

Agency 82
Kansas Corporation Commission

Articles

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**Article 1.—RULES OF PRACTICE
AND PROCEDURE**

82-1-1 to 82-1-200. Reserved.

82-1-201. (Authorized by and implementing K.S.A. 1989 Supp. 55-604, K.S.A. 55-704, 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990; revoked Oct. 10, 2003.)

82-1-202. Conducting business before the commission. (a) Unless otherwise required by law, the requirements of these regulations may be waived by the commission if good cause is shown and if it is in the public interest to do so.

(b) Upon request, any person having business before the commission may receive all reasonable and proper assistance from personnel of the commission, including advice as to the form of any

application, complaint, motion, answer, or other paper necessary to be filed in any proceeding before the commission and the furnishing of any blank forms or other information from its records that will provide the appropriate assistance. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1987; amended July 23, 1990; amended Oct. 10, 2003.)

82-1-203. (Authorized by K.S.A. 55-604, 55-704, 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; revoked May 1, 1985.)

82-1-204. Definitions. As used in these regulations, the following definitions shall apply: (a) "Applicant" means any party on whose behalf an application for authority or permission that the

commission is authorized by law to grant or deny is made.

(b) "Attorney" shall include any licensed attorney currently admitted to practice before the supreme court of the state of Kansas and any attorney at law authorized to enter an appearance under K.A.R. 82-1-228.

(c) "Commission" and "commissioner" mean the state corporation commission of Kansas, and a member of the commission, respectively.

(d) "Complainant" means any party who complains to the commission of either of the following:

(1) Anything done or failed to be done in contravention or violation of either of the following:

(A) The provisions of any statute or other delegated authority administered by the commission; or

(B) any orders or regulations issued or promulgated by the commission under statute or delegated authority; or

(2) any other alleged wrong over which the commission may have jurisdiction.

(e) "Document" means any original, copy, or draft of any handwritten, typewritten, printed, graphic, or electronically recorded material, and shall include the following:

- (1) Correspondence;
- (2) notes;
- (3) memoranda;
- (4) studies;
- (5) reports;
- (6) records;
- (7) charts;
- (8) invoices;
- (9) bills;
- (10) diaries;
- (11) calendars;
- (12) books;
- (13) statements;
- (14) appointment books;
- (15) tape recordings;
- (16) videos;
- (17) faxes;
- (18) computer printouts and software;
- (19) electronically recorded media; and
- (20) any other writing or tangible record of any kind, type, or nature, however produced.

(f) "Formal record" or "record" shall include the following, when filed with the commission:

(1) All applications, complaints, petitions, and other papers seeking commission action;

(2) all answers, replies, responses, objections,

protests, motions, stipulations, exceptions, other pleadings, notices, depositions, certificates, proofs of service, transcripts of oral arguments, and briefs in any matter or proceeding;

(3) all exhibits, all attachments to exhibits, all appendices to exhibits, amendments of exhibits, corrections of exhibits, supplements to exhibits, and all letters of transmittal or withdrawal of any items mentioned in this subsection;

(4) any notice or commission order initiating the matter or proceeding;

(5) any commission order designating a hearing examiner, attorney, or other employee, for any purpose;

(6) the official transcript of the hearing made and transcribed by the reporter;

(7) all exhibits received in evidence;

(8) all prefiled testimony or proposed exhibits offered but not received in evidence; however, any prefiled testimony or proposed exhibit which was not offered in evidence shall not be included in the record;

(9) all offers of proof; and

(10) all motions, stipulations, subpoenas, proofs of service, and anything else ordered by the commission or presiding officer to be made a part of the record.

(g) "Intervenor" means any party petitioning to intervene as provided by K.A.R. 82-1-225, if admitted by the commission as a participant in any proceeding. Admission as an intervenor shall not be construed as recognition by the commission that the intervenor might be aggrieved by any order of the commission in the proceeding.

(h) "KAPA" means the Kansas administrative procedure act found at K.S.A. 77-501 *et seq.* and amendments thereto.

(i) (1) "Party" means a person with an articulated interest in a particular commission proceeding who meets any of the following conditions:

(A) An order is specifically directed to the person.

(B) The person is named as a party to a commission proceeding.

(C) The person is allowed to intervene as a party in the proceeding.

(2) No unincorporated association shall obtain party status in a proceeding without identifying its membership.

(3) Except as provided in K.A.R. 82-1-207, technical staff and staff counsel participating in a proceeding shall be deemed a party for all pur-

poses except the right of appeal of commission orders.

(j) "Person" means any individual, partnership, corporation, association, political subdivision or unit of a political subdivision, or private organization or entity of any other character, including another state agency.

(k) "Petitioner" means any party seeking relief who is not otherwise designated under these regulations.

(l) "Presiding officer" means the chairperson of the commission or the commissioner or other person appointed by the commission who is actively conducting the hearing.

(m) "Protestant" means any party objecting on the ground of private or public interest to the approval of an application, petition, motion, or other matter that the commission may have under consideration.

(1) Each protestant protesting the granting of any application under the motor carrier act shall comply with the provisions of K.A.R. 82-4-65.

(2) Each protestant protesting the granting of any application or permit under the oil and gas conservation act shall comply with the provisions of K.A.R. 82-3-135.

(3) Any protestant desiring to become an intervenor in any other proceeding before the commission may file a petition for intervention as provided by K.A.R. 82-1-225.

(4) Admission of a party as a protestant shall not be construed as recognition by the commission that the protestant might be aggrieved by any order of the commission in the proceeding.

(n) "Respondent" means any party who is subject to any statute, order, rule or regulation or other delegated authority administered, issued, or promulgated by the commission and who meets either of the following conditions:

(1) The party receives an order or notice issued by the commission in a proceeding or investigation instituted on the commission's own initiative.

(2) Any complaint, motion to compel, or other such pleading is filed against the party.

(o) "Restricted mail" shall have the same meaning as set forth in K.S.A. 60-103, and amendments thereto.

(p) "Staff counsel" means the general counsel of the commission, any assistant general counsel of the commission, and any special counsel retained by the commission, participating in a proceeding before the commission.

(q) "Technical staff" means commission em-

ployees with technical expertise and any special assistants or consultants retained by the commission. This term shall not include staff counsel. Technical staff may conduct investigations and otherwise evaluate issues raised, and may testify and offer exhibits on behalf of the general public.

(r) "Test year" means any consecutive 12-month period selected for the purpose of determining or justifying rates. (Authorized by and implementing K.S.A. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1985; amended July 23, 1990; amended Oct. 10, 2003.)

82-1-204a. Classification of public utilities for filing purposes. Public utilities shall be classified as follows for the purposes of filing with the commission.

(a) Electric and gas utilities:

(1) Class A, if the annual operating revenues are \$1 million or more; and

(2) class B, if the annual operating revenues are less than \$1 million;

(b) water utilities:

(1) Class A, if the annual operating revenues are \$750,000 or more; and

(2) class B, if the annual operating revenues are less than \$750,000; and

(c) telecommunications utilities:

(1) Class A, if the annual operating revenues are \$1 million or more; and

(2) class B, if the annual operating revenues are less than \$1 million. (Authorized by and implementing K.S.A. 66-106; effective Oct. 10, 2003.)

82-1-205. Office hours. All offices of the state corporation commission shall be open to the public from 8:00 a.m. to 5:00 p.m. each day other than Saturday and Sunday, except as otherwise provided by law or by order of the governor. Meetings and exercise of powers may be held at any location by the commission. Any inquiry, investigation, or other proceeding necessary to the performance of the commission's duties and functions may be conducted at any location, and any person or persons may be designated or appointed to do so on behalf of and by the commission. (Authorized by and implementing K.S.A. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990; amended Oct. 10, 2003.)

82-1-206. Communications. (a) All written communications to the commission shall be addressed to the executive director of the commission at its Topeka office, unless otherwise spe-

cifically directed by the commission or any commissioner.

(b) Except as otherwise provided in article 3 of these regulations, all pleadings, exhibits and other papers required to be filed with the commission shall meet the following requirements:

(1) Be filed within the time limits provided by KAPA unless otherwise specified by these regulations or by order of the commission, for such filing; and

(2) be accompanied by appropriate fees in cases in which fees are required.

(c) All communications and documents properly addressed or filed shall be deemed to be officially received by the commission when actually delivered at the office of the executive director of the commission. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990; amended Oct. 10, 2003.)

82-1-207. Ex parte communications in non-KAPA proceedings. (a) (1) After the commission has determined and announced that a hearing shall be conducted in a proceeding and before the issuance of a final order, no parties to the proceeding, or their attorneys, shall discuss the merits of the proceeding with the commissioners or the presiding officer unless reasonable notice that allows attendance is given to all parties to the proceeding.

(2) After the commission has determined and announced that a hearing shall be conducted in a proceeding and before the issuance of a final order, each party shall mail copies of any written communications regarding the proceeding that are directed to the commission or any member of its staff, to all parties of record. Each party shall furnish proof that service of the written communication was made to all parties to the proceeding.

(3) The person or persons to whom any ex parte communication is made shall promptly and fully inform the full commission of the substance and circumstances of the communication to enable the commission to take appropriate action.

(b) For purposes of this regulation only, no member of the technical staff shall be considered a party to any proceeding before the commission, regardless of participation in staff investigations in the proceeding or of participation in the proceeding as a witness. Any staff member may be conferred with at any time by the commissioners.

However, no facts that are outside the record and that reasonably could be expected to influence the decision in any matter pending before the commission shall be furnished to any commissioner unless all parties to the proceeding are likewise informed and afforded a reasonable opportunity to respond. The rule against ex parte communications shall apply to staff counsel in regard to any adjudicative proceeding before the commission.

(c) All letters and written communications in the nature of ex parte communications received by the commission, or any commissioner, from interested parties and members of the general public shall be made a part of the file in the docket and shall be made available to all persons who desire to see them. The deposit of these written communications and letters in the file shall not make them a part of the official transcript of the case. (Authorized by and implementing K.S.A. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1985; amended July 23, 1990; amended Oct. 10, 2003.)

82-1-208. Sessions. (a) Public sessions of the commission for hearing evidence, oral arguments, public conferences, and public hearings before the commission, a commissioner, or an examiner shall be held at the time and place ordered by the commission. Unless otherwise provided by statute, notice of these public sessions may be mailed, published by the commission, or delegated to an applicant by the commission.

(b) General sessions of the commission for the transaction of business shall be held at its offices in Topeka, Kansas, or elsewhere in Kansas, on regular business days, as scheduled by the chairperson of the commission. Special sessions of the commission for consultation or conferences, or for the transaction of other business may be held at any time and place, as scheduled by the chairperson of the commission. (Authorized by K.S.A. 66-106; effective Jan. 1, 1966; amended Oct. 10, 2003.)

82-1-209 to 82-1-211. (Authorized by K.S.A. 55-604, 55-704, 66-106; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

82-1-212. Dockets. Each matter coming before the commission and requiring a decision by the commission shall be known as a docket and shall receive a docket number and a descriptive title. The docket number and title shall be used on all papers filed in the docket, and shall appear

in all correspondence relating to the docket. (Authorized by K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended Oct. 10, 2003.)

82-1-213. (Authorized by K.S.A. 55-604, 55-704, 66-106; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

82-1-214. Commencement of a proceeding. A proceeding shall be commenced either by the filing of an application, a complaint, or a petition, or by the issuance of an order of the commission initiating a proceeding on its own motion. However, an application filed by an investor-owned utility for permission to make changes in its rates and tariffs shall not commence a proceeding under these regulations unless the commission has received written notification of the intent to file the application no fewer than 30 and not more than 90 days before the application filing date. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended, E-82-1, Jan. 21, 1981; amended May 1, 1981; amended May 1, 1986; amended July 23, 1990; amended Oct. 10, 2003.)

82-1-215. Copies of pleadings and prefiled testimony. (a) Except as otherwise provided in K.A.R. 82-1-231, K.A.R. 82-3-101 through K.A.R. 82-3-399, and K.A.R. 82-4-27, 82-4-28, 82-4-29, 82-4-30, and 82-4-65, each party filing any application, complaint, prefiled testimony, or other pleading shall file an original and at least seven copies for the commission. The filing of additional copies, as may be necessary, may be required by the commission. In the case of an application to serve an annexed area pursuant to K.S.A. 66-1,176, and amendments thereto, the applicant shall contemporaneously serve a copy of the application upon the currently certified retail electric supplier.

(b) Upon filing, the original shall be placed by the executive director of the commission in the official records of the commission, and the duplicate copies shall be distributed as directed by the commission. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1985; amended July 23, 1990; amended Oct. 10, 2003.)

82-1-216. Service of pleadings. (a) Manner of service of papers. Notices, motions, plead-

ings, or other papers may be served by any of the following means:

- (1) Hand delivery;
- (2) United States mail;
- (3) restricted mail;
- (4) overnight courier;
- (5) facsimile machine if the original of the facsimile document is also served; or
- (6) electronic delivery in a format acceptable to the commission, if a signed, original hard copy of the document delivered electronically is also served.

(b) Who shall be served. All parties and attorneys who have entered their appearances in any proceeding shall be served with all notices, motions, pleadings, orders, or other papers filed in this matter. Service upon an attorney of record shall be deemed to be service upon the party represented by the attorney.

(1) Service by commission. Orders, formal complaints to which a docket number has been assigned, supplemental complaints that have been permitted by the commission, and amended complaints that have been permitted by the commission, shall be served by the commission. Each complainant shall supply the commission with a sufficient number of copies of the complaint to enable the commission to serve one copy upon each defendant and retain the signed original and seven copies for its own use, together with any other copies that may be required by the commission. Notices shall be served either by the commission or as directed by the commission.

(2) Service by parties. Pursuant to K.S.A. 77-519 and amendments thereto, except as stated above in paragraph (b)(1), parties shall be required to serve all documents in accordance with the procedures outlined in subsection (a). (Authorized by and implementing K.S.A. 66-106 and 77-519; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990; amended Oct. 10, 2003.)

82-1-217. Computation and extension of time. (a) Computation; legal holiday defined. In computing any period of time prescribed or allowed by these rules or by an applicable statute in which the method of computing such time is not otherwise specifically provided, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal

holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday. "Legal holiday" includes any day designated as a holiday by the congress of the United States, or by the legislature of this state.

(b) Enlargement. When by these rules or by a notice given under them an act is required or allowed to be done at or within a specified time, the time for doing such act may be extended for good cause shown by the commission in its discretion, or the act may be done subsequent to the expiration of the prescribed time where the failure to act within such time was the result of excusable neglect, as permitted by the commission.

(c) Additional time after service by mail. Service is complete upon mailing. Three days shall be added to the prescribed period for any action required of the recipient. (Authorized by and implementing K.S.A. 1989 Supp. 55-604, K.S.A. 55-704, 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990.)

82-1-218. Form and contents of pleadings. All applications, formal complaints, supplemental complaints, amended complaints, petitions, replies, answers, protests, motions, petitions in intervention, and all amendments of these pleadings shall comply with the provisions of K.A.R. 82-1-219 relating to general requirements for all of these pleadings. The form and contents of the numbered paragraphs in the various kinds of pleadings shall be as follows:

(a) Applications. All applications for the approval, determination, consent, permission, certificate or authorization of the commission in cases for which this approval, determination, consent, permission, certificate, or authorization is required by law, shall be made in writing in a document entitled "application."

In matters before the utilities division and transportation division of the commission, the filing of certified copies of the charter or articles of incorporation of every corporation directly affected by the proposed action and certified copies of all certificates, statements, or records that modify or extend the purpose or powers of such corporations, may be required. However, until so required, the applicant may incorporate the items

by reference rather than by actually filing the copies.

The application shall set forth the facts upon which the application is based, in numbered paragraphs, and reference to the particular provision of the law or regulations of the commission requiring or providing for the same shall be made in the application.

The application shall contain further statements of fact and of law as may be required by any provision of law or these regulations.

(b) Complaints. Complaints shall comply with the provisions of K.A.R. 82-1-220.

(c) Petitions. All petitions for relief shall meet the following criteria:

(1) Clearly and concisely state the interest of the petitioner in the subject matter and the relief sought;

(2) cite by appropriate reference the law, statute, or regulation relied upon by the petitioner for relief; and

(3) comply with the requirements of these regulations.

(d) Responsive pleadings. All responsive pleadings shall fully and completely advise the parties and the commission of the basis and nature of the response and of the rights of the respondent, and shall admit or deny, specifically and in detail, each material allegation of the pleading being answered.

Written responses to petitions for intervention shall not be required. However, if a responsive pleading is filed to a petition to intervene, the responsive pleading shall be served in accordance with K.S.A. 77-519, and amendments thereto, and these regulations.

Any party may file and serve a protest, motion, or other proper pleading within 10 days after service upon that party of any application, petition, notice, formal complaint, supplemental complaint, or amended complaint. However, protests to oil and gas conservation matters shall be filed with the conservation division within 15 days after publication of the notice of the application as required in K.A.R. 82-3-135a. Answers to formal complaints shall be filed as prescribed by K.A.R. 82-1-220 and these regulations.

(e) Protests. All protests shall set forth the position and interest of the protestant and shall advise the commission and the parties in detail of the basis of the protest. Protests against the granting of permits, certificates, extensions, abandonments, and transfers under the motor carrier act

shall comply with K.A.R. 82-4-65. Protests against the granting of applications and permits under the oil and gas conservation act shall comply with K.A.R. 82-3-135b. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990; amended Oct. 10, 2003.)

82-1-219. General regulations relating to pleadings and other papers. Except as otherwise provided in K.A.R. 82-1-231, every pleading shall contain the following formal parts:

(a) Caption. The caption of a pleading shall include the heading, the descriptive title of the docket, and the docket number assigned to the matter by the executive director of the commission.

(1) Heading. Each pleading shall contain the heading "BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS" which shall be centered at the top of the first page of the pleading.

(2) Descriptive title. Immediately beneath the heading, and to the left of the center of the page, shall be the descriptive title of the docket. This title shall begin with the words "In the matter of" and shall be followed by a concise statement of the matter presented to the commission for its determination, including, if appropriate, a brief description of the order, authorization, permission, or certificate sought by the party initiating the docket. The name of the party initiating the docket and the names of all other parties to whom the initial pleading is directed shall be stated in the descriptive title, followed by a designation of each party's status in the proceeding. These designations shall include applicant, complainant, defendant, respondent.

(3) Docket number. Upon the filing of the initial pleading in a docket, a docket number shall be assigned by the executive director of the commission, which shall be placed immediately to the right of the docket title. All pleadings filed in the docket after the formal initiation of the matter shall bear the same caption as the original pleading.

(b) Pleading title. The title of the pleading shall be centered immediately beneath the caption and shall describe the pleading contained in the numbered paragraphs that follow.

(c) Numbered paragraphs. Following the title of the pleading, the pertinent allegations of fact

and law, in compliance with these regulations, shall be set forth in numbered paragraphs.

(d) Numbered pages. Beginning with the second page of the pleading, each page of the pleading shall be numbered consecutively.

(e) The prayer. The numbered paragraphs of the pleading shall be followed by the prayer, which shall be a concise and complete statement of all relief sought by the pleader. The prayer shall be brief, but shall be complete so that an order granting the prayer includes all of the relief desired and requested by the pleader.

(f) Subscription. All pleadings shall be personally subscribed or executed by one of the following methods:

(1) By the party making the same or by one of the parties, if there is more than one party;

(2) by an officer of the party, if the party is a corporation or association; or

(3) for the party, by its attorney. The names and the addresses of all parties shall appear either in the subscription or elsewhere in the pleading. The name, address, telephone number, and telefacsimile number of the attorney for the party who is the pleader shall appear either in the subscription or immediately below it. Abbreviations of names and addresses shall not be used.

(g) Verification. All pleadings shall be verified by the party or by the party's attorney, if the attorney has actual knowledge of the truth of the statements in the pleading or reasonable grounds to believe that the statements are true. All pleadings shall be verified upon oath before any person authorized by law to administer oaths. Pleadings by corporations or associations may be verified by an officer or director of the corporation or association. Written verification may be waived by the commission by order at its discretion.

(h) Certificate of service. Whenever service of a pleading is required by these regulations, the party responsible for effecting service shall endorse a certificate of service upon the pleading to show compliance with these regulations. The certificate shall show service by hand delivery, mail, restricted mail, overnight courier, or by telefacsimile, if the original of the telefacsimile document is also served.

(i) Form. Pleadings shall be typewritten. All pleadings shall be typewritten on paper that is 8½" wide and 11" long. The left-hand margin shall not be less than one inch wide. The impression shall be on only one side of the paper and shall be double-spaced, except that lengthy quo-

tations may be single-spaced and indented. Photocopies of the pleading may be filed.

(j) Rejection of document. Documents that contain defamatory, scurrilous, or unethical language shall be rejected and returned to the party filing the document. Papers, correspondence, or pleadings, or any copies of papers, correspondence, or pleadings that are not clearly legible shall be rejected and returned to the party filing the document.

(k) Amendments. The amendment of any pleading may be allowed by the commission at its discretion, either by replacement of the original pleading with an amended version of it or by interlineation or deletion of material on the original pleading. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990; amended Oct. 10, 2003.)

82-1-220. Complaints. (a) Any person may initiate a complaint proceeding by filing a formal complaint with the commission in which the rates, joint rates, fares, tolls, charges, regulations, classifications, or schedules of any public utility, motor carrier, or common carrier are alleged to be unreasonable, unfair, unjust, unjustly discriminatory, or unduly preferential, or that allege that any service performed or to be performed is illegal, unreasonably inadequate, inefficient, or unduly insufficient, or cannot be obtained.

(b) Formal complaints shall be submitted in writing and shall comply with the requirements of these regulations. Formal complaints shall meet the following conditions:

(1) Fully and completely advise each respondent and the commission as to the provisions of law or the regulations or orders of the commission that have been or are being violated by the acts or omissions complained of, or that will be violated by a continuance of acts or omissions;

(2) set forth concisely and in plain language the facts claimed by the complainant to constitute the violations; and

(3) state the relief sought by the complainant.

(c) Commission action required upon the filing of a formal complaint. A formal complaint shall, as soon as practicable, be examined by the commission to ascertain whether or not the allegations, if true, would establish a prima facie case for action by the commission and whether or not the formal complaint conforms to these regula-

tions. If the commission determines that the formal complaint does not establish a prima facie case for commission action or does not conform to these regulations, the complainant or the complainant's attorney shall be notified of the defects, and opportunity shall be given to amend the formal complaint within a specified time. If the formal complaint is not amended to correct the defects within the time specified by the commission, it shall be dismissed. If the commission determines that the formal complaint, either as originally filed or as amended, establishes a prima facie case for commission action and conforms to these regulations, each public utility, motor carrier, or common carrier complained of shall be served by the commission a true copy of the formal complaint, and the respondent or respondents shall either satisfy the matter complained of or file a written answer within 10 days.

(d) A complainant may file an amended complaint on its own initiative upon leave granted by the commission. Each amended complaint shall set forth any new grounds for the complaint that have accrued in favor of the complainant and against the defendant subsequent to the filing of the original complaint. Each amended complaint shall be served by the commission, as provided by K.A.R. 82-1-216. If practicable, an amended complaint shall be heard, considered, and disposed of in the same proceeding as that for the original formal complaint.

(e) Multiple complaints or multiple complainants may be joined as provided by K.A.R. 82-1-224.

(f) Before or after the hearing, the parties to the proceeding may, with the approval of the commission, enter into a voluntary settlement of the subject matter of the complaint if both of the following conditions are met:

(1) The matter in controversy affects only the parties involved.

(2) The issue has no direct or substantial impact upon the general public.

(g) In furtherance of a voluntary settlement, the parties may be invited by the commission to confer with a designated hearing officer or staff member. These settlement conferences shall be informal and without prejudice to the rights of the parties. No statement, admission, or offer of settlement made at an informal settlement conference shall be admissible in evidence in any formal hearing before the commission. (Authorized by and implementing K.S.A. 55-704, K.S.A. 2001

Supp. 55-604, 66-106; effective Feb. 15, 1977; amended May 1, 1985; amended July 23, 1990; amended Oct. 10, 2003.)

82-1-220a. Expedited review of disputes between telecommunications service providers. (a) The expedited review process shall be used to resolve disputes between competing telecommunications carriers in an expeditious manner. Except as specifically provided in this regulation, the provisions of K.A.R. 82-1-220 shall apply.

(b) This process may be used to bring expedited resolution to disputes under interconnection agreements entered into pursuant to 47 U.S.C. secs. 251 and 252 of the federal telecommunications act of 1996. This process shall be in addition to any dispute resolution process or procedure specified in the parties' interconnection agreement. Use of this process may be requested if a dispute directly affects the ability of a party to provide uninterrupted service to its customers or affects the provisioning of any service, functionality, or network element. This process shall not be used for disputes that involve consumer complaints against the carriers or requests for damages. The commission or its designated examiner shall have the authority to shorten or lengthen the deadlines specified in this regulation if the circumstances warrant or if all parties agree.

(c) Each request for expedited review shall be filed at the same time and in the same document as those for a complaint filed in accordance with K.A.R. 82-1-220, but shall include the phrase "Request for Expedited Review" in the heading. Each complaint that includes a request for expedited review shall contain the following information:

(1) A description of the specific circumstances that make the dispute eligible for expedited review;

(2) a description of the particular service-affecting issue justifying the expedited review;

(3) a description of the parties' efforts to resolve each disputed issue, including any steps taken in accordance with the dispute resolution process contained within the parties' interconnection agreement;

(4) a list of cross-references to the area or areas of the interconnection agreement that are applicable to each disputed issue; and

(5) any proposed resolution of the dispute.

(d) On the same day on which any complaint or response to the complaint is filed with the com-

mission in accordance with this regulation, the complaint or response shall be served on the other party, the commission legal staff, and the commission advisory counsel by hand delivery or by facsimile or electronic mail with telephonic confirmation of receipt.

(e) Within three business days after the filing of the complaint, the respondent shall respond to the issues that the complainant asserts justify the request for expedited review. If additional time is needed to respond to issues raised in the complaint, the respondent shall specifically designate which issues it will address in a later response, but the respondent shall respond to issues that the complainant has designated for expedited review.

(f) A member of the advisory counsel, legal staff, or technical staff may be designated by the commission to act as an examiner in this expedited proceeding. The designated examiner shall have the discretion to determine whether resolution of the complaint should be expedited in light of the complexity of the issues or other factors relevant to the need for a rapid and efficient decision. After reviewing the complaint and response, the examiner shall decide whether expedited review is warranted. If the examiner decides that an expedited review is warranted, the examiner shall schedule a meeting as soon as practical considering the issues raised, but no more than 10 business days after the request for expedited review was filed.

(g) If the examiner determines that the complaint is not appropriate for expedited review, the examiner shall notify the parties in writing no more than 10 business days after the request for expedited review was filed. The complainant may appeal this decision to the commission within five business days of the written decision. A prompt ruling on the appeal shall be issued by the commission.

(h) Throughout the expedited review process, the examiner shall oversee the discussion between the parties and may act in the capacity of a mediator or negotiator. The examiner may issue an interim ruling that controls the actions of the parties until a formal hearing can be conducted or a subsequent written decision is filed. The interim ruling shall be in effect throughout the complaint process. Each interim ruling shall be considered as a nonfinal agency action.

(i) If the examiner determines that an informal resolution of the issues designated for expedited review is not possible, a hearing on the expedited

issues shall commence no later than 15 business days after the complaint was filed. The examiner shall notify the parties not less than two business days before the hearing of the date, time, and location of the hearing.

(j) During the expedited review, each party shall refrain from taking action that would impair the other party's ability to offer service to its end users. Furthermore, both parties shall have at all meetings, unless otherwise agreed by the parties and the examiner, persons who are authorized to resolve the dispute.

(k) The examiner may require the parties to file decision point lists on or before the commencement of the hearing. The decision point lists shall identify all issues to be addressed in the expedited process, any witnesses who will be addressing each issue, and a synopsis of each witness's position on each issue. If the examiner requires the filing of decision point lists, the decision point lists shall be filed simultaneously. Except as provided in K.S.A. 66-1220a, and amendments thereto, relating to confidential information, all materials filed with the commission or provided to the examiner shall be subject to the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto.

(l) The examiner shall make written findings and recommendations on the expedited issues in the complaint within 10 business days after the close of the hearing. The examiner shall notify the parties by facsimile or electronic mail that the decision has been issued. If necessary to fully advise the commission about the expedited review, the examiner may file supplemental findings and recommendations. The examiner shall designate a time for parties to file objections, if any, to the examiner's findings and recommendations. Pursuant to K.S.A. 77-526(i) and amendments thereto, an order shall be promptly issued by the commission on the examiner's findings and recommendations regarding the issues. (Authorized by and implementing K.S.A. 2001 Supp. 66-106; effective Jan. 24, 2003.)

82-1-221. Exhibits and documentary evidence. (a) (1) The applicant shall file an original and at least seven copies of all exhibits and documentary evidence unless otherwise provided in these regulations.

(2) If an applicant is required to file with its application any map, profile, certificate, statement, or other document that has already been

filed with the commission, the applicant may reference rather than attach the document. The applicant shall include in its application the fact that the document has been previously filed, and the date and the proceeding in which, or occasion on which, the filing was made. The application may request that the previously filed document be incorporated by reference.

(3) Court records may be offered into evidence by reference, but shall not be received over the objection of any party unless opportunity for examination has been afforded to the objecting party.

(b) Unless otherwise directed by the commission or hearing examiner, an original and seven copies of any exhibit a party intends to offer into evidence, other than in rebuttal, shall be filed with the commission at least 10 days before the date of the hearing, and one copy of any such exhibit shall be furnished to every other party to the proceeding at least 10 days before the date of hearing. For conservation division matters, an original and four copies of any exhibit an applicant intends to offer into evidence, other than in rebuttal, shall be filed with the conservation division at least 20 days before the hearing; an original and four copies of any exhibit an intervenor or protestant intends to offer into evidence, other than in rebuttal, shall be filed with the conservation division at least 10 days before the hearing. Exceptions to these requirements may be granted only for good cause shown. Each party desiring to introduce an exhibit during the course of the hearing shall furnish six copies to the commission and one copy to every other party to the proceeding. Any exhibit that is not filed within the required time limit may be refused by the commission.

(c) The presiding commissioner or hearing examiner shall assign numbers to the exhibits at the time they are marked for identification at the hearing.

(d) If relevant and material matter offered as documentary evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party offering the documentary evidence shall plainly designate the matter offered. If other matter is in a volume that would encumber the record, the book, paper, or document shall not be received in evidence. In this case, the voluminous matter may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record. Alternately, a true copy of the matter,

in proper form, may be received as an exhibit if the presiding commissioner or examiner so directs.

(e) The party offering the exhibit shall deliver copies of the exhibit to opposing parties or their attorneys. The opposing parties or their attorneys shall be afforded an opportunity to examine the book, paper, or document, and to offer into evidence in like manner other material and relevant portions of the exhibit. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990; amended Oct. 10, 2003.)

82-1-221a. Confidentiality. (a) Any document, data, customer-specific contract, proprietary information, trade secret, or other commercial information filed with or furnished to the Kansas corporation commission (commission) as confidential shall, in addition to the requirements set forth in the Kansas statutes annotated and the Kansas administrative regulations, comply with the following requirements:

(1) The term “document” or “documents,” as used in this regulation, means any original, copy, or draft of any handwritten, typewritten, printed, graphic, or electronically recorded material, and shall include the following:

- (A) Correspondence;
- (B) notes;
- (C) memoranda;
- (D) studies;
- (E) reports;
- (F) records;
- (G) charts;
- (H) invoices;
- (I) bills;
- (J) diaries;
- (K) calendars;
- (L) books;
- (M) statements;
- (N) appointment books;
- (O) tape recordings;
- (P) videos;
- (Q) faxes;
- (R) computer printouts and software;
- (S) electronically recorded media; and
- (T) any other writing or tangible record of any kind, type, or nature, and however produced.

(2) The party seeking to classify documents as confidential shall file with or furnish to the executive director of the commission each document

clearly marked “CONFIDENTIAL,” accompanied by a cover letter requesting confidential status.

(3) Confidential information contained on a floppy disk or other electronic device shall be filed or furnished separately from other devices containing nonconfidential information. The electronic device containing the confidential material shall be clearly marked “CONFIDENTIAL.”

(4) The information contained on floppy disks or other electronic devices shall also contain the “CONFIDENTIAL” designation on each page or other subdivision of information when printed.

(5) A written explanation of the confidential nature of each document shall accompany each page for which confidential status is sought. One written explanation may apply to more than one page of confidential information, if the identity and confidential nature of each individual page is clearly stated in the explanation. The explanation shall be specific to the document in question and shall state whether the information constitutes a trade secret or confidential commercial information. The explanation shall further specify the harm or potential harm that disclosure would cause to the entity seeking nondisclosure.

(b) Requests for information classified as confidential shall be made by filing a written request with the executive director of the commission and using a form provided by the commission for this purpose, or by motion from a party to the docket in which the information is sought.

(1) If a request for information classified as confidential is not filed as a motion in an active KCC docket, the entity seeking to maintain the confidential status of the information shall be notified by the commission of the request. The entity seeking to maintain the confidential status shall have five working days after service, plus three days if service is by mail, to respond to this request. Any response filed with the commission in opposition to a request shall substantiate the basis for nondisclosure and shall be served upon the commission and the entity requesting disclosure. The entity requesting disclosure may reply to the response within five working days after service, plus three days if service is by mail, by serving a reply upon the entity seeking to maintain nondisclosure and upon the commission.

(2) A request made by a party to a docket for disclosure of confidential documents or information contained within the docket shall be made by motion. No party shall request disclosure from the

commission of information classified as confidential until the party has requested the information in writing from the party seeking to maintain its confidential nature and this request has been denied. The motion shall proceed in accordance with the Kansas corporation commission's rules of practice and procedure, K.A.R. 82-1-201 *et seq.*

(3) A determination of the confidential nature of the information and whether or not to require the disclosure of the confidential information requested under paragraphs (b)(1) and (b)(2) above shall be issued by the commission in accordance with K.S.A. 66-1220a and amendments thereto.

(c) Each person making a request pursuant to K.S.A. 45-215 *et seq.*, and amendments thereto, for nonconfidential information shall submit the request in writing and shall include the requester's name, address, telephone number, and the name of the business or entity represented.

(d) Confidential documents submitted to the corporation commission before the adoption of this regulation, including information required by statute, regulation, or order of the commission, shall be handled in accordance with statutes, regulations, and orders applicable at the time the document was submitted. Requests for access to any of this information shall be handled in accordance with the provisions of this regulation.

(e) Documents filed pursuant to K.A.R. 82-3-107 shall be exempt from the requirements of this regulation. (Authorized by and implementing K.S.A. 66-1220a; implementing K.S.A. 1997 Supp. 66-101c, K.S.A. 1997 Supp. 66-117, K.S.A. 1997 Supp. 66-151, K.S.A. 1997 Supp. 66-2010, K.S.A. 1997 Supp. 66-1,190, K.S.A. 1997 Supp. 66-1,203 and K.S.A. 55-704; effective March 12, 1999.)

82-1-221b. (Authorized by and implementing K.S.A. 66-1220a; implementing K.S.A. 1997 Supp. 66-101c, K.S.A. 1997 Supp. 66-117, K.S.A. 1997 Supp. 66-151, K.S.A. 1997 Supp. 66-2010, K.S.A. 1997 Supp. 66-1,190, and K.S.A. 1997 Supp. 66-1,203; effective March 12, 1999; revoked Oct. 10, 2003.)

82-1-222. Prehearing conferences; procedure. (a) In any matter pending before the commission and not governed by the KAPA, the attorneys for the parties to appear before the commission for a prehearing conference may be directed by the commission at its discretion or on the request of any party to consider any of the following:

- (1) The simplification of the issues;
- (2) the trial of issues of law, the determination of which may eliminate or affect the trial of issues of fact;
- (3) the necessity or desirability of amendments to the pleadings;
- (4) the possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;
- (5) the limitation of the number of expert witnesses;
- (6) the advisability of a preliminary reference of issues of fact to an examiner or an investigator appointed by the commission; or
- (7) any other matters that may aid in the disposition of the proceeding.

(b) Preliminary reference. If in the course of a prehearing conference any issues are referred to a presiding officer or an investigator appointed by the commission, the findings of fact of the presiding officer or investigator shall be reduced to writing, filed as an exhibit, and admitted into evidence at the hearing.

(c) Prehearing order. A prehearing order shall be made to reflect the action taken at the prehearing conference, any amendments allowed to the pleadings, and any agreements by the parties relating to any of the matters considered at the prehearing conference. Any agreements by the parties or their attorneys that limit the issues for trial to those not disposed of by admissions or agreements of counsel shall be in writing and shall be filed. The preliminary order, when entered, shall control the subsequent course of the proceeding, unless modified by the commission to prevent manifest injustice. A calendar on which proceedings may be placed for consideration at prehearing conferences may be published by the commission at its discretion, or the attorneys for the parties may be summoned, or the parties themselves, or both, to a prehearing conference upon notice as may be deemed reasonable by the commission. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1977; amended July 23, 1990; amended Oct. 10, 2003.)

82-1-223. (Authorized by and implementing K.S.A. 1989 Supp. 55-604, K.S.A. 55-704, 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; revoked July 23, 1990.)

82-1-224. Joinder of proceedings and parties. (a) For good cause shown, the joinder of

any proceeding with another proceeding may be permitted by the commission. However, issues that are not germane to each other and that require separate and distinct proof shall not be joined in the same proceeding.

(b) Two or more dockets may be consolidated by the commission for hearing on a common record if the commission deems it to be in the public interest to do so.

(c) The broadening of issues may be permitted by the commission in any proceeding before the commission.

(d) Two or more grounds of complaint involving the same purposes, subjects, or statement of facts may be included in one complaint, but shall be separately stated and numbered.

(e) Two or more complainants may join in one complaint if their respective causes of complaint are against the same defendant or defendants and involve substantially the same purposes, subjects or subject matter and a similar statement of facts. (Authorized by K.S.A. 2001 Supp. 55-604, 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended Oct. 10, 2003.)

82-1-225. Intervention. This regulation shall apply to both KAPA and non-KAPA proceedings. (a) The presiding officer shall grant a petition for intervention if the following conditions are met:

(1) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least three days before the hearing.

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law.

(3) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

(b) The presiding officer may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

(c) If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at

any subsequent time. The conditions may include the following:

(1) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(2) limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(3) requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(d) The presiding officer, at least 24 hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification. The presiding officer shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990; amended Oct. 10, 2003.)

82-1-226. Continuances and adjournment. For good cause at any time, with or without motion, any hearing may be continued or adjourned by the commission. A hearing before either the commission or a hearing examiner shall commence at the time and place fixed in the notice, but may be adjourned from time to time or from place to place by the presiding commissioner or the hearing examiner without further notice. Continuances and adjournments may be requested orally, and an oral request may be granted or denied at the discretion of the hearing examiner or the commission. (Authorized by K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended Oct. 10, 2003.)

82-1-227. Subpoenas. (a) Subpoenas may be issued by the commission or by any commissioner, or by the presiding officer, upon written petition by any party to the proceeding. Every subpoena shall contain the caption of the docket and shall command each person to whom it is directed to attend and give testimony at the time and place specified.

(b) A subpoena duces tecum shall be issued in

the same manner and form as a subpoena for the attendance of a witness, and may command the person to whom it is directed to produce the books, papers, documents, or tangible items designated in the subpoena. Upon a prompt motion, and in any event at or before the time specified in the subpoena duces tecum for compliance, any of the following actions may be taken by the commission:

(1) Quash or modify the subpoena if it is unreasonable and oppressive; or

(2) condition denial of the motion upon the advancement by the party on whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible items.

(c) Service of a subpoena or subpoena duces tecum shall be made by delivering a copy of the subpoena or subpoena duces tecum to the person and by tendering to the person the fees for one day's attendance and the mileage allowed by law. A subpoena or subpoena duces tecum may be served by means of any of the following:

(1) Restricted mail;

(2) the sheriff;

(3) the sheriff's deputy; or

(4) any other person who is designated by the commission or the party requesting issuance thereof, who is not a party to the proceeding, and who is not less than 18 years of age.

(d) If the subpoena or subpoena duces tecum is not served by the sheriff or the sheriff's deputy, proof of service shall be shown by affidavit or by return receipt of restricted mail.

(e) Each person who is ordered by commission subpoena to appear as a witness before the commission, or any person authorized by the commission to preside at a hearing, in answer to a subpoena or subpoena duces tecum shall receive fees and mileage as provided by law.

(f) The party petitioning for the subpoena or subpoena duces tecum shall forward to the commission, along with the written petition, fees made payable to the person being subpoenaed in an amount equal to the statutory fee for one day's attendance, plus mileage computed at the rate allowed by law for travel over the most direct route from the party's place of residence to the designated place for hearing and back. The subpoena or subpoena duces tecum and fees may then be issued by the commission as requested in the petition. The petitioning party shall be directly responsible for the payment of any and all costs in-

curred by the sheriff, the sheriff's deputy, or any other person in serving the subpoena or subpoena duces tecum. (Authorized by and implementing K.S.A. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990; amended Oct. 10, 2003.)

82-1-228. Hearings. (a) General provisions. Public hearings shall be held in the hearing rooms of the commission, in any district courtroom, at any other place in Kansas that the commission may deem appropriate, or at any place required by statute. All hearings before the commission shall be conducted by the commission or by a presiding officer, who may be a commissioner, a hearing examiner, or any other person duly authorized by the commission to conduct the hearing. The provisions of these regulations governing hearings before the commission shall be applicable to hearings conducted by the presiding officer.

(b) Convening of hearings. On the date and at the place and time stated in the notice of the hearing, the presiding officer conducting the hearing shall call the docket by announcing the docket number and by reading the caption of the case into the record. Commission hearings shall be opened in a formal way on each day upon which commission business is transacted.

(c) Scope of hearing. The presiding officer may make a concise statement of the scope and the purpose of the hearing and the issues involved at the beginning of the hearing.

(d) Appearances. Each attorney for a party, and any other representative authorized by the commission according to paragraph (3) of this subsection, shall enter an appearance by giving the attorney's or representative's name and address for the record.

(1) Except as otherwise specified in paragraph (2) of this subsection, any party may perform any of the following:

(A) Appear before the commission and be heard in person and on that party's own behalf;

(B) appear before the commission and be represented by an attorney who is regularly admitted to practice in the courts of record of the state of Kansas; or

(C) appear before the commission and be represented by any regularly admitted practicing attorney in the courts of record of another state of the United States, if the nonresident attorney complies with the requirements set forth in K.S.A.

7-104, and amendments thereto. The local counsel shall first enter the local counsel's own appearance and shall then orally move for the admission of the nonresident attorney with whom local counsel is associated. The oath required by K.S.A. 7-104, and amendments thereto, shall be administered to any nonresident attorneys by the presiding officer. An oral order admitting them as attorneys or representatives in the proceeding then pending shall be made by the presiding officer, and they shall enter their appearances on the record.

(2) Except as otherwise specified in paragraph (3) of this subsection, a corporation shall not be permitted to enter an appearance, except by its attorney.

(3) In any intrastate railroad proceeding that comes before the commission, a resident of the state of Kansas who is not an attorney-at-law may represent a party before the commission if both of these conditions are met:

(A) The person is a duly registered with the relevant federal agency as a non-attorney practitioner who is representing the person's permanent employer or is a duly elected officer of a union representing a group of employees of a railroad.

(B) The person has obtained the approval of the commission to appear as a representative upon a motion. The motion shall include the individual's qualifications, the name of the party, and the proceeding in which the individual wishes to appear.

(e) Preliminary matters. Preliminary matters shall be disposed of in the following order:

(1) Petitions for intervention;

(2) any other pending petitions or motions;

(3) stipulations of the parties by which parties may make written or oral stipulations in conformance with these regulations. These stipulations shall be regarded as evidence at the hearing and shall not be binding upon the commission; and

(4) opening statements of attorneys or other representatives for the parties, if requested by the commission. Opening statements, if any, shall be made immediately before the introduction of testimony.

(f) Hearing room conduct.

(1) The conduct of attorneys and other representatives during a hearing shall be the same as the conduct required of attorneys in the district courts of Kansas. Attorneys and other representatives shall examine witnesses from a position at

the counsel table, except when handling exhibits. Anyone whose conduct before the commission is deemed inappropriate may be refused permission to appear by the commission.

(2) Smoking shall not be permitted on commission premises.

(3) The use of photographic equipment or recording devices shall not be prohibited during hearings, except that the presiding officer may regulate the use of this equipment or these devices to insure the orderly conduct of the proceedings. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 66-103, K.S.A. 2001 Supp. 66-106, K.S.A. 66-165; effective Jan. 1, 1966; amended Feb. 15, 1977; amended, T-83-12, June 9, 1982; amended May 1, 1983; amended July 23, 1990; amended March 22, 1993; amended March 12, 1999; amended Oct. 10, 2003.)

82-1-229. Use of prefiled testimony. (a)

In lieu of oral examination, the examination of witnesses may be presented or, if required by the commission or by these regulations, shall be presented in written question-and-answer form. Presentation of prefiled testimony may be required by the commission in accordance with this regulation if it is deemed that doing so would be in the public interest and would be conducive to a fair and expeditious disposition of the proceeding. Any party may object to the use of prefiled testimony by a witness, and the objecting party shall have a right to be heard by the commission or the presiding officer at the hearing on the objection.

(b) All prefiled testimony shall be in typewritten form, double-spaced, on paper that is 8½ inches wide and 11 inches long. The lines on each page shall be numbered consecutively down the left side of the page. The left-hand margin of each page shall be not less than 1¼ inches wide, and the remaining margins shall be not less than one inch wide.

(c) Prefiled testimony shall be filed 10 days before the hearing unless otherwise specified. For conservation division matters, an original and four copies of any prefiled testimony that an applicant intends to offer into evidence, other than rebuttal, shall be filed with the conservation division at least 20 days before the hearing. An original and four copies of any prefiled testimony that an intervenor or protestant intends to offer into evidence, other

than rebuttal, shall be filed with the conservation division at least 10 days before the hearing.

