensation for acting as a cofiduciary with the bank or trust company in the administration of any account undertaken by it. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-1609, K.S.A. 9-1611, and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002.)

17-23-9. Custody of investments. (a) The investments of each fiduciary account shall be kept separate from the assets of the bank or trust company, and shall be placed in the joint custody or control of not less than two of the officers or employees of the bank or trust company designated for that purpose by the board of directors. All of these officers and employees shall be adequately bonded.

(b) A bank or trust company may permit the investments of a fiduciary account to be held by a third party custodian in accordance with a written custodial agreement, which shall be obtained from all depositories other than the federal reserve bank. At a minimum, the custodial agreement shall meet the following requirements:

(1) Be signed by the bank or trust company and the custodian;

(2) clearly state that the parties intend for the agreement to establish a custodial relationship;

(3) require that the books and records of the immediate upstream depository custodian document that all of the assets held by the custodian on behalf of the bank or trust company meet the following criteria:

(A) Are held in the name of the bank or trust company or in the bank's or trust company's nominee name; and

(B) are separate from the assets of the custodian or from the assets of the custodian's other account holders;

(4) provide for the continuous and uncontested control of the assets by the bank or trust company and establish procedures for the release or transfer of the assets at the direction of the bank or trust company; and

(5) prohibit the custodian from utilizing the assets for the custodian's business or own account.

(c) The investments of each fiduciary account shall be held in accordance with one of the following requirements:

(1) The investments shall be kept separate from those of all other accounts, except as provided in K.S.A. 9-1609, and amendments thereto, and K.A.R. 17-23-11.

(2) The investments shall be identified as the property of the relevant account. (Authorized by K.S.A. 2000 Supp.

9-1713; implementing K.S.A. 9-1603, K.S.A. 9-1607, K.S.A. 9-1608, and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002.)

17-23-11. **Collective investment.** (a) Funds held by a bank or trust company as fiduciary may be invested collectively in either of the following:

(1) A common trust fund maintained by the bank or trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as trustee, executor, administrator, conservator, or as custodian under any state law substantially similar to the uniform gifts to minors act or the uniform transfers to minors act as published by the American law institute; or

(2) a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus, or other trusts that are exempt from federal income taxation under the internal revenue code.

(b) Collective investment funds, as defined in subsection (d) of K.A.R. 17-23-1, shall be administered as follows.

(1) Each collective investment fund shall be established and maintained in accordance with a written plan, referred to herein as "the plan," which shall be approved by a resolution of the bank or trust company board of directors or by a committee authorized by the board.

(A) The "plan" shall contain appropriate provisions not inconsistent with the rules and regulations of the state bank commissioner as to the manner in which the fund is to be operated, including provisions relating to the following:

(i) The investment powers and a general statement of the investment policy of the bank or trust company with respect to the fund;

(ii) the allocation of income, profits, and losses;

(iii) fees and expenses that will be charged to the fund and to participating accounts;

(iv) the terms and conditions governing the admission or withdrawal of participations in the fund;

(v) the auditing of accounts of the bank or trust company with respect to the fund;

(vi) the basis and method of valuing assets in the fund, setting forth criteria for each type of asset;

(vii) the expected frequency for income distribution to participating accounts;

(viii) the minimum frequency for valuation of assets of the fund;

(ix) the period following each such valuation date during which the valuation may be made, which in usual circumstances shall not exceed 10 business days;

(x) the basis upon which the fund may be terminated; and

(xi) any other matters that may be necessary to define clearly the rights of participants in the fund.

(B) Except as otherwise provided in paragraph (b)(15) of this regulation, fund assets shall be valued at market value unless that value is not readily ascertainable, in which case a fair value determined in good faith by the fund trustees may be used.

(C) A copy of "the plan" shall be available at the principal office of the bank or trust company for inspection

during all business hours, and upon request a copy of "the plan" shall be furnished to any person.

(2) Property held by a bank or trust company in its capacity as trustee of retirement, pension, profit sharing, stock bonus, or other trusts that are exempt from federal income taxation under any provision of the internal revenue code may be invested in collective investment funds, subject to the provisions herein contained pertaining to these funds, and may qualify for tax exemption pursuant to section 584 of the internal revenue code. Assets of retirement, pension, profit sharing, stock bonus, or other trusts that are exempt from federal income taxation by reason of being described in section 401 of the code may be invested in collective investment funds established under the provisions of paragraph (a)(2) of this regulation if the fund qualifies for tax exemption under revenue ruling 56-267 and following rulings.

(3) All participations in the collective investment fund shall be on the basis of a proportionate interest in all of the assets. In order to determine whether the investment of funds received or held by a bank or trust company as fiduciary in a participation in a collective investment fund is proper, the bank or trust company may consider the collective investment fund as a whole and shall not be prohibited from making the investment because any particular asset is non-income producing.

(4) Each bank or trust company administering a collective investment fund shall determine the value of the assets in the fund as of the date set for the valuation of assets at least once every three months. However, in the case of a fund described in paragraph (a)(2) above that is invested primarily in real estate or other assets that are not readily marketable, the bank or trust company shall determine the value of the fund's assets at least once each year.

(A) Participation shall not be admitted to or withdrawn from the fund except according to the following:

(i) On the basis of the valuation; and

(ii) according to the valuation date.

(B) Participation shall not be admitted to or withdrawn from the fund unless a written request for or notice of intention of taking such action shall have been entered on or before the valuation date in the fiduciary records of the bank or trust company and approved in the manner as the board of directors shall prescribe. No requests or notices may be canceled or countermanded after this valuation date.

(C) If a fund described in paragraph (a)(2) of this regulation is to be invested in real estate or other assets that are not readily marketable, the bank or trust company may require a prior notice period not to exceed one year, for withdrawals.

(5)(A) Each bank or trust company administering a collective investment fund shall at least once during each period of 12 months cause an adequate audit to be made of the collective investment fund by auditors responsible only to the board of directors of the bank or trust company. In the event the audit is performed by independent public accountants, the reasonable expenses of the audit may be charged to the collective investment fund.

(continued)

(B) Each bank or trust company administering a collective investment fund shall at least once during a period of 12 months prepare a financial report of the fund. This report, based upon the above audit, shall contain a list of investments in the fund showing the following:

- (i) The cost and current market value of each investment;
- (ii) a statement for the period since the previous report showing purchases, with cost;
- (iii) sales, with profit or loss and any other investment changes;
- (iv) income and disbursements; and
- (v) an appropriate notation as to any investments in default.

(C) The financial report may include a description of the fund's value on previous dates, as well as its income and disbursements during previous accounting periods. Predictions or representations as to future results shall not be made. In addition, as to funds described in paragraph (a)(1) of this regulation, neither the report nor any other publication of the bank or trust company shall make reference to the performance of funds other than those administered by the bank or trust company.

(D) A copy of the financial report shall be furnished, or notice shall be given that a copy of the report is available and will be furnished without charge upon request, to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. A copy of the financial report may also be furnished to prospective customers. The cost of printing and distribution of these reports shall be borne by the bank or trust company. In addition, a copy of the report shall be furnished upon request to any person for a reasonable charge. The fact of the availability of the report for any fund described in paragraph (a)(1) of this regulation may be given publicity solely in connection with the promotion of the fiduciary services of the bank or trust company.

(E) Except as provided in this regulation, the bank or trust company shall not advertise or publicize its collective investment fund or funds described in paragraph (a)(1) of this regulation.

(6) When participations are withdrawn from a collective investment fund, distributions may be made in cash or ratably in kind, or partly in cash and partly in kind. However, all distributions on any one valuation date shall be made on the same basis.

(7) If, for any reason, an investment is withdrawn in kind from a collective investment fund for the benefit of all participants in the fund at the time of the withdrawal and the investment is not distributed ratably in kind, it shall be segregated and administered or realized upon for the benefit ratably of all participants in the collective investment fund at the time of withdrawal.

(8)(A) A bank or trust company shall not have any interest in a collective investment fund other than in its fiduciary capacity. Except for temporary net cash overdrafts or as otherwise specifically provided herein, it shall not lend money to a fund, sell property to, or purchase property from a fund. Assets of a collective investment fund shall not be invested in stock or obligations, including time or savings deposits, of the bank or trust company

or any of its affiliates. However, these deposits may be made of funds awaiting investment or distribution. Subject to all other provisions of this regulation, funds held by a bank or trust company as fiduciary for its own employees may be invested in a collective investment fund. A bank or trust company shall not make any loan on the security of a participation in a fund. If because of a creditor relationship or otherwise the bank or trust company acquires an interest in a participation in a fund, the participation shall be withdrawn on the first date on which the withdrawal can be effected. An unsecured advance to an account holding a participation shall not be deemed to constitute the acquisition of an interest by a bank or trust company until the time of the next valuation date arrives.