(d) At the hearing, after any prefiled testimony has been properly identified and authenticated under oath by the witness, upon motion, the prefiled testimony may be incorporated into the record in the same way as if the questions had been asked of the witness and the answers had been given by the witness orally. The prefiled testimony shall be subject to the same rules of evidence as if given orally, and the witness presenting the prefiled testimony shall be subject to cross-examination. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended, E-82-1, Jan. 21, 1981; amended May 1, 1981; amended July 23, 1990; amended Oct. 10, 2003.)

82-1-230. Hearings; evidence and procedure. (a) Rules of evidence. The rules of evidence as stated in article four of the Kansas code of civil procedure shall be applied by the commission at all of its hearings. However, the presiding officer may relax the rules of evidence if the presiding officer believes that it is in the public interest to do so and will aid in ascertaining the facts. If an objection is made to the admissibility of evidence, the presiding officer may rule upon the objection or may receive the evidence subject to a subsequent ruling on the objection by the commission. The presiding officer may exclude inadmissible evidence on the presiding officer's own motion and may order cumulative evidence discontinued. All parties may note their exceptions on the record to any ruling or other action of the presiding officer.

(b) Order of procedure at hearings. The presiding officer shall determine the order of procedure at hearing.

(1) Unless otherwise ordered by the presiding officer, the following shall apply:

(A) The applicants shall open and close at hearings on applications.

(B) The complainant shall open and close at hearings on formal complaints.

(C) The staff counsel shall open and close at hearings on investigations initiated by the commission.

(2) In a hearing in which several proceedings have been consolidated for hearing on a common record, the presiding officer shall designate the party who may open and close.

(3) The presiding officer shall designate when each intervenor may be heard.

(4) In all hearings, the presiding officer may direct departures from the suggested order of procedure.

(c) Examination and cross-examination of witnesses.

(1) Subject to the provisions of K.A.R. 82-1-229, concerning the use of prefiled testimony, each witness shall be examined and cross-examined orally and under oath in the order determined by the presiding officer. The direct examination of each witness shall be followed by cross-examination of the witness. Redirect examination, if any, shall be limited in scope to the testimony upon cross-examination. Recross examination, if any, shall be limited in scope to the testimony upon redirect examination.

(2) No more than one attorney for each party shall examine or cross-examine a witness. The presiding officer may require that only one attorney be allowed to cross-examine a witness on behalf of all parties united in interest. To facilitate the orderly and expedient conduct of hearings, the presiding officer may appoint a member of the commission's legal staff to assist any party not represented by counsel in cross-examining witnesses and in presenting evidence.

(d) Going off the record. All testimony shall be taken on the record unless permission to go off the record is first granted, upon request, by the presiding officer.

(e) Excluded evidence. If an objection to a question propounded to a witness is sustained by the presiding officer, the examining attorney may make a proffer of the excluded evidence. The presiding officer may add other statements to clearly show the character of the evidence, the form in which it was offered, the objection made, and the ruling made. Upon request, the excluded testimony or evidence shall be marked and preserved for the record upon appeal.

(f) Further evidence. At any stage of the hearing, or after the close of the testimony, the presiding officer may call for further evidence upon any issue and may require such evidence to be presented by the party or parties concerned or by the staff counsel, either at the hearing or at a further hearing.

(g) "Late-filed" exhibits. The presiding officer may authorize any party to the proceeding to file, within a designated time period, specific documentary evidence as part of the record. Exhibit

numbers may be assigned in advance at the hearing to these items of documentary evidence.

(h) Administrative notice. In addition to matters that are required or permitted to be judicially noticed by K.S.A. 60-409 and amendments thereto, the presiding officer may take administrative notice of commission files and records in deciding matters pending before it.

(i) Briefs. Submission of briefs by the parties may be authorized or required by the presiding officer or the commission. The period of time in which briefs and reply briefs shall be filed may be fixed by order setting the procedural schedule or at the close of the hearing by the presiding officer. Any brief required by an order setting the procedural schedule may be waived by the presiding officer at the close of the hearing or by further commission order. Briefs shall be served in the same manner and upon the same persons as required for other pleadings.

(j) Closing the record. A hearing shall be concluded and the matter shall be submitted to the commission when all parties have submitted any requested briefs and all parties have completed oral arguments. If the parties submit no briefs and make no oral arguments, the presiding officer shall announce that the record of exhibits and testimony is closed and that the matter is taken under advisement. The matter shall then be submitted to the commission.

(k) Reopening the record. After the record of testimony has been closed by the presiding officer, any party may apply to reopen the record for good cause shown. However, no record shall be reopened for further hearing except upon order of the commission. Any record of any hearing may be reopened by the commission on its own motion. (Authorized by and implementing K.S.A. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1985; amended July 23, 1990; amended Oct. 10, 2003.)

82-1-230a. Settlement agreements. (a) As used in this regulation, the following definitions shall apply:

(1) "Settlement agreement" means an agreement between parties to a proceeding submitted to the commission to dispose of all or any part of the issues pending for decision.

(2) "Unanimous settlement agreement" means an agreement that is entered into by all parties to the proceeding or an agreement that is not op-

posed by any party that did not enter into the agreement.

(3) "Nonunanimous settlement agreement" means an agreement that is entered into by fewer than all parties to the proceeding and is opposed by one or more parties.

(b) Unanimous settlement agreements and nonunanimous settlement agreements shall be filed as pleadings and may be approved, rejected, or modified by the commission. A settlement agreement may contain or refer to explanatory material or information in support of the justness and reasonableness of the settlement agreement. A hearing may be conducted by the commission for the purpose of receiving evidence or argument concerning the settlement agreement.

(c) Each party objecting to the settlement agreement shall file a written objection within 10 days after the filing of the settlement agreement or within a shorter time period as directed by the commission. Failure to object in a timely manner shall constitute a waiver of that party's right to object to the settlement agreement. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106, K.S.A. 2001 Supp. 74-616; effective Oct. 10, 2003.)

82-1-231. Filing requirements for rate proceedings. (a) Each electric, gas, telecommunications, or water utility whose rates are under review by the commission at the request of the utility shall comply with this regulation and shall be prepared to establish, by appropriate schedules and competent testimony, all relevant facts and data pertaining to its business and operations that will assist the commission in arriving at a determination of rates that are fair, just, and reasonable both to the utility and the public. However, a telecommunications utility subject to price cap regulation pursuant to K.S.A. 66-2005(b), and amendments thereto, shall not be required to file the information described in this regulation with applications requesting a change in rates pursuant to K.S.A. 66-2005(g), (i), (j), (n), (o), (p), (r), and (s), and amendments thereto. Electric, gas, telecommunications, or water utilities whose rates are under review as a result of an investigation, complaint, or any other procedure may be required by the commission, on its own motion or by party request, to submit the same information described in subsection (c) of this regulation.

(b) Procedures for different classes of utilities.

(1) For filing purposes, each utility shall be classified according to K.A.R. 82-1-204a.

(2) Each class A electric, gas, water, and telecommunications utility that files a major rate application, on its own initiative or as directed by the commission, shall prepare and submit its application and schedules in conformity with subsection (c) of this regulation. Any rural electric cooperative distribution system providing service to fewer than 15,000 customers may elect to follow the procedures outlined in K.A.R. 82-1-231a. Electric, gas, water, and telecommunications utilities, other than class A, may elect to follow the procedures outlined in K.A.R. 82-1-231b.

(3) Any utility that proposes a change in rates within 12 months after a commission order following a general rate proceeding and investigation may submit schedules eliminating data that duplicates information provided in the original schedules if both of the following conditions are met:

(A) The utility is willing to adopt all the regulatory procedures, principles, and rate of return established by the commission in that order.

(B) The utility receives prior approval from the commission.

(4) An application by a class A utility shall be construed to be a major rate application if any of the following conditions is met:

(A) The application relates to a general increase in revenues for the purpose of obtaining an alleged fair rate of return.

(B) Material changes in operations, facilities, or cost of service occur subsequent to the test year employed in any major rate decision, except for proposals that are for the sole purpose of compensating for the increased production or purchase cost of a principal product.

(C) The application will, in the opinion of the commission, materially affect the public interest if it is granted.

(c) Class A utility rate proceedings: application and evidence. (1) Each major rate application by a class A utility shall be accompanied by schedules that will indicate to the commission the nature and extent of the relief requested.

(2) Each application shall be based upon data submitted for a test year. The test year selected by the applicant may be disapproved by the commission for cause.

(3) The original, nine photocopies, and one electronic copy of the application and supporting schedules shall be filed with the commission. The

supporting schedules shall be organized by topical sections with page numbers for each schedule. Negative numbers shall be shown in parentheses. Amounts included in the application shall be cross-referenced between the appropriate summary schedule and supporting schedules as well as between the various sections. Referencing shall include allocation ratios. All items shall be self-explanatory, or additional information, cross-references or explanatory footnotes shall be presented on the schedule.

(A) Original and photocopies. The original and each photocopy of the application and schedule shall be bound together under one loose-leaf binder. If the bulk of the material would make such handling impractical, two or more volumes in loose-leaf form shall be filed. The size of print used in the application and schedules shall not be smaller than elite type reduced 25 percent. The application shall be assembled with index tabs for each section.

(B) Electronic copy. The electronic application and schedules shall be submitted in a format and type of disk that the applicant and staff have agreed upon. All formulas shall be imbedded in the schedule, and all schedules shall be linked where appropriate. Reports required by paragraphs (c)(4)(A), (B), (M) and (P) shall be exempted from the electronic filing requirement. A waiver may be granted from all or any part of the electronic filing requirement.

(4) The form, order, and titles of each section shall conform to the following requirements:

(A) Section 1: Application, letter of transmittal, and authorization. This section shall contain a copy of the application, a copy of the letter of transmittal, and the appropriate document or documents authorizing the filing of the application, if any.

(B) Section 2: General information and publicity. This section shall describe the means generally employed by the utility to acquaint the general public that would be affected by the proposed rate change with the nature and extent of the proposal. This section may include statements concerning newspaper articles and advertisements, meetings with public officials, civic organizations, and citizen groups, and shall include general information concerning the application that will be of interest to the public and suitable for publication. This information shall include the following, if applicable:

(i) The aggregate annual revenue increase that the application proposes;

(ii) the names of communities affected;

(iii) the number and classification of customers to be affected;

(iv) the average, per customer increase sought in dollars and cents;

(v) a summary of the reasons for filing the application;

(vi) any other pertinent information that the applicant may desire to submit or that the commission may require; and

(vii) copies of any press releases issued by the applicant before or at the time of filing the application for a rate review that relate to that review.

(C) Section 3: Summary of rate base, operating income, and rate of return. This section shall contain schedules that show the components of the test year rate base, operating revenues, expenses, and income as well as the rate of return under the present and proposed tariff or tariffs. The schedules shall be presented as follows:

(i) The first schedule shall summarize, for each utility service for which the rate change is sought, the total Kansas and commission jurisdictional components of the rate base, operating revenues, expenses, net income, and rate of return.

(ii) Supporting schedules shall show the unadjusted commission jurisdictional figures and shall further set out each adjustment to arrive at the total adjustments. When added to the unadjusted total, the adjusted commission jurisdictional figures shall correspond with the commission jurisdictional figures presented on the first schedule of this section.

(iii) Additional schedules not applicable to other sections of the application may be set out in this section.

(D) Section 4: Plant investments. This section shall contain the items of plant investment, presented in the following manner:

(i) The first schedule shall detail, by functional classification, unadjusted amounts, adjustments to these amounts, and jurisdictional allocations.

(ii) Supplemental schedules, by primary account, shall set forth year-end plant investment for the three calendar years preceding the test year, for the test year, and for the 12-month period preceding the test year. Additional schedules setting forth pertinent information related to the plant may be submitted under this section. "Primary account," as utilized in this regulation, shall mean the account classification provided in the

uniform system of accounts prescribed by the commission for the utility.

(E) Section 5: Accumulated provision for depreciation, amortization, and depletion. This section shall contain schedules that shall show by functional classification, using dates corresponding with the dates of plant investment data submitted under section 4, the balances of the reserve accounts in which the credits representing provisions for depreciation, amortization, depletion, any adjustments thereto, and jurisdictional allocations are accumulated. Upon commission request, or if considered relevant by the utility, schedules may be submitted showing analysis of the activities of the reserve accounts relating to the plant in service, segregated by primary accounts, or other segregation as is required by the uniform system of accounts prescribed by the commission for that utility.

(F) Section 6: Working capital. This section shall set forth in detail each component of the working capital items the applicant proposes to submit as elements in the composition of the rate base. This section shall be presented as follows:

(i) The first schedule shall contain the components included in working capital, adjustments to this, and jurisdictional allocations.

(ii) The method of calculation for each component of working capital and a complete explanation of any pro forma adjustments shall be included in supporting schedules.

(G) Section 7: Capital and cost of money. This section shall contain the following:

(i) A schedule indicating the amounts of the major components of the capital structures of the utility, including long-term debt, preferred stock, and common equity, outstanding at the beginning and at the end of the test year. This schedule shall contain the ratios of each component to the total capital including the percentage cost and the requested overall rate of return. If only a portion of the capital serves the utility operations involved in the proceeding, as would be the case in a multi-utility or multistate operation, the schedule shall show an appropriate allocation of the capital items;

(ii) a schedule disclosing the cost of each issue of debt and preferred stock outstanding, with due allowance for premiums, discounts, and issuance expense. Data relating to the other components of capital as may be appropriate shall also be included;

(iii) a schedule displaying historical interest

coverage for at least the three calendar years preceding the test year, the test year, and the 12-month period preceding the test year. The method used in the calculation shall be indicated and shall be consistent with the applicant's bond and indenture requirements; and

(iv) the consolidated capital structure, if the applicant is a part of a consolidated group or a division of another company.

(H) Section 8: Financial and operating data. This section shall contain the following, for each of the three calendar years immediately preceding the test year, the test year, and the 12-month period preceding the test year:

(i) A balance sheet by primary account;

(ii) comparative income and retained earnings statements. The primary account numbers shall be shown, and dividends paid, by class of stock, shall be indicated;

(iii) operating revenue and expenses by primary accounts;

(iv) operating statistics appropriate to the type of utility, including kwh or mcf sales by rate schedules and customer consumption, power cost per kwh, minutes of use identified by access or toll and toll, and recurring and nonrecurring, and maintenance cost per subscriber. The statistics shall be presented in at least the same detail as is required in the annual reports to the commission; and

(v) annual payrolls by primary account.

(I) Section 9: Test year and pro forma income statements. The first schedule shall present an operating income statement depicting the unadjusted test year operations, pro forma test year operations, and allocations to jurisdictions. Supporting schedules shall set forth a full and complete explanation of the purpose and rationale for the pro forma adjustments. These pro forma adjustments may include the following:

(i) Adjustments to reflect the elimination or normalization of nonrecurring and unusual items; and

(ii) adjustments for known or determinable changes in revenue and expenses.

(J) Section 10: Depreciation and amortization. This section shall include the schedules indicating depreciation rates by primary account, depreciation expense for the test year, and amounts charged to operations, clearing accounts, and construction. If items of amortization appear in the income statements, schedules showing the basis for those items shall also be included in this sec-

tion or made available. If new depreciation rates are proposed, a copy of the depreciation study shall be provided or made available.

(K) Section 11: Taxes. This section shall contain the following information:

(i) The first schedule shall detail the various taxes chargeable to operations, allocated jurisdictionally. Appropriate supporting schedules for taxes other than income taxes shall be provided if pro forma adjustments are presented.

(ii) A schedule disclosing the calculation of taxable income shall be included.

(iii) A description of adjustments to arrive at taxable income, including method of computation, shall be provided.

(iv) A schedule shall be provided depicting the calculation of income taxes, the jurisdictional allocation of those taxes, and a division of those taxes to reflect current and deferred taxes.

(v) A schedule shall also be included for deferred investment tax credits showing the annual charges, credits, and the balance to that account for a period of not less than 10 years. Furthermore, those schedules shall show the accumulated investment tax credits by the pertinent effective rate or rates for the test year and the 12-month period preceding the test year.

(vi) A schedule shall be included for deferred income taxes showing the annual charges, credits, and balance to the account for a period of not less than 10 years and for the test year and the year preceding the test year. For both the investment tax credits and deferred income tax schedules, the test year and the 12-month period preceding the test year balances shall be allocated to the jurisdictions.

(L) Section 12: Allocation ratios. This section shall contain a complete detail for all ratios used in the allocations between jurisdictions, areas of operations, departments, classes of customers, and other allocable items. In addition, this section shall include a narrative description of the rationale for each allocation ratio, the components included in the calculation of the ratio and their source, the allocation percentages applicable to jurisdictions or departments, and what is being allocated by the ratio.

(M) Section 13: Annual report to stockholders and the U.S. securities and exchange commission. This section shall contain the following:

(i) The most recent annual report of the utility to its stockholders and, if the utility is a subsidiary of a parent corporation, the most recent annual

report of the parent corporation to its stockholders; and

(ii) if applicable, a copy of the most recent form 10-K filed with the U.S. securities and exchange commission.

(N and O) Sections 14 and 15: Additional evidence. These sections shall include all other schedules, exhibits, and data deemed pertinent to the application that may not be properly included under the preceding sections. This additional evidence may be submitted at the option of the applicant and shall be submitted upon the direction of the commission.

(P) Section 16: Financial statements. This section shall include a copy of the financial statements for the most recent fiscal year. These financial statements shall have been audited by an independent certified public accountant and an opinion rendered thereupon.

(Q) Section 17: This section shall be applicable only to applications and schedules filed by or pertaining to the operations of gas or electric utilities. This section shall contain a summary schedule that provides, by general customer classification, the test year revenues utilizing the existing and proposed tariffs. The test year revenues under existing tariffs shall be adjusted if pro forma normalization or annualization adjustments are appropriate. Also, this section shall include a schedule detailing the following data for the test year, by tariff schedule:

- (i) The tariff number;
- (ii) a narrative description of that tariff number;
- (iii) the average number of customers served during the test year;
- (iv) the units sold;
- (v) the base revenue;
- (vi) the revenue from riders, fuel, or purchased power clauses;
- (vii) the total revenue, utilizing the existing tariff. The total revenue shall be shown as adjusted, if appropriate;
- (viii) revenue per unit sold;
- (ix) the proposed tariff revenue;
- (x) the proposed revenue per unit;
- (xi) the dollar increase; and
- (xii) the percentage increase.

(R) Section 18: This section shall contain the proposed rate change schedules. All new language or figures shall be designated by underlining or in another appropriate manner. All deleted language or figures shall be designated in a different man-

ner, such as italics. Upon request, and within the time limits determined by the commission, filing of the proposed rate schedule, or other materials required to be filed under this regulation, separate from the filing of the application and schedules may be permitted by the commission.

(d) Revisions of applications and schedules. If the applicant desires to make revisions to its application and schedules, other than minor corrections and insertions that require only interlineation and do not unduly prolong the hearing with respect to the application or schedules, the applicant shall file with the commission those revised schedules that are necessary to reflect the desired revisions, as follows:

(1) Each page of any such revised section or schedule shall bear the same section letter designation, schedule number, and page number as the original page with the word "Revised" and the date of the revision immediately below the original section, schedule, or page designation.

(2) The same number of copies of any revised sections, schedules, or pages shall be filed as the number of copies originally required to be filed.

(3) A copy of each revised section, schedule, or page shall also be served upon each party whose intervention has previously been permitted by the commission pursuant to K.S.A. 77-521, and amendments thereto, and K.A.R. 82-1-225.

(4) All revised sections, schedules, and pages shall be filed in accordance with the provisions of K.A.R. 82-1-221, unless otherwise ordered by the commission for good cause shown.

(5) Substantial revisions of the schedules, including changing to a different test year, may constitute grounds for a continuance of a scheduled hearing to a later date to be granted by the commission.

(e) Prefiled testimony shall be required in all utility rate proceedings filed according to subsection (c) of this regulation. The prefiled testimony shall be filed simultaneously with the filing of the application.

(f) Any data request issued by the technical staff shall be answered by the applicant within the time period stated on the data request. If the data request cannot be answered within the time period stated on the data request, applicant shall, before the due date, provide technical staff with a written explanation of the failure to comply.

(g) In any docket that constitutes a major rate application or that the commission determines is of sufficient public concern, one or more public

information hearings may be ordered by the commission to be held in the service territory affected by the application. The order shall require publication notice of the filing of the application. The publication notice shall give a concise description of the filing and advise the public of the date and location of each public information hearing. The public information hearing shall provide an opportunity for the applicant to explain its application and shall provide an opportunity for the public to address the commission concerning the application. A transcript shall be made of the public information hearing, but the transcript shall not become a part of the record in the proceeding.

(h) This regulation shall not apply to a change in rates for services by telecommunications utilities that are not subject to price regulation pursuant to K.S.A. 66-2005(v), and amendments thereto.

(i) For good cause shown, any of the requirements of this regulation may be waived by the commission. (Authorized by K.S.A. 2001 Supp. 66-106; implementing K.S.A. 2001 Supp. 66-106 and 2001 Supp. 66-117; effective Jan. 1, 1966; amended Feb. 15, 1977; amended, E-78-31, Nov. 9, 1977; amended May 1, 1978; amended, E-82-1, Jan. 21, 1981; amended May 1, 1981; amended, T-83-43, Dec. 8, 1982; amended May 1, 1983; amended May 1, 1987; amended May 1, 1988; amended July 23, 1990; amended Oct. 10, 2003.)

82-1-231a. Filing requirements for rate proceedings by rural electric distribution cooperative systems providing service to fewer than 15,000 customers. (a) In lieu of filing a rate case application according to K.A.R. 82-1-231, any rural electric distribution cooperative with memberships of fewer than 15,000 may elect to prepare a less extensive application with schedules that are more appropriate to the operations of smaller utilities.

(b) Applications and evidence.

(1) The application and schedules shall be in the form and substance permitted by the commission and shall include an electronic application as described in K.A.R. 82-1-231(c)(3). The application shall include the following:

(A) Supporting schedules as required by the commission;

(B) A copy of the financial statements of the rural electric distribution cooperative for a test year. These financial statements shall have been

audited by an independent certified public accountant and an opinion rendered on them;

(C) a copy of the monthly REA form seven for the test year; and

(D) a copy of the most recent tariffs with penciled-in proposed changes. The test year selected by the applicant may be disapproved by the commission for cause.

(2) A rate case application shall not be considered under this regulation unless all of the following conditions are met:

(A) The commission has received written notice of the intent to file an application not less than 30 and not more than 90 days before the application filing date.

(B) The applicant has met with technical staff to inform the technical staff of the applicant's approximate revenue requirement, any proposed changes in the apportionment of the revenue requirement among rate classes, and any proposed rate design changes.

(C) The applicant has held a public meeting, for which adequate notice was given, to inform its membership of its intent to file an application and to allow its membership to comment. The applicant's public meeting notice shall include a statement of applicant's approximate revenue requirement, any proposed changes in the apportionment of the revenue requirement among rate classes, and any proposed rate design changes.

(3) Within 30 days of a third consecutive filing by an applicant under this regulation, a determination shall be made by the commission as to whether the filing may again be treated as an alternative filing under this regulation, or whether the filing warrants an extended investigation under K.A.R. 82-1-231.

(c) General procedure.

(1) The technical staff shall meet with applicant within 10 days after the application is filed to discuss the technical staff's preliminary review of the application and the appropriateness of addressing the application under this regulation.

(2) Any data request issued by the technical staff shall be answered by the applicant within seven calendar days of issuance. If the data request cannot be answered within seven calendar days, the applicant shall provide the technical staff with a written explanation of the failure to comply. The technical staff may conduct a field audit to verify any information that the technical staff considers essential to a rate proceeding.

(3) The technical staff shall complete the audit

of the application and forward a written recommendation to the commission and to the applicant within 60 days after the application is filed.

(4) If the technical staff recommendation is to approve the application with modification or to deny the application, the applicant may submit written comments, which may include a request for hearing, to the commission within five days from receipt of the technical staff's recommendation.

(5) The application shall be considered by the commission within 15 days after receipt of the technical staff's recommendation. The application may be ruled upon by the commission in any of the following ways:

(A) Approved as filed;

(B) approved with modifications;

(C) suspended by the commission pending an order setting the matter for hearing and directing the technical staff to conduct a further investigation; or

(D) denied.

(6)(A) If the commission approves the application pursuant to paragraph (c)5(A) or (c)5(B), an interim order seeking comment shall be issued within 25 days after receipt of the technical staff's recommendation. The interim order shall be subject to a comment period of 90 days. The applicant shall notify its membership of the interim rates, interim rate design, and the comment period within 20 days after the commission's issuance of the interim order.

(B) If at the close of the 90-day comment period, substantial comment has not been received, a final order making the temporary rates permanent shall be issued by the commission. If at the close of the 90-day comment period, substantial comment has been received, further investigation and hearing may be ordered by the commission.

(7) If the commission orders a further investigation and hearing under paragraph (c)5(C) or (c)6(B), a hearing date and dates by which parties shall file written testimony shall be specified by the commission.

(d) Consideration of an application under this regulation may be suspended and converted to an application subject to K.A.R. 82-1-231 at any time during the proceeding and for good cause. Such a conversion may be made on the motion of the technical staff or the commission.

(e) For good cause shown, any requirements of this regulation may be waived by the commission. (Authorized by K.S.A. 2001 Supp. 66-106; imple-

menting K.S.A. 2001 Supp. 66-106 and K.S.A. 2001 Supp. 66-117; effective May 1, 1988; amended July 23, 1990; amended Oct. 10, 2003.)

82-1-231b. Filing requirements for rate proceedings by electric, gas, water, and telecommunications utilities other than class A.

(a) In lieu of filing a rate case application according to K.A.R. 82-1-231, electric, gas, water, and telecommunications utilities, other than class A, may elect to prepare a less extensive application with schedules that are more appropriate to the operations of smaller utilities, unless otherwise directed by the commission. However, a telecommunications utility that is subject to price cap regulation pursuant to K.S.A. 66-2005(b), and amendments thereto, shall not be required to file the information described in this regulation with applications requesting a change in rates pursuant to K.S.A. 66-2005 (g), (i), (j), (n), (o), (p), (r), and (s), and amendments thereto.

(b) Applications and evidence.

(1) The application and schedules shall be in the form and substance permitted by the commission and shall include an electronic application as described in K.A.R. 82-1-231(c)(3). The application shall include the following:

(A) Supporting schedules as required by the commission;

(B) a copy of the financial statements of the utility for a test year. These financial statements shall have been audited by an independent certified public accountant and an opinion rendered thereupon.

(C) a copy of the most recent tariffs with penciled-in or red-lined proposed changes. The test year selected by the applicant may be disapproved by the commission for cause.

(2) A rate case application shall not be considered under this regulation unless all of the following conditions are met:

(A) The commission has received written notice of the intent to file an application not less than 30 and not more than 90 days before the application filing date.

(B) The applicant has met with technical staff to inform the technical staff of the applicant's approximate revenue requirement, any proposed changes in the apportionment of the revenue requirement among rate classes, and any proposed rate design changes.

(C) The applicant has held a public meeting, for which adequate notice was given, to inform

its customers of its intent to file an application and to allow its customers to comment. The applicant's public meeting notice shall include a statement of the applicant's approximate revenue requirement, any proposed changes in the apportionment of the revenue requirement among rate classes, and any proposed rate design changes.

(3) Within 30 days after a third consecutive filing by an applicant under this regulation, a determination shall be made by the commission as to whether the filing may again be treated as an alternative filing under this regulation, or whether the filing warrants an extended investigation under K.A.R. 82-1-231.

(c) General procedure.

(1) The applicant shall meet with technical staff after the application is filed to discuss the technical staff's preliminary review of the application and the appropriateness of addressing the application under this regulation.

(2) Any data request issued by the technical staff shall be answered by the applicant as expeditiously as possible. The technical staff may conduct a field audit to verify any information the technical staff considers essential to a rate proceeding.

(3) The technical staff shall complete the audit of the application and forward a written recommendation to the commission.

(4) A copy of the technical staff's recommendation shall be provided to the applicant. If the technical staff recommendation is to approve the application with modification or to deny the application, the applicant may submit written comments, which may include a request for hearing, to the commission.

(5) The application shall be considered by the commission. The application may be ruled upon by the commission in any of the following ways:

(A) Approved as filed;

(B) approved with modifications;

(C) suspended by the commission pending an order setting the matter for hearing and directing the technical staff to conduct a further investigation; or

(D) denied.

(6)(A) If the commission approves the application pursuant to paragraph 5(A) or 5(B), an interim order seeking comment shall be issued. The interim order shall be subject to a comment period of 90 days. The applicant shall notify its customers of the interim rates, interim rate design,

and the comment period within 20 days after the commission's issuance of the interim order.

(B) If at the close of the 90-day comment period, substantial comment has not been received, a final order making the temporary rates permanent may be issued by the commission. If at the close of the 90-day comment period, substantial comment has been received, further investigation and a hearing may be ordered by the commission.

(7) If the commission orders a further investigation and hearing under paragraph (5)(C) or (6)(B), a hearing date and dates by which parties shall file written testimony shall be specified by the commission.

(d) Consideration of an application under this regulation may be suspended and converted to an application subject to K.A.R. 82-1-231 at any time during the proceeding and for good cause. Such a conversion may be made on the motion of the technical staff or the commission on its own initiative.

(e) This regulation shall not apply to a change in rates for services by telecommunications utilities that are not subject to price regulation pursuant to K.S.A. 66-2005(v) and amendments thereto.

(f) For good cause shown, any requirements of this regulation may be waived by the commission. (Authorized by K.S.A. 2001 Supp. 66-106; implementing K.S.A. 2001 Supp. 66-106 and K.S.A. 2001 Supp. 66-117; effective July 23, 1990; amended Oct. 10, 2003.)

82-1-232. Orders of the commission. (a) Form and content. Unless otherwise specified, each order of the commission shall contain the following:

(1) A caption that complies with the requirements of paragraph (a)(1) of K.A.R. 82-1-219, except that the heading shall be "THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS" and shall be followed by a designation of the commissioners to whom the matter was submitted;

(2) if the order renders a final determination on a matter after hearing or prehearing conference, a recitation of the appearances, whether by attorney or pro se, and a summary of jurisdictional facts including those pertaining to the dates and places of hearings and notices;

(3) a concise and specific statement of the relevant law and basic facts that persuade the commission in arriving at its decision;

(4) the official signature of the commission, as provided in this regulation;

(5) the surnames of the commissioners who participated in the making of the order typed at the end of the order; and

(6) the date of mailing to the parties shown above the executive director's signature.

(b) Orders issued without a hearing.

(1) Non-KAPA proceeding. If the commission has not used KAPA to govern the conduct of a proceeding and a decision or order is rendered without a hearing, any party affected by the order or decision and deeming it to be improper, unreasonable, or contrary to law may apply, by petition, for a hearing on the matter before the commission. The petition shall contain a statement of every ground of objection that the petitioner will raise against the decision or order. The petition for a hearing may be granted or denied by the commission. If a hearing is granted, it shall be subject to the commission's rules and regulations. If a hearing is denied, the denial shall be construed as a denial of a petition for reconsideration on the matter for purposes of an application for judicial review of the order or decision.

(2) KAPA proceeding. (A) Orders may be issued without hearing in summary proceedings pursuant to KAPA. Any order issued in a summary proceeding shall disclose that any party may file a petition requesting a hearing within 15 days after service of an order.

(B) (i) Interim emergency orders may be issued by the commission upon its own initiative, or upon a request, if there has been a showing of good cause.

(ii) An interim order may be issued by any commissioner. All parties affected by the order shall comply, except that as soon as possible after the order is issued, the order shall be approved or revoked by a majority of the commission.

(iii) Unless a different period of time is otherwise specified by statute, an interim order shall not be effective for a period longer than 30 days if the matter is determined and the order is issued without a hearing on the merits.

(c) Official signature of the commission. All orders, certificates, permissions, approvals, licenses, permits, warrants, subpoenas, or any process or instrument may be officially signed with the signature of the commission by subscribing the signature of the executive director of the commission and affixing the official seal of the commission. All orders or other instruments made and issued by

the commission shall be in strict conformance with the action of the commission as shown by the official written minutes of the commission and signed by at least two commissioners, with the exception of orders suspending or cancelling the authority of a motor carrier for failure to maintain proof of insurance as required by K.S.A. 66-1,128, and amendments thereto. Orders suspending or cancelling the authority of a motor carrier or reinstating the carrier for providing proof of insurance shall require the signature of one commissioner on the minutes, until signatures of the other two commissioners may be obtained.

(d) Filing, effective date. All orders of the commission shall be filed in the office of the commission in Topeka. Orders shall take effect and be in force upon service, as prescribed by K.A.R. 82-1-216, unless otherwise expressly provided in the order or by statute.

(e) Dating of orders. The date of mailing of each order of the commission shall be shown on each order by the executive director above the official signature of the commission, except that orders that are mailed from the office of the commission's conservation division shall have the date of mailing shown on each order by the administrator of the conservation division. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Feb. 15, 1977; amended July 23, 1990; amended March 22, 1993; amended Oct. 10, 2003.)

82-1-233. (Authorized by K.S.A. 55-604, 55-605, 55-704, 55-706, 66-106, 66-1,117, 66-1511; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

82-1-234. (Authorized by K.S.A. 55-704, 66-106, K.S.A. 1965 Supp. 55-604; effective Jan. 1, 1966; revoked May 1, 1985.)

82-1-234a. Discovery. (a) Discovery shall be limited to matters that are clearly relevant to the proceeding involved. Discovery may be further limited by the commission or presiding officer based on the discovering party's interest and participation in the proceeding. This regulation shall not diminish, alter, or modify in any way the authority of the commission staff to request information in the performance of its duties.

(b) Responses to data requests submitted by commission staff shall be furnished within seven days of the date on which the information was

requested, unless otherwise directed. (Authorized by and implementing K.S.A. 1989 Supp. 55-604, K.S.A. 55-704, 66-106; effective May 1, 1985; amended July 23, 1990.)

82-1-235. Petitions for reconsideration; compliance with orders. (a) Any party aggrieved by any order or decision of the commission may file a petition for reconsideration before the commission. All petitions for reconsideration shall be filed pursuant to the appropriate statutory provisions relating to them.

(b) If the petitioner relies on the ground that the commission, in making its determination, did not consider any of the evidence presented in the proceeding, the petition for reconsideration shall cite that portion of the transcript where the testimony appears, if the transcript is available on the date of the commission's order. The application shall specify by number the exhibits and the pertinent portion of those exhibits that is alleged not to have been considered by the commission.

(c) A party filing a petition for reconsideration shall serve a copy of the petition upon all parties to the proceeding in the manner prescribed by these regulations for the filing and service of pleadings.

(d) The burden of going forward with the evidence shall rest upon the applicant or applicants requesting reconsideration.

(e) All the evidence, rules and regulations, instruments, and other documents admitted or received in the original hearing or subsequent hearings shall, by operation of this regulation, become a part of the record in the reconsideration, unless otherwise directed by the commission.

(f) Each party desiring reconsideration shall file a petition for reconsideration. Each party that files a petition for reconsideration shall rely solely upon its own petition. A petitioner may withdraw its petition for reconsideration at any time by motion. All parties shall be entitled to cross-examine witnesses and be heard at the hearing in which facts or issues are given reconsideration. Direct testimony may be introduced only by the petitioner. Rebuttal testimony may be introduced by any party. If two or more petitions for reconsideration are granted, at the discretion of the commission, they may be consolidated for hearing and may be heard on a common record. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Jan. 1, 1971; amended

Feb. 15, 1977; amended July 23, 1990; amended March 12, 1999; amended Oct. 10, 2003.)

82-1-236. (Authorized by K.S.A. 17-1269, 66-106; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

82-1-237. Investigation and hearing. (a) Any public utility, common carrier, motor carrier, or any other party under the commission's jurisdiction may be investigated and hearings or show cause proceedings may be ordered by the commission at any time, upon its own motion if the commission believes that the party under its jurisdiction is in violation of law or of any order of the commission.

(b) Other investigations as are required or authorized by law may be instituted by the commission as deemed necessary.

(c) Evidence considered necessary or desirable in any formal proceeding, in addition to the evidence presented by the parties, may be secured and presented by the commission if deemed necessary. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990; amended Oct. 10, 2003.)

82-1-238. Transcripts. (a) Transcripts of all testimony and proceedings may be ordered and purchased from the commission if the reporter is employed by the commission. Otherwise transcripts may be purchased directly from the reporter. Corrections to the official transcript may be made only to make it conform to the evidence presented at the hearing. Claimed errors and suggested corrections may be offered by any party within 10 days after the transcript is filed with the commission, unless the presiding officer grants an extension. Suggested corrections shall be served in writing upon each party of record, the official reporter, and the presiding officer. The presiding officer shall then determine what changes shall be made, if any. All parties shall be advised by the commission of any authorized corrections to the record.

(b) If any order, pleading brief or other document filed with the commission makes reference to a portion of the transcript of any hearing before the commission, that citation to the transcript shall be made as follows:

(1) If the party has access to the official transcript, the citation shall contain the following:

- (A) The abbreviation “Tr.”;
- (B) the abbreviation “Vol.” followed by the appropriate volume number; and
- (C) a reference to the appropriate page number or numbers in the transcript volume; or
- (2) If the party does not have access to the official transcript, the citation shall contain the following:
 - (A) The witness name;
 - (B) an indication of whether the citation is to the witness’s direct or rebuttal testimony; and
 - (C) a reference to the appropriate page number or numbers in the direct or rebuttal testimony.
- (c) Citations to more than one volume of transcript or to more than one witness or speaker shall be separated by semicolons. (Authorized by and implementing K.S.A. 2001 Supp. 55-604, K.S.A. 55-704, K.S.A. 2001 Supp. 66-106; effective Feb. 15, 1977; amended May 1, 1985; amended July 23, 1990; amended Oct. 10, 2003.)

COMPENSATION TO CONSUMER INTERVENORS PURSUANT TO PURPA

82-1-239. Definitions. As used in this article, the following definitions shall apply: (a) “Attorney fees” means expenses incurred by an intervenor for an attorney with respect to a PURPA position.

(b) “Compensation” means reasonable attorneys’ fees, reasonable expert witness fees, and other reasonable expenses incurred in preparation for and advocacy of a PURPA position.

(c) “Consumer” means any retail customer of an electric utility.

(d) “Expert witness fees” means expenses incurred by an intervenor for an expert with respect to a PURPA position.

(e) “Intervenor” means any retail consumer of an electric utility, any authorized representative of the consumer, any governmental instrumentality, or any representative of a group or organization authorized, pursuant to articles of incorporation or bylaws, to represent the interests of consumers.

(f) “Other reasonable expenses” means reasonable expenses incurred by an intervenor with respect to a PURPA position not exceeding 15 percent of the total of reasonable attorney and expert witness fees awarded.

(g) “PURPA” means the public utility regulatory policies act of 1978.

(h) “PURPA position” means a factual contention, legal contention or specific recommendation

promoting one of the PURPA purposes and relating to one or more of the PURPA subtitle B standards.

(i) “Significant financial hardship” means a condition that shall be established by demonstrating that the intervenor does not have sufficient resources available to participate in the proceeding without an award of compensation or, in the case of a group or organization, by showing that the economic resources of the individual members of the group or organization are small in comparison to the expense of effective preparation for and participation in the proceeding. (Authorized by K.S.A. 2001 Supp. 66-106, K.S.A. 66-1,185; implementing K.S.A. 66-1,185; effective, E-81-42, Dec. 17, 1980; effective May 1, 1981; amended Oct. 10, 2003.)

82-1-240. General rule. In the final order of electric utility proceedings in which a PURPA issue is considered, the commission may award compensation to consumer intervenors whom it determines eligible for compensation. (Authorized by K.S.A. 66-106, 66-1,185; implementing K.S.A. 66-1,185; effective, E-81-42, Dec. 17, 1980; effective May 1, 1981.)

82-1-241. Application for compensation. An intervenor who wishes to apply for an award of compensation shall file within thirty (30) days after filing of an application, a complaint, or an order of the commission initiating a proceeding: (a) A petition to intervene.

(b) An application setting forth:

(1) A statement of the PURPA position which the intervenor intends to raise in the proceeding.

(2) A statement identifying the consumer interest represented by the intervenor, the relevance of the proceeding to that interest, and why participation is necessary for a full and fair determination of the issues.

(3) A statement of the intervenor’s financial position and a showing that without compensation preparation for and participation in the proceeding in order to advocate a PURPA position will impose a significant financial hardship on the intervenor.

(4) A detailed schedule of expected expenses for attorneys’ fees, expert witness fees, and other reasonable expenses of preparing for, and participating in the proceeding. (Authorized by K.S.A. 66-106, 66-1,185; implementing K.S.A. 66-1,185; effective, E-81-42, Dec. 17, 1980; effective May 1, 1981.)

82-1-242. Preliminary hearing. To determine eligibility for compensation, a preliminary hearing for the presentation of evidence by all parties to the proceeding shall be held within a reasonable time after the final date for intervenor filing of an application for compensation. (Authorized by K.S.A. 66-106, 66-1,185; implementing K.S.A. 66-1,185; effective, E-81-42, Dec. 17, 1980; effective May 1, 1981.)

82-1-243. Preliminary commission determination. The preliminary commission determination shall contain a ruling on the following: (a) Whether the intervenor has met its burden of showing significant financial hardship.

(b) A designation, if appropriate, to join as one (1) party all intervenors with the same or similar interests.

(c) Whether the intervenor has or represents an interest which would otherwise not be adequately represented in the proceeding and representation of which is necessary for a fair determination in the proceeding.

(d) A preliminary award of compensation to eligible intervenors based on the evidence presented of the cost to prepare for and participate in the proceeding in order to advocate the PURPA positions which the intervenor intends to raise, subject to evaluation and determination by the commission at the close of the hearing.

(e) No payment will be made prior to the final order in the proceeding. (Authorized by K.S.A. 66-106, 66-1,185; implementing K.S.A. 66-1,185; effective, E-81-42, Dec. 17, 1980; effective May 1, 1981.)

82-1-244. Accounting of costs. (a) Within ten (10) days after the close of the hearing any intervenor seeking compensation shall file with the secretary of the commission a complete itemized accounting of its actual costs.

(b) All records of the intervenor pertaining to costs for which compensation is sought shall be available for inspection at all reasonable times by the commission and the utility from which such compensation is sought. (Authorized by K.S.A. 66-106, 66-1,185; implementing K.S.A. 66-1,185; effective, E-81-42, Dec. 17, 1980; effective May 1, 1981.)

82-1-245. Award of compensation. (a) At the close of the hearing the commission shall permit all parties to submit written briefs commenting on intervenor compensation.

(b) The commission shall make a final award of compensation to eligible intervenors if in its opinion the intervenor substantially contributed to the approval, in whole or in part, of a position which relates to any subtitle B standard.

(c) The award of compensation shall be measured against the prevailing market rates for persons of comparable training and experience who are offering similar services. In no event shall the fees exceed those paid by the commission or the utility, whichever is greater, for persons of comparable training who are offering similar services. (Authorized by K.S.A. 66-106, 66-1,185; implementing K.S.A. 66-1,185; effective, E-81-42, Dec. 17, 1980; effective May 1, 1981.)

82-1-246. Payment of compensation. (a) Costs of compensation shall be assessed against the utility or utilities participating in the proceeding.

(b) Payment shall be made by the affected utility or utilities directly to the intervenor within thirty (30) days after service of the commission's order determining the reasonable amount of compensation. (Authorized by K.S.A. 66-106, 66-1,185; implementing K.S.A. 66-1,185; effective, E-81-42, Dec. 17, 1980; effective May 1, 1981.)

82-1-247. Relationship to other rules. This article applies only to compensation of consumer intervenors of electric utilities subject to title I of PURPA. Nothing in this rule shall be construed to limit in any way the ability of a person to intervene under K.A.R. 82-1-225. (Authorized by K.S.A. 66-106, 66-1,185; implementing K.S.A. 66-1,185; effective, E-81-42, Dec. 17, 1980; effective May 1, 1981.)

82-1-248. This article will apply to all hearings in which PURPA positions are raised and intervenors in dockets already opened shall be able to seek compensation as of the effective date of this rule. (Authorized by K.S.A. 66-106, 66-1,185; implementing K.S.A. 66-1,185; effective, E-81-42, Dec. 17, 1980; effective May 1, 1981.)

82-1-250. Consumer information and education; telephone preference service subscribership; information for telephone solicitors. (a)(1) On or before September 1, 2001, Southwestern Bell Telephone Company shall coordinate an industrywide forum of all interested local exchange carriers and telecommunications carriers to collectively develop a method or meth-

ods for annually notifying residential subscribers of the information specified in K.S.A. 50-675a(a), and amendments thereto.

(2) The forum shall, within two weeks after its conclusion, submit a report to the commission for approval as to the form and content of the method or methods developed to ensure compliance with K.S.A. 50-675a, and amendments thereto.

(b) In addition to the information required to be provided in paragraph (a)(1) above, the following information, to be provided to the forum by the Direct Marketing Association, shall also be provided to all residential subscribers by all local exchange carriers and telecommunications carriers using the method or methods developed:

(1) The procedure for registering with the Direct Marketing Association's telephone preference service;

(2) the frequency with which the Direct Marketing Association's database is updated;

(3) the types of calls residential subscribers should still expect to receive;

(4) the procedure for registration renewal if residential subscribers move or receive a new telephone number;

(5) the duration of the residential subscriber's registration period; and

(6) the procedure for registration renewal.

(c) Any of the following means may be used in attempting to inform telephone solicitors in Kansas of the criteria for membership in the Direct Marketing Association, the charges for members and nonmembers to access the Direct Marketing Association's database, and options for accessing Kansas-specific portions of the Direct Marketing Association's database:

(1) Beginning September 1, 2001, annual publication in the Kansas register by the commission of the criteria for telephone solicitors to become members of the Direct Marketing Association;

(2) inclusion by the commission of relevant information on its internet web site;

(3) inclusion of relevant information in a newsletter mailing by the Direct Marketing Association; or

(4) inclusion of relevant information by publishers of telephone directories in the consumer information pages in local telephone directories. (Authorized by and implementing K.S.A. 2000 Supp. 50-675a; effective July 20, 2001.)