(B) Any bank or trust company administering a collective investment fund may purchase from the fund for its own account any defaulted fixed income investment held by the fund, if in the judgment of the board of directors the cost of segregation of the investment would be greater than the difference between its market value and its principal amount plus interest and penalty charges due. If the bank or trust company elects to purchase the investment, it shall do so at its market value or at the sum of cost, accrued unpaid interest, and penalty charges, whichever is greater.

(9) The reasonable expenses incurred in servicing mortgages held by a collective investment fund may be charged against the income account of the fund and paid to servicing agents, including the bank or trust company administering the fund.

(10) A bank or trust company administering a collective investment fund shall have the exclusive management of it, except as prudence may allow delegation.

(A) The bank or trust company may charge a fee for the management of the collective investment fund if the fractional part of the fee proportionate to the interest of each participant does not, when added to any other compensations charged by a bank to a participant, exceed the total amount of compensations that would have been charged to the participant if no assets of the participant had been invested in participations in the fund.

(B) The bank or trust company shall absorb the costs of establishing or reorganizing a collective investment fund.

(11) A bank or trust company administering a collective investment fund shall not issue any certificate or other document evidencing a direct or indirect interest in this fund in any form.

(12) A mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund shall not be deemed to be a violation of this regulation if promptly after the discovery of the mistake the bank or trust company takes whatever action may be practicable in the circumstances to remedy the mistake.

(13) Short-term investment funds established under subsection (a) of this regulation may be operated on a cost, rather than market value, basis for purposes of admissions and withdrawals, if the plan of operation satisfies each of the following requirements.

(A) Investments shall be limited to bonds, notes, or other evidences of indebtedness payable on demand, including variable amount notes, or having a maturity date not exceeding 91 days from the date of purchase. However, 20 percent of the value of the fund may be invested in longer term obligations.

(B) The difference between the cost and anticipated principal receipt on maturity shall be accrued on a straight-line basis.

(C) Assets of the fund shall be held until maturity under usual circumstances.

(D) After effecting admissions and withdrawals, not less than 20 percent of the value of the remaining assets of the fund shall be composed of cash, demand obligations, and assets that will mature on the fund's next business day.

(c) In addition to the investments permitted under subsection (a) of this regulation, funds or other property received or held by a bank or trust company as fiduciary may be invested collectively, to the extent not prohibited by state law, as follows:

(1) In shares of a mutual trust investment company, organized and operated pursuant to a statute that specifically authorizes the organization of these companies exclusively for the investment of funds held by corporate fiduciaries, commonly referred to as a "bank or trust company fiduciary fund";

(2)(A) In a single real estate loan, a direct obligation of the United States, or an obligation fully guaranteed by the United States, or in a single fixed amount security, obligation or other property, either real, personal or mixed, of a single issuer; or

(B) on a short-term basis in a variable amount note of a borrower of prime credit, if the note is maintained by the bank or trust company on its premises and is utilized by it only for investment of moneys held in fiduciary accounts.

The bank or trust company shall not participate in the loans or obligations authorized under paragraphs (c)(2)(A) and (B) and shall not have an interest in any investment therein except in its capacity as fiduciary;

(3) in a common trust fund maintained by the bank or trust company for the collective investment of cash balances received or held by a bank or trust company in its capacity as trustee, executor, administrator, or guardian, which the bank or trust company considers to be individually too small to be invested separately to advantage:

(A)(i) The total investment for such fund shall not exceed \$100,000;

(ii) the number of participating accounts shall be limited to 100; and

(iii) no participating account may have an interest in the fund in excess of \$10,000;

(B) In applying these limitations, if two or more accounts are created by the same person or persons and one-half of the income or principal of each account is presently payable or applicable to the use of the same person or persons such account shall be considered as one;

(C) a fund shall not be established or operated under this paragraph for the purpose of avoiding the provisions of subsection (b) of this regulation;

(4) in any investment specifically authorized by court order, or authorized by the instrument creating the fiduciary relationship, in the case of trusts created by a corporation, its subsidiaries and affiliates or by several individual settlors who are closely related. An investment shall not be made under this paragraph for the purpose of avoiding the provisions of subsection (b) of this regulation; or

(5) in any other manner that is approved in writing by the state bank commissioner. (Authorized by K.S.A. 9-1609 and K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1609 and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002.)