**Article 2.—OIL AND GAS
CONSERVATION
OIL CONSERVATION**

82-2-100. (Authorized by K.S.A. 55-604; effective, E-72-4, Jan. 1, 1972; effective Jan. 1,

1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-101. (Authorized by and implementing K.S.A. 1981 Supp. 55-128, 55-130, 55-134, 55-136, 55-137, 55-602, 55-604, 55-704, 55-901; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-102. (Authorized by K.S.A. 55-601, 55-602; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1982.)

82-2-103. (Authorized by K.S.A. 55-603; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-104. (Authorized by K.S.A. 55-604; implementing K.S.A. 55-603; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-105 and 82-2-106. (Authorized by and implementing K.S.A. 55-604; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1979; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-107. (Authorized by K.S.A. 55-604, 55-605; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1982.)

82-2-108. (Authorized by K.S.A. 55-603; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-109. (Authorized by and implementing K.S.A. 55-604; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1979; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-110. (Authorized by and implementing K.S.A. 55-604; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1981; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-111. (Authorized by K.S.A. 55-604; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-112 and 82-2-113. (Authorized by K.S.A. 55-603; effective, E-72-4, Jan. 1, 1972; ef-

fective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-114. (Authorized by K.S.A. 55-512, 55-604; implementing K.S.A. 55-512; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-115. (Authorized by and implementing K.S.A. 55-604; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-116. (Authorized by K.S.A. 55-604; implementing K.S.A. 55-131, 55-609; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended May 1, 1978; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-117. (Authorized by K.S.A. 55-604; implementing K.S.A. 55-131, 55-609; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-118. (Authorized by K.S.A. 55-602; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-119. (Authorized by K.S.A. 55-602; implementing K.S.A. 55-118; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-120 and 82-2-121. (Authorized by K.S.A. 55-602; implementing K.S.A. 55-115; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-122. (Authorized by K.S.A. 55-602; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-123. (Authorized by K.S.A. 55-136, 55-137; implementing K.S.A. 55-138; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-124. (Authorized by K.S.A. 55-609a, 55-609b; effective, E-72-4, Jan. 1, 1972; effective

Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-125. (Authorized by and implementing K.S.A. 55-604, 55-704, K.S.A. 1981 Supp. 55-128; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-126. (Authorized by and implementing K.S.A. 55-604; effective May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-127 to 82-2-130. (Authorized by K.S.A. 55-604; implementing K.S.A. 55-603; effective May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-131 to 82-2-199. Reserved.

GAS CONSERVATION

82-2-200. (Authorized by K.S.A. 55-704; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1982.)

82-2-201. (Authorized by K.S.A. 55-704; effective, E-72-4, Jan. 1, 1972; effective, Jan. 1, 1973; revoked May 1, 1982.)

82-2-202. Reserved.

82-2-203. (Authorized by K.S.A. 55-703; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1979.)

82-2-204. (Authorized by and implementing K.S.A. 55-704; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-205 and 82-2-206. (Authorized by K.S.A. 55-703a, 55-705a; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1979.)

82-2-207. (Authorized by K.S.A. 55-705b; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-208. Reserved.

82-2-209. (Authorized by K.S.A. 1978 Supp. 55-711; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1979.)

82-2-210. (Authorized by and implementing K.S.A. 1981 Supp. 55-703; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May

1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-211. (Authorized by and implementing K.S.A. 55-704; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-212. (Authorized by K.S.A. 55-703; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-213. (Authorized by K.S.A. 55-704; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-214. (Authorized by K.S.A. 55-703; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-215. (Authorized by K.S.A. 55-702; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-216. (Authorized by K.S.A. 55-711; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, E-76-38, Sep. 1, 1975; amended May 1, 1976; amended, T-83-14, July 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-217. (Authorized by K.S.A. 55-704; implementing K.S.A. 55-703; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-218. (Authorized by K.S.A. 55-704; implementing K.S.A. 55-711; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-219. (Authorized by K.S.A. 55-704; implementing K.S.A. 55-703; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-220. (Authorized by K.S.A. 55-1203; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-221 to 82-2-224. (Authorized by K.S.A. 55-704; implementing K.S.A. 55-703a, 55-704; effective May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-225. (Authorized by K.S.A. 55-704; implementing K.S.A. 1981 Supp. 55-703; effective May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-226 to 82-2-300. Reserved.

**DRILLING AND PLUGGING OF OIL OR
GAS WELLS AND SEISMIC CORE
OR EXPLORATORY HOLES**

82-2-301. (Authorized by K.S.A. 1978 Supp. 55-128; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1979.)

82-2-302 and 82-2-303. (Authorized by and implementing K.S.A. 1981 Supp. 55-128; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-304. (Authorized by K.S.A. 55-128; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended Feb. 15, 1977; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-305 to 82-2-308. (Authorized by and implementing K.S.A. 1981 Supp. 55-128; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-309. (Authorized by K.S.A. 55-128; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, E-78-3, Nov. 10, 1976; amended May 1, 1978; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-310. (Authorized by K.S.A. 1978 Supp. 55-128a; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1979.)

82-2-311. (Authorized by K.S.A. 55-128a; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1979; amended, T-83-14, July 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-312. (Authorized by K.S.A. 55-128b; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-313. (Authorized by K.S.A. 55-128b;

effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1979.)

82-2-314 to 82-2-399. Reserved.

UNDERGROUND DISPOSAL OF SALT WATER

82-2-400. (Authorized by K.S.A. 65-171d, K.S.A. 1981 Supp. 55-901; implementing K.S.A. 55-1003, 65-171d, K.S.A. 1981 Supp. 55-901; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, E-77-3, Jan. 13, 1976; amended Feb. 15, 1977; amended, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-401. (Authorized by K.S.A. 1981 Supp. 55-901; implementing K.S.A. 55-1003, K.S.A. 1981 Supp. 55-901; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-402. Trial tests; application, contents and approval. (A) On application to and approval by the commission, trial tests may be made in the manner and for such duration as the conditions justify and the commission may permit.

(B) The application for a trial test shall be verified and filed in triplicate with the commission showing (1) the location of the disposal well, (2) location of wells and names of landowners and lessees within one-half mile of the disposal well, (3) description of formation and top and bottom depth where disposal water is to be injected, (4) elevation of the producing formations, (5) disposal well log and description of disposal well casing, (6) such other information as the commission may require to ascertain whether the disposal may be safely and legally made. Trial test application forms may be obtained from the conservation division.

(C) Approval for trial tests will be given by the commission if after investigation it is found that the disposal may be safely made under the proposed plan.

(D) Disposal water may not be injected into a disposal well for a longer period than a trial test without first complying with the requirements herein for permanent disposal. (Authorized by K.S.A. 55-1003; effective, E-72-4, Jan 1, 1972; effective Jan. 1, 1973.)

82-2-403. (Authorized by K.S.A. 1981 Supp. 55-901; implementing K.S.A. 55-1003; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973;

amended, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-404. (Authorized by K.S.A. 1981 Supp. 55-901; implementing K.S.A. 55-1003, K.S.A. 1981 Supp. 55-901; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-405. (Authorized by and implementing K.S.A. 1981 Supp. 55-901; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-406 to 82-2-411. (Authorized by K.S.A. 65-171d, 1981 Supp. 55-901; implementing K.S.A. 55-1003, 65-171d, K.S.A. 1981 Supp. 55-901; effective, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-412 to 82-2-499. Reserved.

FLUID REPRESSURING AND WATER FLOODING OF OIL AND GAS PROPERTIES

82-2-500 to 82-2-504. (Authorized by K.S.A. 55-134, 65-171d; implementing K.S.A. 55-133, 65-171d; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-505. (Authorized by and implementing K.S.A. 1981 Supp. 55-135; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-506. Electric submersible pumps; application and approval. (A) The commission may, upon application, permit the installation and use of electric submersible pumps. No such pumps shall be installed until approved by the commission pursuant to application as herein provided; Provided, however, No application for commission approval shall be required for the installation and use of electric submersible pumps, (1) where the volume of oil to be produced will not exceed the allowable assigned to that individual well in a pool of any class; (2) where a field is unitized for secondary recovery operations.

(B) The application shall be verified and filed in triplicate with the commission, and shall contain the following information: (1) Description of lease and plat showing lease, location of wells

thereon, and all offset leases and operators; (2) location of well to be pumped, formation from which oil is to be produced, and any other well or wells to be used in connection with well to be pumped; (3) size and capacity of pump to be used; (4) estimated oil-water ratio; (5) anticipated maximum daily production of oil; (6) such additional information as the commission may require to ascertain whether the pumps may be used in the furtherance of conservation.

(C) Notice of application shall be given by the applicant by mailing or delivering a copy thereof to operators of all offset leases. Where an offset property is not under lease, notice shall be given to the owner thereof. Such notice shall be mailed or delivered on or before the application is mailed to or filed with the commission. If a hearing be required, notice of the hearing shall be published in at least one (1) issue of a newspaper with general circulation in the county or counties in which the lands involved are located and in such other newspaper as the commission may designate at least ten (10) days prior to the date set for the hearing. The giving of the notice herein required shall be by the commission.

(D) Objections to the application stating reasons for the objection, must be filed with the commission within ten (10) days after the application is filed.

(E) In the event any such objection or complaint is filed or the commission on its own motion deems that there should be a hearing on the application, a hearing shall be had after reasonable notice of the time, place and subject matter of such hearing has been given to the parties in interest.

(F) Orders approving the application will not be entered within ten (10) days of the filing of the application unless the written consent of all persons entitled of notice is filed with the commission within such time. (Authorized by K.S.A. 55-134, K.S.A. 1973 Supp. 55-133; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973.)

82-2-507. Same; assessment of cost. The applicant for any electric submersible pump permit shall, within 30 days after notice by the corporation commission, pay to such commission \$15 for each pump installation involved in the application. (Authorized by K.S.A. 55-135; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973.)

Note: General rules and regulations for representing with air or gas have not been promulgated.

Operators desiring to use such methods should conform to the rules and regulations for water flooding as may be applicable and the commission will make such special orders as the conditions may justify.

82-2-508 to 82-2-510. (Authorized by K.S.A. 55-134, 65-171d; implementing K.S.A. 55-133, 65-171d; effective, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-511. (Authorized by K.S.A. 65-171d, K.S.A. 1981 Supp. 55-901; implementing K.S.A. 55-1003, 65-171d, K.S.A. 1981 Supp. 55-901; effective, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-512. (Authorized by K.S.A. 55-134; implementing K.S.A. 55-133; effective, T-83-8, April 29, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-513 to 82-2-599. Reserved.

COMMINGLING

82-2-600. (Authorized by K.S.A. 55-602; implementing K.S.A. 55-603; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-601 to 82-2-699. Reserved.

PLUGGING OF ABANDONED OIL OR GAS WELLS

82-2-700. (Authorized by K.S.A. 55-141; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; amended, May 1, 1978; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-701 to 82-2-799. Reserved.

NATURAL GAS WELL CLASSIFICATION

82-2-800. (Authorized by K.S.A. 66-1,185; effective, E-80-3, March 8, 1979; effective, E-81-9, April 9, 1980; effective May 1, 1981; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-801. (Authorized by and implementing K.S.A. 66-1,185; effective, E-80-3, March 8, 1979; effective, E-81-9, April 9, 1980; effective May 1, 1981; amended May 1, 1982; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

82-2-802 to 82-2-804. (Authorized by K.S.A. 66-1,185; effective, E-80-3, March 8, 1979;

effective, E-81-9, April 9, 1980; effective May 1, 1981; revoked, T-83-44, Dec. 8, 1982; revoked May 1, 1983.)

Article 3.—PRODUCTION AND CONSERVATION OF OIL AND GAS

82-3-100. General rules and regulations; exception. (a) General rules and regulations shall be statewide in application unless otherwise specifically stated. Special orders shall be issued when required, and shall prevail over general rules and regulations if a conflict occurs.

(b) An exception to the requirements of any regulation may be granted by the commission. Any interested party may file an application for exception. An original and four copies of the application shall be filed with the conservation division. The application for exception shall be set for hearing by the commission. The applicant shall publish notice of the hearing pursuant to K.A.R. 82-3-135. (Authorized by and implementing K.S.A. 1981 Supp. 55-152, 55-604, K.S.A. 55-704; effective T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended April 23, 1990.)

82-3-101. Definitions. (a) As used in these regulations, the following definitions shall apply:

(1) "Acreage factor" means the quotient obtained by dividing the acreage attributable to a well by the basic acreage unit as defined in K.A.R. 82-3-207 and K.A.R. 82-3-312 or as decided by the commission on a case-by-case basis in the basic proration order for the common source of supply in which the well is located.

(2) "Allowable" means the amount of oil or gas authorized to be produced by order of the commission.

(3) "Allowable period" means the time in which the allowable may be produced.

(4) "Alternate cementing materials" means materials used in lieu of portland cement blends, as prescribed by commission order, dated March 29, 1985, Docket No. 34,780-C (C-1825), which is adopted by reference.

(5) "Artesian pressure" means groundwater under sufficient hydrostatic head to rise above the rock unit containing the aquifer.

(6) "Assessment" means any charge against the parties involved in any hearing, application, investigation, or the enforcement of an order, and the assessment on natural gas and oil produced to pay

the costs associated with the administration of the oil or gas conservation act.

(7) "Attributable acreage" means the acreage assigned to a well in accordance with the well spacing program for each of the prorated fields.

(8) "Casing" means tubular materials used to line a well bore.

(9) "Casinghead gas" means gas produced that was in solution with oil in its original state in the reservoir.

(10) "Cement" means portland cement or a blend of portland cement used in the oil and gas industry to support and protect casing and to prevent the migration of subsurface fluids by the formation of an impermeable barrier.

(11) "Coalbed natural gas" means natural gas produced from either coal seams or associated shale.

(12) "Coarse ground bentonite" means a non-treated swelling sodium montmorillonite that exhibits the following properties:

(A) A moisture content between 13 and 17 percent by dry weight;

(B) a clay aggregate particle size between $\frac{3}{8}$ and $\frac{7}{8}$ of an inch;

(C) a pH of 9 or less; and

(D) an inert solid percentage of less than 0.15 percent.

(13) "Commingling" means the mixing of production from more than one common source of supply.

(14) "Commission" means the state corporation commission.

(15) "Common source of supply" means each geographic area or horizon separated from any other area or horizon that contains, or appears to contain, a common accumulation of oil, gas, or both.

(16) "Confining layer" means a formation that serves as a barrier between water-, oil-, or gas-bearing formations.

(17) "Conservation division" means the division of the commission in charge of the administration of the oil and gas conservation acts, the protection of fresh and usable water, well plugging, saltwater disposal, enhanced recovery, and surface ponds.

(18) "Contractor" means any person who acts as an agent for an operator as a drilling, plugging, service rig, or seismograph contractor in the operator's oil and gas operations.

(19) "Core" means a continuous section of formation recovered during drilling.

(20) "Core hole" means a hole drilled with the

intention of collecting geologic information by the recovery of cores.

(21) "Correlative rights" means the privilege of each owner or producer in a common source of supply to produce from that supply only in a manner or amount that will not have any of the following effects:

(A) Injure the reservoir to the detriment of others;

(B) take an undue proportion of the obtainable oil or gas; or

(C) cause undue drainage between developed leases.

(22) "Day" means a period of 24 consecutive hours.

(23) "Deliverability" means the amount of natural gas, expressed in Mcf per day, that a well is capable of producing into a pipeline, while maintaining a back pressure against the wellhead. The amount of back pressure to be maintained and the test procedure shall be specified by the commission in the basic proration order for the common source of supply in which the well is located.

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

(25) "Dike" means a permanent structure that meets the following conditions:

(A) Is constructed at or above the surface of the earth and totally encloses production facilities or lease equipment; and

(B) is used to temporarily contain fluids resulting from oil and gas activities and discharged as a result of unforeseen circumstances.

If there is any excavation below the surface of the earth within the containment area, the dike shall be considered an emergency pit and shall require a permit in accordance with K.A.R. 82-3-600.

(26) "Director" means the director of the conservation division of the commission.

(27) "Division order" means a dated, written statement, duly signed by the owners and delivered to the purchasers, certifying and guaranteeing the interests of ownership of production and directing payment according to those interests.

(28) "Drilling time log" means the chronological tabulation or plotting of the rate of penetration of subsurface rocks by the rotary bit.

(29) "Enhanced recovery" means any process involving the injection of fluids into a pool to increase the recovery of oil or gas.

(30) "Exploratory hole" means a hole drilled for the purpose of obtaining geological information in

connection with the exploration for or production of oil or gas.

(31) "Field" means a geographic area containing one or more pools.

(32) "First purchaser" means the person holding the division order and issuing checks to pay any working or royalty interest.

(33) "Fluid" means a material or substance that flows or moves in a semisolid, liquid, sludge, or gas state.

(34) "Freshwater" means water containing not more than 1,000 milligrams of total dissolved solids per liter. This upper limit is approximately equivalent to 1,000 parts of salt per million or 500 parts of chlorides per million.

(35) "Gas" means the gas obtained from gas or combination wells, regardless of its chemical analysis.

(36) "Gas (cubic foot)" means the volume of gas contained in one cubic foot of space at a standard pressure base and at a standard temperature base. The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be 60 degrees Fahrenheit.

(37) "Gas-oil ratio" means the ratio of gas produced, in cubic feet, to one barrel of oil produced during the concurrent period.

(38) "Gas (sour)" means either of the following:

(A) Any natural gas containing more than 1½ grains of hydrogen sulfide per 100 cubic feet or more than 30 grains of total sulphur per 100 cubic feet; or

(B) gas that is found by the commission to be unfit for sale due to its hydrogen sulfide content.

(39) "Illegal production" means any production in violation of the statutes, rules, regulations, or orders of the commission.

(40) "Injection" means injection of fluids or natural gas for enhanced recovery, or disposal of brines or fluids into an injection well.

(41) "Liquid" means a solution or substance, excluding gas, that flows freely at standard temperature and pressure.

(42) "Mousehole" means a service hole drilled at a slight angle and normally about 30 feet deep on those wells drilled by rotary tools.

(43) "Mud-laden fluid," as the term is commonly used in the industry, means any commission-approved mixture of water and clay, and may include additional materials that will effectively seal a formation to which they are applied.

(44) "Multiple completion" means the completion of any well that permits production from two

or more common sources of supply with the common sources of supply completely segregated.

(45) "Oil (crude)" means any petroleum hydrocarbon that is produced from a well in liquid phase and that existed in a liquid phase in the reservoir.

(46) "Oil (pipeline)" means oil free from water and basic sediment to the degree that it is acceptable for pipeline transportation and refinery use.

(47) "Open flow" means the volume of gas that a gas well is capable of producing at the wellhead during a period of 24 hours against atmospheric pressure, computed according to the standard procedure approved by the commission.

(48) "Operator" means a person who is responsible for the physical operation and control of a well, gas-gathering system, or underground natural gas storage facility.

(49) "Overage" or "overproduction" means the oil or gas produced in excess of the allowable.

(50) "Person" means any natural person, corporation, association, partnership, governmental or political subdivision, receiver, trustee, guardian, executor, administrator, fiduciary, or any other legal entity.

(51) "Pipeline" means any pipes above or below the ground used or to be used for the transportation of oil or gas in either a liquid or gaseous state.

(52) "Pit" means any constructed, excavated, or naturally occurring depression upon the surface of the earth, which shall include surface ponds as referenced in K.S.A. 55-171 and amendments thereto.

(A) "Burn pit" means a pit used for the temporary confinement of oil leakage at a lease site or of materials commonly known as tank bottoms, basic sediment, bottom sediment, bottom settlements, or paraffin, for the purpose of burning these contents.

(B) "Containment pit" means a temporary pit constructed to aid in the cleanup and to temporarily contain fluids resulting from oil and gas activities that were spilled as a result of immediate, unforeseen, and unavoidable circumstances.

(C) "Drilling pit" means any pit, including working pits and reserve pits, used to temporarily confine fluid or exempt exploration and production waste resulting from oil and gas activities, or store spent drilling fluids generated during the drilling or completion of any oil and gas exploration hole, service well, or storage well.

(D) "Emergency pit" means a permanent pit that is used for the emergency storage of oil or saltwater, or both, discharged as a result of any equipment malfunction.

(E) "Haul-off pit" means a pit used to store spent drilling fluids and cuttings transferred from working pits or steel pits at a well location whose surface geologic conditions or near surface geologic conditions, or both, preclude the use of an earthen reserve pit.

(F) "Reserve pit" means a pit used to store spent drilling fluids and cuttings transferred from working pits and permitted as a drilling pit.

(G) "Settling pit" means a pit used for the collection or treatment of fluids, or both, resulting from oil and gas activities.

(H) "Working pit" means a pit used to temporarily confine fluids or refuse resulting from oil and gas activities during the drilling or completion of any oil, gas, exploratory, service, or storage well and permitted as a drilling pit.

(I) "Workover pit" means a pit used to contain fluids during the performance of remedial operations on a previously completed well.

(53) "Pool" means a single and separate natural reservoir of oil or gas characterized by a single pressure system.

(54) "Producer" means any person who owns, in whole or in part, a well capable of producing oil or gas, or both.

(55) "Production" means produced oil, gas, condensate, or casinghead gas.

(56) "Productivity of a well" means the daily capacity of a well to produce oil or gas.

(57) "Productivity of a pool" means the sum of the productivities of the wells completed in the pool.

(58) "Proration" means the regulation of the amount of allowed production to prevent waste or to prevent any of the following in a manner that would favor any one pool as compared to any other pool in this state:

(A) Undue drainage between developed leases;

(B) unratable taking; or

(C) unreasonable discrimination between or among operators, producers, and royalty owners who are within a common source of supply.

(59) "Purchaser" means any person who purchases production from a well, lease, or common source of supply.

(60) "Rathole" means the service hole drilled at a slight angle and normally about 40 feet deep on those wells drilled by rotary tools.

(61) "Reasonable market demand" means the amount of crude petroleum or natural gas that must be produced to satisfy current rates of consumption.

(62) "Recompletion" means that a well is reworked for the purpose of developing new zones after its initial well completion.

(63) "Refuse" means any exempt exploration and production waste, as defined in 40 C.F.R. 261.4(b)(5), published July 1, 2000, and hereby adopted by reference, generated from oil and gas activities, including produced or nonproduced accumulated water in a pit or dike.

(64) "Seismic shot hole" means the borehole in which an explosive is detonated for the purpose of generating a seismic signal.

(65) "Sensitive groundwater area" means a geographic area designated by the commission as having hydrogeologic, climatic, soil, and other characteristics that make the area's fresh and usable groundwater vulnerable to pollution from oil and gas activities.

(66) "Shortage" means the amount by which the oil or gas legally produced and either sold or removed from the premises is less than the allowable.

(67) "Solid" means a material or substance that does not flow freely at standard temperature and pressure.

(68) "Special order" means an order directed to specifically named persons or to a group that does not constitute a general class and that is dispositive of a particular matter as applied to a specific set of facts.

(69) "Spill" means any escape of saltwater, oil, or refuse by overflow, seepage, or other means from the vicinity of oil, gas, injection, service, or gas storage wells, or from tanks, pipelines, dikes, or pits, if the wells, tanks, pipelines, dikes, or pits are involved in or related to any of the following:

(A) The exploration or drilling for oil or gas;

(B) the lease storage, treatment, or gathering of oil or gas; or

(C) the drilling, operating, abandonment, or postabandonment of wells. For purposes of this regulation, "vicinity" means the area within six feet of the wellhead.

(70) "Spud date" means the date of first actual penetration of the earth with a drilling bit.

(71) "Storage oil" means produced oil confined in tanks, reservoirs, or containers.

(72) "Storage oil (lease)" means produced oil in

tanks, reservoirs, or containers on the lease where it was produced.

(73) "Stratigraphic hole" means a hole, normally of small diameter, that is drilled through subsurface strata for exploratory purposes, with no intent to produce hydrocarbons through the hole being drilled, and does not utilize a detonated explosive for generating a seismic signal.

(74) "Surface casing" is the first casing put in a well that is cemented into place. It serves to shut out shallow water formations. It also acts as a foundation or anchor for all subsequent drilling activity. For purposes of compliance with K.A.R. 82-3-106, additional strings of casing that are set and cemented in a well bore below the lowest fresh and usable water strata shall be deemed to be surface casing.

(75) "Tertiary recovery process" means the process or processes described in K.S.A. 79-4217, and amendments thereto.

(76) "Underage" and "under production" mean the difference between the assigned oil or gas allowable volume and the actual oil or gas production volume if the actual oil or gas production volume is less than the assigned oil or gas allowable volume.

(77) "Undue drainage" means the uncompensated migration of either oil or gas between or among developed leases within the same common source of supply caused by the unratable production of any well or wells located on one or more of the leases.

(78) "Usable water" means water containing not more than 10,000 milligrams of total dissolved solids per liter. This upper limit is approximately equivalent to 10,000 parts of salt per million or 5,000 parts of chlorides per million.

(79) "Waste oil" means any tank bottom; basic sediment; cut oil; reclaimed oil from pits, ponds, or streams; dead oil; emulsions; or other types of oil not defined as pipeline oil.

(80) "Waterflood" means the process of injecting fluids into one or more wells to enhance the recovery of oil.

(81) "Well" means any hole or penetration of the surface of the earth for geological, geophysical, or any oil and gas activity.

(A) "Combination well" means a well that produces both oil and gas, excluding casinghead gas, from the same common source of supply.

(B) "Discovery well" means the first well completed in a common source of supply that is not

in communication with any other common source of supply.

(C) "Disposal well" means a well into which those fluids brought to the surface in connection with oil and natural gas production are injected, for purposes other than enhanced recovery.

(D) "Enhanced recovery injection well" means a well into which fluids are injected to increase the recovery of hydrocarbons.

(E) "Gas well" means a well that meets either of the following criteria:

(i) Produces gas not associated with oil at the time of production from the reservoir; or

(ii) produces more than 15,000 standard cubic feet of gas to each stock tank barrel of oil from the same common source of supply, as measured by the gas-oil ratio test prescribed by and reported on the form furnished by the commission.

(F) "Hardship well" means a well authorized by commission order to produce at a specified rate because reasonable cause exists to expect that production below the specified rate would damage the well and cause waste.

(G) "Injection well" means a well that is used for any of the following:

(i) To inject brine or other fluids that are brought to the surface in connection with natural gas storage operations or oil or natural gas production and that may be commingled with waste waters from gas plants that are an integral part of production operations, unless those waste waters are classified as a hazardous waste at the time of injection;

(ii) to conduct enhanced recovery operations for oil or natural gas;

(iii) to store hydrocarbons that are liquid at standard temperature and pressure;

(iv) to conduct simultaneous injection operations; or

(v) to inject permitted fluids.

(H) "Minimum well" means any oil well that has a productivity of 25 barrels or less per day.

(I) "Oil well" means a well that has produced one stock tank barrel or more of crude oil to each 15,000 standard cubic feet of gas, as measured by the gas-oil ratio test prescribed by and reported on the form furnished by the commission. One stock tank barrel is equivalent to 42 U.S. gallons measured at 60° F.

(J) "Service well" means a well drilled for any of the following:

(i) The injection of fluids in enhanced recovery projects;

(ii) the supply of fluids for enhanced recovery projects; or

(iii) the disposal of saltwater.

(K) "Storage well" means a well used to inject or extract natural gas for storage purposes.

(82) "Wellhead working pressure" means the static pressure in the annulus while flowing through the tubing, or static pressure in the tubing while flowing through the annulus, except in cases in which the casinghead is not in open communication with the producing formation because of the presence of a packer or other obstruction in the annular space between the casing and tubing. In these cases, the wellhead working pressure shall be determined by adjusting the observed tubing pressure for the effect of friction caused by flow through the tubing, or by using a bottom-hole pressure bomb and correcting back to wellhead conditions.

(83) "Well history" means the chronological record of the development and completion of a well.

(84) "Well log" means the written record progressively describing the well's down-hole development.

(b) Any term not defined in this regulation or in any applicable commission rule, regulation, or order shall be interpreted to be consistent with its common use in the industry. (Authorized by K.S.A. 55-152, 55-602, 55-604, 55-704, and 55-901; implementing K.S.A. 55-152, 55-171, 55-172, 55-602, 55-704, 55-901, and 74-623; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended, T-84-19, July 26, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-46, Dec. 19, 1986; amended May 1, 1987; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990; amended July 29, 1991; amended March 20, 1995; amended Oct. 25, 1996; amended March 19, 1999; amended April 23, 2004; amended Dec. 22, 2006.)

82-3-102. Classification of wells; determining and naming common sources of supply; nomenclature committee. Wells shall be classified by the common sources of supply from which they produce. Common sources of supply shall be determined and named by the commission after considering the recommendations of the conservation division and the nomenclature committee of the Kansas geological society. In naming common sources of supply, preference shall be

given to common usage and geographic names. Separate common sources of supply within the same field shall, if possible, be named according to the producing formation. The commission may redetermine a common source of supply whenever necessary. (Authorized by K.S.A. 55-604; implementing K.S.A. 55-603; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983.)

82-3-103. Notice of intention to drill; penalty. (a) Notice required.

(1) Intent to drill. Unless otherwise provided by K.A.R. 82-3-115a or K.A.R. 82-3-701, the owner, operator, or any other person responsible for a drilling operation shall submit written notice of the intention to drill to the conservation division for permit approval before the commencement of drilling operations for any of the following:

- (A) Exploratory holes;
- (B) a well to be drilled for the discovery or production of oil, gas, or other minerals, including reentry of a previously plugged and abandoned well;

- (C) a service well;
- (D) a storage well; or
- (E) a stratigraphic or core hole.

(2) Form and contents. The notice shall be submitted on a form prescribed by the commission. The notice shall be filled in completely and shall contain the following:

- (A) The operator's name, address, and commission license number;
- (B) the contractor's name, address, and commission license number;
- (C) the date on which drilling is anticipated to begin;
- (D) the lease name, quarter section, section, range, township, county, and the distance of the proposed drilling location from the section's nearest corner, in exact footages;
- (E) the distance to the nearest lease or unit boundary line;
- (F) the estimated total depth of the well;
- (G) the type of drilling equipment to be used;
- (H) the depth to the bottom of the deepest freshwater at the drill site;
- (I) the depth to the bottom of the deepest usable water formation at the drill site;
- (J) for each exploratory hole, the estimated depth to water in each hole and to the top of the uppermost confined aquifer;
- (K) for each well to be drilled into a common source of supply subject to a basic proration order

of the commission, a plat map showing that the well will be located as specified in the basic proration order in relationship to other wells producing from the common source of supply, both within the area subject to proration and within one mile of the boundaries of the prorated area for gas wells and within one-half mile of the boundaries of the prorated area for oil wells;

(L) for each well to be drilled in locations not subject to a basic proration order, a plat map showing the well location; and

(M) any other relevant information that may be requested by the commission.

(b) District office notification. Before spudding the well, the operator shall notify the appropriate district office. Failure to notify the appropriate district office before spudding the well shall be punishable by a penalty of not less than \$250 and not more than \$1000.

(c) Surface casing and cementing. The conservation division shall give surface casing and cementing requirements to the operator along with the approved notice of the intention to drill. Unless otherwise provided, inadequate installation of or failure to install surface casing or failure to complete alternate II cementing pursuant to K.A.R. 82-3-106 shall each be punishable by a penalty of up to \$5000.

(d) Commencement of drilling. Drilling shall not commence until after commission approval has been received. The operator shall post a copy of the approved notice of intent to drill on each drilling rig. Drilling before receiving commission approval or drilling without an approved notice of intent to drill posted on the drilling rig shall be punishable by a \$1000 penalty.

(e) Plugging instructions. The conservation division shall give preliminary plugging instructions to the operator along with the approved notice of intention to drill.

(f) Expiration of approval. The approval of the notice of intent to drill shall expire one year from the date of approval.

(g) Extension. No extension of the one-year period shall be granted.

(h) Division of water resources information. The operator may be required by the commission to designate, on the written notice of intention to drill, the source of drilling water and the vested right or permit file number assigned by the division of water resources of the state department of agriculture. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-151, 55-152, 55-164; effective,

T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended April 23, 1990; amended Feb. 24, 1992; amended March 20, 1995; amended Oct. 25, 1996; amended Oct. 26, 2007.)

82-3-103a. Deviated holes; horizontal drilling; notice and hearing required. (a) The owner, operator, or persons responsible for a drilling operation shall submit written notice of the intention to drill for approval by the conservation division before the commencement of drilling operations, for any hole where intended deviation from the surface to the top of the producing formation exceeds 7°.

(b) Any hole drilled horizontally into a formation for production or deviated in the manner stated in subsection (a) may be permitted by the commission only after application to the conservation division and notice pursuant to K.A.R. 82-3-135a. The application may be set for hearing by the commission. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-151; effective May 8, 1989; amended April 23, 1990; amended Aug. 29, 1997.)

82-3-104. Pollution; prevention. Every person who drills a well or test hole, for any purpose, that penetrates formations containing oil, gas, fresh water, mineralized water, or valuable minerals shall case or seal off these formations to effectively prevent migration of oil, gas, or water from or into strata that would be damaged by this migration. The effectiveness of the casing or sealing off shall be tested in a manner prescribed or approved by an agent of the commission. (Authorized by K.S.A. 55-602; implementing K.S.A. 1982 Supp. 55-159; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983.)

82-3-105. Well cementing. The use of cement in setting casing or sealing off producing formations, underground porosity gas storage formations, or fresh and usable water formations shall be required.

This regulation shall be effective on and after October 29, 2002. (Authorized by K.S.A. 55-152 and K.S.A. 2001 Supp. 55-1,115 and 74-623; implementing K.S.A. 55-156 and K.S.A. 2001 Supp. 55-1,115 and 74-623; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 8, 1989; amended, T-82-6-27-02, July 1, 2002; amended Oct. 29, 2002.)

82-3-106. Cementing-in surface casing; penalty. (a) Beginning of drilling operations. Drilling shall not begin until the operator has received the approved notice of intent to drill from the conservation division, pursuant to K.A.R. 82-3-103. The notice of intent to drill shall indicate the amount of surface casing that shall be set.

(b) Depth. The depth of required surface casing shall be determined in the following manner.

(1) The operator shall set a minimum of 50 feet of steel surface casing in the well, except as otherwise provided by paragraph (b)(2).

(2) Table I, which establishes minimum surface casing requirements as incorporated by reference in commission order dated August 1, 1991, docket no. 34,780-C (C-1825), shall be used to determine the required depth of the surface casing and the cementing requirements for the protection of fresh and usable water. Upon submission of additional information, adjustments to the required depth of the surface casing may be made by the commission. These adjustments shall be indicated on the approved notice of intent to drill.

(A) Operators who drill wells in areas referenced in commission order dated June 29, 1994, docket no. 133,891-C, may set surface casing at the minimum depth set forth in that docket.

(B) An exception to the requirements set forth in table I, as incorporated by reference in commission order dated August 1, 1991, docket no. 34,780-C (C-1825), may be granted by the director.

(3) The failure to install surface casing shall be punishable by a \$5000 penalty, and any well not in compliance with the requirements of this regulation shall be shut-in until compliance is achieved.

(c) Cementing and time requirements. Protection of fresh and usable water shall be accomplished by one of the two following alternatives.

(1) Alternate I. The surface casing shall be cemented to the surface with a portland cement blend. The surface casing shall be set and cemented below all fresh and usable water strata, according to the requirements established pursuant to subsection (b). An operator shall not drill to any depth to test for oil or gas without having set and cemented a continuous string of surface casing.

(2) Alternate II. Surface casing shall be set and cemented in the following manner:

(A) The first string of casing shall be set through all unconsolidated material plus 20 feet

into the underlying formation. The surface casing shall be cemented to the surface with a portland cement blend. An operator shall not drill to any depth to test for oil or gas without having set and cemented this string of casing.

(B) (i) All additional casing which is next to the borehole shall be cemented by circulating cement to the surface from a point at least 50 feet below the base of the lowest known fresh and usable water, according to the requirements established pursuant to subsection (b). Cementing shall be completed with a portland cement blend except as provided by paragraph (d)(3).

(ii) The operator shall notify the appropriate district office prior to the cementing of the additional casing. If a time period is specified by table I, as incorporated by reference in commission order dated August 1, 1991, docket no. 34,780-C (C-1825), the additional cementing shall be completed within the time period specified. If a time period is not specified in table I, referred to in paragraph (b)(2), the additional cementing shall be completed within a time period sufficient to allow compliance with K.A.R. 82-3-106(e). Extensions of the time period within which the additional cementing must be completed may be granted by the director. Requests for these extensions shall be made in writing and shall state the reason for extension. Requests shall be submitted to the director within 120 days after the spudding of the well.

(iii) A backside squeeze, which is the uncontrolled placement of cement in the annular space between the surface casing and production casing from the surface down, shall be permitted only upon a request to the appropriate district office. Requests shall be granted only upon the approval of the cement evaluation method to be utilized and submitted as verification of cement placement.

(d) Methods and materials to be used in setting and cementing of surface casing.

(1) In setting surface casing, the surface hole diameter shall be sufficiently larger than the surface casing to permit circulation of the cement.

(2) The annular space between the surface casing and the borehole shall be filled with a portland cement blend. The cement shall be maintained at surface level.

(3) The use of any material other than a portland cement blend shall be prohibited except for the alternative cementing materials as defined by commission order dated August 1, 1991, docket

no. 34,780-C (C-1825), which is incorporated by reference.

(4) The cemented casing string shall stand and further operations shall not begin until the cement has been in place for at least eight hours and has reached a compressive strength of 300 pounds per square inch. This requirement may be modified by specific order of the commission.

(e) Affidavit.

(1) Each operator shall file a sworn affidavit with the conservation division setting out the type, amount, and method of cementing used on all casing strings in a wellbore. The affidavit shall be filed within 120 days of the spud date of the well, or as otherwise required by K.A.R. 82-3-130(b), on the form provided by the commission.

(2) Legible documentation of the cementing operations across fresh and usable water strata shall be attached to the affidavit. The documentation may consist of invoices, job logs, job descriptions, or other similar service company reports.

(3) Falsification of documentation or the failure to complete alternate II cementing shall be punishable by a \$5000 penalty, and any well not in compliance with requirements of this regulation shall be shut-in until compliance is achieved. (Authorized by K.S.A. 1993 Supp. 55-152; implementing K.S.A. 1993 Supp. 55-151, 55-152, 55-159, 55-162, 55-164; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended, T-85-1, Jan. 13, 1984; amended, T-85-51, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-46, Dec. 19, 1986; amended May 1, 1987; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990; amended Feb. 24, 1992; amended March 20, 1995.)

82-3-107. Preservation of well samples, cores, and logs; penalty. (a) Each operator drilling or responsible for drilling service wells or drilling or recompleting holes for the purpose of the exploration or production of oil or gas, excluding seismic shot holes, shall preserve and retain samples or drill cuttings, cores, and all other information as required under subsection (d).

(b) All formation samples or drill cuttings normally saved in drilling or recompletion operations and any cores taken shall be retained by the operator for 120 days after the spudding of the well.

(c)(1) Upon request of the Kansas geological survey as specified in paragraph (c)(2), the sam-

ples shall be washed and cut into splits or sets. One set shall be placed in labelled sample envelopes and delivered, at the prepaid expense of the operator, to the Kansas geological survey, sample library, Wichita, Kansas. Upon request of the Kansas geological survey, all cores or core longitudinal sections not required by the operator for well evaluation purposes shall be placed in stratigraphic sequence in adequate boxes, labelled with the well name, location, and footage, and delivered, at the prepaid expense of the operator, to the Kansas geological survey, Lawrence, Kansas.

(2) The operator shall be given notice that samples or cores are required by a notice appended to or on a copy of the notice of intention to drill returned to the operator by the conservation division or the Kansas geological survey. Delivery of the processed samples or cores shall be made within 120 days of the spud date or date of commencement of recompletion of the well.

(3) If retention of the core is required by the operator, designated Kansas geological survey staff members shall be provided unrestricted access to the core at the operator's facility during the operator's normal business hours. This access shall be subject to any confidentiality requests made under subsection (e).

(4) Operators in physical possession of cores requested by the Kansas geological survey shall not dispose of the cores without permission of the Kansas geological survey.

(5) If the Kansas geological survey requests samples from portions of the hole that are not normally saved in drilling operations, the operator shall provide these samples. The sample library shall accept all washed and cut samples whether or not they were requested.

(d)(1) The following information shall be delivered to the conservation division, within 120 days of the spud date or date of commencement of recompletion of the well:

- (A) A copy of the affidavit of completion;
- (B) core analyses;
- (C) final drill stem data elements;
- (D) recorded drill stem fluid recoveries and charts;
- (E) final electric logs;
- (F) final radioactivity logs;
- (G) similar wireline logs or surveys run by operators on all boreholes, excluding seismic shot holes;
- (H) final logs run to obtain geophysical data;
- (I) geological well reports; and

(J) if available, final electronic log files in a data format and medium approved by the director, including the following:

- (i) A log American standard code for information interchange standard (LAS) file, using version 2.0 or a newer version; and
- (ii) an image file.

If electronic log files are available, these files shall be delivered to the conservation division in lieu of the paper logs required by this regulation.

(2) For good cause shown, an extension of 60 days may be granted by the supervisor of the production department or the supervisor's designated agent for the submission of the required information. The request for extension shall be submitted in writing and received before the expiration of the 120-day period.

(3) The conservation division shall deposit the information with the Kansas geological survey.

(4) Failure to deliver the information to the conservation division shall be punishable by a \$500 penalty and operator license review.

(e)(1) If a written request for confidentiality is made to the conservation division within 120 days of the spud date or the date of commencement of recompletion of the well, all information, samples, or cores filed as required in subsections (c) or (d) shall be held in confidential custody for an initial period of one year from the written request.

(2) All rights to confidentiality shall be lost if the filings are not timely, as provided in subsections (c) and (d), or if the request for confidentiality is not timely, as provided in paragraph (e)(1).

(3) Samples, cores, or information may be released before the expiration of the one-year period only upon written approval of the operator.

(4) If a request for an extension is made at least 30 days before the expiration of the initial one-year period, the period of confidentiality may be extended for one additional year.

(f) Each wire line service company shall furnish to the conservation division, on a form prescribed by the commission, a list of all logging services performed on each hole serviced in the state of Kansas each month by the twentieth day of the month following the month in which the services were performed. Failure to submit or timely submit the list shall be punishable by a \$250 penalty. (Authorized by K.S.A. 55-152 and 55-164; implementing K.S.A. 55-604 and 55-704; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended May 1, 1988; amended May 8, 1989;

amended April 23, 1990; amended June 6, 1994; amended Oct. 24, 2008.)

82-3-108. Well location; exception. (a) General setback requirement. Except as provided by subsection (b) or (c), an oil well or gas well shall not be drilled nearer than 330 feet from any lease or unit boundary line.

(b) Setback requirements for eastern Kansas.

(1) An oil well that is drilled to a total depth of less than 2,000 feet and is drilled in one of the following counties shall not be drilled nearer than 165 feet from the nearest lease or unit boundary line: Allen, Anderson, Atchison, Bourbon, Brown, Cherokee, Coffey, Crawford, Douglas, Elk, Franklin, Greenwood, Jackson, Jefferson, Johnson, Labette, Leavenworth, Linn, Lyon, Miami, Montgomery, Neosho, Osage, Shawnee, Wilson, Woodson, and Wyandotte.

(2) An oil well that is drilled in Chautauqua County and is drilled to a total depth of less than 2,500 feet shall not be drilled nearer than 165 feet from the nearest lease or unit boundary line.

(c) Well location exception. A well location exception may be granted to permit drilling within shorter distances than those provided in subsection (a) or (b), whichever is applicable, and to the acreage attributable and assigned allowables, if these exceptions are necessary either to prevent waste or to protect correlative rights. In granting the exception, the acreage attributable to the well and the assigned allowables shall be considered.

(d) Application for well location exception. If an exception to this regulation is desired according to subsection (c), an application shall be submitted to the conservation division. The application shall contain the following:

(1) A brief explanation of the exception or exceptions requested;

(2) the proposed location of the well, including the distance to the nearest lease or unit boundary line;

(3) a list of the following:

(A) Each offset operator whose lease line is located less than the required distance from the proposed location;

(B) each unleased offset mineral owner whose property boundary is located less than the minimum distance required by subsection (a) or (b) from the proposed locations; and

(C) the applicant's lessor or lessors, if the applicant operates any lease that will be situated less

than the minimum distance required by subsection (a) or (b) from the proposed well location;

(4) the acreage attributable to the well; and

(5) the allowable requested.

(e) Additional application requirements. Each application submitted under subsection (d) shall be accompanied by the proposed notice of the intention to drill and a plat, drawn to the scale of one inch equalling 1,320 feet, that accurately shows the following:

(1) The property on which the well is sought to be drilled;

(2) all other completed, partially drilled, or permitted wells on the property; and

(3) all adjacent properties and wells.

(f) Notice; protest. Notice of the application shall be provided to all parties specified in paragraphs (d)(3)(A), (d)(3)(B), and (d)(3)(C) of this regulation and shall be published as required by K.A.R. 82-3-135a(d). If a protest is filed in accordance with K.A.R. 82-3-135a(e), the application shall be set for hearing by the commission.

(g) Approval of intent to drill. Upon the issuance of a written permit by the conservation division for the well location exception, the proposed notice of intention to drill shall be approved in accordance with K.A.R. 82-3-103, if all other applicable requirements for approval have been met.

(h) Allowable required. Each operator of any well drilled nearer than the minimum distance required by subsection (a) or (b) from any lease or unit boundary line without a previously obtained well location exception shall be prohibited from producing either oil or gas until an appropriate allowable is determined.

(i) Factors considered for allowable. Whenever authority is granted to drill a well at a location other than a location specified by this regulation, the allowable shall be determined by the conservation division for the protection of the correlative rights of all persons entitled to share in the common source of supply in accordance with K.A.R. 82-3-207 and K.A.R. 82-3-312. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-152, 55-603, 55-605, 55-703a, 55-706; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended, T-85-51, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended April 23, 1990; amended Jan. 14, 2005; amended Oct. 24, 2008.)

82-3-109. Application for well spacing, basic proration orders; evidence; hearing.

(a) Contents. Any interested party may file an application for, or an application for amendments to, a well spacing or basic proration order. The application shall include the following:

(1) If the application is for amendment, a description of the nature of the amendment sought;

(2) The location, depth, and common source of supply from which a well or wells in the subject acreage are producing;

(3) a description of the acreage subject to the application, with an affirmation that all of the acreage is reasonably expected to be productive from the subject common source of supply;

(4) the proposed well location restriction and proposed provisions or any exceptions thereto;

(5) the proposed configuration of producing units for acreage attribution purposes;

(6) the name and address of each operator or lessee of record in the subject acreage, and a certificate of mailing indicating the date service of a copy of the application was made to each;

(7) the name and address of each owner of record of the minerals in unleased acreage within the subject acreage, and a certificate of mailing indicating the date service of a copy of the application was made to each;

(8) the name and address, as shown by the applicant's books and records, of each person owning the royalty or leasehold interest in the subject acreage and operated by the applicant, or on which the applicant has a lease or an interest in the lease, and a certificate of mailing indicating the date service of a copy of the application was made to each;

(9) if a proration formula is sought, the specific factors proposed to be utilized in the allocation of production;

(10) the applicant's license number; and

(11) such other information which may be required by the commission.

(b) Evidence. Applicants for a spacing or basic proration order or for amendments adding or deleting acreage in an existing spacing or basic proration order shall file with the application the following evidence in support of the application:

(1) a net sand isopachous map of the subject common source of supply;

(2) a geological structure map of the subject common source of supply;

(3) to the extent practicable, a cross-section of

logs representative of wells in the acreage affected by the application;

(4) any available drill stem test data;

(5) an economic analysis, including a reservoir or drainage study which supports the specific pattern sought in the application; and

(6) any other information which may be required by the commission.

(c) Notice. An original and four copies of the application shall be filed with the conservation division. The application shall be set for hearing by the commission. The applicant shall publish notice of the hearing pursuant to K.A.R. 82-3-135.

(d) Drilling prohibited. Once notice of the hearing has been provided, any drilling of wells within an area sought to be spaced or prorated under the provisions of this regulation and before commission approval of the well spacing proposal shall be prohibited unless the intended well location conforms to the most restrictive location provisions sought in the pending application or applications. An exception to this requirement may be granted after notice and hearing. (Authorized by K.S.A. 1989 Supp. 55-604, K.S.A. 55-704; implementing K.S.A. 1989 Supp. 55-603, 55-605, 55-706, K.S.A. 55-703a, 55-704; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended, T-85-51, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990.)

82-3-110. Penalties for violations of well spacing, basic proration orders.

(a) Any well drilled or being drilled in violation of an order or rule of the commission in effect at the time drilling commences shall be considered to be an unlawful location. Such a well shall be presumed to be in violation of correlative rights and to constitute waste. A show cause order to determine whether the drilling of the well was necessary to protect correlative rights or prevent waste may be issued by the commission, either upon receipt of a complaint or on the commission's own motion. A hearing shall be held after notice to all interested parties.

(b) If the commission determines that good cause has not been shown or that an exception should be denied, an order may be issued by the commission requiring the well to be permanently capped or plugged and abandoned in accordance with the rules of the commission, or production at a reduced rate may be permitted by the com-

mission to ensure protection of correlative rights and the prevention of waste. (Authorized by K.S.A. 1989 Supp. 55-604, K.S.A. 55-704; implementing K.S.A. 1989 Supp. 55-604, 55-605, K.S.A. 55-703a, 55-704; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended April 23, 1990.)

82-3-111. Temporarily abandoned wells; penalty; plugging. (a) Temporary abandonment approval or plugging required. Within 90 days after operations cease on any well drilled for the purpose of exploration, discovery, service, or production of oil, gas, or other minerals, the operator of that well shall perform either of the following:

- (1) Plug the well; or
- (2) file an application with the conservation division requesting temporary abandonment authority, on a form prescribed by the conservation division.

(b) Approval of temporary abandonment. No well shall be temporarily abandoned as described in subsection (a) unless first approved by the conservation division. If the operations on any temporarily abandoned well or other inactive well are not resumed within one year after the application has been approved, the well shall be deemed a permanently abandoned well, and the operator of the well shall comply with regulations of the commission relating to the plugging of wells. Upon application to the conservation division before the expiration of the one-year period and for good cause shown, the period may be extended by the conservation division for one year. Additional one-year extensions may be granted by the conservation division. A well shall not be eligible for temporary abandonment status if the well has been shut in for 10 years or more without an application for an exception pursuant to K.A.R. 82-3-100 and approval by the commission. The failure to file a notice of temporary abandonment shall be punishable by a \$100 penalty.

(c) Right of denial. After an application for temporary abandonment has been filed, the well shall be subject to inspection by the conservation division to determine whether its temporary abandonment could cause pollution of fresh and usable water resources. If necessary to prevent the pollution of fresh and usable water, temporary abandonment may be denied by the conservation division, and the well may be required to be plugged or repaired according to the direction of the con-

servation division and in accordance with its regulations.

(d) Plugging of temporarily abandoned wells. At the expiration of any approved temporary abandonment period, each well temporarily abandoned shall be plugged, repaired, or returned to operation in accordance with applicable regulations.

(e) Certain wells exempted. The requirements of this regulation shall not apply to any well that meets all of the following criteria:

- (1) The well is fully equipped for production of oil or gas or for injection.
- (2) The well is capable of immediately resuming production of oil or gas or of injection.
- (3) The well is subject to a valid, continuing oil and gas lease.
- (4) The cessation period for the well is less than 365 consecutive days.
- (5) The well is otherwise in full compliance with all of the commission's regulations.

(f) Post-exemption requirements. The date on which a well ceases to qualify for the exemption specified in subsection (e) shall be deemed to be the date operations ceased on the well, for purposes of subsection (a). (Authorized by K.S.A. 55-152; implementing K.S.A. 55-152 and 55-164; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended April 23, 1990; amended Jan. 25, 2002; amended Oct. 24, 2008.)

82-3-112. Shut-off test; when required. Whenever it appears to the conservation division that any water from any well is migrating or infiltrating into oil-bearing or gas-bearing strata or that any detrimental substances are infiltrating any fresh and usable water, a shut-off test may be required by the conservation division, to be made at the expense of the operator or owner of that well. The time and procedure for the taking of the test shall be fixed by the conservation division. Reasonable notice of the test shall be given to the owner or operator.

The person legally responsible for the proper care and control of any abandoned oil or gas well from which water is migrating or infiltrating into any oil-bearing or gas-bearing strata, or from which any detrimental substances are infiltrating any fresh or usable water, shall immediately plug or repair the well in accordance with K.A.R. 82-3-114 or 82-3-115 and shall prevent the infiltration of oil, gas, salt water or other detrimental sub-

stances into underground fresh and usable water strata. (Authorized by K.S.A. 55-602; implementing K.S.A. 55-157; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended May 1, 1988.)

82-3-113. Notice of intention to plug and abandon a well; supervision; penalty. (a) Notice required; penalty. Before any work is commenced to plug and abandon any well drilled for the discovery of oil or gas, for underground porosity gas storage, or for disposal of salt water, or to plug and abandon any injection well for enhanced recovery, including any well drilled below the fresh and usable water level, the operator shall give written notice to the conservation division of the intention to plug and abandon that well. The notice shall be submitted upon a form furnished by the conservation division and shall contain all of the information requested on it. The failure to file a notice of intention to plug and abandon a well shall be punishable by a \$100 penalty.

(b) Plugging instructions; scheduling.

(1) Upon receipt of the notice, the notice shall be acknowledged by the conservation division by letter to the operator. The letter shall provide instructions to the operator, including the name of the district office that is to be notified, and a requirement that the operator submit a proposed plugging plan.

(2) The operator shall notify the appropriate district office of the operator's proposed plugging plan no later than five days before the plugging.

(c) Exceptions. Exceptions from the notice requirement on the plugging of wells may be granted by the district office if either of the following conditions is met:

(1) A drilling rig already at work on location is ready to commence plugging operations on a dry and abandoned well.

(2) An emergency situation exists. In this case, the operator shall orally notify and present the plugging proposal to the district office.

This regulation shall be effective on and after October 29, 2002. (Authorized by K.S.A. 55-152 and K.S.A. 2001 Supp. 55-1,115 and 74-623; implementing K.S.A. 55-152, 55-159, K.S.A. 2001 Supp. 55-164, K.S.A. 55-173, K.S.A. 2001 Supp. 55-1,115 and 74-623; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended April 23, 1990; amended, T-82-6-27-02, July 1, 2002; amended Oct. 29, 2002.)

82-3-114. Plugging methods and procedure. (a) Plugging of producing, storage, and injection wells. In addition to any other applicable requirements in these regulations, the methods and procedure for plugging a well drilled for exploration of oil or gas, for underground porosity gas storage, or for injection shall be as follows:

(1) For productive or past-productive oil or gas formations, a cement plug not less than 50 feet in length or a bridge capped with cement shall be placed above each such formation.

(2) Cement plugs of 50 feet or more in length shall be placed both above and below any fresh or usable water horizons. The lower plug shall extend at least 50 feet below the base of water zones, and the upper plug shall extend at least 50 feet above the top of the water zones.

(3) In each well plugged, a cement plug shall be placed near the surface of the ground in a manner that does not interfere with soil cultivation.

(b) Rathole and mousehole plugging. Each rathole and each mousehole shall be plugged by displacing any mud or water with cement from the bottom of the hole to near the surface in a manner that does not interfere with soil cultivation.

(c) Highly permeable formations. If the wellbore has penetrated both a highly permeable formation and an overlying major salt formation, a cement plug of 50 feet or more in length shall be set above the highly permeable formation. Additionally, a cement plug of 50 feet or more in length shall be set in the first formation compatible with cement in each of the following locations:

(1) Immediately above the salt formation; and

(2) Immediately below the salt formation.

(d) Well location exceptions. In wells located within 330 feet from the lease or unit boundary or located within less than the minimum distance specified in K.A.R. 82-3-108(b), all zones that are perforated or open in the well and that are being produced on the lease adjacent to that boundary shall be plugged. This requirement shall not apply to zones that are not producing within one-half mile of the well to be plugged.

(e) Plugging intervals. All intervals between plugs within the same wellbore shall be filled with an approved heavy, mud-laden fluid of not less than 36 viscosity as measured using the marsh funnel method described in sections 4.1 and 4.2 of the "recommended practice standard procedure for field testing water-based drilling fluids," second edition, dated September 1997 and published by the American petroleum institute. Sections 4.1

and 4.2 of this document are hereby adopted by reference. The approved heavy, mud-laden fluid shall have a weight of not less than nine pounds per gallon. If the requirements of this subsection are not met, a bridge shall be set at all plugging intervals.

(f) Alternative plugging methods; when authorized.

(1) If the procedures specified in this regulation cannot be followed due to conditions in the casing or wellbore, alternative plug placement while ensuring the protection of fresh and usable water may be authorized by a representative of the commission.

(2) The operator, with the approval of the representative of the commission, may place cement in the well by using a dump bailer, pumping through tubing, or using any other method approved by the commission.

(g) Tagging plugs. Plugs may be tagged by the commission at the direction of the director of the conservation division.

This regulation shall be effective on and after October 29, 2002. (Authorized by K.S.A. 55-152 and K.S.A. 2001 Supp. 55-1,115 and 74-623; implementing K.S.A. 55-152, 55-156, 55-157, 55-159, and K.S.A. 2001 Supp. 55-1,115 and 74-623; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended, T-87-3; amended May 1, 1986; amended May 1, 1988; amended May 8, 1989; amended, T-82-6-27-02, July 1, 2002; amended Oct. 29, 2002.)

82-3-115. Plugging methods and procedure for core and other stratigraphic holes; fees. The methods and procedure for plugging core and other stratigraphic holes shall be as follows:

(a) The owner or operator shall notify the commission prior to the plugging of each core or stratigraphic hole pursuant to the requirements of K.A.R. 82-3-113. An on-site inspection of the plugging operation may be conducted by a representative of the commission.

(b) Each core or stratigraphic hole that penetrates a regionally confined salt water aquifer shall be plugged so as to prevent the migration of salt waters into fresh or usable water.

(1) As used in this regulation, a "regionally confined salt water aquifer" means a salt water-bearing zone overlain by an aquitard which, in area, is coextensive with the salt water zone and restricts

the movement of the salt water. Aquitard means a zone of low permeability.

(2) The hole shall be filled with a cement plug from a point 20 feet below the base of the regionally confined salt water aquifer to within 10 feet of the surface. The remaining hole shall be filled to surface with coarse ground bentonite.

(c) Each core or stratigraphic hole that does not penetrate a regionally confined salt water aquifer shall be plugged as follows:

(1) A bridge and cement plug shall be placed at the depth set forth as the base of the deepest fresh and usable water. The cement plug shall be not less than 50 feet in length or shall be placed to a point within 12 feet of the surface, whichever is the lesser length. The remaining hole shall be filled to the surface with coarse ground bentonite as defined in K.A.R. 82-3-101(a)(12);

(2) The interval or intervals between the bottom of any hole and the plug or plugs set in any hole shall be filled with an approved heavy mud-laden fluid of not less than 9.4 pounds per gallon.

(d) Each core or stratigraphic hole that penetrates multiple usable or fresh water aquifers regionally confined by consolidated rock or strata, as distinguished from usable or fresh water zones in an unconsolidated stratum, shall be filled with cement from the bottom of the hole to the top of the highest aquifer, if identifiable and the remaining hole shall be filled with fine grain materials to within 20 feet of the surface, then with impermeable material to within 12 feet of the surface and the top 12 feet of the hole filled with coarse ground bentonite. If the top of the highest aquifer is not identifiable the hole shall be filled with cement from the bottom to within 12 feet of the surface and the remaining hole filled with coarse ground bentonite.

(e) Each core or stratigraphic hole that penetrates a usable or fresh water zone resulting in an artesian flow to the surface shall have a cement plug placed immediately above the top of the artesian water zone. The plug shall not be less than 25 feet in length or shall be placed to a point within 12 feet of the surface, whichever is the lesser length. The remaining hole shall be filled with coarse ground bentonite.

(f) If circulation is lost in the drilling of any hole and circulation cannot be regained, a cement plug shall be placed immediately above the zone of lost circulation. The plug shall not be less than 25 feet in length or shall be placed to a point within 12 feet of surface, whichever is the lesser

length. The remaining hole shall be filled with coarse ground bentonite.

(g) Alternative plugging methods may be specified by the district supervisor when geological conditions warrant.

(h) Alternative plugging materials may be substituted for coarse ground bentonite upon approval by the Director of the Conservation Division. The Director shall base approval or denial upon material specifications including experimental results supplied by the manufacturer of such material and will keep a list available of all materials approved. The approval process for alternative plugging materials shall also be applicable to K.A.R. 82-3-115b.

(i) All core and stratigraphic holes shall be plugged as soon after being used as is reasonably practicable. However, such holes shall not remain unplugged for a period of more than 10 days after the drilling of the hole. An extension may be granted by the district supervisor if access to the hole is prevented by force of nature.

(j) A minimum fee of \$5 shall be assessed for plugging of core and other stratigraphic holes. The minimum fee for any hole which penetrates a regionally confined salt water aquifer shall be assessed pursuant to K.A.R. 82-3-118. (Authorized by K.S.A. 1992 Supp. 55-152; implementing K.S.A. 1993 Supp. 55-152, 55-156, 55-157; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended March 20, 1995.)

82-3-115a. Intent to drill seismic shot holes; notification; penalty; exemption. (a) Each owner, operator, or persons responsible for a seismic operation shall give written notice of the intention to drill for approval by the conservation division before the commencement of drilling operations.

(1) Filing. The notice shall be filed with the conservation division at least five days before any drilling is commenced.

(2) Contents. The notice shall be on a form prescribed by the commission. The notice shall be filled in completely and signed by the operator or the operator's agent, and shall contain:

(A) The seismic company's name, address, and commission license number;

(B) the date on which drilling is anticipated to begin;

(C) the quarter section, section, township, range and county of the proposed location;

(D) the estimated number and depth of seis-

mic shot holes to be drilled in each quarter section;

(E) the proposed plugging plan or method to be used for plugging seismic shot holes; and

(F) any other information which may be requested by the commission.

(b) District office notification. Prior to drilling one or more seismic shot holes, the operator shall notify the appropriate district office.

(c) Emergency situation. When an emergency situation exists, the operator shall orally notify and present the proposal to the district office. The written notice of intention to drill shall be filed with the commission within 24 hours.

(d) Drilling seismic shot holes without an approved notice of intent of emergency notice shall be punishable by a penalty of up to \$1000.

(e) Exemption. Seismic operations which do not require the drilling or digging of a hole shall be exempt from the requirements of this regulation. (Authorized by K.S.A. 1993 Supp. 55-152; implementing K.S.A. 1992 Supp. 55-151, 55-152, 55-164; effective March 20, 1995.)

82-3-115b. Plugging methods and procedures for seismic shot holes; retention of logs; penalty; exemption; fees. (a) Each seismic shot hole shall be plugged in accordance with the specified methods applicable to the geologic conditions or drilling method used as described in this regulation and in Table IV.

(b) Each hole drilled with water or water-based muds and each hole that encounters water and does not encounter artesian pressure shall be plugged using the following method.

(1) Each seismic shot hole drilled in a single aquifer area shall be plugged from the point of collapse of the last shot with one 50-pound bag of coarse ground bentonite followed by cuttings to within 12 feet of the surface. The top 12 feet of the hole shall be filled with coarse ground bentonite. A non-metallic retrievable plug with identifying mark shall be placed three feet from the surface.

(2) Each seismic shot hole drilled in a multiple aquifer area and which penetrates only the upper aquifer, may be plugged using the single aquifer method.

(3) Seismic shot holes drilled into or through multiple aquifers shall be pre-plugged by filling the hole with coarse ground bentonite to a point at which the bentonite no longer encounters water followed by cuttings to within 12 feet of the sur-

face. The top 12 feet of the hole shall be filled with coarse ground bentonite. A non-metallic retrievable plug with identifying marks shall be placed three feet from the surface. The plug shall be allowed to set at least 15 hours prior to detonation of the explosive charge unless a lesser time is approved by the appropriate district supervisor. The coarse ground bentonite used to fill the hole up to the point where it no longer encounters water shall be poured at a rate no greater than one 50 pound bag per two minutes.

(4) Each seismic shot hole that penetrates a saltwater formation shall be plugged from bottom to top with cement. The blend of cement shall be approved by the district supervisor.

(5) Alternate plugging material may be substituted for coarse ground bentonite in accordance with procedures set forth in K.A.R. 82-3-115(h).

(c) Each hole that penetrates a strata which causes water to flow at the surface shall not be charged nor shot and shall be immediately plugged with cement. The plug shall be placed from bottom to top using tubular goods for placement. Prior to plugging, the company shall immediately notify the appropriate district office for plugging instructions.

(d) If groundwater is not encountered in a seismic shot hole that is drilled with air, dry augured, or otherwise drilled, the hole shall be either pre-plugged or post-plugged by filling the hole with clay or silt sized cuttings from the point of collapse of the last shot to within 12 feet of the surface. The top 12 feet of the hole shall be filled with coarse ground bentonite. A non-metallic retrievable plug with identifying mark shall be placed three feet from the surface.

(e) The district supervisor may make changes in the plugging requirements on a case-by-case basis and may prescribe other methods where the district supervisor deems other plugging methods to be more appropriate due to geological or hydrologic conditions.

(f) The operator shall submit plugging reports to the Conservation Division Central Office on forms provided by the commission within 90 days after the commencement of each project. All plugging reports shall include:

- (1) a description of the placement of plugs and the material used;
- (2) a description of the identifying mark on the non-metallic retrievable plug;
- (3) the name of the licensed person, firm, as-

sociation, or corporation actually conducting the seismic operation; and

(4) a plat map showing the number of holes drilled, the location of each hole, the designated well number of each hole, and other information requested on the plugging report. Requests for confidentiality of plat map information should be made to the Director in accordance with procedures set forth in K.A.R. 82-3-107(e) and will be subject to time limits established in that regulation.

(g) The operator shall notify the appropriate district office prior to the plugging if the plugging of seismic holes is to occur anytime other than immediately after shooting takes place.

(h) When an emergency situation exists, the operator shall verbally notify and present the plugging proposal to the district office. A written plugging report shall be filed with both the district and conservation division office within five days of the completion of the plugging operation.

(i) A listing of those areas in which complex, multiple or divided aquifers occur shall be prepared by the commission. This list shall be made available to all drillers of seismic shot holes. Seismic shot holes drilled in these areas shall be plugged in accordance with the guidelines described in subsection (b)(3) of this regulation or as determined by the district supervisor.

(j) The driller or on-site geologist shall keep well logs of each hole drilled on forms approved by the commission. The logs shall be retained by the operator. If requested by the Conservation Division, the logs shall be made available contingent upon client approval.

(k) A minimum fee of \$5 shall be assessed for plugging of seismic holes. The minimum fee for any hole which penetrates a regionally confined salt water aquifer shall be assessed pursuant to K.A.R. 82-3-118.

(1) Seismic operations which do not require the drilling or digging of a hole shall be exempt from the requirements of this regulation.

(m) Failure to comply with the provisions of this regulation shall result in the following penalties:

- (1) \$250 fine for the first offense, plus correction of the violation;
- (2) Up to \$1000 fine for the second offense and review of operator's license, plus correction of any violations; and
- (3) Up to \$2000 fine per hole for the third offense, plus 30 days suspension of license, which

may be extended if correction of violation does not occur during suspension period, and review of license. (Authorized by K.S.A. 1993 Supp. 55-152; implementing K.S.A. 1993 Supp. 55-151, 55-152, 55-164; effective March 20, 1995.)

82-3-116. Core and other stratigraphic holes to be plugged; affidavit. Before any core or other stratigraphic hole is abandoned, it shall be plugged in accordance with K.A.R. 82-3-115 to properly protect all fresh and usable water formations. The person, firm, association or corporation actually conducting the core or stratigraphic field operations requiring use of the hole, regardless of whether these operations are for their own account or under contract or agreement for the account of others, shall file with the conservation division an affidavit on the form prescribed by the commission. The affidavit shall state the date of drilling, the location of each hole, the method used to plug such hole, and all other information requested by the prescribed form. The affidavit shall be filed within 60 days after the core or other stratigraphic holes in a specifically platted area have been plugged. (Authorized by K.S.A. 1993 Supp. 55-152; implementing K.S.A. 1993 Supp. 55-152, 55-156, 55-157; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended March 20, 1995.)

82-3-117. Plugging report; penalty. (a) Within 60 days after plugging any well drilled for discovery of oil or gas, for underground porosity gas storage, for disposal of salt water, or for injection for enhanced recovery, the owner or operator of the well shall file a well plugging report with the conservation division setting forth the following information:

- (1) The date of drilling;
- (2) the location of the well;
- (3) the method used in plugging the well; and
- (4) all other information required by the commission.

The report shall be made on the form furnished by the commission and shall be verified by the operator.

(b) The failure to file a plugging report shall be punishable by a \$100 penalty.

(c) The operator shall be assessed the cost of the plugging as specified in K.A.R. 82-3-118.

(d) Copies of well plugging records shall be furnished to any person requesting that information upon the payment of two dollars per copy.

This regulation shall be effective on and after

October 29, 2002. (Authorized by K.S.A. 55-152 and K.S.A. 2001 Supp. 55-1,115 and 74-623; implementing K.S.A. 55-152, K.S.A. 2001 Supp. 55-158, K.S.A. 55-159, and K.S.A. 2001 Supp. 55-164, 55-1,115, and 74-623; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1988; amended April 23, 1990; amended, T-82-6-27-02, July 1, 2002; amended Oct. 29, 2002.)

82-3-118. Costs. The owner or operator of each plugged well shall pay a fee to the commission, as assessed, at a cost of \$.0325 per foot of well depth plugged. The minimum amount of any fee paid under this regulation shall be \$35.00. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-152, 55-131; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984.)

82-3-119. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-152, 55-156, 55-157; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; revoked Nov. 2, 2007.)

82-3-120. Operator or contractor licenses: application; financial responsibility; denial of application; penalty. (a)(1) No operator or contractor shall undertake any of the following activities without first obtaining or renewing a current license:

(A) Drilling, completing, servicing, plugging, or operating any oil, gas, or injection well;

(B) operating a gas-gathering system, even if the system does not provide gas-gathering services as defined in K.S.A. 55-1,101(a) and amendments thereto; or

(C) constructing or operating an underground porosity gas storage facility.

Each operator in physical control of any such well or gas storage facility shall maintain a current license even if the well or storage facility is shut in or idle.

(2) Each licensee shall annually submit a completed license renewal form on or before the expiration date of the current license.

(b) To qualify for a license or license renewal, the applicant shall be in compliance with applicable laws, as required in subsection (h), and shall submit the following items to the conservation division:

(1) An application meeting the requirements of subsection (c);

(2) a \$100 license fee, except that an applicant for a license who is operating one gas well used strictly for the purpose of heating a residential dwelling shall pay an annual license fee of \$25;

(3) for each rig as defined in subsection (d), a \$25 fee and copies of property tax receipts on all rigs; and

(4) financial assurance in accordance with subsection (e).

(c) Application. The application for a license or a license renewal shall be verified and filed with the commission showing the following information:

(1) The applicant's full legal name and any other name or names under which the applicant transacts or intends to transact business under the license and the applicant's correct mailing address. If the applicant is a partnership or association, the application shall include the name and address of each partner or member of the partnership or association. If the applicant is a corporation, the application shall contain the names and addresses of the principal officers;

(2) the number of rigs sought to be licensed; and

(3) any other information that the forms provided may require.

Each application for a license shall be signed and verified by the applicant if the applicant is a natural person, by a partner or a member if the applicant is a partnership or association, or by an executive officer if the applicant is a corporation.

(d) "Rig" means any crane machine used for drilling or plugging wells. An identification tag shall be issued by the commission for each rig licensed according to this regulation. The operator shall display a current identification tag on each rig at all times.

(e)(1) Financial assurance shall be provided in accordance with the requirement specified in paragraph (e)(2), if applicable, or in accordance with subsection (g).

(2) The applicant shall pay an annual \$50 non-refundable fee if the applicant has an acceptable record of compliance, as demonstrated during the preceding 36 months.

(f) For purposes of this regulation, "an acceptable record of compliance" shall mean both of the following:

(1) The operator neither has been assessed by final order of the commission with \$3,000 or more in penalties nor has been cited by final commis-

sion order for five or more violations in the preceding 36 months.

(2) The operator has no outstanding undisputed orders or unpaid fines, penalties, or costs assessed by the commission and has no officer or director that has been or is associated substantially with another operator that has any such outstanding orders or unpaid fines, penalties, or costs.

(g) (1) If the applicant does not meet the provisions of paragraph (e)(2) or has not been licensed for at least the preceding 36 months, the applicant shall furnish one of the following, up to \$30,000, on an annual basis:

(A) An individual performance bond or letter of credit on a form prescribed by the commission, in an amount equal to \$.75 times the total aggregate depth, in feet, of all wells for which the operator is responsible;

(B) a blanket performance bond or letter of credit on a form prescribed by the commission, in an amount equal to the following, as applicable:

(i) Wells fewer than 2,000 feet in depth: 1-5 wells, \$5,000; 6-25 wells, \$10,000; over 25 wells, \$20,000; and

(ii) wells 2,000 or more feet in depth: 1-5 wells, \$10,000; 6-25 wells, \$20,000; over 25 wells, \$30,000;

(C) a nonrefundable fee equal to 3% of the amount of the bond or letter of credit required by paragraph (g)(1)(A) or (B); or

(D) a first lien in favor of the state of Kansas on tangible personal property associated with the operator's oil and gas production, having a salvage value equal to not less than the amount of the bond or letter of credit required by paragraph (g)(1)(A) or (B); or

(E) any other financial assurance approved by the commission.

(2) Well inventory. Each operator furnishing financial assurance under paragraph (g)(1)(A) of this regulation shall also furnish a complete inventory of wells and the depth of each well for which the operator is responsible. Each operator furnishing financial assurance under paragraphs (g)(1)(B) through (E) either shall furnish a well inventory or shall be required to furnish the \$30,000 bond, letter of credit, fee, or other financial assurance based on that amount. Falsification of the well inventory shall be punishable by a penalty of up to \$5,000 and possible suspension of the operator's license.

(h) Compliance with applicable laws.

(1) If the applicant is registered with the federal

securities and exchange commission, the applicant shall demonstrate to the commission that the applicant complies with all requirements of chapter 55 of the Kansas statutes annotated, all regulations adopted thereunder, and all commission orders and enforcement agreements.

(2) If the applicant is not registered with the federal securities and exchange commission, the applicant shall demonstrate to the commission that the following individuals comply with all requirements of chapter 55 of the Kansas statutes annotated, all regulations adopted thereunder, and all commission orders and enforcement agreements:

- (A) The applicant;
- (B) any officer, director, partner, or member of the applicant;
- (C) any stockholder owning in the aggregate more than 5% of the stock of the applicant; and
- (D) any spouse, parent, brother, sister, child, parent-in-law, brother-in-law, or sister-in-law of any of the individuals specified in paragraphs (h)(2)(A) through (C).

(i) Upon approval of the application by the conservation division, a license shall be issued to the applicant. Each license shall be in effect for one year unless suspended or revoked by the commission.

(j) Denial of application. An application or renewal application shall be denied if the applicant has not satisfied the requirements of this regulation. Denial of a license application shall constitute a summary proceeding under K.S.A. 77-537 and amendments thereto. A denial pursuant to K.S.A. 55-155(c)(3) or (4), and amendments thereto, shall be considered a license revocation.

(k) Upon revocation of a license, no new license shall be issued to that operator or contractor until after the expiration of one year from the date of the revocation.

(l) The failure to obtain or renew an operator or contractor license before operating shall be punishable by a \$500 penalty.

(m) Notification of changes. Each operator shall immediately notify the conservation division in writing of any change in information supplied in conjunction with the license application. If the change involves an increase in the number or depth of the wells listed on the operator's well inventory, the operator's notification shall be accompanied by additional financial assurances to cover the additional number or depth of wells.

This regulation shall be effective on and after

October 29, 2002. (Authorized by K.S.A. 55-152 and K.S.A. 2001 Supp. 55-164, 55-1,115, and 74-623; implementing K.S.A. 2001 Supp. 55-155 and K.S.A. 2001 Supp. 55-164, 55-1,115, and 74-623; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 8, 1989; amended April 23, 1990; amended March 20, 1995; amended Aug. 29, 1997; amended Jan. 25, 2002; amended, T-82-6-27-02, July 1, 2002; amended Oct. 29, 2002.)

82-3-120a. (Authorized by and implementing K.S.A. 1996 Supp. 55-155 and 55-164; effective Aug. 29, 1997; revoked Jan. 25, 2002.)

82-3-121. Designation of an agent.

Every person, firm or corporation operating within the state shall designate an agent who will be responsible for certification of compliance with the commission's regulations concerning the drilling, completion or plugging of wells. The designation of an agent shall be set forth on the commission's forms used for licensing of operators and contractors. (Authorized by and implementing K.S.A. 1982 Supp. 55-154; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983.)

82-3-122. Operators; complaints; hearing. A hearing may be conducted by the commission if it finds that there is reasonable cause to believe, or upon a written complaint charging, that any operator has violated any of the rules and regulations adopted by the commission pursuant to K.S.A. chapter 55. (Authorized by K.S.A. 1989 Supp. 55-152, implementing K.S.A. 1989 Supp. 55-152, 55-162; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended April 23, 1990.)

82-3-123. Well bore; commingling of production. (a) Applicability. Commingling of production from more than one source of supply shall be permitted if the total production potential is less than the allowable for a single common source of supply for the immediate area and after application and approval by the conservation division.

(b) Coalbed natural gas. Each well producing only coalbed natural gas shall be exempt from this regulation.

(c) Application. Each original application for commingling and one copy shall be filed with the conservation division. The application shall be submitted to the commission on the form provided by the commission and shall be accompanied by the following information:

(1) A description of the well with a plat attached showing the location of the subject well, the location of other wells on the lease, the location of offset wells within a ½-mile radius of the subject well, and for each of these wells, the name of the lessee of record or the operator;

(2) the names of the upper and lower limits of the sources of supply to be commingled, with proposed perforations or open holes noted;

(3) a wireline log of the subject well;

(4) the production potential of oil, water, gas, or a combination for each source of supply;

(5) the total anticipated production for the formations sought to be commingled; and

(6) the applicant's license number.

(d) Allowable. The maximum well allowable for a well in which commingled production is approved shall be the following:

(1) For oil wells, the allowable for the deepest source of supply demonstrating productivity as specified in K.A.R. 82-3-203 or special order; and

(2) for gas wells, the allowable specified in K.A.R. 82-3-312, based on the combined actual open-flow potential from all producing zones or as provided by special order.

(e) Notice; protest. The applicant shall provide notice of the application as required in K.A.R. 82-3-135a. If a protest is filed in accordance with K.A.R. 82-3-135a, the application shall be set for hearing by the commission. Commingling shall be prohibited if the commission finds that waste or a violation of correlative rights is likely to result.

(f) Application for additional sources of supply. A new commingling application shall be required if the operator desires to open an additional source of supply that was not included in the initial application. (Authorized by K.S.A. 55-152, K.S.A. 55-604, K.S.A. 55-704; implementing K.S.A. 55-603, K.S.A. 55-605; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990; amended Aug. 29, 1997; amended Jan. 25, 2002; amended Jan. 14, 2005; amended Nov. 2, 2007.)

82-3-123a. Well bore; commingling of fluids. (a) When applicable. Well bore commingling of fluids from one or more intervals with fluids from a production interval shall be permitted after application and approval by the conservation division.

(b) Application. Each original application for

commingling and one copy shall be filed with the conservation division. The application shall contain the following information:

(1) A plat map showing the location of the subject well, the location of other wells on the lease, the location of offset wells within a ½-mile radius of the subject well, and, for each well, the name of the lessee of record or the operator;

(2) the intervals to be commingled, with proposed perforations or open holes noted;

(3) a well construction diagram of the subject well;

(4) any available water chemistry data demonstrating the compatibility of the fluids to be commingled; and

(5) an estimate of the amount of fluids to be commingled.

(c) Notice; protest. The applicant shall provide notice of the application as required in K.A.R. 82-3-135a. If a protest is filed in accordance with K.A.R. 82-3-135a, the application shall be set for hearing by the commission. Commingling shall be prohibited if the commission finds that waste or a violation of correlative rights is likely to result. (Authorized by K.S.A. 55-604; implementing K.S.A. 55-603, K.S.A. 55-605; effective May 8, 1989; amended April 23, 1990; amended Jan. 14, 2005; amended Nov. 2, 2007.)

82-3-124. Dual or multiple-completed wells. (a) When applicable. Production from more than one common source of supply through the same well bore shall be permitted if separation of each source of supply is maintained and after application and approval by the commission has been obtained.

(b) Application. Whenever an operator or producer desires to complete a well in more than one common source of supply, an original and one copy of an application requesting approval of dual or multiple completion shall be filed with the conservation division. The application shall be submitted to the commission on the form provided by the commission and shall be accompanied by the following:

(1) A description of the well with a plat attached showing the location of the subject well, the location of all other wells on the lease, the location of all offset wells within a ½-mile radius of the subject well, and for each of these wells, the name of the lessee of record or the operator. Well depths and producing sources of supply shall be properly designated on the plat;

(2) the names and upper and lower limits of the common sources of supply involved in the dual or multiple completion;

(3) a wireline log of the subject well;

(4) a complete description of the proposed installation including the size, weight, depth, and condition of all casing and tubing, the size of all drilled holes, the amount of cement used and the location of the tops of cement behind each casing string, the location or intended location of casing perforations, the type of packer to be used and the depth at which it is to be set. A diagram of the proposed installation shall be attached to the application;

(5) a description of the proposed plan for separately measuring and accounting for the production for each source of supply;

(6) a description of storage facilities;

(7) a description and diagram of the proposed wellhead to pipeline installation; and

(8) the applicant's license number.

(c) Notice. The applicant shall provide notice of the application pursuant to K.A.R. 82-3-135a.

(d) Commission supervision. All dual and multiple completions shall be made and operated under the direction of the commission. Packers shall not be installed, removed, reinstalled, or replaced in such a well, except upon notice to and with the approval of a representative of the commission. If one of the producing sources of supply is abandoned, the plugging of the abandoned source of supply shall be in accordance with the requirements of the commission.

(e) Plugging. If any common source of supply in an intended dual or multiple completion is found upon testing to be nonproductive, it shall immediately be plugged under the direction of a commission representative.

(f) Packer testing. Dual and multiple-completed wells shall be operated and maintained so as to ensure complete segregation of all fluids from the producing sources of supply. In monitoring installation of packers, and in inspecting dual and multiple-completed wells, tests shall be made by or at the direction of representatives of the commission to determine whether packer leakage exists. These tests may include bottom hole pressure measurements, chemical analysis of oil, water, and gas, and any other tests which indicate the effectiveness of the packer.

(g) Packer leakage. Whenever evidence of leakage of the packer in any dual or multiple-completed well is discovered, the packer shall be im-

mediately repaired, a new packer shall be installed, or the affected producing source of supply shall be plugged.

(h) Allowable. The allowable for each source of supply shall be determined according to K.A.R. 82-3-203(b) or K.A.R. 82-3-312 for non-prorated common sources of supply or according to the basic proration order for prorated common sources of supply, or both.

(i) Packer installation. Operators shall notify the commission and the operators of offset producing leases at least 24 hours before installing a packer.

(j) Installation charge. An installation charge for each dual or multiple-completed well, and a charge for any inspection of such a well, shall be made to defray necessary expenses of supervision by the commission.

(k) Revocation. Failure of the operator of any dual or multiple-completed well to comply with any of the provisions of this regulation shall constitute grounds for the revocation of the order granting the dual or multiple completion, or the suspension or cancellation of current or future allowables of that well. If the order granting the dual or multiple completion of any well is revoked, all but one of the producing sources of supply shall immediately be sealed off under the direction of the commission.

(l) Approval. Tentative approval for dual or multiple-completed wells may be granted by the commission based on extenuating circumstances. Final approval may be granted after proper application. (Authorized by K.S.A. 55-602; implementing K.S.A. 55-605, 55-706, 55-603; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended, T-85-51, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990; amended Nov. 2, 2007.)

82-3-125. Surface commingling of production. The production from one common source of supply may be commingled on the surface with that from another common source of supply before delivery to a purchaser. However, the commission may prohibit surface commingling whenever this action is deemed advisable. (Authorized by and implementing K.S.A. 55-604; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983.)

82-3-126. Tank and truck identification; penalty. (a) Tanks. All oil tanks, tank batteries, tanks used for salt water collection or disposal, and

tanks used for sediment oil treatment or storage shall be identified by a sign posted on, or not more than 50 feet from the tank or tank battery. The sign shall be of durable construction and shall be large enough to be legible under normal conditions at a distance of 50 feet. The sign shall identify:

(1) the name and license number of the operator;

(2) the name of the lease being served by the tank; and

(3) the location of the tank by unit name, section, township, range, and county.

(b) The failure to post an identification sign shall be punishable by a \$100 penalty.

(c) Trucks. Every truck, tank wagon or other vehicle transporting crude petroleum oil, sediment oil, water or brine produced in association with the production of oil or gas shall have the name and address of the owner or lessee painted or otherwise durably marked on both sides of the vehicle. (Authorized by and implementing K.S.A. 55-1503, 55-1504, K.S.A. 1989 Supp. 55-164; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended April 23, 1990.)

82-3-127. Documentation required for transportation and storage. (a) Transportation.

(1) Every person that uses a motor vehicle to transport crude petroleum oil, sediment oil, water or brine produced in association with the production of oil or gas shall possess a run ticket or equivalent documents containing the following:

(A) the name and address of the transporter;

(B) the name and license number of the operator of the lease;

(C) the name of the lease or facility from which the above-named fluids were taken and the location of the tank by unit letter, section, township, range and county;

(D) the date and time that fluids were loaded for transportation and unloaded at the destination;

(E) the estimated volume of fluids, or the opening and closing tank gauges or meter readings;

(F) the signature of the driver;

(G) the name and location of the disposal, storage, processing or refining facility to which the fluid is being transported; and

(H) the name and address of the party receiving shipment.

(2) The following information shall be left at the facility from which the fluids were removed:

(A) the name and address of the transporter;

(B) the date and time that fluids were loaded for transportation;

(C) the signature of the driver;

(D) the estimated volume of fluids, or the opening and closing tank gauges or meter readings.

(3) One copy of the documentation shall be carried in the vehicle during transportation and shall be produced for examination and inspection by any representative of the commission or any federal, state, county or city law enforcement officer upon identification and request.

(4) All persons who transport fluids produced in association with the production of oil or gas shall retain a record reflecting the transportation of the fluids for at least three years.

(b) All persons that store, possess or dispose of fluids produced in association with the production of oil or gas shall retain a record reflecting a complete inventory, including detail of the acceptance and disposition of the fluids, for at least three years. (Authorized by and implementing K.S.A. 55-1504; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1987.)

82-3-128. Reports and permits; penalty.

Verification of any information necessary to administer these rules and regulations or any commission order may be required by the conservation division. The failure to verify requested information shall be punishable by a \$100 penalty. (Authorized by and implementing K.S.A. 1989 Supp. 55-604, 55-164; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended April 23, 1990.)

82-3-129. (Authorized by K.S.A. 1989 Supp. 55-604; implementing K.S.A. 1989 Supp. 55-176, 55-609; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended April 23, 1990; revoked Aug. 29, 1997.)

82-3-130. Completion reports; penalty.

(a) Within 120 days of the spud date or commencement of recompletion of a well, the operator shall file an original and two copies of an affidavit of completion with the conservation division, except as provided by subsection (b).

(b) If the time requirement for cementing the additional casing, pursuant to 82-3-106(c)(2)(B), is greater than 120 days, the time for filing the affidavit of completion and two copies shall be extended accordingly.

(c) The affidavit of completion shall be filed regardless of the manner in which the well is com-

pleted or recompleted, including a well that is dry and abandoned. The affidavit of completion shall be submitted on forms furnished by the commission. The affidavit shall be accompanied by wireline logs of the well, if run. The failure to file the affidavit of completion within the time required shall be punishable by a \$500 penalty.

(d) Each operator shall attach legible documentation to the affidavit of completion, showing the type, amount, and method of cementing used on all casing strings in the wellbore. The documentation may consist of invoices, job logs, job descriptions, or other similar service company reports. (Authorized by and implementing K.S.A. 1996 Supp. 55-604, K.S.A. 1996 Supp. 55-164; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1986; amended May 8, 1989; amended April 23, 1990; amended Aug. 29, 1997.)

82-3-131. Vacuum and high volume pumps; application and approval. (a) Upon application, the installation and use of vacuum pumps in fields that are nearly depleted and the installation and use of high volume pumps may be permitted by the commission. A high volume pump shall mean one that is capable of producing total fluids in excess of 2,500 barrels per day. No application for commission approval shall be required for the installation and use of vacuum or high volume pumps in a field that is unitized for secondary recovery operations.

(b) The original and one copy of the application shall be filed with the conservation division. The application shall contain the following information:

- (1) The applicant's license number;
- (2) the name, location, and producing formation of the well or wells to be pumped;
- (3) a plat map showing the subject well or wells, the location of all oil and gas wells on the lease, and the location of all offset wells within a 1/2-mile radius of the subject well or wells and their operators' names;
- (4) the anticipated maximum daily production of oil, water, and gas;
- (5) for vacuum pump applications, an estimate of the remaining recoverable hydrocarbon reserves underlying the subject lease;
- (6) for high volume pump applications, the size and capacity of the pump to be used and the estimated oil-water ratio; and

(7) any additional relevant information that the commission may require.

(c) Each applicant shall provide notice of the application pursuant to K.A.R. 82-3-135a. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-604; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1987; amended May 1, 1988; amended April 23, 1990; amended Nov. 2, 2007.)

82-3-132. Re-entry notification. Every operator shall notify the conservation division or a district office at least 48 hours before re-entering an abandoned or plugged well. An agent of the commission may conduct on-site inspection of the drilling operations. A report shall be filed by the agent of the commission or, in the absence of an observing agent, by the operator, stating where cement was encountered when drilling out plugs. (Authorized by K.S.A. 1986 Supp. 55-152; implementing K.S.A. 1986 Supp. 55-160; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1988.)

82-3-133. Penalties for unlawful production. (a) The production of oil or gas in violation of the provisions of a basic proration order, or otherwise in violation of the statutes or the rules and regulations of the commission, shall be deemed unlawful and shall be presumed to violate correlative rights and to constitute waste.

(b) Upon the commission's receipt of a complaint or on its own motion, and upon a determination that a well has unlawfully produced, the operator of that well may be ordered by the commission to shut in the well. The well shall remain shut in until the unlawful production is made up. The violating operator may make application for an exception to the order by showing that the unlawful production was necessary to protect correlative rights or to prevent waste. The exception may be granted by the commission after proper notice and hearing.

(c) Upon a determination by the commission that a well has produced unlawfully, the following may be ordered:

- (1) The surface equipment of the unlawfully produced well to be sealed or padlocked for any period of time that the commission may determine;
- (2) production of the unlawfully produced well at a reduced rate to ensure the protection of correlative rights and the prevention of waste;
- (3) a penalty of \$500; or

(4) any combination of the orders enumerated in paragraphs (c)(1), (2), and (3).

(d) Any action taken by the commission under this regulation shall be in accordance with the Kansas administrative procedure act. (Authorized by K.S.A. 2000 Supp. 55-164, K.S.A. 55-152; implementing K.S.A. 2000 Supp. 55-603, K.S.A. 55-605, K.S.A. 55-703; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended April 23, 1990; amended June 1, 2001.)