17-23-14. Time of notification for securities transactions. The time for mailing or otherwise furnishing the written notification described in K.A.R. 17-23-13 shall be five business days from the date of the transaction, or if a broker or dealer is utilized, within five business days from the receipt by the bank or trust company of the broker or dealer's confirmation. However, the bank or trust company may elect to use the following alternative procedures if the transaction is effected for the following types of securities. (a) For accounts, except periodic plans, for which the bank or trust company does not exercise investment discretion, the bank or trust company and the customer may agree in writing to a different arrangement as to the time and content of the notification. The agreement shall make clear the customer's right to receive the written notification within the prescribed time period at no additional cost to the customer.

(b) For accounts, except collective investment funds, for which the bank or trust company exercises investment discretion in other than an agency capacity, the bank or trust company shall, upon request of the person having the power to terminate the account or, if there is no such person, upon the request of any person holding a vested beneficial interest in the account, mail or otherwise furnish to the person the written notification within a reasonable time. The bank or trust company may charge that person a reasonable fee for providing this information.

(c) Unless otherwise provided in the account agreement, for accounts for which the bank or trust company exercises investment discretion in an agency capacity, the following requirements shall be met:

(1) The bank or trust company shall mail or otherwise furnish to each customer not less frequently than once every three months an itemized statement which shall specify the funds and securities in the custody or possession of the bank or trust company at the end of that period and all debits, credits, and transactions in the customer's account during that period; and

(2) if requested by the customer, the bank or trust company shall mail or otherwise furnish to the customer within a reasonable time the written notification described in K.A.R. 17-23-13. The bank or trust company may charge a reasonable fee for providing this information.

(d) For a collective investment fund, the provisions of K.A.R. 17-23-11 shall apply.

(continued)

(e)(1) For a periodic plan, the bank or trust company shall mail or otherwise furnish to the customer as promptly as possible after each transaction a written statement showing the following information:

(A) The funds and securities in the custody or possession of the bank or trust company;

(B) all service charges and commissions paid by the customer in connection with the transaction; and

(C) all other debits and credits of the customer's account involved in the transaction.

(2) Upon the written request of any customer, the bank or trust company shall furnish the information described in K.A.R. 17-23-13. However, any information relating to remuneration paid in connection with the transaction shall not be required to be provided to the customer when paid by a source other than the customer. The bank or trust company may charge a reasonable fee for providing this information. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1601 and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002.)

17-23-15. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-2103; effective Feb. 28, 1994; revoked Jan. 18, 2002.)

Franklin W. Nelson
State Bank Commissioner

Doc. No. 027426

State of Kansas

Animal Health Department

Permanent Administrative Regulations

Article 29.—CERVIDAE

9-29-12. **Definitions.** As used in these regulations, the terms below shall have the following definitions. (a) "Affected herd" means any cervidae herd in which the carcass of an animal tested positive for chronic wasting disease (CWD) using an approved test conducted at an approved laboratory.

(b) "Approved laboratory" means any laboratory approved to test for CWD by the animal and plant health inspection administrator of the United States department of agriculture.

(c) "Approved test" means any test used for detecting CWD that is approved by the animal and plant health inspection service administrator of the United States department of agriculture.

(d) "Chronic wasting disease" and "CWD" mean a nonfebrile, transmissible spongiform encephalopathy that is insidious and degenerative and that affects the central nervous system of cervidae.

(e) "Commingling" means grouping animals in a manner in which physical contact among animals may occur, including maintaining animals in a pasture or enclosure. Commingling shall not include holding animals at a sale, during transportation, or in other situations in which only limited contact is involved.

(f) "Commissioner" means the livestock commissioner.

(g) "CWD-positive animal" means any cervidae that tests positive on an approved test at an approved laboratory.

(h) "CWD-suspect animal" means any cervidae that showed clinical signs of the disease before death, but whose results on an approved test are inconclusive.

(i) "Herd" means a group of animals maintained on the same premises, or two or more groups of animals maintained in a manner that results in commingling.

(j) "Herd inventory" means an accounting that lists each animal 12 months of age or older by its sex, age, and official identification and that is confirmed by an accredited veterinarian or by a representative of the commissioner.