82-3-133a. Balancing overages and underages in nonprorated areas; penalty. For purposes of determining whether a particular oil or gas well subject to statewide field rules and regulations is overproduced or underproduced, the following requirements shall apply:

(a) Operators shall retain records of production volumes for each individual oil and gas well subject to the statewide rules and regulations each month. These records shall show any underage or overage under the applicable statewide rules and regulations. Notwithstanding any other applicable record retention requirements, for purposes of this regulation, these records shall be retained for a minimum of five years.

(b) Production volumes for oil wells shall be balanced on a quarterly basis. Any overage for oil wells shall be made up in the calendar quarter following the quarter in which it was accrued. Accrued underage shall be used in the quarter after it is accrued, or it shall be canceled.

(c) Production volumes for gas wells shall be balanced on the semiannual basis of April through September and October through March. Any overage shall be made up in the six-month period following the six-month period in which it was accrued. Accrued underage shall be used in the six-month period after it is accrued, or it shall be canceled.

(d) Records kept for the subsequent year shall show the amounts that were made up during the time period denoted in subsection (b) or (c), and these amounts shall not be counted against the production allowable in the subsequent year.

(e) Any underage that is not made up within the time designated in subsections (b) and (c) shall be canceled and may not be reinstated except through application to the commission and for good cause shown.

(f) Any overage that is not made up within the time designated in subsections (b) and (c) may be eliminated or reduced, at the discretion of the

commission, through application to the commission for retroactive assignment of allowable and for good cause shown.

(g) Any overage that is not made up within the time designated in subsections (b) and (c) shall subject the well and operator to the penalties for overproduction. (Authorized by K.S.A. 2000 Supp. 55-164, K.S.A. 55-152; implementing K.S.A. 2000 Supp. 55-603, K.S.A. 55-605, K.S.A. 55-703; effective June 1, 2001.)

82-3-134. (Authorized by and implementing K.S.A. 55-152, K.S.A. 55-604, 55-704; effective May 1984; revoked April 23, 1990.)

82-3-135. Notice of hearings. (a) Scope. The notice requirements in this regulation apply to each hearing arising under any rule or regulation or statutory provision for the conservation of crude oil and natural gas or for the protection of fresh and usable water, heard by the commission or any agent appointed by the commission.

(b) Hearings initiated by the attorney general or the commission.

(1) Notice of the hearing shall be published by the commission in the Wichita Eagle newspaper and in the Kansas Register. Notice of the hearing shall also be published in the official county newspaper of each county in which the lands affected by the hearing are located. If that county does not have an official county newspaper, notice may be published in any newspaper satisfying the requirements of K.S.A. 64-101 in a county in which the lands affected by the hearing are located.

(2) A copy of the notice of the hearing shall be mailed by the commission to each person who has filed for the purpose of receiving notice. The notice shall be mailed not less than 10 days prior to the hearing date.

(3) Any additional notice required by any rule, regulation or statute which applies to the hearing or which is necessary to provide due process to any person whose property may be affected by the hearing shall be provided by the commission.

(c) Hearings initiated by any person other than the attorney general or commission.

(1) Anyone who initiates a hearing shall publish notice of the hearing in the Wichita Eagle newspaper and in the official county newspaper of each county in which the lands affected by the hearing are located. Anyone who initiates a hearing may publish notice in any newspaper satisfying the requirements of K.S.A. 64-101 in a county in which the lands affected by the hearing are lo-

cated, if that county does not have an official newspaper.

(2) A copy of the notice of the hearing shall be mailed by the commission to each person who has filed for the purpose of receiving notice. The copy of the notice shall be mailed not less than 10 days prior to the hearing date.

(3) Anyone who initiates a hearing shall provide any additional notice required by any rule, regulation or statute which applies to the hearing or is necessary to provide due process to any person whose property may be affected by the hearing.

(d) Proof of notice. If the commission is required to publish notice, it shall be proven by commission staff that notice has been properly published. Acceptable proof of notice may include an affidavit sworn by the commission staff that notice has been perfected. Anyone who initiates the hearing shall provide that notice has been properly published. An affidavit sworn by the person who initiates the hearing certifying that notice has been perfected may be accepted as proof of notice. The affidavit shall be filed with the commission on or before the hearing date.

(e) Filing for the purpose of receiving notice. Anyone who desires to receive notice of any hearings shall file annually with the conservation division that person's name, address and other information as may be reasonably required by the commission. The filing shall be on a form required by the commission and shall be accompanied by an annual \$50 fee. (Authorized by K.S.A. 1989 Supp. 55-152, 55-604, K.S.A. 55-602, 55-704; implementing K.S.A. 1989 Supp. 55-605, 55-706; effective, T-85-51, Dec. 19, 1984; effective May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended April 23, 1990.)

82-3-135a. Notice of application. (a) Scope. Except as otherwise provided in K.A.R. 82-3-100, 82-3-103a, 82-3-108, 82-3-109, 82-3-138, 82-3-203, 82-3-208, 82-3-209, 82-3-300, and 82-3-300a, the notice requirements in this regulation shall apply to each application for an order or permit filed pursuant to any regulation, special order, or statutory provision for the conservation of crude oil and natural gas or for the protection of fresh and usable water.

(b) Production matters. Except as otherwise provided in K.A.R. 82-3-100, 82-3-103a, 82-3-108, 82-3-109, 82-3-138, 82-3-203, 82-3-208, 82-3-209, 82-3-300, and 82-3-300a, each applicant for an or-

der filed pursuant to K.A.R. 82-3-100 through K.A.R. 82-3-314 shall give notice of the application on or before the date the application is filed with the conservation division by mailing or delivering a copy of the application to the following:

(1) Each operator or lessee of record within a one-half mile radius of the well or of the subject acreage; and

(2) each owner of record of the minerals in unleased acreage within a one-half mile radius of the well or of the subject acreage.

(c) Environmental matters. Each applicant for an order or permit filed pursuant to K.A.R. 82-3-400 through 82-3-412 and K.A.R. 82-3-600 through 82-3-607 shall give notice of the application on or before the date the application is filed with the conservation division by mailing or delivering a copy of the application to the following:

(1) Each operator or lessee of record within a one-half mile radius of the well or of the subject acreage;

(2) each owner of record of the minerals in unleased acreage within a one-half mile radius of the well or of the subject acreage; and

(3) the landowner on whose land the well affected by the application is located.

(d) Publication of notice. Notice of the application shall be published in at least one issue of the official county newspaper of each county in which the lands affected by the application are located. In addition, notice of applications relating to production matters shall also be published in at least one issue of the Wichita Eagle newspaper.

(e) Protest. Once notice of the application is published pursuant to subsection (d), the application shall be held in abeyance for 15 days for production matters and 30 days for environmental matters, pending the filing of any protest pursuant to K.A.R. 82-3-135b. If a valid protest is filed or if the commission, on its own motion, deems that there should be a hearing on the application, a hearing shall be held. The applicant shall publish notice of the hearing pursuant to K.A.R. 82-3-135. (Authorized by K.S.A. 55-152, 55-704, 55-901; implementing K.S.A. 55-605, 55-901, 55-1003; effective April 23, 1990; amended Oct. 24, 2008.)

82-3-135b. Protesters. Each protest against the granting of an application for an order or permit filed pursuant to K.A.R. 82-3-135a shall be considered under the following conditions and requirements:

(a) A protest may be filed by any person having

a valid interest in the application. Each protest shall be submitted in writing and shall provide the name and address of the protester and the title and docket number of the proceeding. The protest shall include a clear and concise statement of the direct and substantial interest of the protester in the proceeding, including specific allegations as to the manner in which the grant of the application will cause waste, violate correlative rights, or pollute the water resources of the state of Kansas.

(b) If the protester opposes only a portion of the proposed application, the protester shall state with specificity the objectionable portion.

(c)(1) The protest shall be filed with the conservation division according to the following deadlines:

(A) For each protest of production matters, within 15 days after publication of the notice of the application required in K.A.R. 82-3-135a; and

(B) for each protest of environmental matters, within 30 days after publication of the notice of the application required in K.A.R. 82-3-135a.

(2) Failure to file a timely protest shall preclude the interested person from appearing as a protester.

(d) Each protester shall serve the protest upon the applicant at the same time or before the protester files the protest with the conservation division. The protest shall not be served on the applicant by the conservation division.

(e) To secure consideration of a protest, the protester shall offer evidence or a statement or participate in the hearing. (Authorized by K.S.A. 55-152, 55-704, and 55-901; implementing K.S.A. 55-605, 55-901, 55-1003; effective April 23, 1990; amended Oct. 24, 2008.)

82-3-136. Transfer of operator responsibility. (a) If operator responsibility is transferred, the past operator shall report this transfer to the conservation division within 30 days of the change upon a form prescribed by the commission.

(b) The past operator shall furnish a list of all active and inactive wellbores on the lease, unit, gas storage facility, or secondary recovery unit with the notice of transfer.

(c) Transfers shall not be made to any individual, partnership, corporation, or municipality not currently licensed as an operator, gas gatherer, or gas storage operator.

(d) Within 90 days of any transfer, the new operator shall change the tank battery identification

sign provided for in K.A.R. 82-3-126 to show the new operator information.

(e) Violations of this regulation shall be punishable by a penalty of up to \$1,000 for the first violation, \$2,000 for a second violation, and \$3,000 plus license review for a third violation. (Authorized by and implementing K.S.A. 1996 Supp. 55-164, K.S.A. 1996 Supp. 55-604, and K.S.A. 55-704; effective May 1, 1985; amended Aug. 29, 1997.)

82-3-137. Change in purchasers. If a purchaser of production changes and if that production is subject to a proration order issued by the commission, the operator shall report this change to the conservation division within 30 days of the change in the purchaser. (Authorized by and implementing K.S.A. 55-604, 55-704; effective May 1, 1985.)

82-3-138. New pool application. (a) Application requirements. Each application for a new pool certificate shall be submitted to the conservation division on the form provided by the conservation division and shall be accompanied by the following:

(1) The affidavit of completion;

(2) a copy of the results of a state-supervised production test, showing volumes of oil, gas, and water;

(3) a certificate of mailing verifying that notice of the application was provided as required in K.A.R. 82-3-135a(b);

(4) the exhibits and evidence needed to substantiate the applicant's claim of a new pool; and

(5) any other relevant information required by the conservation division.

(b) New pool certificate. Each newly discovered pool shall be recognized only upon issuance of a certificate by the conservation division, signifying that the application has been approved. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-603; effective May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended April 23, 1990; amended June 6, 1994; amended Jan. 14, 2005; amended Oct. 24, 2008.)

82-3-139. (Authorized by and implementing K.S.A. 1987 Supp. 55-152, K.S.A. 55-602, 55-604, as amended by L. 1988, Ch. 356, Sec. 168, 55-704; effective May 1, 1986; amended May 8, 1989; revoked April 23, 1990.)

82-3-140. Tertiary recovery project certification. (a) Any interested party may file an

application for certification of a tertiary recovery project. Each application for certification of a tertiary recovery project to the Kansas department of revenue shall be submitted to the conservation division and shall be accompanied by the following:

- (1) The project name and its legal description;
- (2) the type of tertiary recovery process to be implemented;
- (3) exhibits and evidence required to support the application for certification; and
- (4) any other relevant information that may be required by the commission.

(b) The applicant shall publish notice of the application pursuant to K.A.R. 82-3-135a. (Authorized by K.S.A. 55-152, 55-704, and 79-4217; implementing K.S.A. 55-604 and 79-4217; effective, T-87-46, Dec. 19, 1986; effective May 1, 1987; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990; amended Nov. 2, 2007.)

82-3-141. (Authorized by and implementing K.S.A. 1989 Supp. 55-164, 55-604; effective May 1, 1988; amended April 23, 1990; revoked Aug. 29, 1997.)

82-3-142. (Authorized by and implementing K.S.A. 1988 Supp. 55-604, K.S.A. 55-704; effective May 8, 1989; revoked April 23, 1990.)

82-3-143. (Authorized by and implementing K.S.A. 55-604, as amended by L. 1988, Ch. 356, Sec. 168, 55-704; effective May 8, 1989; revoked April 23, 1990.)

82-3-144 to 82-3-199. Reserved.

82-3-200. Prevention of waste, protection of correlative rights, and prevention of discrimination between pools. (a) Any person having the right to drill, complete and operate wells from which oil from any common source of supply or pool is produced may produce on a monthly basis not more than that amount of crude oil from any well or lease than the allowable specified by the commission.

(b) Oil market demand.

(1) A monthly hearing may be held by the commission to determine the total statewide oil allowable.

(2) The statewide oil allowable shall be the amount of crude petroleum that can be produced daily throughout the state, during the next succeeding proration period, without causing waste.

(3) The total statewide allowable shall be allo-

cated by the commission among the prorated pools, leases and wells.

(4) Any crude oil which is removed from a lease shall be charged against the allowable established for that lease, except in cases where permission is granted to use waste oil for oiling roads leading to the lease.

(c) The crude oil allowable shall be that amount of oil which may be produced currently from any pool without causing waste or injury to correlative rights, and without discriminating between pools.

(1) In determining allowables, the statistical status of each well or lease, as of the first day of the preceding proration period shall be considered by the commission.

(2) Any applicable overages and shortages for each well or lease shall be used in determining the statistical status of that well or lease.

(d) The provisions of this regulation shall be construed in conjunction with K.A.R. 82-3-202 through K.A.R. 82-3-208. (Authorized by K.S.A. 1993 Supp. 55-602, 55-604; implementing K.S.A. 1993 Supp. 55-603; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1986; amended June 6, 1994.)

82-3-201. Oil production in prorated areas: balancing of underages. Whenever an oil well producing in a prorated area fails to produce its allowable, this shortage or underage shall be carried forward for two months upon the monthly proration report of the commission. The well shall be permitted to produce the underage in addition to its designated allowable. If the commission determines, however, that a proration unit is incapable of producing its allowable, the accrued underages shall be cancelled. Whenever shortages are attributable to the lack of transportation facilities, these shortages shall not be accrued for more than 60 days from the date of the initial productivity test, except as otherwise ordered by the commission. (Authorized by and implementing K.S.A. 1999 Supp. 55-604; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1986; amended April 23, 1990; amended June 1, 2001.)

82-3-202. Productivities, methods of determining, when required. The productivity of all wells in prorated pools in this state shall be determined in accordance with the following rules.

(a) Type of test. The productivity of each well

shall be determined by a physical test conducted in the manner in which the well is normally produced. The initial physical test shall be conducted within 30 days of the filing of the affidavit of completion for the well.

(b) Supervision. Each test shall be conducted under the supervision of the commission.

(c) Notice and witnesses. Each operator of a well on which a test is to be conducted shall notify the commission's agent at least 12 hours before the beginning of a test. Any offset operator may witness the test.

(d) Temporary allowable of a well. After the operator files an affidavit of completion, a temporary allowable for the well shall be established and shall be effective for 30 days.

(e) Production considered. Only pipeline oil produced during the test shall be considered in determining a well's productivity.

(f) Pool and productivity tests. (1) Pool and productivity tests shall be taken initially and on an annual basis, except on wells which produced less than 25 barrels of oil per day at the time of the last current test.

(2) Those wells producing less than 25 barrels of oil per day shall be exempt from further testing unless the well becomes capable of producing more than 25 barrels of oil per day or unless otherwise ordered by the commission.

(3) Whenever, due to some act or omission of the operator, more than 15 months have lapsed since the last productivity test for a well was conducted, the well shall not be entitled to an allowable until tested, unless otherwise exempt.

(4) Any well that was tested less than three months before the date of a scheduled pool test shall not be required to take the pool test.

(5) Operators shall be notified 10 days before the start of a pool test.

(g) Good cause shown. The commission may, on its own motion and for good cause shown, direct the taking of a productivity test of any well or any pool. (Authorized by and implementing K.S.A. 55-604; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1986; amended May 1, 1988.)

82-3-203. State and pool allowable and proration. (a) Well allowables for nonprorated pools. Allowables shall be assigned on an individual well basis. The allowable for each well in nonprorated pools shall be set by the following depth

schedule and shall take effect from the date of first production:

Producing Interval Found Between	Daily Production Allowable bbls/well/day
0-4000'	100
4001-6000'	200
Below 6000'	300

(b) Oil wells not meeting the provisions of K.A.R. 82-3-207 shall have their oil allowables determined under the provisions of that section.

(c) Exception. An allowable may be assigned and acreage may be attributed to a given nonprorated well at variance to the allowable assigned and acreage attributed to a well of similar depth as set out in subsection (a). The applicant for such an exception shall file a verified application that shows:

(1) the exact location of the well and the acreage attributed to the well;

(2) the allowable requested;

(3) the geological name of the producing formation;

(4) the top and bottom depths of the producing formation;

(5) the names and addresses of each operator or lessee of record and each unleased mineral owner within a 1/2 mile radius of the subject well, and an affidavit indicating the date that service of a copy of the application was made to each; and

(6) any other information the commission may require.

(d) Any interested party may file an application for an exception to the well allowable provisions of this regulation.

(1) An original and four copies of the application shall be filed with the conservation division.

(2) The application shall be set for hearing by the commission.

(3) The applicant shall publish notice of the hearing pursuant to K.A.R. 82-3-135. (Authorized by K.S.A. 1993 Supp. 55-604; implementing K.S.A. 1993 Supp. 55-605, 55-604; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended, T-85-51, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 8, 1989; amended April 23, 1990; amended June 6, 1994.)

82-3-204. Reports by producers. The producer or operator of each well in prorated pools, including minimum wells, shall file each month a verified statement showing the amount

of crude petroleum actually produced by each well and lease. The verified statement shall be filed with the conservation division on or before the 15th day of each month following the month in which the production occurred. The filing of production reports by producers shall be required for the purpose of obtaining allowables. (Authorized by K.S.A. 55-604; implementing K.S.A. 55-603; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1986; amended May 1, 1988.)

82-3-205. (Authorized by and implementing K.S.A. 55-604, as amended by L. 1988, Ch. 356, Sec. 168; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended May 8, 1989; revoked April 23, 1990.)

82-3-206. Assessment. In order to pay the conservation division expenses and administration costs not otherwise provided for, an oil conservation assessment shall be made as follows:

(a) A charge of 91.00 mills on each barrel of crude oil or petroleum marketed or used each month shall be assessed to each producer. The charge and assessment shall apply only to the first purchase of oil from the producer.

(b) Each month, the first purchaser of the production shall perform the following:

(1) Deduct the assessment per barrel of oil marketed or used from the lease before paying for production;

(2) remit the assessment in a single check to the conservation division when making regular oil payments; and

(3) account for the deductions on the regular payment statements to producers and royalty owners or other interested persons. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-176; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1986; amended April 23, 1990; amended Dec. 6, 1993; amended Nov. 15, 1996; amended June 1, 2001; amended Dec. 22, 2006.)

82-3-207. Oil drilling unit. In the absence of special orders issued by the commission, the following provisions shall apply to all oil wells.

(a) Standard drilling unit. A standard drilling unit shall be 10 acres. Except as otherwise provided by K.A.R. 82-3-108(b) or (c), the well for that unit shall be located at least 330 feet from any lease or unit boundary.

(b) Acreage-attribution unit. Unless an exception is granted, any oil well that is drilled nearer than the minimum distance required by subsection (a) or (b) of K.A.R. 82-3-108, whichever is applicable, from any lease or unit boundary line shall have its attributable acreage determined by the establishment of an acreage-attribution unit. The width of the acreage-attribution unit shall be twice the distance from the well to the nearest lease or unit boundary line. The length of the unit shall be the same as the width.

(c) Acreage attributable. When the acreage attributable to any well is less than 10 acres, the well's allowable shall be reduced in the same proportion that the acreage attributable to the well bears to 10 acres. (Authorized by and implementing K.S.A. 55-604; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended May 1, 1988.)

82-3-208. Venting or flaring of casinghead gas. (a) Exception to hearing requirement.

Without a hearing, the venting or flaring of casinghead gas, other than sour casinghead gas, may be permitted by the commission if the requirements of this subsection are met. The operator shall file an affidavit with the conservation division. The affidavit shall be submitted on a form supplied by the commission and shall state all of the following:

(1) The well has 25 mcf/d or less of casinghead gas available for sale as established by a state-supervised test.

(2) The casinghead gas volume is uneconomic to market because a pipeline connection is not feasible, or the price received would not allow reasonable recovery of the investment required to market the gas and the direct expense attributable to marketing.

(3) The operator has made a diligent effort to obtain a market for the gas, and the volume of casinghead gas produced from this well will not economically justify a pipeline connection.

(b) Notice; hearing. If the total volume produced and available for sale from a well is in excess of 25 mcf/d, the venting or flaring of a specified amount of casinghead gas may be permitted by the commission upon application and after notice and hearing. In making such a determination, the following shall be considered by the commission:

(1) The availability of a market or of pipeline facilities;

(2) the probable recoverable gas reserves;
 (3) the necessity for maintenance of reservoir gas pressure to maximize the recoverability of oil reserves from the formation;

(4) the feasibility of reinjecting the gas;

(5) a reasonable testing period;

(6) any anticipated change in the gas-to-oil ratio;

(7) the applicant's compliance with the department's applicable air quality regulations; and

(8) any other fact or circumstance demonstrating the reasonableness of the request.

(c) Application. Any interested party may file an application to vent or flare a total volume of casinghead gas in excess of 25 mcf/d from a well. The original and four copies of the application shall be filed with the conservation division. The application shall be set for hearing by the commission. The applicant shall publish notice of the hearing pursuant to K.A.R. 82-3-135.

(d) Form and contents. The application shall include the following:

(1) The name and address of each operator or lessee of record within a ½-mile radius of the subject well, and a certificate of mailing indicating the date on which service of a copy of the application was made to each operator or lessee;

(2) the name and address of each owner of record of the minerals in unleased acreage within a ½-mile radius of the subject well, and a certificate of mailing indicating the date on which service of a copy of the application was made to each owner of record; and

(3) the name and address, as shown by the applicant's books and records, of each person owning the royalty or leasehold interest in the acreage upon which the well is located, and a certificate of mailing indicating the date on which service of a copy of the application was made to each person.

(e) Gas measurement; continuing jurisdiction. The volume of gas vented or flared under this regulation shall be metered, measured, or monitored, and the charts or records shall be retained for two years. This information shall be reported to the commission semiannually or as designated by the commission. The continuing jurisdiction with authority to terminate the venting or flaring of gas when necessary shall lie with the commission.

(f) Protection of persons and property. All gas vented or flared under this regulation shall be done in a manner designed to prevent damage to property and injury to persons who are reasonably expected to be in the vicinity for work, pleasure,

or business. (Authorized by K.S.A. 2003 Supp. 55-604, K.S.A. 55-704; implementing K.S.A. 2003 Supp. 55-102, K.S.A. 2003 Supp. 55-604, K.S.A. 55-605, 55-702, and 55-704; effective May 1, 1984; amended May 1, 1986; amended April 23, 1990; amended Jan. 14, 2005.)

82-3-209. Flaring of sour gas. (a) The flaring of sour casing-head gas may be permitted by the commission. In making such a determination, the following factors shall be considered by the commission:

(1) the availability of a market or of pipeline facilities;

(2) probable recoverable gas reserves;

(3) the necessity for maintenance of gas pressure in the formation to protect the nonwasteful production of oil;

(4) the feasibility of reinjection of sour gas;

(5) any anticipated change in the gas/oil ratio;

(6) the hydrogen sulfide content of the gas;

(7) the feasibility of desulfurization of the gas;

(8) the proposed flaring facility;

(9) the applicant's compliance with the department's air quality regulations in K.A.R. 28-19-6 *et seq.*; and

(10) any other fact or circumstance having bearing on the reasonableness of the request.

(b) Any interested party may file an application for the flaring of sour casing-head gas from a well. An original and four copies of the application shall be filed with the conservation division. The application shall be set for hearing by the commission. The applicant shall publish notice of the hearing pursuant to K.A.R. 82-3-135.

(c) The application shall include the following:

(1) The name and address of each operator or lessee of record within a one-half mile radius of the subject well, and a certificate of mailing indicating the date service of a copy of the application was made to each;

(2) the name and address of each owner of record of the minerals in unleased acreage within a one-half mile radius of the subject well, and a certificate of mailing indicating the date service of a copy of the application was made to each.

(3) the name and address, as shown by the applicant's books and records, of each person owning the royalty or leasehold interest in the acreage upon which the well is located, and a certificate of mailing indicating the date service of a copy of the application was made to each.

(d) When required by the commission, all sour

gas flared under this regulation shall be metered and analyzed for its hydrogen sulfide content. Such information shall be reported to the commission semi-annually or as designated by the commission. The flaring of sour gas may be terminated by the commission when necessary. (Authorized by K.S.A. 1989 Supp 55-604, K.S.A. 55-704; implementing K.S.A. 55-102, K.S.A. 1989 Supp. 55-604, K.S.A. 55-702, K.S.A. 1989 Supp. 55-703, K.S.A. 55-704, K.S.A. 1989 Supp. 55-706; effective May 1, 1987; amended April 23, 1990.)

82-3-210 to 82-3-299. Reserved.

82-3-300. Assignment of gas allowables in prorated pools; notice. (a) Request for allowable. A gas well in a prorated common source of supply that is in conformance with all provisions of the applicable basic proration order shall be granted an allowable by the commission on the date of filing the latest of the following:

(1) A form as prescribed by the commission requesting an allowable for a gas well in a prorated pool;

(2) an acreage plat verifying the location of the well and a description of the acreage to be attributed to the well;

(3) the results of the state-supervised test as required by the applicable basic proration order; and

(4) in the case of a replacement well, either of the following:

(A) Documentation that the operator has plugged the original well, caused the productive perforations to be squeezed, or otherwise isolated the productive zone; or

(B) an affidavit filed with the commission stating that the well is disconnected and surface equipment is sealed in preparation to be plugged or returned to other use within one year of the date of being sealed.

(b) Replacement wells. In the case of a replacement well, any accumulated overage or underage shall be transferred to the replacement well.

(c) Application for exception. A gas well in a prorated common source of supply that requires exceptions to any provision of the applicable basic proration order may be granted an allowable by the commission only after an application has been filed with the conservation division. Each application shall show the following:

(1) The exact location of the well and the acreage attributed to the well;

(2) the common source of supply from which the well is producing;

(3) the name and address of the purchaser, if known;

(4) a statement of the exception being requested and the reasons the exception should be granted;

(5) a plat showing the location and approximate depths of all wells and dry holes that have been drilled within one mile from the acreage to be attributed;

(6) the applicant's license number;

(7) the names and addresses of each person owning a royalty or working interest in the acreage to be attributed, and a certificate of mailing indicating the date on which service of a copy of the application was made to each person;

(8) the names and addresses of all operators of producing acreage abutting or adjoining the acreage to be attributed, and a certificate of mailing indicating the date on which service of a copy of the application was made to each operator;

(9) the names and addresses of all lessees of record of nonproducing acreage abutting or adjoining the acreage to be attributed, and a certificate of mailing indicating the date on which service of a copy of the application was made to each lessee;

(10) the names and addresses of all owners of record of the minerals in, or royalty of unleased acreage abutting or adjoining, the acreage to be attributed, and a certificate of mailing indicating the date on which service of a copy of the application was made to each owner;

(11) the names and addresses of all persons owning the royalty or leasehold interests in acreage abutting or adjoining the acreage to be attributed that is operated by the applicant or on which the applicant has a lease or an interest in the lease, and a certificate of mailing indicating the date on which service of a copy of the application was made to each person;

(12) a statement advising each person listed in paragraphs (7) through (11) of this subsection that the person has 15 days in which to file a protest to the application with the conservation division pursuant to the provisions of K.A.R. 82-3-135b; and

(13) any other relevant information that the commission may require.

(d) Notice of the application. In addition to mailing a copy of the application to each of the persons described in subsection (c), notice of the

application shall be published in at least one issue of the official county newspaper of each county in which lands affected by the application are located and in the "Wichita Eagle" newspaper.

(e) Protest. After notice of the application is published pursuant to subsection (d) and mailed to the persons described in subsection (c), the application shall be held in abeyance for 15 days from the date of publication or mailing, whichever is later, pending the filing of any protest pursuant to K.A.R. 82-3-135b. If a valid protest is filed or if, on the commission's own motion, it is deemed that there should be a hearing on the application, a hearing shall be held. The applicant shall publish notice of the hearing pursuant to K.A.R. 82-3-135. (Authorized by K.S.A. 55-152 and 55-704; implementing K.S.A. 55-705b, K.S.A. 55-706; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1988; amended April 23, 1990; amended March 20, 1995; amended June 1, 2001; amended Nov. 2, 2007.)

82-3-300a. Reinstatement of cancelled underage. (a) A cancelled underage for any gas well producing from a common source of supply governed by a basic proration order which provides for the reinstatement of cancelled underage shall not be reinstated by the commission unless an application has been filed with the conservation division and duly verified.

Each application shall show:

- (1) The exact location of the well and the acreage attributed to the well;
- (2) the common source of supply from which the well is producing;
- (3) the name and address of the purchaser, if known, and a certificate of mailing indicating the date the application was served;
- (4) the volume of underage available to be reinstated and the date of its cancellation;
- (5) the applicant's license number; and
- (6) any other information the commission may require.

(b) Notice of the application shall be published in at least one issue of the official county newspaper of each county in which lands affected by the application are located and in the Wichita Eagle newspaper. (Authorized by and implementing K.S.A. 55-704, K.S.A. 1989 Supp. 55-706; effective April 23, 1990.)

82-3-301. (Authorized by K.S.A. 55-704; implementing K.S.A. 1982 Supp. 55-703; effective,

T-83-44, Dec. 8, 1982; effective May 1, 1983; revoked Jan. 14, 2005.)

82-3-302. (Authorized by and implementing K.S.A. 55-704; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; revoked May 1, 1988.)

82-3-303. Determination of open flow of a gas well. In the absence of field rules to the contrary, the open flow capacity of a gas well shall be determined by flowing the well into a pipeline for a period of 24 to 72 hours, as required to attain stabilization through approved metering equipment. This procedure shall be known as a one point stabilized flow test. The rate of flow shall be recorded on a standard orifice meter chart, either graphically or mathematically, or recorded electronically in a flow computer connected to a metering device. The rate of flow at the end of the period shall be extrapolated to atmospheric pressure by using the characteristic well slope as determined from a multipoint back-pressure test.

(a) Multipoint back-pressure test. A multipoint back-pressure test shall be taken for determination of characteristic well slope, "n," as determined from the equation

$$Q = C(P_c^2 - P_w^2)^n$$

where:

- Q = the rate of flow, using MCF per day at 14.65 pounds per square inch absolute and 60°F;
- C = the performance coefficient of the well;
- P_c = wellhead shut-in pressure, expressed in pounds per square inch absolute and using the casing or tubing pressure, whichever is higher;
- P_w = static wellhead working pressure, expressed in pounds per square inch absolute, at the termination of each flow period. Except as otherwise provided, the casing pressure shall be used if the annulus is open to the formation. If the annulus is not open to the formation so that the pressure cannot be measured on a static column, the tubing pressure shall be used if the flowing pressure is corrected for friction. All squared pressures shall be expressed in thousands; and
- n = a numerical exponent characteristic of the particular well, referred to as "slope."

Multipoint back-pressure tests shall be limited to one per commercial gas well. A second test shall

be permitted for a commercial gas well only if the well is recompleted into a separate common source of supply or for good cause shown.

The basic procedures for taking a multipoint back-pressure test shall be as follows:

(1) The well shall be shut in for 72 hours, plus or minus six hours, and the shut-in pressure shall be taken. This shut-in pressure shall be considered stabilized unless readings taken with commission-approved equipment at a shorter period are higher. In this event, the highest recorded pressure during the test shall be used as the shut-in pressure. If the shut-in period appreciably affects the surface pressure, appropriate correction of the surface pressure shall be made in order to account for the pressure due to the liquid column.

(2) If the well being tested has a pipeline connection, it shall be flowed for at least 24 hours before the shut-in period at a rate high enough to clear the well of liquids.

(3) A series of at least four flow tests shall be taken. The tests shall be run in an increasing flow rate sequence. In the case of high liquid-to-gas ratio wells, a decreasing flow rate sequence may be used if the increasing sequence method will not give point alignment. If the decreasing sequence method is used, a statement giving the reasons why the use of this method is necessary, with a copy of the data taken on increasing sequence, shall be furnished to the commission.

(4) Each flow test shall extend for not more than two hours. If the wellhead working pressure does not decline more than 0.1 percent of the wellhead shut-in pressure during any 15-minute period before the end of the two-hour flow period, the pressure may be recorded and the next flow test started. All subsequent flow periods shall be of the same duration.

(5) If the back-pressure curve cannot be drawn through at least three of the plotted points, the well shall be retested. If upon retest a curve cannot be drawn through at least three of the plotted points, an average curve shall be drawn through the points of the test if the slope of the curve will be not more than 1.0 and not less than 0.5.

(6) If the curve drawn through at least three points of the back-pressure test has a slope greater than 1.0 or less than 0.5, the well shall be retested. If upon retest the slope of the curve is greater than 1.0, a curve with a slope of 1.0 shall be drawn through the data point corresponding to the highest rate of flow. If upon retest the slope of the curve is less than 0.5, a curve with a slope of 0.5

shall be drawn through the data point corresponding to the lowest rate of flow.

(7) All tests shall be subject to review and approval by a representative of the state corporation commission.

(8) The lowest rate of flow on the test shall be at a rate high enough to keep the well clear of liquids.

(9) If possible, the working wellhead pressure at the lowest rate of flow shall be drawn down at least five percent of the well's shut-in pressure and, if possible, 25 percent of the well's shut-in pressure at the highest rate of flow. If data cannot be obtained in accordance with this paragraph, a written explanation shall be furnished to the commission.

(10) Correction for the compressibility of flowing gas shall be made in accordance with approved commission methods.

(11) If the static wellhead working pressure reading cannot be obtained due to packer or dual completion, the pressure shall be calculated by using appendix A in the document adopted by reference in paragraph (b)(4).

(12) If a satisfactory test cannot be obtained on wells whose indicated open flow is 500 mcf or less, an exception to the foregoing procedure may be granted by the commission and a slope of 0.85 may be assigned to the well.

(13) Upon completion of the test, all the calculations shall be shown on any approved form and shall be accompanied by a back-pressure curve neatly plotted on equal scale log paper of at least three-inch cycles.

(b) One-point stabilized flow test.

(1) An initial one-point stabilized flow test shall be made within 30 days from the date of first production of gas into a pipeline, and additional tests shall be taken yearly or as ordered by the commission. Upon the completion of all flow tests, a copy of the flow calculations shall be submitted to the commission.

(2) Immediately after the shut-in wellhead pressure is taken, the well shall be opened into the pipeline and gas shall be produced for the subsequent 24 to 72 hours at the test rate as required to reach stabilization. During this time, the working pressure at the wellhead shall be maintained as nearly as possible at 85 percent of the wellhead shut-in pressure, expressed in pounds per square inch gauge, or as close to 85 percent as operating conditions in the field will permit.

(3) The wellhead working pressure shall never

be more than 95 percent or less than 75 percent of the wellhead shut-in pressure of the well being tested unless, in the judgment of the commission's representative, it is impractical to maintain the pressure within these limits. In this case, the well shall be produced at maximum capacity through either the tubing or the annulus, whichever will give the greater drawdown.

(4) The open flow shall be calculated by use of the formula specified in this paragraph. Flow shall be measured by an approved meter throughout the test period, and the wellhead and meter pressures shall be measured at the close of the test period by gauges approved for use in the state corporation commission's "manual of back pressure testing of gas wells," written pursuant to commission order dated May 15, 1957, docket number 34,780-C (C-1825), which is hereby adopted by reference, including the appendices.

The rate at which the well is producing at the end of the flow period shall be considered the stabilized producing rate corresponding to the wellhead working pressure existing at that time, if the rate is not greater than the average producing rate for the entire flow period. The observed stabilized producing rate shall be converted to open flow by use of the following formula:

$$OF = R \text{ times } \left[\frac{(P_c^2 - P_a^2)}{(P_c^2 - P_w^2)} \right]^n$$

where:

- OF = Open flow, expressed in MCF/D.
- R = Stabilized producing rate, expressed in MCF per day at 14.65 pounds per square inch absolute and 60°F.
- P_a = Atmospheric pressure, expressed in pounds per square inch absolute.
- P_c = Wellhead shut-in pressure of the well, expressed in pounds per square inch absolute.
- P_w = Stabilized wellhead working pressure at rate R, expressed in pounds per square inch absolute.
- n = Characteristic well slope as determined by the multipoint back-pressure test.

(5) Shut-in wellhead pressure shall be measured after the well has been shut in for approximately 72 hours. The well shall have been shut in for not less than 66 hours and not more than 78

hours when the shut-in pressure is taken. If the representative of the commission believes that the shut-in pressure taken upon a well is incorrect, the representative may require that the well be blown to clean fluids from the well bore or may take any other reasonable steps that may be necessary to get a true pressure reading upon the well. If more than one shut-in pressure is taken upon a well during the test period, the highest shut-in pressure obtained shall be used in calculating the open flow of the well.

(c) Metering devices. An orifice meter, a critical flow prover, or a turbine meter in good operating condition and properly calibrated in accordance with the manufacturer's recommendation shall be the only acceptable metering devices. The owner of the metering device shall have documentation of any recalibration or refurbishment of the metering device and shall furnish the documentation to the conservation division upon request.

(d) Gas venting. Gas shall not be vented except when absolutely necessary. (Authorized by K.S.A. 55-704; implementing K.S.A. 55-703; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1987; amended April 23, 1990; amended June 1, 2007.)

82-3-304. Tests of gas wells; penalty. (a) Initial certified tests.

(1) Initial certified tests run on gas wells to determine the standard daily allowable as a percentage of the well's actual open-flow potential shall be conducted in conformance with K.A.R. 82-3-303 or special orders of the commission. These tests shall be completed and filed by the well operator with the commission within 60 days of the first gas sales. The well operator shall conduct the tests under the supervision of the conservation division, and a representative of the commission may be present to witness these tests. A test of any individual well may be required by the commission at any time.

(2) The operator of any gas wells producing a minimum allowable of 250 mcf or less of gas per day in non-prorated fields shall not be required to perform an initial certified test in conformance with K.A.R. 82-3-303. Each operator of a minimum allowable gas well shall perform an initial test consisting of a 24-hour shut-in pressure test within 30 days of the first gas sales. The operator of the well shall report the results of the shut-in

pressure test to the commission on a prescribed form within 30 days of the test date.

(3) In prorated fields, all gas produced into a pipeline shall be counted against the allowable.

(b) Test witnessing; notification. Tests may be witnessed by a representative of any producer, purchaser, or transporter in the gas field from which the well produces. Any producer, purchaser, or transporter may request notification of the time the tests will commence from the operator of the well on which a test is to be run.

(c) Annual testing.

(1) An annual test shall be run, in accordance with these regulations, on all gas wells not covered by a proration order or special order, unless these wells are exempt pursuant to subsection (d) below. The test shall be effective during the following year. The test shall become effective the first day of the month following receipt of test results by the conservation division.

(2) Each operator who fails to submit an annual gas well test shall shut in the well until the annual well test has been submitted.

(d) Exemption from annual testing. If the well does not produce gas with more than 30 grains per 100 cubic feet of H₂S and, if applicable, the operator has submitted an open-flow test in accordance with K.A.R. 82-3-303, the following shall be exempt from annual testing requirements:

(1) Gas wells used for domestic purposes where gas is not sold;

(2) gas wells that produce 250 mcf of gas or less per day;

(3) water-prone gas wells equipped with a plunger lift;

(4) gas wells used exclusively for secondary oil recovery; and

(5) gas wells employing a vacuum to recover gas.

(e) Request for exemption. Each operator shall request the exemption from annual testing each year on forms prescribed by the commission, shall perform a shut-in pressure test during each year, and shall furnish the results of the test to the commission with the request for exemption.

(f) Coalbed natural gas exemption.

(1) Any operator of a well producing only coalbed natural gas may seek an exemption from subsections (a) and (c) by filing an application for exemption with the conservation division stating that only coalbed natural gas is produced from the well and that the testing would be physically impossible or contrary to prudent practices for the wells.

No well shall be deemed exempt unless the application for exemption has been approved by the conservation division. The conservation division's approval shall be deemed granted 30 days after the application has been filed, unless the conservation division has notified the applicant before the expiration of the 30-day time period that the application has been denied. Each notice of denial shall be in writing and shall include the procedure for the applicant to appeal the denial.

(2) If this exemption is granted, the exemption shall continue until the well no longer meets the criteria for exemption under this subsection. The operator shall notify the conservation division immediately if the well begins producing oil or gas other than coalbed natural gas or if the well characteristics change so that testing becomes possible.

(g) Responsibility for conducting test; confirmation of allowable. Each operator of a gas well shall be responsible for conducting all tests required to obtain an allowable for the well. Each operator shall submit one copy of the test required under subsection (c) to the conservation division and one copy to the purchaser to confirm the allowable as determined by these regulations or by special orders.

(h) Illegal production. All gas produced and sold without the required test shall be considered illegal production.

(i) Penalty. The failure to submit an annual gas well test shall be punishable by a \$500.00 penalty. (Authorized by K.S.A. 55-704; implementing K.S.A. 55-164 and K.S.A. 55-703; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended April 23, 1990; amended Aug. 29, 1997; amended Jan. 25, 2002; amended Jan. 14, 2005; amended June 1, 2007.)

82-3-305. Gas to be metered. (a) Well, lease, or unitized property. All gas, when produced or sold, shall be metered with an approved meter of sufficient capacity. Gas may be metered from a lease or unitized property as a whole if it is shown that ratable taking can be maintained. Meters shall not be required for gas produced and used on the lease for development purposes and lease operations or for use in primary dwellings.

(b) Meters: calibration, testing, charts, and records. Each party who owns, maintains, or operates the metering device used to record gas sales from each well or lease in gas fields shall at a min-

imum test and calibrate the metering device on an annual basis by a method approved by the conservation division and retain the record of the testing and calibration for at least two years. Each party shall also retain for at least two years the original field record consisting of magnetic tapes, meter charts, electronic records, or records of gas purchases. All information retained shall be made available to the conservation division upon request.

(c) By-passes. By-passes shall not be connected around meters in a manner that will permit the improper taking of gas.

(d) Penalties. Each failure to comply with any of the requirements of this regulation shall be punishable by a \$1,000 penalty. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-164 and 55-703; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 8, 1989; amended Dec. 22, 2006.)

82-3-306. Report of gas produced. (a)

Each party who owns, maintains, or operates the metering device used to record gas produced from each well in any prorated gas field shall file a monthly volume report showing the amount of gas actually metered on each well. The volume report shall be filed with the conservation division on or before the 20th day of the succeeding month in which the production occurred. Extensions of the time period within which the volume report shall be filed may be granted by the director. The form or electronic format used for reporting the volume shall be furnished or approved by the commission.

(b) Each party who owns, maintains, or operates the metering device used to record gas produced from each lease or well in any gas field under statewide general rules and regulations may be directed by the commission to file a volume report showing the amount of gas actually metered on each lease or well for a specified time period. The form or electronic format used for reporting the volume shall be furnished or approved by the commission. (Authorized by and implementing K.S.A. 55-704; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1988; amended April 23, 1990; amended June 1, 2001.)

82-3-307. Gas conservation assessment.

In order to pay the conservation division expenses and other costs in connection with the administration of the gas conservation regulations not oth-

erwise provided for, an assessment shall be made as follows.

(a) A charge of 12.90 mills shall be assessed on each 1,000 cubic feet of gas sold or marketed each month. The assessment shall apply only to the first purchaser of gas.

(b) Each month, the first purchaser of the production shall perform the following:

(1) Before paying for the production, deduct an amount equal to the assessment for every 1,000 cubic feet of gas produced and removed from the lease;

(2) remit the amounts deducted, in a single check if the purchaser desires, to the conservation division when the purchaser makes regular gas payments for this period; and

(3) show all deductions on the regular payment statements to producers and royalty owners or other interested parties.

(c) The assessment established by the commission shall not apply to gas that is being returned to the ground for repressuring purposes within the field, but shall apply to gas that is produced and removed from the lease and returned to the ground for storage purposes. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-176; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended April 23, 1990; amended Aug. 19, 1991; amended Dec. 6, 1993; amended Nov. 15, 1996; amended June 1, 2001; amended Dec. 22, 2006.)

82-3-308. (Authorized by and implementing K.S.A. 1982 Supp. 55-703; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; revoked Aug. 29, 1997.)

82-3-309. (Authorized by and implementing K.S.A. 1982 Supp. 55-703; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; revoked Aug. 29, 1997.)

82-3-310. Natural gas pipeline maps. Upon the request of the conservation division, each operator shall file natural gas pipeline maps of a size and scale prescribed by the commission, indicating the location, size, and extensions of the pipeline, and any portions abandoned or not used. (Authorized by K.S.A. 55-704; implementing K.S.A. 55-703; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended June 1, 2001.)

82-3-311. Drilling through gas storage formations. (a) Any person, firm, or corporation who, for any purpose, drills or causes the drilling

of a well or test hole that penetrates or bores through any underground stratum or formation utilized for the underground storage of natural gas shall seal off the natural gas storage stratum or formation by either of the following:

(1) The methods and materials recommended by the operator of the gas storage facility and approved by the commission or its duly authorized representative; or

(2) any methods and materials that the commission determines to be fair, equitable, and reasonable.

(b) That person, firm, or corporation shall maintain the well or test hole in a manner that protects the stratum or formation at all times against pollution and the escape of natural gas.

(c) Not less than 30 days before commencing or plugging a well or test hole as referred to in subsection (b), the person, firm, or corporation desiring to commence drilling or plugging operations shall give the operator of the gas storage facility and the commission notice in writing, by registered mail, of the date desired for commencement of drilling or plugging the well.

(d) Within 10 days after receipt of notice, the operator of the gas storage facility shall forward to the commission its recommendations as to the manner, methods, and materials to be used in the sealing off or plugging operation. The operator of the gas storage facility shall give notice of the recommendations by mailing or delivering a copy to the person, firm, or corporation who seeks to drill or plug a well or test hole. The notice shall be mailed or delivered on or before the date on which the recommendations are mailed to or filed with the commission.

(e) Any objections or complaints stating why the recommendations proposed by the operator of the gas storage facility are not feasible, practical, or reasonable shall be filed within five days after the recommendation is filed.

(f) If any objections or complaints are filed or if the commission deems that there should be a hearing on the recommendation of the operator of the gas storage facility, a hearing shall be held. Notice of the hearing shall be published according to K.A.R. 82-3-135.

(g) Following receipt of the recommendations proposed by the operator of the gas storage facility or the hearing, the manner, methods, and materials to be used in the sealing off or plugging operation shall be prescribed by the commission. Operations shall not commence until the manner,

methods, and materials to be used have been prescribed by the commission.

(h) Any operator of the gas storage facility involved may have a representative present at all times during the drilling, completing, or plugging of the well or test hole and shall have access to all records relating to the drilling, equipping, maintenance, operation, or plugging of the well.

(i) Each operator of the gas storage facility involved, in conjunction with the commission or its representative and the operator of the well, shall have the right to inspect or test the well to discover any leaks or defects that may affect the underground natural gas storage stratum or formation.

(j) Each cost and expense necessarily incurred in sealing off the stratum or formation or in plugging, maintaining, inspecting, or testing the well, as recommended by the operator of the gas storage facility and subsequently approved or independently determined by the commission or its representative, that is over and above the ordinary expense of operations using similar methods, shall be paid upon completion by the operator of the gas storage facility involved.

This regulation shall be effective on and after October 29, 2002. (Authorized by K.S.A. 55-152, K.S.A. 2001 Supp. 55-1,115 and 55-604, K.S.A. 55-704, and K.S.A. 2001 Supp. 74-623; implementing K.S.A. 2001 Supp. 55-1,115, K.S.A. 55-605, 55-706, 55-1203, and K.S.A. 2001 Supp. 74-623; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended, T-85-51, Dec. 19, 1984; effective May 1, 1985; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990; amended, T-82-6-27-02, July 1, 2002; amended Oct. 29, 2002.)

82-3-312. Gas allowables and drilling unit. In the absence of basic proration orders issued by the commission, the following provisions shall apply to all gas wells: (a) Standard daily allowable. The standard daily allowable for a gas well shall be limited to 50 percent of the well's actual open-flow potential. The actual open-flow potential used to determine the standard daily allowable shall be measured by the testing procedures specified in K.A.R. 82-3-303. All gas wells that are in compliance with the provisions of K.A.R. 82-3-304 shall be entitled to a minimum allowable of 250 mcf per day.

(b) Coalbed natural gas exemption. Coalbed natural gas wells that are exempt from the

requirements of K.A.R. 82-3-304(a) and (c) shall be exempt from subsection (a) of this regulation.

(c) Standard drilling unit. A standard drilling unit shall be 10 acres. Except as otherwise specified in K.A.R. 82-3-108(c), the well for that unit shall be located at least 330 feet from any lease or unit boundary.

(d) Acreage-attribution unit. Unless a well location exception is granted, each gas well located nearer than 330 feet to any lease or unit boundary line shall have acreage attributed to it by the establishment of an acreage-attribution unit. The width of each unit shall be defined as being twice the distance from the well to the nearest lease or unit boundary line. The length of the unit shall be defined to be the same as the width.

(e) Acreage attributable. If any gas well is located nearer than 330 feet to any lease or unit boundary line, the standard daily allowable or minimum allowable shall be reduced in the same proportion that the acreage attribution to the well bears to 10 acres.

(f) Exceptions. Exceptions may be granted, and adjustments to the allowables may be made by the commission to protect correlative rights, prevent waste, and give the full allowable if any of these conditions exists:

(1) Location exceptions have been granted for man-made structures or topographic features.

(2) No interference with drainage of adjacent wells can be shown by competent evidence.

(3) Actual interference is less than the reduced allowable. (Authorized by K.S.A. 55-704; implementing K.S.A. 55-703; effective May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended April 23, 1990; amended Aug. 29, 1997; amended June 1, 2001; amended Jan. 25, 2002; amended Jan. 14, 2005.)

82-3-313. (Authorized by K.S.A. 55-604, 55-704; implementing K.S.A. 55-602, 55-603, 55-703, as amended by L. 1985, Ch. 183, Sec. 1; effective May 1, 1986; revoked Aug. 29, 1997.)

82-3-314. Venting or flaring of gas other than casinghead gas. (a) Coalbed natural gas.

(1) Without a hearing, the venting or flaring of coalbed natural gas may be permitted by the commission if the requirements specified in this subsection are met. The operator shall file an affidavit with the conservation division. The affidavit shall be submitted on a form supplied by the commission and shall meet the following requirements:

(A) Identify the geographic area included in the proposed pilot project;

(B) state that there are no gathering or pipeline facilities available;

(C) state that venting or flaring of gas is necessary to dewater wells while they are being tested to determine the economic feasibility of installing gathering or other facilities to make the gas marketable and to determine the required capacity of the facilities;

(D) state the maximum daily volume of gas anticipated to be vented or flared; and

(E) state that the applicant will comply with the department's applicable air quality regulations.

(2) Venting or flaring for any reason shall not exceed 180 days without reapplication with the commission. Without a hearing, one extension not to exceed 180 days may be granted by the commission.

(3) The operator shall publish notice of the affidavit and any request for an extension of the venting or flaring period, pursuant to K.A.R. 82-3-135. In addition, the operator shall give notice to the local emergency planning commission (LEPC). If any part of the proposed project area falls within the corporate limits of any city, the operator shall give notice to the city clerk. The operator shall file with the conservation division a certificate of mailing indicating the date on which service of a copy of the affidavit was made to the LEPC or city clerk.

(b) Natural gas.

(1) Without a hearing, the venting or flaring of natural gas, other than sour gas, may be permitted by the commission if necessary for any of the following purposes:

(A) Dewatering or well cleanup;

(B) well testing;

(C) well cleanup after stimulation or workover;

(D) evaluation and testing before connecting to a pipeline;

(E) emergencies; or

(F) those purposes and conditions specified under K.S.A. 55-102(a), and amendments thereto.

(2) If a well is to be vented or flared for more than seven days, either pursuant to K.S.A. 55-102(a) and amendments thereto or for any other reason, the operator shall notify the appropriate district office and shall file an affidavit with the conservation division, on a form supplied by the commission. The affidavit shall state that the ex-

tended period of time to vent the well is necessary for at least one of the following:

- (A) The efficient operation of the well;
- (B) evaluation and determination of whether the quality of gas meets pipeline specifications; or
- (C) evaluation and determination of whether the well is capable of producing in economic quantities.

(c) Gas measurement; continuing jurisdiction. The volume of gas vented or flared under this regulation shall be metered, measured, or monitored, and the charts or records shall be retained for two years. This information shall be reported to the commission semiannually or as designated by the commission. The continuing jurisdiction with authority to terminate the venting or flaring of gas when necessary shall lie with the commission.

(d) Protection of persons and property. All gas vented or flared under this regulation shall be done in a manner designed to prevent damage to property and injury to persons who are reasonably expected to be in the vicinity for work, pleasure, or business.

(e) The venting or flaring of natural gas under conditions not addressed in this regulation may be authorized if the operator files an application and the commission approves the application before the start of the venting or flaring activity. (Authorized by K.S.A. 55-152; implementing K.S.A. 2003 Supp. 55-102; effective Jan. 14, 2005.)

82-3-315 to 82-3-399. Reserved.

82-3-400. Injection allowed only by permit; penalty. (a) Authority to inject. Injection shall be permitted only after both of the following conditions are met:

(1) The operator has filed an application for injection authority with the conservation division in accordance with K.A.R. 82-3-401 and provided notice in accordance with K.A.R. 82-3-402.

(2) The conservation division has issued a written permit granting the application.

(b) Penalty for unauthorized injection. The failure to obtain a written permit from the conservation division before beginning injection operations shall be punishable by a penalty of \$1,000 for first-time violators, \$5,000 for second-time violators, and \$10,000 and operator license review for third-time violators. In addition, each injection well found to be operating without a conservation division permit shall be shut in until compliance is achieved. (Authorized by K.S.A. 55-151, 55-152, K.S.A. 2000 Supp. 55-164, as amended by L.

2001, ch. 5, sec. 191; implementing K.S.A. 55-151, K.S.A. 2000 Supp. 55-164, as amended by L. 2001, ch. 5, sec. 191; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended, T-87-46, Dec. 19, 1986; amended May 1, 1987; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990; amended April 5, 2002.)

82-3-401. Application for injection well; content. (a) Application form; content. The original and two copies of each application shall be signed and verified by the operator, and filed with the conservation division on a form approved by the commission, and shall provide the following information:

(1) The name, location, surface elevation, total depth, and plug-back depth of each injection well;

(2) a plat showing the location of all oil and gas wells, including producing wells, abandoned wells, drilling wells and dry holes within a ½-mile radius of the injection well, and indicating producing formations and the subsea top of the producing formations;

(3) the name and address of each operator of a producing or drilling well within a ½-mile radius of the injection well;

(4) the name, description, and depth of each injection interval. The application shall indicate whether the injection is through perforations, an open hole, or both;

(5) the depths of the tops and bottoms of all casing and cement used or to be used in the injection or disposal well;

(6) the size of the casing and tubing and the depth of the tubing packer;

(7) an electric log run to the surface or a log showing lithology or porosity of geological formations encountered in the injection well, including an elevation reference. If such a log is unavailable, an electric log to surface or a log showing lithology or porosity of geological formations encountered in wells located within a one-mile radius of the subject well;

(8) a description of the fluid to be injected, the source of injected fluid, and the estimated maximum injection pressure and average daily rate of injection in barrels per day;

(9) an affidavit that notice has been provided in accordance with K.A.R. 82-3-402;

(10) information showing that injection into the proposed zone will be contained within the zone and will not initiate fractures through the

overlying strata that could enable the fluid or formation fluid to enter fresh and usable water strata. Fracture gradients shall be computed and furnished to the conservation division by the applicant, if requested by the conservation division;

(11) the applicant's license number;

(12) any other information that the conservation division requires; and

(13) payment of the application fee required by K.A.R. 82-3-412.

(b) Applications for dually completed wells. In addition to the requirements set out in subsection (a), applications for dually completed injection and production wells shall show that the producing interval lies above the injection interval. Before a well is dually completed, the applicant shall demonstrate that the well has mechanical integrity as specified in K.A.R. 82-3-407 from a point immediately above the producing interval to the surface.

(c) Applications for simultaneous injection wells. In addition to the requirements set out in subsection (a), applications for simultaneous injection wells shall demonstrate all of the following:

(1) The injection will not adversely affect offsetting production or endanger fresh and usable groundwater.

(2) Injection pressure is limited to less than the local injection formation fracture gradient.

(3) The injection well is continuously cemented across the injection and producing intervals.

(4) The well demonstrates mechanical integrity as specified in K.A.R. 82-3-407.

(d) Disposal zone. If the application is for disposal into a producing zone within a ½-mile radius of the applicant's well, the disposal zone shall be below the oil-water contact or 50 feet below the base of the producing zone. For the purposes of this subsection, "disposal zone" means the stratigraphic interval that contains few or no commercially productive hydrocarbons and that is salt-water bearing, and "producing zone" means the stratigraphic interval that contains, or appears to contain, a common accumulation of commercially productive hydrocarbons.

(e) Design approval. Each applicant desiring design approval shall place the words "design approval" at the top of the application for injection operations. The design approval application shall be subject to the requirements set forth in subsection (a) of this regulation, K.A.R. 82-3-402(a), and K.A.R. 82-3-403(a).

(f) Well modifications. Significant modifications to the type or construction of the injection well shall not require an application, but shall require notice as specified in K.A.R. 82-3-408. However, if the modifications include an increase in injection rate or pressure or an additional perforation or injection zone, neither of which is expressly authorized by the existing permit, an application for injection shall be filed.

(g) Multiple enhanced recovery wells. Applications may be filed for more than one enhanced recovery well on the same lease or on more than one lease. The applicant shall provide the requested information for each well included in the application. (Authorized by K.S.A. 55-901, as amended by L. 2001, ch. 5, sec. 198, 55-151, and 55-152; implementing K.S.A. 55-151, 55-901, as amended by L. 2001, ch. 5, sec. 198, and 55-1003; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended, T-85-51, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-46, Dec. 19, 1986; amended May 1, 1987; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990; amended May 3, 1993; amended April 5, 2002.)

82-3-401a. (Authorized by and implementing K.S.A. 1991 Supp. 55-152 and 55-901; effective May 3, 1993; revoked April 5, 2002.)

82-3-401b. (Authorized by K.S.A. 55-901 and 55-152; implementing K.S.A. 55-164, 55-152, and 55-1003; effective March 19, 1999; revoked April 5, 2002.)

82-3-402. Notice of application; objection. (a) Notice required. Each applicant shall give notice of the application either to those persons listed in K.A.R. 82-3-135a(c) or according to the provisions of subsection (b) below. Notice shall be mailed or delivered on or before the date the application is filed with the conservation division. Notice of the application shall be published in at least one issue of the official county newspaper of each county in which the lands involved are located.

(b) Area notice. In lieu of the notice requirements of K.A.R. 82-3-135a(c), an applicant may provide area notice utilizing the following procedure:

(1) The application shall state that area notice in accordance with this regulation is being utilized and shall state the approximate maximum number

of injection wells that will ultimately be utilized within the project boundaries.

(2) The applicant shall notify each of the following parties whose acreage lies partially or fully within a ½-mile radius of the project boundaries, by mailing or delivering a copy of the application and notice:

- (A) Each operator or lessee of record;
- (B) each owner of record of the mineral rights of unleased acreage; and
- (C) each landowner within the project boundaries.

(3) Notice of the application shall be published in at least one issue of the official county newspaper of each county in which the affected acreage is located, which shall be defined as a ½-mile radius around the project boundary, and shall contain the following:

- (A) The name of the operator of the enhanced recovery project;
- (B) the legal description of the project acreage;
- (C) the proposed maximum injection rate and pressure;
- (D) the proposed injection formation or formations and approximate depth;
- (E) a statement indicating that no wells will be used for injection that are closer to lease or unit boundary lines than allowed by field or general state spacing rules unless further notice is given; and

(F) the approximate maximum number of injection wells that will ultimately be utilized in the project.

(4) The applicant shall file a memorandum of notification with the register of deeds in each county where the project is located, setting out the information contained in the published notice. The applicant shall provide proof of this filing to the conservation division before the application may be approved and a permit issued.

(5) Notice of application for additional injection wells added to a project shall be published in at least one issue of the official county newspaper of the county or counties in which the well is located, if the well exceeds the required distance from lease or unit boundary lines as provided by field order or general state spacing regulations.

(6) The applicant shall provide notice of application for each additional injection well that is located less than the required distance from the lease or unit boundary lines, under the field order or general state spacing regulations. A copy of the application shall be mailed to each offsetting op-

erator or unleased mineral owner whose acreage is adjacent to any additional injection well that does not exceed the required distance from the lease or unit boundary lines under the field order or general state spacing regulations. Notice of the application shall be published in at least one issue of the official county newspaper of the county in which the well is located.

(7) The publication notice specified in paragraphs (b)(5) and (6) of this regulation shall contain the following information:

- (A) The name of the operator;
- (B) the location of proposed injection wells;
- (C) the proposed maximum injection rate;
- (D) the proposed maximum injection pressure; and
- (E) the proposed injection formations and approximate depth.

(8) Each application for any significant modifications to the injection permit, including increasing pressure or rate and changing or adding injection formations, shall require the notice specified in paragraphs (b)(2), (3), and (4) of this regulation.

(c) Objection to application. Objections or complaints shall be filed within 30 days after the notice is published. Each complaint or objection shall conform to the requirements of K.A.R. 82-3-135b and shall state the reasons why the proposed plan, as contained in the application, may cause damage to oil, gas, or fresh and usable water resources. (Authorized by K.S.A. 55-152 and 55-901; implementing K.S.A. 55-152; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 8, 1989; amended April 5, 2002; amended Oct. 24, 2008.)

82-3-403. Permitting factors; application approval. (a) Permitting factors. When a permit authorizing injection is issued, the following factors shall be considered by the conservation division:

- (1) Maximum injection rate;
- (2) maximum surface pressure, formation pressure, pressure at the formation face, or all of the above;
- (3) the type of injection fluid and the rock characteristics of the injection zone and the overlying strata;
- (4) the adequacy and thickness of the confining zone or zones between the injection interval and the base of the lowest fresh and usable water; and
- (5) the construction of all oil and gas wells within a ¼-mile radius of the proposed injection

well, including all abandoned, plugged, producing, and other injection wells, to ensure that fluids introduced into the proposed injection zone will be confined to that zone. If deemed necessary by the conservation division to ensure the protection of fresh and usable water, this radius may be determined pursuant to 40 C.F.R. 146.6(a)(2), as published July 1, 2000, which is hereby adopted by reference.

(b) Conditions for simultaneous injection. Simultaneous injection may be permitted if, in addition to the requirements of subsection (a) above, all of the following conditions are met:

(1) Injection will not adversely affect offsetting production or endanger fresh and usable groundwater.

(2) Injection pressure is limited to less than the local injection formation fracture gradient.

(3) The injection well is continuously cemented across the injection and producing intervals.

(4) The well demonstrates mechanical integrity.

(c) Protection of fresh and usable water. Before any formations may be approved for use, determinations shall be made that these formations are separated from fresh and usable water formations by impervious beds to give adequate protection to the fresh and usable water formations.

(d) In reviewing applications for injection wells, the protection of hydrocarbons and water resources and oil and gas advisory committee recommendations concerning safe depths for injection for all producing areas in the state shall be considered by the conservation division.

(e) Minimum depth for injection. If no additional information, including well logs, formation tests, water quality data, and water well data, is made available by the operator, table II, "established minimum depths for disposal wells," revised August 1, 1987, and hereby adopted by reference, shall be used by the conservation division in determining the minimum depth for the injection of saltwater.

(f) For all injection well applications that require wellhead pressure to inject fluids, filed on and after December 8, 1982, the operator shall inject the fluids through tubing under a packer set immediately above the uppermost perforation or open-hole zone, except as specified in K.A.R. 82-3-406. A packer run on the tubing shall be set in casing opposite a cemented interval at a point immediately above the uppermost perforation or open-hole interval.

(g) Design approval. If the application requests design approval, approval of the design of the proposed well may be obtained before actual construction of the well.

(1) Each applicant shall be notified by the conservation division of its approval of the well design if both of the following conditions are met:

(A) All requirements set forth in K.A.R. 82-3-401(a), K.A.R. 82-3-402(a), and K.A.R. 82-3-403(a) have been met.

(B) The design of the proposed well will protect fresh and usable water.

(2) Upon completion of each well, the applicant shall submit a copy of the well completion report, on the form furnished by the commission, to the conservation division. The application for the injection of fluid into the proposed well for injection purposes shall be approved, if there are not significant differences between actual construction and the approved designed construction of the proposed well and if the mechanical integrity of the well has been tested according to K.A.R. 82-3-407.

(h) Emergency authority. Emergency authority to inject or dispose of fluids at an alternate location, if a facility is shut in for maintenance, testing, or repairs, or by order of the commission, may be granted by the conservation division. (Authorized by K.S.A. 55-151, 55-152, 55-605, 55-901; implementing K.S.A. 55-151, 55-605, 55-901, 55-1003; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended April 23, 1990; amended April 5, 2002.)

82-3-404. Notice of commencement and discontinuance of injection operations; cessation of production from dually completed well; penalty. (a) Immediately upon the commencement of injection operations, the applicant shall notify the conservation division of the date of commencement.

(b) Within 90 days after permanent discontinuance of injection operations, the operator of the project shall notify the conservation division of the date of the discontinuance and the reasons for discontinuance, and shall follow the provisions of K.A.R. 82-3-111.

(c) Cessation of production from dually completed well. Upon cessation of commercial production from the producing interval of a dually completed injection well, the injection authority shall be canceled by the conservation division un-

less the operator, through the filing of a modification, shows all of the following:

(1) The perforations at the producing interval are sealed.

(2) The casing above the injection packer has mechanical integrity according to K.A.R. 82-3-407.

(3) The tubing-casing annulus is filled with a corrosion-inhibiting fluid.

(d) The failure to notify the commission of commencement or permanent discontinuance of injection operations shall be punishable by a \$100 penalty. (Authorized by K.S.A. 55-152, 55-156, 55-157, K.S.A. 2000 Supp. 55-164, as amended by L. 2001, ch. 5, sec. 191, and K.S.A. 55-901, as amended by L. 2001, ch. 5, sec. 198; implementing K.S.A. 55-156, 55-157, K.S.A. 2000 Supp. 55-164, as amended by L. 2001, ch. 5, sec. 191, and K.S.A. 55-1003; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended, T-87-46, Dec. 19, 1986; amended May 1, 1987; amended April 23, 1990; amended April 5, 2002.)

82-3-405. Casing and cement. Injection wells shall be cased and the casing cemented so that damage will not be caused to hydrocarbon sources or fresh and usable water resources. Steel surface casing shall be set and cemented in the following manner:

(a) In existing wells to be converted to injection use, all additional casing that is next to the bore hole shall be cemented by circulating cement to the surface from a point at least 50 feet below the base of the lowest known fresh and usable water. If cement fails to circulate to the surface, staged squeezes shall be required to protect and isolate fresh and usable water resources. Cementing shall be completed with a portland cement blend, except as provided by K.A.R. 82-3-106(d)(3).

(b) The operator shall notify the appropriate district office before the cementing of the additional casing. A backside squeeze, the uncontrolled placement of cement in the annular space between the surface casing and the production casing from the surface down, shall be permitted only upon request to the appropriate district office. Each request shall be granted only upon the approval of the cement evaluation method to be utilized and submitted as verification of cement placement.

(c) An exception to the cementing requirements of subsection (a) may be granted by the

director or the director's designee. A written request for exception shall be submitted to the conservation division and shall include cement evaluation logs demonstrating that the proposed alternate process adequately protects fresh and usable water resources. The alternate process shall be proposed to be performed between the casing and the borehole at a point at least 50 feet below the base of the lowest known fresh and usable water resources to ensure protection of fresh and usable water resources.

(d) If the injection zone lies stratigraphically above the Wellington salt and the wellbore has penetrated into or through the salt, a cement plug of at least 50 feet in length shall be placed in the borehole or casing below the injection zone and above the salt. However, if the plug is inside the casing, the annular space between the casing and the well bore shall be protected with cement through the same interval. (Authorized by K.S.A. 55-152, 55-157, and 55-901, as amended by L. 2001, ch. 5, sec. 198; implementing K.S.A. 55-1003, 55-152, and 55-157; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1987; amended May 8, 1989; amended April 23, 1990; amended April 5, 2002.)

82-3-406. Injection well tubing and packer requirements. (a) Each well permitted after December 8, 1982 shall meet one of the following requirements:

(1) The well shall be equipped to inject through tubing below a packer.

(2) A packer run on the tubing shall be set in casing opposite a cemented interval at a point immediately above the uppermost perforation or open-hole interval. The annulus between the tubing and the casing shall be filled with a corrosion-inhibiting fluid or hydrocarbon liquid.

(3) With the prior approval of the conservation division, packerless or tubingless completions may be authorized under the provisions of subsection (b) or (c) of this regulation.

(b) Injection through tubing without a packer may be authorized by the conservation division if the following requirements are met:

(1) Surface wellhead injection pressure shall not exceed zero psig.

(2) The tubing shall be run to a depth equal to or below the uppermost perforation or open hole of the injection interval.

(3) The annular space between the tubing and

the casing shall be filled with a corrosion-inhibiting fluid or hydrocarbon liquid that has a specific gravity less than 1.00 and that is displaced and maintained at a point within 50 feet of the bottom of the tubing.

(4) Each wellhead shall be equipped with a pressure observation valve on the tubing and the tubing-casing annulus.

(5) A positive annulus pressure shall be maintained and monitored.

(6) Annulus pressure and injection surface pressure shall be monitored and recorded monthly and kept by the operator for five years.

(7) All pressure readings recorded shall be taken during actual injection operations and under static conditions.

(c) Injection without tubing may be authorized by the conservation division if all five of the following requirements are continuously met during the life of the well:

(1) The casing shall be cemented continuously from setting depth to surface.

(2) Surface wellhead injection pressure shall be recorded monthly and kept by the operator for five years.

(3) All pressure readings recorded shall be taken during actual injection operations.

(4) Mechanical integrity tests shall be performed at least every five years by running a retrievable plug to a depth of no more than 50 feet above the uppermost perforation or open hole of the injection zone or by another method approved by the conservation division.

(5) It shall be the sole responsibility of the operator of the tubingless completion to maintain the well so that the mechanical integrity tests can be performed as specified, or the well shall be immediately plugged and abandoned by displacing cement from the bottom of the well to the surface. (Authorized by K.S.A. 55-152, 55-901, as amended by L. 2001, ch. 5, sec. 198; implementing K.S.A. 55-152, 55-901, as amended by L. 2001, ch. 5, sec. 198, 55-1003; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended, T-87-46, Dec. 19, 1986; amended May 1, 1987; amended April 23, 1990; amended April 5, 2002.)

82-3-407. Mechanical integrity requirements; penalty. (a) Each injection well shall be completed, equipped, operated, and maintained in a manner that will prevent pollution of fresh and usable water, prevent damage to sources of

oil or gas, and confine fluids to the interval or intervals approved for injection.

An injection well shall be considered to have mechanical integrity if there are no significant leaks in the tubing, casing, or packer and no fluid movement into fresh or usable water. Mechanical integrity shall be established on each well by one of the following:

(1) Pressure test. The annulus above the packer, or the injection casing in wells not equipped with a packer, shall be pressure tested at least once every five years under the supervision of a representative of the operator. The date for this test shall be mutually agreed upon by the operator's representative and a representative of the commission. Test results shall be verified by the operator's representative. A minimum of 25 percent of the tests conducted each year shall be witnessed by a representative of the commission. The test shall be conducted in accordance with subsection (b). Injection wells within tubing shall be tested in accordance with K.A.R. 82-3-406.

(2) Alternate tests. Alternative test methods approved by the commission, including radioactive tracer surveys and temperature surveys, may be used to establish mechanical integrity if conditions are appropriate. The test shall be run at least once every five years under the supervision of a representative of the operator. The date for this test shall be mutually agreed upon by the operator's representative and a representative of the commission. Test results shall be verified by the operator's representative and shall be interpreted as specified in commission-approved procedures. A minimum of 25 percent of the tests conducted each year shall be witnessed by a representative of the commission.

(3) Monitoring. Once a month, the operator shall monitor and record, during actual injection, the pressure or fluid level in the annulus and any other information deemed necessary by the conservation division. An annual report of information logged shall be submitted to the conservation division in accordance with K.A.R. 82-3-409.

(4) Dually completed injection wells. For dually completed injection wells, the testing requirements shall include the following:

(A) The operator shall determine the fluid level in the annular space in the production casing and the fluid level within the injection tubing. All fluid level determinations shall be performed under static well conditions. The minimum shut-in time shall be 24 hours before determining the

fluid level. Fluid level tapes shall be submitted as verification of measurements.

(B) The operator shall measure and report the oil-to-water ratio of produced fluids from the well. In the case of gas wells, the operator shall report changes in monthly production volumes.

(C) The fluid level determination and oil-to-water ratios shall be performed once every three months during the first year of the well's five-year test cycle, and then once a year for the next four years. The repeat test cycle of quarterly reports for one year and annual reports for four years shall begin on the five-year anniversary of the first fluid level test.

(b) Before operating a well drilled or converted to injection after December 8, 1982, an operator choosing to use a pressure test for the initial mechanical integrity test shall perform the test in the following manner:

(1) Wells constructed with tubing and a packer shall be pressure tested with the packer in place. A fluid pressure of 300 psig shall be applied. If the operator requests a pressure in excess of 300 psig on the injection application, a test pressure up to the requested pressure may be required. The duration of the test shall be at least 30 minutes. Maintenance of the fluid pressure during the test shall provide assurance of the integrity of the injection casing.

(2) For wells constructed with tubing and no packer, a retrievable plug or packer shall be set immediately above the uppermost perforation or open hole zone. A fluid pressure of 300 psig shall be applied. The duration of the test shall be at least 30 minutes. Maintenance of the fluid pressure during the test shall provide assurance of the integrity of the injection casing.

(3) For wells constructed with tubing and no packer, a method of pressure testing known as fluid depression may be conducted with prior approval and under guidelines established by the appropriate district office. The fluid in the well shall be depressed with gas pressure to a point in the wellbore immediately above the perforations or open hole interval. The minimum calculated pressure required to depress the fluid in the wellbore shall be no less than 100 psig.

(4) For simultaneous injection wells, the following requirements shall be met:

(A) Mechanical integrity shall initially be demonstrated at a pressure of 300 psig before installation of downhole simultaneous injection equipment and shall be demonstrated in the same

manner each time that the downhole simultaneous injection equipment is removed; and

(B) after the initial mechanical integrity test, the operator shall monitor the well once each month and record the oil-to-water or gas-to-water ratio. The operator shall report the oil-to-water or gas-to-water ratio to the commission within 30 days for the first month and then annually at the time of filing the annual report according to K.A.R. 82-3-409. The operator shall immediately report an oil-to-water or gas-to-water ratio at or in excess of 10% over the prior month's ratio to the appropriate district office.

(5) In lieu of paragraph (b)(3), the casing may be tested before perforating, upon approval of the conservation division. A fluid pressure of 300 psig shall be applied. If the operator requests a pressure in excess of 300 psig on the injection application, a test pressure up to the requested pressure may be required. The duration of the test shall be at least 30 minutes. Maintenance of the fluid pressure during the test shall provide assurance of the integrity of the injection casing.

(c) The operator of any well failing to demonstrate mechanical integrity by one of the above methods shall have no more than 90 days from the date of initial failure in which to perform one of the following:

(1) Repair and retest the well to demonstrate mechanical integrity;

(2) plug the well; or

(3) isolate the leak or leaks to demonstrate that the well will not pose a threat to fresh or usable water resources or endanger correlative rights.

(d) Mechanical failures or other conditions indicating that a well is not, or may not be, directing the injected fluid into the permitted or authorized zone shall be cause to shut in the well. The operator shall orally notify the conservation division of any of these failures or conditions within 24 hours of knowledge of any failure or condition. The operator shall submit written notice of a well failure to the conservation division within five days of the occurrence together with a plan for testing and repairing the well. Results of the testing and well repair shall be reported to the conservation division, and all information shall be included in the annual monitoring report to the conservation division. Any mechanical downhole well repair performed on the well that was not previously reported shall also be included in the annual report.

(e) If the district office has approved the use of any chemical sealant or other mechanical de-

vice to isolate the leak before use, the injection pressure into the well shall not exceed the maximum mechanical integrity test pressure. Additionally, the well shall demonstrate mechanical integrity on an annual basis for the duration the well is completed in this manner.

(f) Each operator choosing a pressure mechanical integrity test on a well permitted for injection before December 8, 1982 or on a well having passed an initial pressure mechanical integrity test as specified in subsection (b) shall conduct the test in the following manner:

(1) Wells located in areas having saltwater-bearing zones with sufficient bottom-hole pressure to sustain a static fluid level at or above fresh or usable water bearing zones shall be pressure tested as specified in paragraphs (b)(1) and (2), except that the maximum required test pressure shall be limited to 300 psi.

(2) Wells located in areas without saltwater-bearing zones with sufficient bottom-hole pressure to sustain a static fluid level at or above fresh or usable water bearing zones shall be pressure tested as specified in paragraphs (b)(1) and (2), except that the maximum required test pressure shall be limited to 100 psi.

(3) For wells constructed with tubing and no packer, a method of pressure testing known as fluid depression may be conducted with prior approval and under guidelines established by the commission. The fluid in the well shall be depressed with gas pressure to a point in the wellbore immediately above the perforations or open-hole interval. The minimum calculated pressure required to depress the fluid in the wellbore shall be no less than 100 psi unless otherwise approved by the appropriate district office.

(g) No injection well shall be operated before having passed a mechanical integrity test. The operator's failure to test a well to show its mechanical integrity or to report the oil-to-water or gas-to-water ratio as required under paragraph (b)(4)(B) above shall be punishable by a \$1,000 penalty, and these wells shall be shut in until the required test has been passed or the reports have been furnished. (Authorized by K.S.A. 55-152, K.S.A. 2000 Supp. 55-164, as amended by L. 2001, ch. 5, sec. 191, K.S.A. 55-901, as amended by L. 2001, ch. 5, sec. 198; implementing K.S.A. 55-152, K.S.A. 2000 Supp. 55-164, as amended by L. 2001, ch. 5, sec. 191, K.S.A. 55-901, as amended by L. 2001, ch. 5, sec. 198, and K.S.A. 55-1003; effective, T-83-44, Dec. 8, 1982; effective

May 1, 1983; amended, T-87-46, Dec. 19, 1986; amended May 1, 1987; amended May 8, 1989; amended April 23, 1990; amended April 5, 2002.)

82-3-408. Duration of injection well permits; modification penalty. (a) Permits authorizing injection into wells shall remain valid for the life of the well, unless revoked by the commission for just cause.

(b) Modifications of any injection well permit may be made only upon application to the conservation division. Each application shall be submitted on the form furnished by the conservation division. The applicant shall give notice of the application to modify according to the provisions of K.A.R. 82-3-135a.

(c) An operator shall not be required to file an application to modify any injection well permit but shall file with the conservation division a notice of modification on a form furnished by the conservation division for permit modifications for one or more of the following purposes:

(1) The operator seeks to decrease the maximum injection pressure.

(2) The operator seeks to decrease the maximum injection rate.

(3) The operator seeks to add or delete leases disposing into the well but will not exceed the maximum authorized injection rate and pressure.

(d) The failure to obtain conservation division approval of any modification to an existing injection well, other than the modifications designated in subsection (c), before resuming injection operations, or the failure to notify the conservation division under subsection (c) shall be punishable by a \$1,000 penalty. (Authorized by K.S.A. 55-152 and K.S.A. 55-901; implementing K.S.A. 55-1003, K.S.A. 55-152, K.S.A. 55-164, and K.S.A. 55-901; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1985; amended, T-87-46, Dec. 19, 1986; amended May 1, 1987; amended May 8, 1989; amended April 23, 1990; amended March 19, 1999; amended April 5, 2002; amended Nov. 2, 2007.)

82-3-409. Record retention; annual report; penalty. (a) Each operator of an injection well shall perform the following:

(1) Keep current, accurate records of the amount and kind of fluid injected into the injection well; and

(2) preserve the records required in paragraph (a)(1) above for five years.

(b) Each operator of an injection well shall submit a report to the conservation division, on a form required by the commission, showing for the previous calendar year the following information:

- (1) The monthly average wellhead pressure;
- (2) the maximum wellhead pressure;
- (3) the amount and kind of fluid injected into each well; and
- (4) any other performance information that may be required by the conservation division.

The report shall be submitted on or before March 1 of the following year.

(c) The failure to file or timely file an annual injection report shall be punishable by a \$100 penalty. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2000 Supp. 55-164, as amended by L. 2001, ch. 5, sec. 191; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended May 8, 1989; amended April 5, 2002.)

82-3-410. Transfer of authority to inject; penalty. (a) Authority to operate an injection well shall not be transferred from one operator to another without the approval of the conservation division. The transferring operator shall notify the conservation division in writing, on a form prescribed by the commission and in accordance with K.A.R. 82-3-136, of the intent to transfer authority to operate an injection well from one operator to another. In addition to the requirements of K.A.R. 82-3-136, the written notice shall contain the following information:

- (1) The name and address of the present operator and the operator's license number;
- (2) the name and location of the well being transferred;
- (3) the order or permit number and date of the order or permit authorizing injection;
- (4) the zone or zones of injection;
- (5) the proposed effective date of transfer;
- (6) the signature of the present operator and the date signed;
- (7) the name and address of the new operator and the operator's license number; and
- (8) the signature of the new operator and the date signed.

(b) The transferring operator may be required by the conservation division to conduct a mechanical integrity test as a condition of the transfer.

(c) Failure to notify the conservation division of a transfer in accordance with this regulation shall subject the operator to penalties under

K.A.R. 82-3-136(e). (Authorized by K.S.A. 55-152, K.S.A. 2000 Supp. 55-164, as amended by L. 2001, ch. 5, sec. 191, and K.S.A. 55-901, as amended by L. 2001, ch. 5, sec. 198; implementing K.S.A. 55-152, 55-1003; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended April 23, 1990; amended April 5, 2002.)

82-3-411. Authorization for existing injection wells. Each injection well authorized by order of the commission on or before December 8, 1982 shall be considered an existing injection well. Injection shall be prohibited in any existing well unless the operator had filed, on or before May 1, 1983, an inventory of existing injection wells on the form prescribed by the commission. (Authorized by K.S.A. 55-152, 55-901, as amended by L. 2001, ch. 5, sec. 198; implementing K.S.A. 55-152, 55-901, as amended by L. 2001, ch. 5, sec. 198, 55-1003; effective April 5, 2002.)

82-3-412. Assessment of costs. An assessment to pay the costs incurred by the conservation division in reviewing, processing, and approving each injection application shall be payable upon the filing of an application as follows:

- (a) Enhanced recovery injection wells.
 - (1) A fee of \$200 shall be assessed to each applicant for injection authority to cover the review only of the initial pilot well. A fee of \$100 shall be assessed on each additional well included in the initial injection application except where the well depth of each additional well is less than 1,000 feet. Each additional well having a depth of less than 1,000 feet shall be assessed a fee of \$50.
 - (2) A fee of \$100 for each well shall be assessed to each applicant for any modification to the initial injection well permit or permit adding an injection well or wells except where the well depth of each additional well sought to be modified in the initial order or permit is less than 1,000 feet. Each modification adding an injection well having a depth of less than 1,000 feet shall be assessed a fee of \$50 for each added well.
 - (3) A fee of \$100 shall be assessed to each applicant for any modification to the initial injection well order or permit seeking to make a significant change in the construction of an injection well, to add an injection well to an authorized waterflood, or to increase either the maximum injection pressure or the maximum injection rate.
 - (4) A fee of \$50 shall be assessed for any other

modification of the initial injection order or permit. However, no fee shall be assessed for those modifications specified in K.A.R. 82-3-408(c).

(b) Injection wells.

(1) A fee of \$200 shall be assessed to each applicant for injection authority.

(2) A fee of \$100 shall be assessed to each applicant for any modification to the initial injection order or permit seeking to make a significant change in the construction of the injection well or to increase either the maximum injection pressure or the maximum injection rate.

(3) A fee of \$50 shall be assessed for any other modification to the initial injection order or permit. However, no fee shall be assessed for those modifications specified in K.A.R. 82-3-408(c).

(c) Fee nonrefundable. Once paid, each fee shall be nonrefundable. (Authorized by and implementing K.S.A. 55-152, 55-176, as amended by L. 2001, ch. 5, sec. 192, and 55-901, as amended by L. 2001, ch. 5, sec. 198; effective April 5, 2002.)

82-3-413 to 82-3-499. Reserved.

82-3-500. (Authorized by and implementing K.S.A. 66-1,185; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; revoked Aug. 29, 1997.)

82-3-501. (Authorized by and implementing K.S.A. 66-1,185; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; revoked Aug. 29, 1997.)

82-3-502. (Authorized by K.S.A. 66-1,185; implementing K.S.A. 1986 Supp. 55-706, K.S.A. 66-1,185; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended, T-85-51, Dec. 19, 1984; amended May 1, 1988; revoked Aug. 29, 1997.)

82-3-503. (Authorized by and implementing K.S.A. 66-1,185; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; revoked Aug. 29, 1997.)

82-3-504. (Authorized by and implementing K.S.A. 66-1,185; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; revoked Aug. 29, 1997.)

82-3-505 to 82-3-599. Reserved.

82-3-600. Pit permits; penalty; application and approval. (a) Pits shall not be used to contain fluids resulting from oil and gas activities until approved by the commission. Pits shall be

permitted only upon application to and approval by the commission. Use of a pit without a pit permit shall be punishable by a \$500 penalty. Pit permits shall be considered granted unless denied within 10 days after the commission's receipt of the application.

The following types of pits may be authorized by the commission:

(1) Drilling pit, which shall include reserve pits and working pits;

(2) work-over pit;

(3) emergency pit;

(4) settling pit;

(5) burn pit; and

(6) haul-off pit.

(b) Each application shall be verified and filed with the conservation division upon the form prescribed by the commission.

(c) In reviewing applications for pit permit approval, the protection of soil and water resources from pollution shall be considered by the commission. The chloride concentration of drilling fluids and produced waters to be contained in pits and the geohydrologic characteristics of the pit location shall be considered in determining the pollution risk that a particular pit poses to water resources.

(d) Work-over pits may be permitted through verbal authorization from the appropriate district office supervisor or a designated staff member, subject to the filing of a pit application within five days after the verbal authorization.

(1) Requests for verbal authorization shall be made no less than 24 hours before the intended work-over operation. However, if emergency circumstances require immediate work-over operations, requests for verbal authorization may be made less than 24 hours before the intended operation.

(2) The operator requesting verbal authorization shall provide the information required on the application form to the appropriate district office at the time of the request.

(e) Each operator shall notify the appropriate district office, as specified in K.A.R. 82-3-603, that a temporary containment pit was constructed. A permit shall not be required for a containment pit constructed and used in accordance with this subsection.

(f) Each operator of a pit shall perform the following:

(1) Install observation trenches, holes, or wells if required by the commission;

(2) seal any pit, except burn pits, with liners as specified in K.A.R. 82-3-601a(b)(1) through (6) if the commission determines that an unsealed condition will present a pollution threat to soil or water resources; and

(3) prevent surface drainage from entering the pit.

(g) A pit permit shall not be required for the construction of a dike at an oil and gas facility. (Authorized by K.S.A. 55-152, K.S.A. 2000 Supp. 55-164, as amended by L. 2001, ch. 5, sec. 191; implementing K.S.A. 55-152, K.S.A. 2000 Supp. 55-164, as amended by L. 2001, ch. 5, sec. 191, K.S.A. 55-171, K.S.A. 2000 Supp. 74-623, as amended by L. 2001, ch. 191, sec. 16; effective, T-87-46, Dec. 19, 1986; effective May 1, 1987; amended July 29, 1991; amended April 23, 2004.)

82-3-600a. Pit permit revocation. A pit permit may be revoked by the director of the conservation division if fresh or usable water resources are in danger of becoming polluted by the use of the pit or if the operator of a pit is not in compliance with the permit requirements. Each pit for which the permit has been revoked shall be closed according to K.A.R. 82-3-602. (Authorized by K.S.A. 55-152, K.S.A. 55-171; implementing K.S.A. 55-152, K.S.A. 2000 Supp. 55-162, K.S.A. 55-171, K.S.A. 2000 Supp. 74-623, as amended by L. 2001, ch. 191, sec. 16; effective April 23, 1990; amended April 23, 2004.)

82-3-600b. (Authorized by K.S.A. 1990 Supp. 55-152, 55-164; implementing K.S.A. 1990 Supp. 55-152, 55-171, 74-623; effective July 29, 1991; revoked April 23, 2004.)

82-3-601. (Authorized by K.S.A. 55-152, as amended by 1986, Ch. 201, Sec. 9; implementing K.S.A. 55-152, as amended by L. 1986, Ch. 201, Sec. 9; L. 1986, Ch. 201, new Sec. 1, 23; effective, T-87-46; effective May 1, 1987; revoked July 29, 1991.)

82-3-601a. Pit construction; sensitive groundwater areas; reporting. (a) Freeboard. All drilling, work-over, burn, and containment pits shall be constructed with a minimum of 12 inches of freeboard. All emergency and settling pits shall be constructed with a minimum of 30 inches of freeboard.

(b) Pit construction. If required by the conservation division to be sealed, pits shall be constructed so that the bottoms and sides have a hydraulic conductivity no greater than 1×10^{-7} cm/

sec. during their use. The hydraulic conductivity shall be established by liners, which shall include any of the following:

(1) A natural clay liner;

(2) a soil-mixture liner composed of soil mixed with cement, bentonite, clay-type, or other additives to be applied to pits whose walls do not exceed a slope of three to one;

(3) a recompacted clay liner composed of in situ or imported clay soils that are compacted or restructured to be applied to pits whose walls do not exceed a slope of three to one;

(4) a manufactured liner composed of synthetic material to be applied to pits in a manner that ensures its integrity while the pit is open;

(5) a combination of two or more types of liners described in paragraphs (b)(1) through (4); or

(6) any other liner or groundwater protection system acceptable to the conservation division.

(c) Emergency pit construction. In sensitive groundwater areas as designated in table III as adopted by reference in K.A.R. 82-3-601b, emergency pits shall be sealed. Emergency pits located in sensitive groundwater areas shall be constructed and sealed as set out in paragraphs (b) (1) through (6).

(d) Construction depth. No pit shall be constructed to a depth greater than five feet above the shallowest existing water table in the vicinity of the well.

(e) Reporting.

(1) The hydraulic conductivity of natural liners shall be determined by one of the soil tests approved by the American society of testing and materials and contained in either of the following ASTM publications, both of which are hereby adopted by reference:

(A) "Standard test methods for measurement of hydraulic conductivity of saturated porous materials using a flexible wall permeameter," published January 2001; and

(B) "standard guide for comparison of field methods for determining hydraulic conductivity in the vadose zone," published December 1990 and reapproved in 1998.

Alternately, the hydraulic conductivity of natural liners shall be determined by using another field or laboratory test approved by the commission and conducted by either the operator or the operator's contractor.

(2)(A) Test results for pits required to be sealed according to subsection (b) shall be re-

ported to the appropriate district office at the time of spud notification.

(B) Written documentation of test results shall be filed with the conservation division on a form prescribed by the commission within five days after spudding the well.

(C) Test results for work-over and emergency pits shall be reported to the conservation division when the pit application is filed.