(k) "Herd status" means one of the five CWD herd classification levels indicating the probability that the herd is not affected by the disease, which is determined by the length of time the herd has been monitored for CWD, has been found to be free of clinical symptoms of CWD, and has had negative results on all approved tests on the carcasses of animals that die while in the participating herd. If an animal is added to the participating herd from a herd with a lower herd status or from a herd with an unknown herd status, the status of the receiving herd shall be lowered to the status of the herd from which the animal was transferred or to the lowest herd status if the status of the transferring herd is not known.

(l) "Official identification" means the identification required by K.S.A. 47-2101, and amendments thereto, which for animals in participating herds shall be in the form of an official USDA metal ear tag, a North American elk breeders' association registered tattoo, a microchip, or any other type of identification approved by the commissioner.

(m) "Participating herd" means any herd enrolled in the chronic wasting disease monitoring program.

(n) "Premises" means the grounds, area, and buildings occupied by the herd and equipment used in the husbandry of the herd.

(o) "Program" means the chronic wasting disease monitoring program. (Authorized by K.S.A. 47-607d, 47-610, and 47-2101, as amended by L. 2001, Ch. 5, Sec. 176; implementing K.S.A. 47-610 and 47-2101, as amended by L. 2001, Ch. 5, Sec. 176; effective Jan. 18, 2002.)

9-29-13. **Requirements to participate in the chronic wasting disease program.** (a) Each participating herd shall be maintained or held only on premises for which a current domesticated deer permit has been issued by the commissioner.

(b) Each application for enrollment of a herd in the program shall be submitted on a form provided by the commissioner and shall include the following:

(1) Documentation that a current domesticated deer permit has been issued for the premises on which the herd is held or maintained;

(2) a copy of an initial herd inventory, including documentation of at least two forms of official identification for each animal; and

(3) adequate herd records and documentation of the history of the herd over a minimum of the previous three years, including the following:

(A) For each animal added to the herd, any available records documenting the herd status of the herd from which the animal was transferred; and

(B) records establishing that no animal has displayed any clinical signs of CWD and that the herd has not had any CWD-positive animals.

(c) A herd inventory shall be completed annually and confirmed by an accredited veterinarian or by a representative of the commissioner. Each inventory report shall be filed no less than 11 months and no more than 13 months after the last anniversary date of the participating herd's enrollment in the program.

(d) An approved test shall be administered to the carcass of each animal that is 16 months of age or older at the time it dies, unless an exception is granted by the commissioner. (Authorized by K.S.A. 47-607d, 47-610, and 47-2101, as amended by L. 2001, Ch. 5, Sec. 176; implementing K.S.A. 47-610 and 47-2101, as amended by L. 2001, Ch. 5, Sec. 176; effective Jan. 18, 2002.)

9-29-14. **Program levels.** Each participating herd shall be assigned to one of the following levels of herd status, based on the number of years that the participating herd has been under surveillance with no evidence of disease and subject to reassignment based on the herd status of each herd from which one or more animals are transferred into the participating herd.

(a) Standard track.

(1) Each participating herd that has not included any CWD-positive animals or animals displaying clinical signs of CWD within the three preceding years shall be eligible to enroll in the program. Each participating herd that has been enrolled in the program for less than 12 months shall be assigned to a "level I" herd status.

(2) Each participating herd that has been enrolled in the program for a minimum of 12 months and that has not included any CWD-positive animals or animals displaying clinical symptoms of CWD at any time within the four preceding years shall be assigned to a "level II" status.

(3) Each participating herd that has been enrolled in the program for a minimum of 24 months and that has not included any CWD-positive animals or animals displaying clinical symptoms of CWD at any time within the preceding five years shall be assigned to a "level III" herd status.

(4) Each participating herd that has been enrolled in the program for a minimum of 48 months and that has not included any CWD-positive animals or animals displaying clinical symptoms of CWD at any time within the preceding seven years shall be assigned to a "level IV" herd status.

(5) Each participating herd that has been enrolled in the program for a minimum of 72 months and that has not included any CWD positive animals or animals displaying clinical symptoms of CWD at any time within the preceding nine years shall be assigned to a "level V" herd status.

(b) Accelerated program.