(D) The right to verify test results through on-site investigation may be exercised by the conservation division. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-152, K.S.A. 55-171, K.S.A. 2000 Supp. 74-623; effective July 29, 1991; amended April 23, 2004.)

82-3-601b. Sensitive groundwater areas; exception procedure. (a) Each operator of an emergency pit in a sensitive groundwater area as designated by "table III: established sensitive groundwater areas for surface ponds," dated March 2000 and hereby adopted by reference, may request an exception to the requirements of K.A.R. 82-3-601a(c).

(b) Each request for an exception shall be made in writing to the director of the conservation division and shall be submitted with the application for a pit permit. The request shall contain supporting data to show why the exception should be granted.

(c) An on-site investigation may be conducted by the director or a designee to determine whether the exception request is warranted. (Authorized by and implementing K.S.A. 55-152, K.S.A. 55-171, K.S.A. 2000 Supp. 74-623, as amended by L. 2001, ch. 191, sec. 16; effective July 29, 1991; amended April 23, 2004.)

82-3-602. Time limitation; penalty; closure of pits; closure forms; drilling fluid management; waste transfer; surface restoration.

(a) (1) The time limitation for the closure of each pit, unless otherwise specified in writing by the commission, shall be according to the following schedule:

(A) Drilling pits or haul-off pits shall be closed within a maximum of 365 calendar days after the spud date of a well.

(B) Work-over pits shall be closed within a maximum of 365 days after work-over operations have ceased.

(C) Settling pits, burn pits, and emergency pits shall be closed within 30 days after cessation or abandonment of the lease.

(2) Any pit permit may be extended upon written request by the operator and with the approval of the director. Failure to close any pit or to file an extension within the prescribed time limits set out in paragraphs (1)(A) through (C) of this subsection shall be punishable by a \$250 penalty.

(b) Closure. Before backfilling any pit, the operator shall dispose of pit contents according to K.A.R. 82-3-607.

(c) Closure form required. Each operator of a pit shall file a pit closure form prescribed by the commission within 30 days after the closure of the pit. Failure to file the pit closure form in accordance with this subsection shall be punishable by a \$100 penalty.

(d) Drilling fluid management.

(1) Each operator of a reserve pit shall report the chloride content of reserve pit fluids and the drilling fluid management plan to the appropriate district office within 48 hours after drilling operations cease. The chloride concentration shall be measured by a state-certified laboratory or according to either of the following American petroleum institute fluid testing standards, which are hereby adopted by reference:

(A) "Recommended practice: standard procedure for field testing water-based drilling fluids," second edition, September 1997; and

(B) "recommended practice: standard procedure for laboratory testing drilling fluids," sixth edition, May 2000.

Alternately, the chloride concentration shall be measured by using another field or laboratory test approved by the commission.

(2) Each operator of a reserve pit shall report the drilling fluid management methods utilized for the reserve pit on the affidavit of completion required by K.A.R. 82-3-130.

(e) Waste transfer. Each pit operator shall notify the appropriate district office at least 24 hours before transferring pit waste according to subsection (b). Within 30 days after the transfer of the waste, each operator shall file a form prescribed by the commission with the conservation division reporting any transfer of pit waste from the lease.

(f) Surface restoration. Upon abandonment of any pit, the operator shall grade the surface of the soil as soon as practicable or as required by the commission. To the greatest extent possible, the surface of the soil shall be returned to the same condition as that which existed before the construction of the pit. (Authorized by K.S.A. 55-152, K.S.A. 2000 Supp. 74-623; implementing K.S.A.

55-171; effective, T-87-46, Dec. 19, 1986; effective May 1, 1987; amended May 1, 1988; amended July 29, 1991; amended April 23, 2004.)

82-3-603. Spill notification and cleanup; penalty; lease maintenance. (a) Escape of oil field fluids prohibited. No person shall permit saltwater, oil, or refuse from any well to escape by overflow, seepage, or other means from the vicinity of the well. Each operator shall keep this saltwater, oil, or refuse safely confined in tanks, pipelines, pits, or dikes to prevent the escape of these substances.

(b) Notification: when required.

(1) Threat to surface water or groundwater. Each operator shall notify the appropriate district office in accordance with subsection (c) immediately upon discovery or knowledge of any escape of saltwater, oil, or refuse that has or threatens to reach surface water or to impact groundwater. The operator shall take immediate action in accordance with procedures specified or approved by the district office to contain and prevent the saltwater, oil, or refuse from reaching surface water or impacting groundwater.

(2) Timely notification of spills. Except as otherwise specified in this regulation, the operator shall notify the appropriate district of any escape of saltwater, oil, or refuse that meets the definition of "spill" in K.A.R. 82-3-101. This notification shall meet the requirements of subsection (c) and shall be made no later than the next business day following the date of discovery or knowledge of the spill.

(3) Exception for minor leaks and drips. The notification requirement for spills in paragraph (b)(2) shall not apply to very minor amounts of saltwater, oil, or refuse, that unavoidably or unintentionally leak or drip from pumps, machinery, pipes, valves, fittings, or well rods or tubing during the conduct of normal prudent operations and that are not confined in dikes or pits or within the vicinity of the well. However, this exception shall not apply to ongoing, continual, or repeated leaks or drips, or to leaks or drips that are the result of intentional spillage or abnormal operations, including unrepaired or improperly maintained pumps, machinery, pipes, valves, and fittings.

(4) "Discovery or knowledge" defined. For purposes of this regulation, the point of "discovery or knowledge" shall mean that point when the operator knew or reasonably should have known of the spill or escape.

(c) Information required with notification. The notification requirement in subsection (b) shall include the following information:

- (1) The operator's name and license number;
- (2) the lease name and legal description and the approximate spill location;
- (3) the time and date the spill occurred;
- (4) a description of the escaped materials, including type and amount;
- (5) a description of the circumstances creating the spill;
- (6) the location of the spill with respect to the nearest fresh and usable water resources;
- (7) the proposed method for containing and cleaning up the spill; and
- (8) any other information that the commission may require.

(d) Penalty for failure to notify. The notification requirement in subsection (b) shall apply even if the operator knows or believes that the appropriate district office is already aware of the spill or escape. The failure to comply with subsection (b) shall be punishable by a \$250 penalty for the first violation, a \$500 penalty for the second violation, and a \$1,000 penalty and an operator license review for the third violation.

(e) Cleanup of spill or escape.

(1) Reportable spill or escape. The operator shall clean up any spill or escape that requires notification under this regulation in accordance with the cleanup method approved by the appropriate district office. The cleanup techniques deemed appropriate and acceptable to the appropriate district office shall be physical removal, dilution, treatment, and bioremediation. Except as otherwise required by law or regulation, the operator shall complete the cleanup of the spill or escape within 10 days after discovery or knowledge of the spill or escape, or by the deadline prescribed in writing by the district office.

(2) Other spills and escapes. The operator shall clean up all leaks, drips, and escapes that are excepted from notification under this regulation in accordance with cleanup techniques recognized as appropriate and acceptable by the commission. The cleanup techniques deemed appropriate and acceptable to the commission shall be physical removal, dilution, treatment, and bioremediation. This cleanup shall be accomplished upon completion of the routine operation or condition that caused the leak, drip, or escape or within 24 hours of discovery or knowledge of the leak, drip, or escape, whichever occurs sooner.

(f) Penalties. Failure to contain and clean up the spill or escape in accordance with this regulation shall be punishable by a \$1,000 penalty for the first violation, a \$2,500 penalty for the second violation, and a \$5,000 penalty and an operator license review for the third violation. (Authorized by K.S.A. 55-152; implementing K.S.A. 2002 Supp. 55-164, K.S.A. 55-172, K.S.A. 74-623; effective, T-87-46, Dec. 19, 1986; effective May 1, 1987; amended May 1, 1988; amended April 23, 1990; amended April 23, 2004.)

82-3-603a. Spill notification to landowner or representative; penalty. (a) Notification required. Each operator shall make good faith efforts to notify the landowner or the landowner's representative of any spill or escape that is required to be reported to the conservation division under K.A.R. 82-3-603(b)(1) or (b)(2). This notification to the landowner or landowner's representative shall meet the requirements of subsection (b) and shall be made no later than five business days following the discovery or knowledge of the spill or escape.

(b) Required information. Each notification shall include the following information:

- (1) The operator's name;
- (2) the lease name and approximate spill location;
- (3) the time and date the spill or escape occurred;
- (4) a description of the escaped materials, including each type and amount; and
- (5) the methods being used to clean up the spill.

(c) "Discovery and knowledge" defined. For the purpose of this regulation, the point of "discovery and knowledge" shall mean the point at which the operator knew or reasonably should have known of the spill or escape.

(d) Record of notification and retention of records. Each operator shall keep accurate records of each notification made to a landowner or a landowner's representative regarding spills or escapes required under subsection (a). These records may include correspondence, electronic mail, telephone records, and field notes. The operator shall keep these records for at least three years. The records shall be made available to the conservation division upon request.

(e) Penalty for failure to notify. Failure to comply with subsection (a) shall be punishable by a \$250 penalty for the first violation, a \$500 penalty for the second violation, and a \$1,000 penalty for

each subsequent violation. (Authorized by K.S.A. 55-152 and K.S.A. 2006 Supp. 55-186; implementing K.S.A. 55-164, K.S.A. 2006 Supp. 55-186, K.S.A. 74-623; effective Oct. 26, 2007.)

82-3-604. Discharges into emergency pits and diked areas; removal of fluids; penalties. (a) Notification of discharge. Each operator shall notify the appropriate district office within 24 hours of discovery or knowledge of any oil field-related discharge of five or more barrels of saltwater, oil, or refuse into an emergency pit or diked area.

(b) Removal of fluids from pit or dike. Each operator of an emergency pit or diked area shall remove any fluid from the pit or diked area within 48 hours after discovery or knowledge, or as authorized by the appropriate district office, and shall dispose of the fluid according to K.A.R. 82-3-607.

(c) "Discovery or knowledge" defined. For purposes of this regulation, the point of "discovery or knowledge" shall mean that point when the operator knew or reasonably should have known of the discharge.

(d) Penalties. The failure to timely notify the district office, in accordance with subsection (a), of an oil field-related discharge into an emergency pit or diked area, or the failure to timely remove fluids from an emergency pit or diked area, shall be punishable by the following penalties:

- (1) \$250 for the first violation;
- (2) \$500 for the second violation; and
- (3) \$1,000 and an operator license review for

the third violation. (Authorized by K.S.A. 55-152; implementing K.S.A. 2003 Supp. 55-164, K.S.A. 55-172, and K.S.A. 74-623; effective April 23, 1990; amended June 6, 1994; amended April 23, 2004.)

82-3-605. (Authorized by and implementing K.S.A. 1993 Supp. 55-152, 55-164, 55-171, 55-172; effective July 29, 1991; amended June 6, 1994; revoked April 23, 2004.)

82-3-606. Chemical dumping prohibited; penalty. (a) The dumping or release of chemical substances and other nonexempt waste associated with any drilling or production operation, as listed in K.A.R. 28-31-3, into pits or diked areas shall be strictly prohibited. Nonexempt waste shall include the following:

- (1) Unused acids, or any other unused sub-

stances brought onto the lease for potential use in drilling or production operations;

(2) oil and gas service company wastes, including empty drums, spent solvents, rinsate, spilled chemicals, and waste acid;

(3) used equipment lubrication oils and hydraulic fluids; and

(4) sanitary wastes, drums, insulation, and other miscellaneous solid waste.

(b) Any operator or contractor found to be responsible for the dumping or release of chemical substances or nonexempt wastes shall be assessed a \$1,000 penalty for the first violation, a \$5,000 penalty for the second violation, and a \$10,000 penalty for the third violation. Under this regulation, operators and contractors shall be considered responsible for the actions of their subcontractors. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2000 Supp. 55-164, as amended by L. 2001, ch. 5, sec. 191, and K.S.A. 2000 Supp. 74-623, as amended by L. 2001, ch. 191, sec. 16; effective April 23, 1990; amended April 23, 2004.)

82-3-607. Disposal of dike and pit contents. (a) Each operator shall perform one of the following when disposing of dike or pit contents:

(1) Remove the liquid contents to a disposal well or other oil and gas operation approved by the commission or to road maintenance or construction locations approved by the department;

(2) dispose of reserve pit waste down the annular space of a well completed according to the alternate I requirements of K.A.R. 82-3-106, if the waste to be disposed of was generated during the drilling and completion of the well; or

(3) dispose of the remaining solid contents in any manner required by the commission. The requirements may include any of the following:

(A) Burial in place, in accordance with the grading and restoration requirements in K.A.R. 82-3-602(f);

(B) removal and placement of the contents in an on-site disposal area approved by the commission;

(C) removal and placement of the contents in an off-site disposal area on acreage owned by the same landowner or to another producing lease or unit operated by the same operator, if prior written permission from the landowner has been obtained; or

(D) removal of the contents to a permitted off-site disposal area approved by the department.

(b) Each violation of this regulation shall be punishable by the following:

(1) A \$1,000 penalty for the first violation;

(2) a \$2,500 penalty for the second violation; and

(3) a \$5,000 penalty and an operator license review for the third violation. (Authorized by and implementing K.S.A. 55-152 and K.S.A. 2000 Supp. 55-164, as amended by L. 2001, Ch. 5, Sec. 191; effective April 23, 2004.)

82-3-700. Definitions. As used in these regulations for cathodic protection facilities, the following terms shall have the meanings specified:

(a) “Annular space” means the space between the surface casing and the borewall or the space between two or more strings of surface casing in a cathodic protection borehole.

(b) “Anode conductor grout” means a mixture having a minimum of 30 percent solids and weighing not less than 10.1 pounds per gallon. This mixture shall consist of 14 gallons of freshwater and 50 pounds of a commercial, single-sack grout that contains a plugging sodium bentonite blended clay with less than 10 percent of inorganic additives to temporarily inhibit sodium bentonite clay hydration during placement.

(c) “Aquifer” means any geologic formation capable of yielding water in sufficient quantities so that the water can be diverted for beneficial use.

(d) “Aquifer completion” means a cathodic protection borehole that is installed in an aquifer.

(e) “Bedrock” means shale, limestone, sandstone, siltstone, anhydrite, gypsum, salt, or other consolidated rock material that can occur at the surface or underlie unconsolidated material.

(f) “Bentonite cement” means a mixture weighing not less than 14.1 pounds per gallon and consisting of freshwater, Portland cement, and four to eight percent of sodium bentonite clay additive or an equivalent as approved by the director of the conservation division or the manager of groundwater management district #2 or #5 for cathodic protection boreholes drilled in the respective groundwater management district.

(g) “Bentonite clay grout” means a mixture weighing not less than 9.4 pounds per gallon. This mixture shall consist of freshwater and commercial grouting or plugging sodium bentonite clay containing a high percentage of solids including those manufactured under the trade names of “Volclay” grout and “HolePlug” or a generic equivalent as approved by the director of the con-

servation division or the manager of groundwater management district #2 or #5 for cathodic protection boreholes drilled in the respective groundwater management district.

(h) "Cathodic protection borehole" means any excavation penetrating the water table of an aquifer that is drilled, cored, bored, washed, driven, dug, or otherwise constructed for the intended use or purpose of installing equipment to prevent electrolytic corrosion of metallic equipment or facilities.

(i) "Cathodic surface casing" means the first nonmetallic casing put in a cathodic protection borehole with the annular space grouted from the bottom of the cathodic surface casing to land surface, which serves to shut out shallow water formations and also acts as a foundation or anchor for all subsequent drilling activity.

(j) "Concrete" means a mixture consisting of one 94-pound bag of Portland cement, an equal volume of sand having a grain-size diameter not larger than 0.080 inches, and five to six gallons of freshwater.

(k) "Groundwater management district (GMD)" means a continuous area that overlies one or more aquifers, together with any area in between, that is organized for groundwater management purposes, pursuant to K.S.A. 82a-1020 et seq., and amendments thereto.

(l) "Grout" means concrete, neat cement, bentonite clay grout, bentonite cement, or any other material that meets the following requirements:

(1) Is used to create a permanent, impervious, watertight bond; and

(2) is approved by the director of the conservation division or the manager of groundwater management district #2 or #5 for cathodic protection boreholes drilled in the respective groundwater management district.

(m) "Multiple aquifer completion" means a cathodic protection borehole that penetrates more than one aquifer.

(n) "Neat cement" means a mixture consisting of one 94-pound bag of Portland cement and five to six gallons of freshwater.

(o) "Pitless casing adapter" means a nonmetallic assembly of parts installed in the cathodic surface casing to permit the installation of a conduit through the wall of the cathodic surface casing and sealed to prevent the entrance of any fluids or contaminants. (Authorized by and implementing K.S.A. 55-152; effective Oct. 25, 1996;

amended, T-82-1-21-04, Jan. 21, 2004; amended May 14, 2004.)

82-3-701. Intent to drill cathodic protection boreholes; notification; penalty; exemption. This regulation shall apply in Kansas except for groundwater management districts #2 and #5. Each owner, operator, or person responsible for drilling a cathodic protection borehole in groundwater management district #2 or #5 shall apply directly to the manager of that groundwater management district in accordance with K.A.R. 82-3-705. (a) Except as set forth in subsection (e) of this regulation, each owner, operator, or person responsible for drilling a cathodic protection borehole shall submit written notice of the intention to drill to the conservation division for permit approval before the commencement of drilling operations.

(1) The applicant shall file the notice with the conservation division at least 60 days before commencing any drilling.

(2) Each notice shall be submitted on a form prescribed by the commission. The notice shall be filled in completely and signed by the operator or the operator's agent. The notice shall contain the following:

(A) The name and address of the owner and, if different from the owner, the name of the operator, and the operator license number;

(B) the date on which drilling is anticipated to begin;

(C) the well name or number designation, quarter section, section, range, township, county, and the distance of the proposed drilling location from the section's nearest corner, in exact footage;

(D) the estimated total depth of the borehole;

(E) the type of drilling equipment to be used;

(F) the depth to the bottom of the deepest freshwater at the drill site;

(G) the depth to the bottom of any usable water formation at the drill site; and

(H) any other relevant information requested by the commission.

(3) When a "cathodic protection borehole intent" form is filed, the owner, operator, or person responsible shall submit an "application for surface pit" form in accordance with K.A.R. 82-3-600 and, if required by K.A.R. 82-3-602, a pit closure form.

(b) Before drilling a cathodic protection borehole, the operator shall notify the appropriate conservation division district office.

(c) Any applicant may submit written requests to the director of the conservation division for an exception to the 60-day intention to drill filing period in emergency situations. Each request shall document why the emergency exists.

(d) Drilling any cathodic protection borehole without an approved notice of intent or without being granted an exception shall be punishable by a penalty of up to \$1,000.00.

(e) No permit shall be required for distributed anode systems, shallow "single bell hole" galvanic anode systems, and individual anode installation systems that are less than 25 feet in depth or do not penetrate an aquifer. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-152 and K.S.A. 2003 Supp. 55-164; effective Oct. 25, 1996; amended, T-82-1-21-04, Jan. 21, 2004; amended May 14, 2004.)

82-3-702. Construction of cathodic protection boreholes, measurements, logging, reports, penalty. This regulation shall apply in Kansas except for groundwater management districts #2 and #5. Each owner, operator, or person responsible for the construction of a cathodic protection borehole located in groundwater management district #2 or #5 shall be subject to K.A.R. 82-3-706 through K.A.R. 82-3-709. (a) Each owner, operator, or person responsible for the construction of a cathodic protection borehole shall use a driller who is licensed by the commission under K.S.A. 55-155, and amendments thereto, or a water well contractor who is licensed by the Kansas department of health and environment under K.S.A. 82a-1201 et seq., and amendments thereto.

(b) The operator shall construct each cathodic protection borehole in the following manner.

(1) The total depths of each borehole and the bottom of the cathodic surface casing shall not exceed the depths permitted on the approved intention to drill.

(2) The diameter of the borehole for cathodic surface casing installation shall be at least six inches larger than the nominal outside diameter (OD) of the cathodic surface casing.

(3) In aquifer completions, cathodic surface casing shall extend from the surface to 20 feet below the top of the aquifer.

(4) In multiple aquifer completions, the cathodic surface casing shall extend from the land surface through the aquifers and 20 feet into shale or other impermeable bedrock.

(5) Exceptions to the surface casing depth requirements may be granted by the director of the conservation division upon written request. Each operator requesting an exception shall be required to demonstrate that the exception provides adequate protection of fresh and usable waters.

(6) All cathodic surface casing shall be non-metallic and shall have a standard dimension ratio (SDR) of 26 or less. The SDR shall be calculated by dividing the cathodic surface casing's outside diameter (OD) by its minimum wall thickness (MWT): $SDR = OD/MWT$.

(7) The operator shall install centralizers along the entire length of the cathodic surface casing at intervals of not greater than 40 feet, starting at the bottom of the casing.

(8) The operator shall grout the annular space either by using a tremie pipe or by following the instructions of individual grout manufacturers. The grout shall be allowed to set undisturbed for at least 24 hours, or for the length of time recommended by individual grout manufacturer's instructions. Exceptions to this requirement may be granted by the director of the conservation division upon written request. Each operator requesting an exception shall be required to demonstrate that the exception provides equivalent or greater protection to fresh and usable waters. Bentonite clay grout shall not be used where a mineralized aquifer or aquifers transect the borehole.

(9) The operator shall not make any openings through the cathodic surface casing, except for the installation of a pitless casing adapter.

(10) The operator shall not use products designed for drilling purposes that contain organic polymers as either drilling mud or grout.

(11) The operator shall install anodes and anode conductors in the borehole beginning at least five feet below the bottom of the cathodic surface casing.

(c) The operator shall measure each borehole to determine the cathodic surface casing depth and the total depth of the borehole. The operator shall record each measurement.

(d) The operator shall log each cathodic protection borehole as follows:

(1) The operator shall collect and record drill cuttings at intervals not greater than five feet or more frequently, if needed to produce an accurate lithologic or driller's log of the entire borehole.

(2) The operator shall record any electrical surveys, logs, or other geophysical readings of the

borehole and make them a part of the permanent record.

(e) The operator shall submit a final completion report within 60 days of the start date to the production department of the conservation division. The report shall include all electrical or geophysical readings or logs, as required by the commission.

(f)(1) Each failure to construct a cathodic protection borehole in accordance with these regulations shall be punishable by a penalty of up to \$2,500.

(2) Each failure to submit the final report in accordance with subsection (e) of this regulation shall be punishable by a penalty of \$100. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-152 and K.S.A. 2003 Supp. 55-164; effective Oct. 25, 1996; amended, T-82-1-21-04, Jan. 21, 2004; amended May 14, 2004.)

82-3-703. Surface construction requirements, appurtenances, vault and below-ground construction, penalty. This regulation shall apply in Kansas except for groundwater management districts #2 and #5. Each owner, operator, or person responsible for the construction of a cathodic protection borehole located in groundwater management district #2 or #5 shall be subject to K.A.R. 82-3-706 through K.A.R. 82-3-709. (a) All surface construction features of a cathodic protection borehole shall be designed to minimize physical damage to the installation, prevent entry of fluids and contaminants, and prevent unauthorized access.

(1) The operator shall equip the surface access to each borehole with a waterproof cap, cover, or equivalent housing.

(2) At the land surface contact, the cathodic surface casing or vault cover shall be designed to deter unauthorized access.

(b) Vent pipes shall remove gases from the borehole and shall terminate at least one foot above the highest known flood elevation and at least three feet above land surface.

(c) The aboveground terminus end of the vent pipe shall be turned 180 degrees and equipped at the terminus end with a 16-mesh or greater brass, bronze, or copper screen or other metallic material with similar hardness if that material is approved by the director of the conservation division.

(d) Gases shall not be vented or released if the

release is a hazard to public health and safety or the environment.

(e) The top of the cathodic surface casing shall terminate at least three feet above land surface, except as set forth in subsections (f) and (g).

(f) If the top of the cathodic surface casing terminates below land surface in a vault, the following construction features shall be required:

(1) The operator shall install a water-resistant and structurally sound vault to house the top of the cathodic surface casing.

(2) The vault and the cover or lid shall be strong enough to support vehicular traffic where this traffic could occur.

(3) The operator shall set the top of the vault so that surface fluids are directed away from the vault.

(4) The cathodic surface casing shall contact the vault to form a water-resistant and structurally sound seal and connection.

(g) If the borehole and cathodic surface casing are grouted, the operator shall place grout at least five feet below the bottom of the cathodic surface casing, with grout extending into the cathodic surface casing at least 10 feet in total thickness.

(h) Cathodic surface casing installations that terminate and are buried below land surface shall meet the same water resistance and structural integrity requirements as those for vaulted-type construction described in subsection (f) of this regulation.

(i) The operator shall mark all aboveground installations with the commission borehole permit number, which shall be protected from possible damage and shall be easily visible.

(j) Exceptions to this regulation may be granted by the director of the conservation division upon written request. Each operator requesting an exception shall be required to demonstrate that the requested exception provides an equivalent or greater level of protection to public health and the environment.

(k) Each failure to construct the surface installation in accordance with this regulation shall be punishable by a penalty of up to \$500. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-152 and K.S.A. 2003 Supp. 55-164; effective Oct. 25, 1996; amended, T-82-1-21-04, Jan. 21, 2004; amended May 14, 2004.)

82-3-704. Plugging methods and procedures for cathodic protection boreholes, site restoration, submission of plugging re-

port, penalty. This regulation shall apply in Kansas except for groundwater management districts #2 and #5. Each owner, operator, or person responsible for the plugging of a cathodic protection borehole located in groundwater management district #2 or #5 shall be subject to K.A.R. 82-3-710. (a) The operator, owner, or agent of the owner shall plug each cathodic protection borehole in accordance with the following procedures:

(1) At least 72 hours before the actual plugging, the operator, owner, or agent of the owner shall contact the appropriate conservation division district office for plugging instructions and approval.

(2) Before the actual plugging, the operator shall remove any cables and anodes, the vent pipe and anode conductor, and any other materials originally installed in the borehole to a level necessary to ensure that the borehole is properly plugged and to facilitate proper plugging.

(3) The operator shall cut off the cathodic surface casing at least three feet below the land surface.

(4) The operator shall plug each borehole with grout from at least five feet below the bottom of the cathodic surface casing to the top of the cathodic surface casing. The operator shall place grout with a tremie pipe or any other method approved by the appropriate conservation division district office where the facility or borehole is located if the method provides adequate protection of fresh and usable waters.

(5) Where subsurface pressures cause artesian flow, the operator shall maintain a pressure sufficient for placement of the grout plug long enough for the plug to set.

(6) The operator shall fill any vent pipe not removed from the borehole with grout.

(b) The operator shall restore each former cathodic protection borehole site, as close as practical to predrilling condition.

(1) The operator shall backfill and compact each borehole from three feet below land surface to land surface, with clean topsoil.

(2) The operator shall remove from the site all cables and anodes, the vent pipe and anode conductor, all surface casing sections, and any other material installed at the surface or in the borehole.

(c) The operator shall submit a final plugging report to the production department of the conservation division within 60 days after plugging has been completed, on forms prescribed by the commission.

(d) Exceptions to this regulation may be granted by the director of the conservation division upon written request. Each operator requesting an exception shall be required to demonstrate that the exception provides adequate protection of fresh and usable waters.

(e) A cathodic protection borehole shall be considered abandoned if either of the following conditions is met:

(1) The borehole has not been used for one year, and the owner has not provided a written request to the director for temporary abandonment status pursuant to K.A.R. 82-3-111.

(2) The borehole is contaminating or threatening to contaminate a freshwater aquifer.

(f) Each failure to comply with the provisions of this regulation shall be punishable by a penalty of up to \$1,000. (Authorized by K.S.A. 55-152; implementing K.S.A. 55-152 and K.S.A. 2003 Supp. 55-164; effective Oct. 25, 1996; amended, T-82-1-21-04, Jan. 21, 2004; amended May 14, 2004.)

82-3-705. Groundwater management districts #2 and #5: permit to drill cased and uncased cathodic protection boreholes; notification; exceptions; drilling pit application.

This regulation shall apply only within the boundaries of groundwater management districts #2 and #5. (a) Except as specified in subsection (g), it shall be a violation of this regulation for the operator, owner, or person responsible to drill or construct either a cased or uncased cathodic protection borehole without first applying for and obtaining a permit to drill and construct a cathodic protection borehole.

(b) Each individual seeking a permit shall submit an application to the appropriate GMD office at least 60 days before planned construction, on a form furnished by the appropriate GMD. The permit application shall contain the following:

- (1) The name and address of the owner;
- (2) the quarter section, section, range, township, and county;
- (3) the distance from the borehole to the section's southeast corner, in exact footage;
- (4) the top and bottom depths of any freshwater aquifer;
- (5) the total borehole depth;
- (6) the number and depths of the anodes;
- (7) the top and bottom depths of the anode conductor or anode conductor grout; and

(8) any other relevant information requested by the manager of the appropriate GMD.

(c) Each manager of a GMD shall submit one copy of each cathodic protection borehole application upon which action has been taken to the production department of the conservation division within 10 days of approval.

(d) The operator, owner, or person responsible shall notify the appropriate GMD office at least 72 hours before drilling each cathodic protection borehole.

(e) When required by the manager of the appropriate GMD, the operator, owner, or person responsible shall submit a surface pit permit approved by the director of the conservation division with the application for a permit to drill and construct a cathodic protection borehole.

(f) Drilling a cased or an uncased cathodic protection borehole without an approved permit shall be punishable by a penalty of up to \$1,000. Drilling any cased or uncased cathodic protection borehole without providing notice to the appropriate GMD office in accordance with subsection (d) shall be punishable by a penalty of up to \$1,000.

(g) No permit shall be required for a cathodic protection anode system that meets the following conditions:

(1) Is constructed to a maximum depth below the land surface of 25 feet or less; and

(2) does not penetrate an aquifer. (Authorized by K.S.A. 55-152 and K.S.A. 2003 Supp. 82a-1028; implementing K.S.A. 55-152, K.S.A. 2003 Supp. 55-164, and K.S.A. 2003 Supp. 82a-1028; effective, T-82-1-21-04, Jan. 21, 2004; effective May 14, 2004.)

82-3-706. Groundwater management districts #2 and #5: drilling contractor; logging; construction; reports. This regulation shall apply only within the boundaries of groundwater management districts #2 and #5. (a) Only a driller or water well contractor licensed with the Kansas department of health and environment under K.S.A. 82a-1201 et seq., and amendments thereto, shall drill and construct each cathodic protection borehole.

(b) The total depths of the borehole and the bottom of the cathodic surface casing shall not exceed the authorized depths in the approved permit to drill and construct a cathodic protection borehole.

(c) The cathodic protection borehole shall be logged according to the following requirements:

(1) The drill cuttings shall be sampled and recorded at intervals not greater than five feet or more frequently, if needed, to produce an accurate lithologic or driller's log of the complete cathodic protection borehole.

(2) The electrical readings or log and any other geophysical readings or logs of the complete cathodic protection borehole shall be recorded and made a permanent record.

(d) No uncased cathodic protection borehole shall be drilled or completed below shale or impermeable bedrock surface.

(e) The minimum diameter of each cathodic protection borehole shall be one of the following:

(1) Eight inches for uncased boreholes; or

(2) six inches greater than the outside diameter (OD) of the surface casing for cased boreholes.

(f) Except for uncased cathodic protection boreholes, each borehole shall be constructed according to the following requirements:

(1) Nonmetallic casing equipped with centralizers shall be installed in the borehole when the drilling penetrates 20 feet into either shale or impermeable bedrock.

(2) The casing shall be new, clean, serviceable, and free of defects.

(3) The casing shall have a standard dimension ratio (SDR) of 21 or less and shall be calculated by dividing the casing's outside diameter (OD) by its minimum wall thickness (MWT).

(4) Centralizers shall be installed along the entire length of the casing at intervals not greater than 40 feet, starting at the bottom end of the casing.

(5) The annular space shall be grouted, and the grout shall be installed using a grout tremie pipe or as recommended by the grout manufacturer's instructions and allowed to set undisturbed as recommended by the grout manufacturer's specifications.

(6) No opening shall be made through the casing, except for the installation of a pitless casing adapter.

(g) Measurements shall be made as necessary to determine the depth, dimensions, or spacing of the borehole, casing, anode, anode conductor, grout, and other borehole materials.

(h) Drilling products and borehole materials containing organic polymers shall not be used to either drill or construct the borehole.

(i) (1) If the manager of the appropriate GMD determines that the use of a drilling pit threatens to contaminate groundwater, the operator, owner,

or person responsible shall ensure that the pit meets one of the following requirements:

(A) Be constructed so that the bottom and sides have a hydraulic conductivity no greater than 1×10^{-7} cm/sec during use;

(B) be constructed aboveground; or

(C) consist of a portable aboveground tank.

(2) All fluids that threaten to contaminate the groundwater shall be removed from the drilling pit and disposed of upon closure of the pit, in accordance with K.A.R. 82-3-602.

(j) If drilling and construction operations are temporarily suspended or interrupted by an unforeseen circumstance, the following requirements shall apply:

(1) All drilling and grouting equipment shall be removed from the borehole.

(2) The borehole shall be secured to prevent the following:

(A) The entry of contaminating or polluting materials into the borehole; and

(B) unauthorized access.

(3) The borehole shall be maintained in a stable condition to prevent collapse.

(k) Two copies of the following information shall be submitted to the appropriate GMD office within 30 days after the cathodic protection borehole is completed:

(1) The well completion form provided by the commission and completed by the operator;

(2) any electrical or geophysical readings or logs; and

(3) an as-built plan.

The manager of the appropriate GMD shall provide one copy of this information to the conservation division within 30 days of receipt by the GMD office.

(l)(1) Each failure to construct a cathodic protection borehole in accordance with these regulations shall be punishable by a penalty of up to \$2,500.

(2) Each failure to submit the report required under subsection (k) to the appropriate GMD office shall be punishable by a penalty of \$100. (Authorized by K.S.A. 55-152 and K.S.A. 2003 Supp. 82a-1028; implementing K.S.A. 55-152, K.S.A. 2003 Supp. 55-164, and K.S.A. 2003 Supp. 82a-1028; effective, T-82-1-21-04, Jan. 21, 2004; effective May 14, 2004.)

82-3-707. Groundwater management districts #2 and #5: anode, anode conductor, and anode conductor grout requirements for

cased and uncased boreholes. This regulation shall apply only within the boundaries of groundwater management districts #2 and #5. (a) Each operator, owner, or person responsible shall install anodes and anode conductor in each cased cathodic protection borehole starting five feet below the bottom of the cathodic surface casing.

(b) Each operator, owner, or person responsible shall install anodes and anode conductor grout in uncased boreholes according to the following requirements:

(1) Each anode for use in a public water supply system shall meet or exceed the requirements specified in section 4.2.3, "anode materials," in the American water works association's standard D104-01, as approved in 2001. Section 4.2.3 of this document is hereby adopted by reference.

(2) Each anode shall be installed from a minimum of three feet above the shale or impermeable bedrock surface to a maximum of 20 feet below land surface.

(3) The anode conductor grout shall be placed from the total depth to five feet above the anode nearest the land surface, using a grout tremie pipe or as recommended by the grout manufacturer.

(4) The anode conductor grout shall be certified by the national sanitation foundation to meet the criteria specified in section 8 of "drinking water treatment chemicals—health effects," NSF/ANSI 60-2003e, as revised in October 2003. Section 8 of this document, titled "miscellaneous water supply products" and consisting of pages 27 through 34, is hereby adopted by reference.

(5) Anode conductor grout containing bentonite clay or any other similar material shall not be used if the salinity equals or exceeds 2,000 mg/L chloride in any portion of an aquifer.

(c) Each failure to install anodes or grouting material in accordance with this regulation shall be punishable by a penalty of up to \$2,500. (Authorized by K.S.A. 55-152 and K.S.A. 2003 Supp. 82a-1028; implementing K.S.A. 55-152, K.S.A. 2003 Supp. 55-164, and K.S.A. 2003 Supp. 82a-1028; effective, T-82-1-21-04, Jan. 21, 2004; effective May 14, 2004.)

82-3-708. Groundwater management districts #2 and #5: surface construction requirements for cased cathodic protection boreholes. This regulation shall apply only within the boundaries of groundwater management districts #2 and #5. (a) Each operator, owner, or person responsible shall ensure that the top of the

cathodic protection borehole casing of each cased borehole meets one of the following requirements:

(1) Terminates a minimum of three feet above land surface or one foot above the highest known flood elevation greater than three feet above land surface;

(2) is equipped with a water-resistant and structurally sound vault; or

(3) terminates a minimum of three feet below land surface.

(b) The minimum construction requirements for each cased cathodic protection borehole shall be the following:

(1) The top of the cathodic protection borehole casing shall meet the following requirements:

(A) Be constructed to prevent damage to the cathodic protection borehole casing, prevent entry of contaminants, and deter unauthorized access to the installation;

(B) be constructed so that surface drainage is directed away from the installation;

(C) be equipped with a watertight seal, cover, or an equivalent device approved by the appropriate GMD office; and

(D) be equipped with an easily visible sign identifying the cathodic borehole permit number and the borehole owner.

(2) The borehole shall be vented of any gases according to the following requirements:

(A) The vent pipe shall terminate a minimum of either three feet above land surface or one foot above the highest known flood elevation greater than three feet above land surface.

(B) The aboveground terminus end of the vent pipe shall be turned 180 degrees and equipped at the terminus end with a 16-mesh or greater brass, bronze, or copper screen, or other material with similar properties if that material is approved by the manager of the appropriate GMD office.

(C) Gases shall not be vented or released if the release is a hazard to public health and safety or the environment.

(3) The cathodic protection borehole casing vault shall meet the following requirements:

(A) Be strong enough to support vehicular traffic where this traffic could occur; and

(B) contact the cathodic protection borehole casing to form a water-resistant and structurally sound seal and connection.

(4) The cathodic protection borehole casing installation terminated below land surface shall meet the following minimum requirements:

(A) Grout shall be placed in the borehole from a minimum of five feet below the bottom of the nonmetallic cathodic protection borehole casing to the top of the nonmetallic cathodic protection borehole casing by using a tremie pipe or by following the recommendation of the grout manufacturer.

(B) The borehole shall be backfilled with clean and compacted topsoil from the top of the nonmetallic cathodic protection borehole casing to the land surface.

(c) Each operator, owner, or person responsible shall ensure that any concrete pad constructed around an aboveground cathodic protection borehole casing or vault meets the following requirements:

(1) Is a minimum of four inches thick;

(2) is sloped so that surface drainage is directed away from the installation;

(3) is free of cracks, voids, and other defects that detract from its watertightness; and

(4) has a joint between the base and the nonmetallic cathodic protection borehole casing that is structurally resistant to sound and water.

(d) Each failure to complete surface construction requirements for cathodic protection boreholes in accordance with this regulation shall be punishable by a penalty of up to \$500. (Authorized by K.S.A. 55-152 and K.S.A. 2003 Supp. 82a-1028; implementing K.S.A. 55-152, K.S.A. 2003 Supp. 55-164, and K.S.A. 2003 Supp. 82a-1028; effective, T-82-1-21-04, Jan. 21, 2004; effective May 14, 2004.)

82-3-709. Groundwater management districts #2 and #5: construction specifications for uncased cathodic boreholes.

This regulation shall apply only within the boundaries of groundwater management districts #2 and #5. Each operator, owner, or person responsible shall ensure that the requirements of this regulation are met. (a) The construction features of each uncased cathodic protection borehole shall prevent physical damage to the installation and prevent the entry of pollutants and contaminants into fresh and usable groundwater.

(b) Each uncased borehole shall be grouted from the top of the anode conductor grout to three feet below land surface with either of the following:

(1) Grout; or

(2) anode conductor grout.

(c) From three feet below land surface to the

land surface, each uncased borehole shall be back-filled with clean, compacted topsoil and sloped so that surface drainage or runoff is directed away from the installation.

(d) A vent pipe or other gas-venting device shall not be installed in any uncased borehole.

(e) In any area having a saline concentration of 500 ppm or higher, or as determined by the manager of the appropriate GMD office after consideration of ambient water quality data taken from the area within a ½-mile radius of the proposed uncased borehole, a log of a test well located within 20 feet of the proposed uncased borehole shall accompany each uncased cathodic borehole application submitted pursuant to K.A.R. 82-3-705 and shall include the following information:

(1) A 10-acre tract legal description of the test well location;

(2) the depth to bedrock;

(3) the depth to the water table;

(4) a description of drill cuttings sampled and recorded at intervals not greater than five feet and more frequently, if necessary, to produce an accurate lithologic log; and

(5) the analyses of groundwater samples collected in a manner approved by the manager of the appropriate GMD office from the upper, middle, and lower portions of an aquifer. These analyses shall meet the following requirements:

(A) Consist of chloride, specific conductance, and any other parameter analysis specified by the manager of the appropriate GMD office; and

(B) be performed by a laboratory certified by the Kansas department of health and environment.

(f) Each failure to construct any uncased cathodic protection borehole in accordance with this regulation shall be punishable by a penalty of up to \$2,500. (Authorized by K.S.A. 55-152 and K.S.A. 2003 Supp. 82a-1028; implementing K.S.A. 55-152, K.S.A. 2003 Supp. 55-164, and K.S.A. 2003 Supp. 82a-1028; effective, T-82-1-21-04, Jan. 21, 2004; effective May 14, 2004.)

82-3-710. Groundwater management districts #2 and #5: abandonment, plugging methods, and procedures for cathodic protection boreholes, reports, and restoration.

This regulation shall apply only within the boundaries of groundwater management districts #2 and #5. (a) A cathodic protection borehole shall be deemed abandoned when any of the following conditions exists:

(1) The cathodic protection borehole is not completed due to unforeseen circumstances.

(2) The cathodic protection borehole either threatens to contaminate or contaminates a fresh-water aquifer.

(3) Uncontrollable fluid or gas flow is present in the cathodic protection borehole.

(4) The cathodic protection borehole is not operational or is in a state of disrepair.

(b) The operator, owner, or person responsible shall plug each abandoned cathodic protection borehole.

(c) The minimum plugging requirements for an abandoned cathodic protection borehole shall be the following:

(1) At least 72 hours before plugging operations are scheduled to begin, the operator, owner, or person responsible shall submit a plugging plan to the appropriate GMD office. The operator, owner, or person responsible shall not begin plugging operations until the plugging plan is approved.

(2) As part of initial plugging operations, any cables and anodes, the vent pipe and anode conductor, and any other cathodic equipment or materials installed in the borehole shall be removed as necessary to ensure that the borehole is properly plugged and to facilitate proper plugging.

(3) All surface casing shall be cut off a minimum of three feet below the land surface and removed.

(4) Each cased cathodic protection borehole shall be plugged with grout from a minimum of five feet below the bottom of the surface casing to the top of the surface casing.

(5) Each uncased cathodic protection borehole shall be plugged with grout from the bottom of the borehole to three feet below the land surface.

(6) All grout shall be placed with a tremie pipe or in a manner recommended by the grout manufacturer.

(7) Each borehole shall be backfilled with clean topsoil and compacted from three feet below land surface to the land surface.

(8) Each vent pipe not removed from a cased cathodic protection borehole shall be completely filled with grout.

(9) Wherever subsurface fluid or gas pressure flow is encountered, a pressure sufficient for placement of the grout shall be maintained long enough for the grout to set.

(10) The operator shall submit a final plugging report to the manager of the appropriate GMD

office within 60 days after plugging operations are completed, on forms prescribed by the manager of the appropriate GMD office.

(d) Each former cathodic protection borehole site shall be restored, as close as practical to pre-drilling conditions, by removing from the site any cables and anodes, the vent pipe and anode conductor, any surface casing sections, and any other material installed at the surface or in the borehole.

(e) (1) Each failure to provide notice under paragraph (c)(1) shall be punishable by a penalty of up to \$1,000.

(2) Each failure to properly plug any cathodic protection borehole in accordance with this regulation shall be punishable by a penalty of up to \$2,500. (Authorized by K.S.A. 55-152 and K.S.A. 2003 Supp. 82a-1028; implementing K.S.A. 55-152, K.S.A. 2003 Supp. 55-164, and K.S.A. 2003 Supp. 82a-1028; effective, T-82-1-21-04, Jan. 21, 2004; effective May 14, 2004.)

82-3-800. Licensing. Each person operating any gas-gathering system within the state of Kansas shall be licensed by the commission. Any person claiming an exemption from reporting under L. 1997, Ch. 132, § 22 shall be licensed. (Authorized by and implementing K.S.A. 1997 Supp. 55-155; effective April 3, 1998.)

82-3-801. Report furnished by persons offering gas-gathering services; penalty. (a) Each person offering gas-gathering services shall file with the commission the following data on forms prescribed by the commission:

(1) data on rates paid for natural gas purchased at the wellhead on each gas-gathering system or part thereof if purchased by the gatherer;

(2) data on contract rates charged for gas-gathering services on each gas-gathering system or part thereof;

(3) any special contract terms relating to the volume and characteristics of the gas that will be purchased or transported by the person offering gas-gathering services;

(4) the number of wells connected to the gas-gathering system or part thereof;

(5) a legible map showing the location of the gas-gathering system drawn to a scale of .5 inch equals one mile and clearly indicating section, township, and range; and

(6) other related data that may be required by the commission.

(b) The reports shall contain information current as of the first day of January, April, July, and

October and shall be filed within sixty days of these dates. Maps shall be filed annually at the time of license renewal. If any due date falls on a legal holiday or weekend, the report shall be due on the next business day. If no change has been made to reported data from the prior filing, the operator may note this on the reporting form.

(c) Any person claiming an exemption pursuant to L. 1997, Ch. 132, § 22 shall provide a verified, detailed written explanation in support of the exemption.

(d) The report filed with the commission shall be subject to the Kansas open records act.

(e) The report filed with the commission shall not be used by the commission to order a change in any rate except in a proceeding pursuant to K.A.R. 82-3-802.

(f) Any person claiming an exemption pursuant to L. 1997, Ch. 132, § 22 who no longer qualifies for the exemption shall file the necessary gas-gathering report pursuant to K.A.R. 82-3-801 within 10 days from the date on which the exemption expires.