(1) Any participating herd for which the commissioner determines that an adequate, accurate herd history and records have been provided documenting that the herd has not included any CWD-positive animals or animals displaying clinical symptoms of CWD at any time within the four preceding years may be assigned to a level II herd status upon initial enrollment in the program.

(2) Any participating herd for which the commissioner determines that an adequate, accurate herd history and records have been provided documenting that the herd has not included any CWD-positive animals or animals displaying clinical symptoms of CWD at any time within the five preceding years may be assigned to a level III herd status upon initial enrollment in the program.

(c) Introduction of new animals into a participating herd. If a new animal is introduced into a participating herd from a herd with a lower herd status level or from a herd with an unknown herd status, the herd status of the receiving herd shall be lowered to the status of the herd from which the animal was transferred or to level I herd status if the status of the transferring herd is not known. The participating herd shall be assigned to the next herd status level if the new animal has been under surveillance and has not shown any clinical symptoms of CWD for the same minimum number of years that participating herds are required to be free of any symptoms in order to be eligible for that next level. (Authorized by K.S.A. 47-607d, 47-610, and 47-2101, as amended by L. 2001, Ch. 5, Sec. 176; implementing K.S.A. 47-610 and 47-2101, as amended by L. 2001, Ch. 5, Sec. 176; effective Jan. 18, 2002.)

9-29-15. **Affected herds.** Each affected herd shall be subject to the following provisions:

(a) A herd quarantine shall be issued by the commissioner immediately after receiving a report from an approved laboratory of a positive test for an animal from a participating herd.

(b) A herd plan shall be developed in a timely manner by a representative of the commissioner and the owner.

(c) Each domesticated deer permittee shall notify the commissioner of the death of any animal in an affected herd. The notice shall be given to the commissioner within 24 hours of the discovery of the animal's death. An approved test shall be administered by a designee of the commissioner to the carcass of each animal in the affected herd that dies.

(d) If an animal in an affected participating herd shows symptomatic or clinical signs of CWD, the domesticated deer permittee shall notify the commissioner. The animal shall be sacrificed and administered an approved test by a designee of the commissioner.

(e) The carcass of each animal that has a positive CWD result on an approved test shall be disposed of only by a method and at a site approved by the commissioner.

(f) The owner of an affected herd may apply to reenroll the herd in the program with a level I herd status under the standard track after three consecutive years in which there are no animals in the herd with any clinical signs of CWD and no positive results on an approved test.

(g) The quarantine on the affected herd shall be removed if the herd achieves a herd status of level II. (Authorized by K.S.A. 47-607, 47-607d, 47-610, and 47-2101, as amended by L. 2001, Ch. 5, Sec. 176; implementing K.S.A. 47-607, 47-610, 47-614, 47-622, and 47-2101, as amended by L. 2001, Ch. 5, Sec. 176; effective Jan. 18, 2002.)

George Teagarden
Kansas Livestock Commissioner

Doc. No. 027425

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. Temporary regulations are designated with a (T) in the Action column. This cumulative index supplements the 2000 Volumes and 2001 Supplement to the Kansas Administrative Regulations.

AGENCY 1: DEPARTMENT OF ADMINISTRATION

Table with 3 columns: Reg. No., Action, Register. Lists regulations 1-5-8 through 1-45-7a.

AGENCY 4: DEPARTMENT OF AGRICULTURE

Table with 3 columns: Reg. No., Action, Register. Lists regulations 4-3-47 through 4-10-5a.

AGENCY 5: DEPARTMENT OF AGRICULTURE—DIVISION OF WATER RESOURCES

Table with 3 columns: Reg. No., Action, Register. Lists regulation 5-25-4.

AGENCY 7: SECRETARY OF STATE

Table with 3 columns: Reg. No., Action, Register. Lists regulations 7-17-1 through 7-41-13.

AGENCY 9: ANIMAL HEALTH DEPARTMENT

Table with 3 columns: Reg. No., Action, Register. Lists regulations 9-7-19 through 9-22-5.

AGENCY 16: ATTORNEY GENERAL

Table with 3 columns: Reg. No., Action, Register. Lists regulations 16-7-1 through 16-7-9.

AGENCY 17: STATE BANK COMMISSIONER

Table with 3 columns: Reg. No., Action, Register. Lists regulation 17-24-2.

AGENCY 20: CRIME VICTIMS COMPENSATION BOARD

Table with 3 columns: Reg. No., Action, Register. Lists regulations 20-8-1 through 20-13-3.

AGENCY 22: STATE FIRE MARSHAL

Table with 3 columns: Reg. No., Action, Register. Lists regulations 22-24-1 through 22-24-18.

AGENCY 23: DEPARTMENT OF WILDLIFE AND PARKS

Table with 3 columns: Reg. No., Action, Register. Lists regulations 23-1-11 and 23-8-27.

AGENCY 26: DEPARTMENT ON AGING

Table with 3 columns: Reg. No., Action, Register. Lists regulations 26-11-1 through 26-11-3.

AGENCY 28: DEPARTMENT OF HEALTH AND ENVIRONMENT

Table with 3 columns: Reg. No., Action, Register. Lists regulations 28-10-15 through 28-15-37.

Table with 3 columns: Reg. No., Action, Register. Lists regulations 28-16-28b through 28-16-60.

Table with 3 columns: Reg. No., Action, Register. Lists regulations 28-16-76 through 28-34-52b.

Table with 3 columns: Reg. No., Action, Register. Lists regulations 28-34-53 through 28-34-62a.

Table with 3 columns: Reg. No., Action, Register. Lists regulations 28-34-75 through 28-61-11.

AGENCY 30: SOCIAL AND REHABILITATION SERVICES

Table with 3 columns: Reg. No., Action, Register. Lists regulations 30-4-64 through 30-6-89.

AGENCY 40: KANSAS INSURANCE DEPARTMENT

Table with 3 columns: Reg. No., Action, Register. Lists regulations 40-1-8 through 40-12-1.

AGENCY 50: DEPARTMENT OF HUMAN RESOURCES—DIVISION OF EMPLOYMENT

Table with 3 columns: Reg. No., Action, Register. Lists regulations 50-1-2 and 50-1-3.

111-2-120	Amended	V. 20, p. 1094
111-2-124	Amended	V. 20, p. 1343
111-2-125	New	V. 20, p. 573
111-2-126	New	V. 20, p. 573
111-2-127	Amended	V. 20, p. 937
111-2-128	New	V. 20, p. 1188
111-2-129	New	V. 20, p. 1343
111-2-130	New	V. 20, p. 1394
111-2-131	New	V. 20, p. 1778
111-2-132	New	V. 20, p. 1901
111-2-133	New	V. 20, p. 1901
111-2-134	New	V. 20, p. 1901
111-3-12	Amended	V. 20, p. 40
111-3-35	Amended	V. 20, p. 1189
111-4-1795	through	
111-4-1813	New	V. 20, p. 40-47
111-4-1801	Amended	V. 20, p. 1095
111-4-1803	Amended	V. 20, p. 1095
111-4-1805a	New	V. 20, p. 1095
111-4-1814	through	
111-4-1823	New	V. 20, p. 419-427
111-4-1818	Amended	V. 20, p. 575
111-4-1824	New	V. 20, p. 575
111-4-1825	through	
111-4-1839	New	V. 20, p. 937-942
111-4-1828	Amended	V. 20, p. 1096
111-4-1832	Amended	V. 20, p. 1344
111-4-1840	through	
111-4-1844	New	V. 20, p. 1096-1100
111-4-1845	through	
111-4-1850	New	V. 20, p. 1189-1193
111-4-1849	Amended	V. 20, p. 1344
111-4-1851	New	V. 20, p. 1345
111-4-1852	New	V. 20, p. 1346
111-4-1853	New	V. 20, p. 1347
111-4-1854	through	
111-4-1870	New	V. 20, p. 1395-1405
111-4-1864	Amended	V. 20, p. 1569
111-4-1866	Amended	V. 20, p. 1570
111-4-1867	Amended	V. 20, p. 1601
111-4-1869	Amended	V. 20, p. 1601
111-4-1871	New	V. 20, p. 1571
111-4-1872	New	V. 20, p. 1572
111-4-1873	New	V. 20, p. 1572
111-4-1874	through	
111-4-1877	New	V. 20, p. 1779-1781
111-4-1877	Amended	V. 20, p. 1902

111-4-1878	through	
111-4-1885	New	V. 20, p. 1902-1906
111-5-23	Amended	V. 20, p. 428
111-5-24	Amended	V. 20, p. 428
111-5-27	Amended	V. 20, p. 429
111-7-123	Amended	V. 20, p. 48
111-7-134	Amended	V. 20, p. 429
111-7-152	Amended	V. 20, p. 49
111-7-158	through	
111-7-162	New	V. 20, p. 577
111-7-159	Amended	V. 20, p. 1101
111-7-162	Amended	V. 20, p. 944
111-7-163	through	
111-7-170	New	V. 20, p. 1101-1103
111-7-165	Amended	V. 20, p. 1194
111-7-171	through	
111-7-175	New	V. 20, p. 1782, 1783
111-8-101	through	
111-8-126	New	V. 20, p. 1573-1579
111-9-111	New	V. 20, p. 1406
111-9-112	Amended	V. 20, p. 1579
111-9-113	New	V. 20, p. 1906

AGENCY 112: KANSAS RACING AND GAMING COMMISSION

Reg. No.	Action	Register
112-4-1	Amended	V. 20, p. 765
112-7-19	Amended	V. 20, p. 547
112-10-3	Amended	V. 20, p. 1728
112-10-6	Amended	V. 20, p. 1728
112-11-20	Amended	V. 20, p. 945
112-17-4	Amended	V. 20, p. 1729
112-18-11	Amended	V. 20, p. 1922

AGENCY 115: DEPARTMENT OF WILDLIFE AND PARKS

Reg. No.	Action	Register
115-2-1	Amended	V. 20, p. 1499
115-2-4	Amended	V. 20, p. 1499
115-3-1	Amended	V. 20, p. 766
115-3-2	Amended	V. 20, p. 767
115-4-1	Revoked	V. 20, p. 767
115-4-2	New	V. 20, p. 767
115-4-3	Revoked	V. 20, p. 768
115-4-4	New	V. 20, p. 768
115-4-5	Revoked	V. 20, p. 769
115-4-7	through	
115-4-10	Revoked	V. 20, p. 769
115-4-11	Amended	V. 20, p. 769

115-4-12	Revoked	V. 20, p. 770
115-4-13	Amended	V. 20, p. 770
115-8-1	Amended	V. 20, p. 1061
115-8-4	Amended	V. 20, p. 1500
115-8-5	Revoked	V. 20, p. 1061
115-8-8	Amended	V. 20, p. 1061
115-8-12	Amended	V. 20, p. 1062
115-8-16	Revoked	V. 20, p. 1062
115-8-18	Revoked	V. 20, p. 1062
115-8-20	Amended	V. 20, p. 1062
115-8-21	Amended	V. 20, p. 1062
115-13-1	Amended	V. 20, p. 1500
115-13-2	Amended	V. 20, p. 1500
115-13-5	Amended	V. 20, p. 1501
115-14-2	Amended	V. 20, p. 1501
115-14-3	Amended	V. 20, p. 1502
115-14-5	Amended	V. 20, p. 1502
115-14-6	Amended	V. 20, p. 1502
115-14-7	Revoked	V. 20, p. 1502
115-14-9	Amended	V. 20, p. 1502
115-14-10	Amended	V. 20, p. 1503
115-18-5	Revoked	V. 20, p. 1504
115-18-8	Amended	V. 20, p. 1504
115-18-9	Amended	V. 20, p. 1504
115-18-14	Amended	V. 20, p. 1504
115-18-17	New	V. 20, p. 1062
115-20-1	Amended	V. 20, p. 1063
115-20-2	Amended	V. 20, p. 1063
115-21-1	Amended	V. 20, p. 1803
115-21-2	Amended	V. 20, p. 1804
115-21-3	Revoked	V. 20, p. 1804
115-21-4	New	V. 20, p. 1804
115-22-1	New	V. 20, p. 1804

AGENCY 117: REAL ESTATE APPRAISAL BOARD

Reg. No.	Action	Register
117-6-3	Amended	V. 20, p. 862
117-6-4	New	V. 20, p. 863
117-7-1	Amended	V. 20, p. 863
117-8-1	Amended	V. 20, p. 1020

AGENCY 118: STATE HISTORICAL SOCIETY

Reg. No.	Action	Register
118-5-1	through	
118-5-10	New (T)	V. 20, p. 1492-1495

AGENCY 125: AGRICULTURAL REMEDIATION BOARD

Reg. No.	Action	Register
125-1-1	through	
125-1-9	New (T)	V. 20, p. 1496-1498
125-1-1	through	
125-1-9	New	V. 20, p. 1891-1893

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