(g) Failure to materially complete the form shall constitute noncompliance with this regulation, and the operator may be subject to the penalty provisions set forth in subsection (h).

(h) Upon notice and opportunity to be heard, a penalty may be imposed by the commission on any person, not to exceed \$10,000.00 per day up to an aggregate maximum amount of \$250,000.00, for failure to file the report required by subsection (a).

(i) Notice of any substantive change to the reporting form occurring after July 1, 1998, shall be published in the Kansas register at least 30 days before adoption. Additional notice may be provided by the Kansas corporation commission to interested parties and the public generally. An opportunity to comment and a hearing shall be conducted as to the proposed form. (Authorized by and implementing L. 1997, Ch. 132, § 23; effective April 3, 1998.)

82-3-802. Gas-gathering services and access, complaint, hearing. (a) Each person offering any gas-gathering services or facilities essential to providing these services shall do so in a manner that is just, reasonable, not unjustly discriminatory, and not unduly preferential to persons seeking services or access to facilities.

(b) Each person performing gas-gathering services shall engage in practices and charge fees

for such services that are just, reasonable, not unjustly discriminatory, and not unduly preferential.

(c) Any consumer of gas-gathering services, any person seeking direct purchase of natural gas at the wellhead, any royalty owner, or any natural gas producer may request that the commission investigate and initiate proceedings to review a fee, term, or practice being used by a person offering gas-gathering services.

(d) As a condition to commission action, the person under subsection (c) requesting the action shall file a complaint that includes the following:

(1) A statement that the complainant has presented the complaint, in writing, to the person offering gas-gathering services and has requested a meeting to discuss the complaint. A copy of this document shall accompany the complaint;

(2) a statement that the requested meeting took place and no resolution was reached or that the person offering gas-gathering services refused to meet;

(3) a detailed factual statement alleging how the fee, term or practice violates subsections (a) or (b);

(4) a statement of the precise remedy being requested that will make the fee, term, or practice consistent with the standards established in this section;

(5) if the complainant is a producer of natural gas, a copy of the analysis of the complainant's gas, including the nitrogen, carbon dioxide, hydrogen sulfide, water and other contaminant content; the volume; the Btu; and the pressure at the wellhead;

(6) if available, a map showing the location of the affected wells and all known gas-gathering systems in the area; and

(7) proof of service of the complaint on the gas gatherer.

(e) Upon the filing of a complaint, the parties to the complaint shall be contacted by the commission staff, and resolution of the matter shall be attempted by the commission staff through the use of informal procedures, including one or more of the following:

(1) A meeting with the complainant, the person offering gas-gathering services, and commission staff.

(2) A mediation conference conducted under the following procedures:

(A) Upon the request of any party and acceptance of the other party, the commission shall schedule a mediation conference. The purpose of the mediation shall be to assist the parties in

reaching agreement on any disputed issues by the intervention of a third party who has no decision-making authority, is impartial to the issues being discussed, assists the parties in defining the issues in dispute, facilitates communication between the parties, and assists the parties in reaching resolution.

(B) Mediation conferences shall be conducted by mediators appointed by the commission who are qualified as mediators pursuant to the dispute resolution act, K.S.A. 5-501 et seq., and amendments thereto, and any relevant rules of the Kansas supreme court as authorized pursuant to K.S.A. 5-510, and amendments thereto.

(C) Persons with final settlement authority for each party shall be present, in person, at the mediation conference.

(D) All mediation conferences shall be conducted by a mediator in accordance with the dispute resolution act.

(E) The confidentiality and privilege provisions of K.S.A. 60-452(a) shall apply to all mediation conferences to assure that all verbal or written information transmitted between any party to a dispute and the mediator shall be treated as confidential information and that no admission, representation, or statement made in the mediation conference shall be admissible as evidence or subject to discovery.

(F) The costs of mediation shall be shared equally among all parties.

(G) The commission shall disseminate information about the mediation conference procedure.

(3) Other informal mediation procedures as may be agreed to by all parties.

(f) The commission may at any time review a fee, term, or practice. Upon notice and opportunity for hearing in accordance with the Kansas administrative procedures act, the authority to order the remediation of any violation of L. 1997, Ch. 132, § 24 shall rest with the commission.

(g) A formal hearing shall be scheduled by the commission if the complaint is not resolved by informal procedures within 60 days of its filing or upon notice that no party wishes to utilize any informal procedure. A scheduling order providing notice to the affected parties of the date of hearing and setting forth any additional conditions as the commission deems appropriate shall be issued by the commission.

(h) The hearing shall be conducted in accordance with the Kansas administrative procedure

act, K.S.A. 77-501 et seq., and with the commission's rules of practice and procedure, K.A.R. 82-3-201 et seq.

(i) The costs of a proceeding may be assessed to a party or parties based on the findings of the commission.

(j) In determining whether or not to grant access to a system, factors including the following may be considered by the commission:

(1) whether or not the natural gas can be reasonably carried by a gatherer;

(2) whether or not construction of a new system would be feasible;

(3) whether or not a material extension or expansion of facilities would be required;

(4) whether or not there is another gatherer of natural gas who is willing to gather or can more conveniently gather gas;

(5) whether or not the gathering of gas can reasonably be expected to have a materially adverse effect on safety or on service to existing customers or on the operation of or recovery of any processing facility;

(6) whether or not the gas satisfies minimum standards for quality, energy or recoverable hydrocarbon content consistently applied by the gatherer of that system;

(7) whether or not the gas gatherer is gathering gas from an affiliated marketer or producer;

(8) the fiscal impact to all parties; or

(9) any other matters that the commission determines to be relevant.

(k) In evaluating or establishing a fee, term, or practice for a gathering service, whether or not the fee, term, or practice is a just, reasonable, not unjustly discriminatory, and not unduly preferential fee that would result from good faith negotiations in a competitive market shall be determined by the commission. In evaluating or establishing a fee, term, or practice, all economically relevant factors including the following may be considered by the commission:

(1) the fees or terms that the gatherer receives from other shippers;

(2) the fees or terms charged by other gatherers within a relevant area determined by the commission;

(3) the financial risks of installing a gathering system;

(4) the financial risks of operating a gathering system;

(5) the capital, operating and maintenance costs of a gathering system;

(6) the existing gas contract or contracts;

(7) the fiscal impact to all parties;

(8) the fees, terms, or practices that the gas gatherer offers to an affiliated producer or marketer; or

(9) other factors that the commission determines to be relevant, provided that a fee shall not be required to be computed on a utility rate-of-return basis. (Authorized by and implementing L. 1997, Ch. 132, § 24 and L. 1997, Ch. 132, § 25; effective April 3, 1998.)

82-3-803. Abuse of complaint procedure. No person shall abuse the complaint process in any manner, including causing a delay in the proceedings that may damage a party's ability to pursue or defend the complaint. Any action deemed necessary to protect the rights of a party against abuse of the complaint process may be taken by the commission. (Authorized by and implementing L. 1997, Ch. 132, § 25; effective April 3, 1998.)

82-3-804. Notice of termination. A public utility providing service from a gas-gathering system shall provide written notice to the executive director of the commission at its Topeka office and to the person receiving service, not later than November 1 preceding the calendar year of service, that it cannot serve the needs of the person receiving service. The utility shall explain in detail any reasons it is unable to perform the service. Investigation of the proposed termination and reporting to the commission shall be made by the utilities division with the assistance of the conservation division of the commission. Any further action taken by the commission shall be conducted under chapter 66. (Authorized by and implementing L. 1997, Ch. 132, § 30; effective April 3, 1998.)

82-3-900. Enhanced recovery severance tax exemption, application, hearing, penalty. (a) Any operator seeking exemption from the severance tax provisions pursuant to K.S.A. 79-4217, and amendments thereto, shall submit an application to the director of the conservation division. The commission staff shall assign a certifying number to each application upon receipt. The determination as to whether or not the production enhancement project qualifies for exemption shall be made and certified by the director of the conservation division or the director's designee. In the event of an adverse decision at

the director's level, an appeal may be made by requesting a hearing before the full commission pursuant to the Kansas administrative procedures act.

(b) Upon the certification by the director of the conservation division or by the commission after hearing, the certification shall be forwarded by the conservation division to the operator for submission to the department of revenue.

(c) All records submitted in connection with an application for exemption from the severance tax under this provision shall be retained by the corporation commission. These records shall be subject to the confidentiality provision of K.A.R. 82-3-107(e). The records shall be retained for no fewer than four years and shall be open at all times to the department of revenue.

(d) Either the first purchaser and the operator or an operator who has duly elected to report the severance tax shall be notified by the department of revenue of its acceptance of the certification from the state corporation commission.

(e) The willful filing of false documents, fraudulent documents, or both, in order to obtain an exemption from the severance tax with the conservation division shall constitute a simultaneous false filing with the department of revenue under K.S.A. 79-4225, and amendments thereto, and its provisions shall apply with respect to civil penalties, criminal prosecution, or both. (Authorized by and implementing K.S.A. 79-4217, as amended by L. 1998, ch. 130, sec. 28; effective March 19, 1999.)

82-3-901. Determination of base production. "Base production," as defined in K.S.A. 79-4217(b)(6)(A)(2), and amendments thereto, shall be determined with respect to production decline by the operator certifying under penalty of perjury as to the 12-month history of any well or wells that are part of the production enhancement project. The production decline curve shall be prepared and certified to by either a petroleum geologist or petroleum engineer under penalty of perjury. (Authorized by and implementing K.S.A. 79-4217, as amended by L. 1998, ch. 130, sec. 28; effective March 19, 1999.)

82-3-902. Relief from severance tax; when available. Relief from the severance tax under K.S.A. 79-4217, and amendments thereto, shall be available only to a well that has been in existence for no fewer than 12 months in order that an accurate production decline curve can be

calculated and substantiated, except if the increase in production is a result of projects utilizing secondary recovery projects or new discoveries from the use of new technology, as defined in K.S.A. 79-4217(b)(6)(A)(4)(iii) or (vii), and amendments thereto. If the increase in production is the result of new technology, the base production shall be zero. Base production for secondary recovery projects shall be as determined under K.A.R. 82-3-906. (Authorized by and implementing K.S.A. 79-4217, as amended by L. 1998, ch. 130, sec. 28; effective March 19, 1999.)

82-3-903. Certification of well history; right to review. As part of the certification process, the operator shall certify that the history file of each well or wells substantiates that the efforts taken with respect to a work-over as defined in K.S.A. 79-4217, and amendments thereto, are more than routine maintenance, routine repair, and like-for-like replacement of downhole equipment. The right to review any of this documentation shall be reserved by the commission. (Authorized by and implementing K.S.A. 79-4217, as amended by L. 1998, ch. 130, sec. 28; effective March 19, 1999.)

82-3-904. Wells qualifying for both new pool and production enhancement severance tax exemptions. When a new well or the opening of a new zone in an existing well would qualify for a severance tax exemption both as a new pool under K.S.A. 79-4217(b)(4), and amendments thereto, and as a production enhancement project under K.S.A. 79-4217(b)(6)(A)(4)(ii), and amendments thereto, the operator shall elect which exemption is being claimed. The seven-year exemption for any other production enhancement project for a well already qualifying for a new pool exemption shall begin on the date of the first sale after the enhancement project is completed. (Authorized by and implementing K.S.A. 79-4217, as amended by L. 1998, ch. 130, sec. 28; effective March 19, 1999.)

82-3-905. New technology; qualification for severance tax exemption. "New technology," as used in K.S.A. 79-4217 and amendments thereto, shall include three-dimensional seismic studies and other technology that may be certified by the KCC technical staff. The applicant shall furnish to the Kansas corporation commission proof that the production is the result of new technology, as may be required by the commission

staff. All wells drilled as a result of the utilization of new technology shall qualify for the severance tax exemption. (Authorized by and implementing K.S.A. 79-4217, as amended L. 1998, ch. 130, sec. 28; effective March 19, 1999.)

82-3-906. Production enhancement projects; secondary recovery projects. For secondary recovery projects, the base production and production decline calculations required under K.A.R. 82-3-901 shall be based on either of the following:

(a) Aggregate production of all producing wells within the boundaries of the secondary recovery project if unitized; or

(b) total production from the enhanced recovery project. (Authorized by and implementing K.S.A. 79-4217, as amended by L. 1998, ch. 130, sec. 28; effective March 19, 1999.)

82-3-907. Production enhancement project; multiple well lease. When a production enhancement project is performed on a multiple well lease producing into a common battery or meter, the operator shall make a separate filing for each well. A production test shall be performed on each individual well before the enhancement project and immediately following the enhancement project so that total lease production may be allocated to the individual wells for the purpose of establishing base production and production decline as referenced in K.A.R. 82-3-901. (Authorized by and implementing K.S.A. 79-4217, as amended by L. 1998, ch. 130, sec. 28; effective March 19, 1999.)

82-3-908. Definition, "start-up date." The term "start-up date" shall be defined as the date of the first sale following the production enhancement procedure. (Authorized by and implementing K.S.A. 79-4217, as amended by L. 1998, ch. 130, sec. 28; effective March 19, 1999.)

82-3-1000. Definitions: underground porosity gas storage facilities. The following terms, as used in these regulations for underground porosity gas storage facilities, shall have the following meanings: (a) "Cushion gas" means the volume of gas required as permanent storage inventory to maintain adequate reservoir pressure for meeting minimum gas deliverability demands throughout the withdrawal season.

(b) "FERC" means the federal energy regulatory commission.

(c) "Fracture gradient" means the pressure gra-

dient, measured in pounds per square inch per foot, that, if applied to a subsurface formation, will cause that formation to physically fracture.

(d) "Fresh water" means water containing not more than 1,000 milligrams of total dissolved solids per liter.

(e) "Gas storage injection or withdrawal well" means a well used to inject and withdraw natural gas stored in an underground porous and permeable reservoir.

(f) "Gas storage observation well" means a well either completed or recompleted for the purpose of observing subsurface phenomena, including the presence of hydrocarbon gas, pressure fluctuations, fluid levels and flow, and temperature.

(g) "Gas storage porosity reservoir" means a porous stratum of the earth that is separated from any other similar porous stratum by an impermeable stratum and is capable of being used for underground storage of natural gas.

(h) "Gas storage well" means any gas storage injection or withdrawal well, gas storage withdrawal well, or gas storage observation well completed or recompleted as part of an underground porosity gas storage facility.

(i) "Gas storage withdrawal well" means a well used only for the withdrawal of natural gas stored in an underground porous and permeable reservoir.

(j) "Leak detector" means a device capable of detecting by chemical or physical means the presence of hydrocarbon vapor or the escape of vapor through a small opening.

(k) "Licensed engineer" means an engineer that is licensed or authorized to practice engineering in Kansas by the Kansas state board of technical professions.

(l) "Licensed geologist" means a geologist that is licensed or authorized to practice geology in Kansas by the Kansas state board of technical professions.

(m) "Packer" means an expanding mechanical device used in a well to seal off certain sections of the well when cementing, testing, or isolating the well from the completed interval.

(n) "Small, well-defined outside area" means an area, including a playground, recreation area, outdoor theater, and other place of public assembly, that is occupied by 20 or more persons on at least five days a week for 10 weeks in any 12-month period. The days and weeks shall not be required to be consecutive.

(o) "Underground porosity gas storage" means

the storage of hydrocarbon gas in underground porous and permeable geologic strata that have been converted to hydrocarbon gas storage.

(p) "Underground porosity gas storage facility" and "storage facility" mean the leased acreage associated with the storage field. This term shall include the wellbore tubular goods, the wellhead, and any related equipment, including the last positive shutoff valve attached to the flowline.

(q) "Working gas" means the portion of the gas storage volume that can be removed from a gas storage porosity reservoir for deliveries and still maintain pressure sufficient to meet design deliverability.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2001 Supp. 55-1,115 and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

82-3-1001. Notice of federal energy regulatory commission proceedings. Whenever the operator of an underground porosity gas storage facility files any application or report concerning the storage facility or operation of the facility with FERC, the operator shall at the same time deliver a copy of this application or report to the commission.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 2001 Supp. 55-1,115 and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

82-3-1002. Provisional operating permits and operating requirements for existing underground porosity storage facilities; penalties. (a) Application deadline; permitting procedure. No underground porosity gas storage facility or gas storage well in existence on or before July 1, 2002 shall continue in operation unless the following conditions are met:

(1) The operator has filed an application for a provisional underground porosity gas storage permit with the conservation division in accordance with subsection (b) on or before January 31, 2003.

(2) The conservation division has issued a written provisional permit or written temporary provisional permit granting the application. The application shall be acted upon by the commission within 90 days of receipt of the application.

(b) Application form; content. The original and two copies of each application shall be signed and verified by the operator, shall be filed with the

conservation division on a form furnished by the commission, and shall provide the following information:

(1) The name of the underground porosity gas storage facility;

(2) the name, description, and average depth of the porosity reservoir or reservoirs being utilized for underground porosity storage;

(3) a site map showing the boundaries of the underground porosity gas storage facility, the location and well number of each gas storage well, including any observation wells, the location of cathodic protection boreholes or ground bed systems, and the location of all pertinent surface facilities located within the boundary of the storage facility. This site map shall be verified by the operator;

(4) a statement confirming that the applicant holds the necessary and sufficient property rights for construction and operation of the underground porosity gas storage facility;

(5) a tabular summary showing the location, well number, completion date, elevation, top and bottom depths of the completed interval, casing information, tubing and packer information, and cementing information for each gas storage well located within the boundary of the underground porosity gas storage facility. This tabular summary shall be verified by the operator;

(6) the results of a water quality test of fluid recovered from the underground porosity storage reservoir or reservoirs reporting the amount of chlorides and total dissolved solids for the fluid in milligrams per liter (mg/l). This test shall be conducted by a laboratory that is certified by the state of Kansas. No gas storage shall be permitted in any underground porous stratum with chloride levels less than 5,000 milligrams per liter;

(7) the maximum wellhead injection rate and pressure currently utilized at the underground porosity gas storage facility and, if the facility is regulated by FERC, the maximum rate and pressure approved by FERC. In all cases, the applicant shall provide information showing that the maximum injection rate and pressure utilized at the facility will not exceed the fracture gradient and will not initiate fractures through the overlying strata that could enable stored gas or associated formation fluid to enter fresh and usable water strata or cause the injected gas to leak from the underground porosity gas storage reservoir. The fracture gradient of the formation may be required by the conservation division to be deter-

mined by a step rate test or by the calculation of a licensed engineer or a licensed geologist, using a method acceptable to the conservation division;

(8) a tabular summary of any gas storage wells located within the boundary of the underground porosity gas storage facility that have unrepaired casing leaks that are currently controlled with a tubing and packer completion;

(9) a schedule of completed and pending mechanical integrity testing for all gas storage wells utilized at the gas storage facility. All existing gas storage injection and withdrawal wells and gas storage withdrawal wells shall demonstrate mechanical integrity according to K.A.R. 82-3-1005 on or before July 1, 2004. All existing gas storage observation wells shall demonstrate mechanical integrity according to K.A.R. 82-3-1005 on or before July 1, 2007. Pressure testing or alternative tests or surveys conducted in accordance with K.A.R. 82-3-1005 and performed after July 1, 1999 shall be deemed to have demonstrated mechanical integrity on the date of the test or survey. All gas storage wells completed after July 1, 2002 shall demonstrate mechanical integrity according to K.A.R. 82-3-1005 before being placed into service as an active gas storage well;

(10) the current maximum storage volume, including values for cushion gas and working gas for the underground porosity gas storage facility;

(11) a detailed description of the storage facility's current safety plan;

(12) the applicant's license number;

(13) any other information that the conservation division requires; and

(14) payment of the application fee required by K.A.R. 82-3-1012.

(c) Safety plan required. Each operator of an underground porosity gas storage facility shall develop and implement a storage facility safety plan on or before January 31, 2003. This plan shall include current emergency response procedures, provisions to provide security against unauthorized activity, and any current gas release detection and prevention measures utilized by the facility. The emergency response procedures for the storage facility shall include contingency plans for gas storage well leaks and loss of containment from gas storage wells or the gas storage reservoir. The emergency response procedures shall also identify specific contractors and equipment vendors capable of providing necessary services and equipment to respond to any gas storage well leaks or loss of containment from one or more of the gas

storage wells or the gas storage reservoir. Copies of the plan shall be available at the storage facility and the nearest operational office of the operator of the facility.

(d) Gas metering; required. The total volume of gas injected into and withdrawn from an underground porosity gas storage facility that is operating under a provisional permit or temporary provisional permit issued by the conservation division shall be metered according to K.A.R. 82-3-1006.

(e) Gas volume; reporting. The operator of an underground porosity gas storage facility operating under a provisional permit or temporary provisional permit issued by the conservation division shall report monthly, to the conservation division, the volume of gas placed into storage and the volume of gas removed from storage at the facility during the preceding month. The report shall be filed according to K.A.R. 82-3-1006.

(f) Gas leaks; reporting. The operator of an underground porosity gas storage facility operating under a provisional permit issued by the conservation division shall report any pressure changes or other monitoring data that indicate the presence of leaks in a gas storage well or the lack of confinement of the injected gases and any associated fluids to the underground porosity gas storage reservoir. This report shall be submitted according to K.A.R. 82-3-1006.

(g) Maximum term for provisional permits; extensions. The maximum term for provisional underground porosity gas storage permits issued by the conservation division shall not exceed two years from the date of issue. Underground porosity gas storage facilities operating under a provisional permit shall file for a fully authorized operating permit in accordance with K.A.R. 82-3-1003 before the expiration of the provisional permit. The extension of a provisional permit may be granted administratively on a showing of good cause by the operator. If a request for an extension is administratively denied, the operator shall have a right to a hearing upon written request.

(h)(1) Provisional permit amendment. The operator of an existing underground porosity gas storage facility operating under a provisional permit shall file an application with the conservation division on a form furnished by the conservation division for an amendment to that provisional permit under any of the following:

(A) At any time that a material change in conditions has occurred in the operation of the stor-

age facility or in the ability of the facility to operate without causing pollution or the waste of hydrocarbons;

(B) before expanding the areal extent of the underground porosity gas storage facility;

(C) before increasing the underground porosity gas storage facility reservoir pressure above the maximum permitted pressure;

(D) before adding any additional gas storage well within the underground porosity gas storage facility, if the well will be located 1,320 feet or less from the boundary of the storage facility; or

(E) before adding any additional gas storage well within the underground porosity gas storage facility, if the well will be located more than 1,320 feet from the boundary of the storage facility.

(2)(A) The applicant for any amendments under paragraphs (h)(1)(A) through (D) of this regulation shall publish notice of the application in at least two issues of the official county newspaper of each county in which the lands affected by the application are located. In addition, notice shall also be published in at least one issue of the Wichita Eagle newspaper. The applicant shall also deliver or publish any notice that the applicant deems necessary to ensure that those persons whose rights may be affected by the application have been sufficiently notified in accordance with applicable due process requirements.

(B) The application shall be held in abeyance for 15 days from the date of last publication or delivery of notice, whichever is later. If during the 15-day period a valid protest is filed according to K.A.R. 82-3-135b or if the commission on its own motion deems that there should be a hearing on the application, a hearing shall be held. The applicant shall publish notice of the hearing in the same manner as that required by paragraph (h)(2)(A) above.

(C) If an application for an amendment is administratively denied, the operator shall have a right to a hearing upon written request.

(i) Penalties.

(1) Operating an underground porosity gas storage facility in violation of this regulation shall be punishable by a penalty of \$1,000, and the underground porosity gas storage facility may be shut down until compliance is achieved.

(2) Each day that the violation continues may be considered a separate violation. The penalties specified in this subsection may be increased by the commission if it finds that aggravating factors exist.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2001 Supp. 55-162, 55-164, 55-1,115, and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

82-3-1003. Fully authorized operating permits and operating requirements for existing and new underground porosity gas storage facilities and underground porosity gas storage wells; penalties. (a) Application and permit required. No underground porosity gas storage facility or gas storage well shall be put into operation and no underground porosity gas storage facility or gas storage well in existence before July 1, 2002 shall continue to operate after its provisional permit has expired, unless the following conditions are met:

(1) The operator has filed an application for a fully authorized underground porosity gas storage facility operating permit with the conservation division in accordance with subsection (b), and the operator has constructed or is operating the storage facility in compliance with provisions of this regulation.

(2) Each application for a fully authorized operating permit for an underground porosity gas storage facility to be constructed after July 1, 2002 also complies with K.A.R. 82-3-1004.

(3) The operator has received from the conservation division a written permit granting the application for full authorization.

(b) Application form; content. The original and two copies of each application for full authorization shall be signed and verified by the operator, filed with the conservation division on a form furnished by the commission, and provide the following information:

(1) The name of the underground porosity gas storage facility and, if applicable, the permit number of the provisional permit for which the operator is requesting full authorization;

(2) the name, description, and average depth of the gas storage porosity reservoir or reservoirs being utilized for underground porosity gas storage;

(3) a geologic and hydrogeologic evaluation of the gas storage porosity reservoir or reservoirs and the surrounding formations. The evaluation shall include any available geophysical data and assessments of any regional tectonic activity, regional or local fault zones, and structural or stratigraphic anomalies. The evaluation shall focus on the gas storage porosity reservoir or reservoirs and adja-

cent confining layers. The evaluation shall also identify any oil and gas horizons known to be productive in the area of the storage facility and any freshwater-bearing horizons known to be developed in the area of the storage facility. The evaluation shall include exhibits and plan view maps showing the following:

(A) All water, oil, and gas exploration and development wells, and other man-made surface structures and activities within one mile outside of the storage facility boundary;

(B) any regional or local faulting;

(C) an isopach map of the gas storage reservoir or reservoirs;

(D) an isopach map of the adjacent confining layer;

(E) a structure map of the top and base of the storage reservoir or reservoirs;

(F) identification of all structural spill points or stratigraphic anomalies controlling the isolation of stored hydrocarbon gases or associated fluids; and

(G) structural and stratigraphic cross-sections that describe the geologic conditions at the underground porosity gas storage facility.

The geologic and hydrogeologic evaluation required under this paragraph shall be certified by a licensed geologist or licensed engineer. The operator of an underground porosity gas storage facility may submit existing geologic and hydrogeologic studies or evaluations in fulfillment of the requirement of this paragraph if those studies have been updated to reflect current storage facility conditions at the time of the application and have been certified as such by a licensed geologist or licensed engineer;

(4) an area of review evaluation, which shall include a review of the data of public record for wells that penetrate that part of the underground porosity reservoir designated as the gas storage porosity reservoir, and those wells that penetrate the underground porosity gas storage reservoir within one-fourth mile of the boundary of the underground porosity gas storage facility. This review shall determine if all abandoned wells have been plugged in a manner that prevents the movement of gas or associated fluids from the underground porosity gas storage reservoir. The area evaluation required under this paragraph shall be certified by a licensed geologist or licensed engineer. The applicant shall identify any wells that appear from the review of public records to be unplugged or improperly plugged, and any other

unplugged or improperly plugged wells of which the applicant has actual knowledge;

(5) the calculated maximum storage volume for the underground porosity gas storage reservoir or reservoirs using a method acceptable to and filed with the conservation division. Storage volume calculations shall include working gas and cushion gas volumes. Any refinement of actual underground porosity gas storage reservoir volumes determined after continued operation of the facility shall be filed with the conservation division. Storage volume calculations filed according to this paragraph shall be certified by a licensed engineer or licensed geologist;

(6) a report of the maximum operating pressures to be utilized at the underground porosity gas storage facility. The maximum allowed storage reservoir pressure, measured in psig, shall be no greater than 75 percent of the fracture gradient of the formation as determined by a step rate test or as calculated by a licensed engineer or licensed geologist using a method acceptable to the conservation division. The underground porosity gas storage reservoir shall not be subjected to operating pressures in excess of the calculated fracture pressure even for short periods of time. Higher operating pressures may be allowed by the conservation division upon written application by the operator. The application, if approved by the conservation division, shall be subject to any conditions established by the conservation division;

(7) the results of multiple water quality tests of fluid recovered from the gas storage porosity reservoir or reservoirs reporting the amount of chlorides and total dissolved solids for the fluid in milligrams per liter. This test shall be conducted by a laboratory that is certified by the state of Kansas. No porosity gas storage shall be permitted in porous strata with chloride levels less than 5,000 milligrams per liter;

(8) a schedule of completed and pending mechanical integrity testing for all gas storage wells utilized at the storage facility. All existing gas storage injection and withdrawal wells and gas storage withdrawal wells shall demonstrate mechanical integrity according to K.A.R. 82-3-1005 before July 1, 2004. All existing gas storage observation wells shall demonstrate mechanical integrity according to K.A.R. 82-3-1005 on or before July 1, 2007. Pressure testing or alternative tests or surveys conducted in accordance with K.A.R. 82-3-1005 and performed after July 1, 1999 shall be deemed to have demonstrated mechanical integrity on the

date of the test or survey. All gas storage wells completed after July 1, 2002 shall demonstrate mechanical integrity according to K.A.R. 82-3-1005 before being placed into service as an active gas storage well;

(9) a current site map showing the boundaries of the underground porosity gas storage facility, the location and well number of all gas storage wells, including any observation wells, the location of cathodic protection boreholes or ground bed systems, and the location of all pertinent surface facilities within the boundary of the storage facility. This site map shall be verified by the operator;

(10) a statement confirming that the applicant holds the necessary and sufficient property rights for construction and operation of the underground porosity gas storage facility;

(11) a detailed description of the storage facility's current safety plan;

(12) the applicant's license number;

(13) any other information that the conservation division requires; and

(14) payment of the application fee required by K.A.R. 82-3-1012.

(c) Safety plan required. Each operator shall develop and implement a storage facility safety plan. This plan shall include emergency response procedures and provisions to provide security against unauthorized activity. The plan shall detail the safety procedures concerning the residential, commercial, and public land use in the proximity of the storage facility. The emergency response procedures shall include contingency plans for gas storage well leaks and loss of containment from gas storage wells or the gas storage reservoir. The emergency response procedures shall also identify specific contractors and equipment vendors capable of providing necessary services and equipment to respond to such gas storage well leaks or loss of containment from gas storage wells or the gas storage porosity reservoir. The plan shall be updated as changes in safety features at the facility occur, or as the conservation division requires. Copies of the plan shall be available at the storage facility and at the nearest operational office of the operator of the storage facility.

(d) Safety systems required. Leak detectors shall be placed at all gas storage wells located within 330 feet of an inhabited residence, commercial establishment, church, school, small, well-defined outside area, or enclosed compressor site. Leak detectors, where applicable, shall be integrated with automated warning systems. Inspec-

tion and testing of these leak detectors shall comply with requirements of K.A.R. 82-3-1005. Identification signs shall be required at each gas storage well and shall comply with signage requirements specified in K.A.R. 82-3-1007.

(e) Well casing and cementing requirements.

(1) Gas storage wells in existence on July 1, 2002 shall comply with appropriate provisions of casing and cementing requirements as outlined in K.A.R. 82-3-104, K.A.R. 82-3-105, and K.A.R. 82-3-106. However, any intermediate or production casing strings or liners that are set in the wellbore shall be cemented with a sufficient volume of cement to fill the annular space to a point 500 feet above the top of the storage reservoir or to the surface, whichever is less.

(2) Gas storage wells completed after July 1, 2002 and completed with a tubing and packer configuration shall comply with appropriate provisions of casing and cementing requirements as outlined in K.A.R. 82-3-104, K.A.R. 82-3-105, and K.A.R. 82-3-106, except as outlined below:

(A) Any intermediate or production casing strings or liners that are set in the wellbore shall be cemented with a sufficient volume of cement to fill the annular space to a point 500 feet above the top of the storage reservoir or to the surface, whichever is less.

(B) All surface, intermediate, and production casings shall meet the standards specified in either of the following documents, both of which are hereby adopted by reference:

(i) "Bulletin on performance properties of casing, tubing, and drill pipe," API bulletin 5C2, as published by the American petroleum institute in October 1999; or

(ii) "specification for casing and tubing (U.S. customary units)," API specification 5CT, as published by the American petroleum institute in October 1998.

All surface, intermediate, and production casings shall be new casing or reconditioned casing of equivalent quality that has been pressure-tested in accordance with the requirements of paragraph (e)(2)(B). For new pipe, the pressure test conducted at the manufacturing mill or fabrication plant may be used to fulfill the requirements of paragraph (e)(2)(B).

(C) Emplacement of cement in the setting of the intermediate casing string, production casing string, or any liners shall be verified by a cement bond log, cement evaluation log, or any other eval-

uation method approved by the conservation division.

(D) (i) All tubing strings shall meet the standards contained in either of the documents adopted in paragraph (e)(2)(B) of this regulation. All tubing shall be new tubing or reconditioned tubing of equivalent quality that has been pressure-tested. For new tubing, the pressure test conducted at the manufacturing mill or fabrication plant may be used to fulfill this requirement.

(ii) For tubing completions, the packer shall be set at a depth at which the packer will be opposite a cemented interval of the long string casing and shall be set no more than 50 feet above the uppermost perforation or open hole for the gas storage reservoir.

(3) Each gas storage well completed after July 1, 2002 and not completed with a tubing and packer configuration shall be permitted only upon a showing of good cause. Each well shall, at a minimum, comply with appropriate provisions of casing and cementing requirements as outlined in K.A.R. 82-3-104, K.A.R. 82-3-105, and K.A.R. 82-3-106, except as outlined below:

(A) Any intermediate or production casing strings or liners that are set in the wellbore shall be cemented with a sufficient volume of cement to fill the annular space to the surface. The proposed cementing plan shall be approved by the conservation division in advance of drilling and cementing operations.

(B) All surface, intermediate, and production casings shall meet the standards contained in either of the documents adopted in paragraph (e)(2)(B) of this regulation.

All surface, intermediate, and production casings shall be new casing or reconditioned casing of equivalent quality that has been pressure-tested. For new pipe, the pressure test conducted at the manufacturing mill or fabrication plant may be used to fulfill this requirement. The proposed casing plan shall be approved by the conservation division in advance of drilling and completion operations.

(C) Emplacement of cement in the setting of the intermediate casing string, production casing string, or any liners shall be verified by a cement bond log, cement evaluation log, or any other evaluation methods approved by the conservation division.

(D) Gas injection or withdrawal wells located within 330 feet of an inhabited residence, commercial establishment, church, school, or small,

well-defined outside area shall be equipped with down-hole safety shutoff valves.

(f) Wellhead valves, connections, and flow line requirements. All wellhead components, including the casinghead and tubing head, valves, and fittings, shall be made of steel having operating pressure ratings sufficient to exceed the maximum injection pressures computed at the wellhead. These ratings shall be clearly identified on valves and fittings. The wellhead master valve on each gas storage well shall be fully opening and shall be sized to the diameter of the casing or tubing string to which the valve is attached. Each flow line connected to the wellhead shall be equipped with a manually operated positive shutoff valve located on the wellhead.

(g) Gas metering; required. The total volume of gas injected into and withdrawn from an underground porosity gas storage facility operating under a fully authorized gas storage permit issued by the conservation division shall be metered according to the requirements of K.A.R. 82-3-1006.

(h) Gas volume; reporting. The operator of an underground porosity gas storage facility operating under a fully authorized gas storage permit issued by the conservation division shall report monthly to the conservation division the volume of gas placed into storage and the volume of gas removed from storage at the facility during the preceding month. The report shall be filed according to K.A.R. 82-3-1006.

(i) Gas leaks; reporting. The operator of an underground porosity gas storage facility operating under a fully authorized gas storage permit issued by the conservation division shall report any pressure changes or other monitoring data that indicate the presence of leaks in a gas storage well or the lack of confinement of the injected gases and any associated fluids to the gas storage reservoir. The report shall be filed according to K.A.R. 82-3-1006.

(j) Modification, suspension, or cancellation of permit. A fully authorized operating permit may be modified, suspended, or canceled after notice and opportunity for hearing if a material change in conditions has occurred in the operation of the gas storage facility or if there are material deviations from the information originally furnished to the conservation division that affect the safe operation of the facility or the ability of the facility to operate without causing the waste of hydrocarbons, pollution, or a threat to public safety. All underground porosity gas storage facility opera-

tions shall cease upon suspension or cancellation of a permit under this subsection.

(k)(1) Application required to amend permit; fully authorized permit amendment. The operator of a storage facility operating under a fully authorized operating permit shall file an application with the conservation division on a form furnished by the conservation division for an amendment to that permit under any of the following:

(A) At any time that a material change in conditions has occurred in the operation of the gas storage facility or in the ability of the facility to operate without causing pollution or the waste of hydrocarbons;

(B) before expanding the areal extent of the underground porosity gas storage facility;

(C) before increasing the underground porosity gas storage reservoir pressure above the maximum permitted pressure;

(D) before adding any additional gas storage well within the underground porosity gas storage facility, if the well will be located 1,320 feet or less from the boundary of the storage facility; or

(E) before adding any additional gas storage well within the underground porosity gas storage facility, if the well will be located more than 1,320 feet from the boundary of the storage facility.

(2)(A) The applicant for any amendments under paragraphs (k)(1)(A) through (D) of this regulation shall publish notice of the application in at least two issues of the official county newspaper of each county in which the lands affected by the application are located. In addition, notice of the application shall also be published in at least one issue of the Wichita Eagle newspaper. The applicant shall also deliver or publish any notice that the applicant deems necessary to insure that those persons whose rights may be affected by the application have been sufficiently notified in accordance with applicable due process requirements.

(B) The application shall be held in abeyance for 15 days from the date of the last publication or delivery of notice, whichever is later. If during that 15-day period a valid protest is filed according to K.A.R. 82-3-135b or if the commission on its own motion deems that there should be a hearing on the application, a hearing shall be held. The applicant shall publish notice of the hearing in the same manner as that required by paragraph (k)(2)(A) above.

(C) If an application for an amendment is administratively denied, the operator shall have a right to a hearing upon written request.

(l) Penalties.

(1) Operating an underground porosity gas storage facility in violation of this regulation shall be punishable by a penalty of \$1,000, and the underground porosity gas storage facility may be shut down until compliance is achieved.

(2) Each day that the violation continues may be considered a separate violation. The penalties specified in this subsection may be increased by the commission if it finds that aggravating factors exist.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2001 Supp. 55-162, 55-164, 55-1,115, and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

82-3-1004. Notice of application for a permit to operate an underground porosity gas storage facility constructed after July 1, 2002.

(a) Notice to adjacent property owners. Each applicant for an underground porosity gas storage facility operating permit for a facility constructed after July 1, 2002 shall give notice on or before the date the application is filed with the conservation division by mailing or delivering a copy of the application to the following:

(1) Each operator or lessee of record within one-half mile of the boundary of the storage facility;

(2) each owner of record of the minerals in unleased acreage within one-half mile of the boundary of the storage facility; and

(3) the landowner on whose land the well or wells affected by the application is located.

(b) Notice by publication. The applicant shall publish notice of the application in at least two issues of the official county newspaper of each county in which the lands affected by the application are located. In addition, notice of the application shall also be published in at least one issue of the Wichita Eagle newspaper. The applicant shall also deliver or publish any notice that the applicant deems necessary to insure that those persons whose rights may be affected by the application have been sufficiently notified in accordance with applicable due process requirements.

(c) Protest; notice of hearing.

(1) The application shall be held in abeyance for 15 days from the date of last publication or delivery of notice, whichever is later. If during that 15-day period a valid protest is filed according to K.A.R. 82-3-135b or if the commission on its

own motion deems that there should be a hearing on the application, a hearing shall be held.

(2) The applicant shall publish notice of the hearing in the same manner as that required by subsection (b).

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2001 Supp. 55-1,115 and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

82-3-1005. Testing and inspection requirements for underground porosity gas storage facilities and underground porosity gas storage wells; penalty. (a) Mechanical integrity testing requirements; existing wells. Each operator of a gas storage injection and withdrawal well or a gas storage withdrawal well completed before July 1, 2002 shall demonstrate the mechanical integrity of each such well according to this regulation before July 1, 2004. Each operator of an existing gas storage observation well shall demonstrate the mechanical integrity of each gas storage observation well according to this regulation on or before July 1, 2007. Each operator of a gas storage well shall subsequently retest each well at least once every five years following the initial mechanical integrity test performed on the well. The operator and a representative of the conservation division shall mutually agree to a date for the mechanical integrity test. Test results shall be verified by the operator's representative. An extension of time to complete or conduct mechanical integrity testing may be granted upon a showing of good cause or as part of an approved alternate testing program. Approved testing procedures for gas storage wells shall include the following:

(1) Pressure tests.

(A) Gas storage wells equipped with a tubing and packer completion shall be pressure tested at no less than 300 psig or 100 percent of the maximum authorized injection pressure for the underground porosity gas storage facility, whichever is less. The pressure shall be applied to the tubing casing annulus at the surface for a period of 30 minutes and shall have no decrease in pressure greater than 10 percent of the required minimum test pressure. For tubing completions, the packer shall be set at a depth at which the packer will be opposite a cemented interval of the long string casing and shall be set no more than 50 feet above

the uppermost perforation or open hole for the gas storage reservoir.

(B) Gas storage wells not completed with a tubing and packer completion shall be pressure tested at 100 percent of the maximum authorized injection pressure for the underground porosity gas storage facility. The pressure shall be applied to the long string casing at the surface after running a retrievable plug, which shall be set no more than 50 feet above the uppermost perforation or open hole of the gas storage reservoir. The test pressure shall be applied for at least 30 minutes and shall have no decrease in pressure greater than 10 percent of the required minimum test pressure.

(2) Alternate tests. An alternative test method, including a tracer survey, temperature survey, gamma ray log, neutron log, noise log, casing inspection log, or a combination of two or more of these surveys and logs, may be used to demonstrate mechanical integrity if approved in advance by the conservation division.

(b) Mechanical integrity testing requirements; newly constructed wells. Each operator of a gas storage well completed after July 1, 2002 shall demonstrate the mechanical integrity of each well according to the testing procedures established in subsection (a) of this regulation before placing the well into service as an active gas storage well. Each operator of a gas storage well shall subsequently retest each well at least once every five years following the initial mechanical integrity test performed on the well. The date for this mechanical integrity test shall be mutually agreed upon by the operator and a representative of the conservation division. Test results shall be verified by the operator's representative. An extension of time to complete or conduct mechanical integrity testing may be granted upon a showing of good cause or as part of an approved alternate testing program.

(c) Supervision of mechanical integrity testing. Conservation division representatives shall be responsible for witnessing a minimum of 25 percent of all mechanical integrity tests conducted by each storage facility operator. However, the conservation division's inability to witness a minimum of 25 percent of all mechanical integrity tests shall not result in any penalty to the operator of the underground porosity gas storage facility if the operator has complied with subsections (a) and (b) of this regulation.

(d) Requirements upon test failure. If a gas storage well fails to demonstrate mechanical in-

tegrity by an approved method, the operator of the well shall immediately isolate the leak or leaks in a manner that contains natural gas and associated fluids in the well or storage reservoir and demonstrates that the well does not pose a threat to fresh and usable water resources or to public safety. The operator shall, within 90 days, perform one of the following:

- (1) Repair and retest the well to demonstrate mechanical integrity;
- (2) plug the well; or
- (3) file an application with the conservation division for temporary abandonment according to K.A.R. 82-3-1011.

(e) Leak detector inspections and testing. Each leak detector required under K.A.R. 82-3-1003 shall be tested once each calendar year and, if defective, shall be repaired or replaced within 10 days. Each repaired or replaced detector shall be retested if required by the conservation division. An extension of time for repair or replacement of a leak detector may be granted upon a showing of good cause by the operator of the underground porosity gas storage facility. A record of each inspection, which shall include the inspection results, shall be maintained by the operator for at least five years and shall be made available to the conservation division upon request.

(f) Penalties.

(1) The failure to perform a mechanical integrity test on a gas storage well as required under subsection (a) or (b) of this regulation shall be punishable by a \$1,000 penalty.

(2) The failure to comply with the requirements of subsection (d) of this regulation shall be punishable by a \$1,000 penalty.

(3) The failure to comply with the requirements of subsection (e) of this regulation shall be punishable by a \$500 penalty per occurrence.

(4) Each day that a violation of this regulation continues may be considered a separate violation. The penalties specified in this subsection may be increased by the commission if it finds that aggravating factors exist. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2003 Supp. 55-162, K.S.A. 2003 Supp. 55-164, and K.S.A. 2003 Supp. 55-1,115; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002; amended Jan. 14, 2005.)

82-3-1006. Storage facility monitoring and reporting. (a) Monthly wellhead pressure monitoring; record retention. At the time the ap-

plication for a provisional or fully authorized permit is submitted, the operator shall begin monitoring and recording the wellhead pressure of each gas storage well, including each annulus of the well, on a monthly basis. However, if the operator has provided sufficient evidence to the conservation division that the annulus has been cemented to the surface, no monitoring and reporting shall be required for that annular space. These records shall be retained by the operator for five years.

(b) Annual report of wellhead pressures. Each operator shall annually report information regarding wellhead pressures for each gas storage well to the commission. This report shall be submitted on a form furnished by the commission.

(c) Report of potential leak. The operator of an underground porosity gas storage facility shall report any pressure changes or other monitoring data that indicate the presence of leaks in the well or the lack of confinement of the injected gases and any associated fluids to the gas storage reservoir. This report shall be made orally as soon as practicable to the appropriate conservation district field office following the occurrence of the leak and shall be confirmed in writing to the conservation division office within three working days.

(d) Gas metering; record retention. The total volume of gas injected into and withdrawn from a storage facility shall be metered through a master meter. The gas volumes shall be metered with a meter that has sufficient capacity and is approved by the conservation division. The operator of the storage facility shall keep the original field record consisting of magnetic tapes, digital electronic data, meter charts, or records of gas injected or withdrawn for at least five years. This information shall be made available to the conservation division upon request.

(e) Monthly volume report. The operator of an underground porosity gas storage facility shall, on or before the last day of each month, file with the conservation division a report showing the volume of gas placed into storage and the volume of gas removed from storage at the storage facility during the preceding month. The report shall also state the total volume of gas stored on the first and last days of the preceding month.

(f) Penalties.

(1) The failure to file or timely file the annual pressure report required under subsection (b) shall be punishable by a \$100 penalty.

(2) The failure to file or timely file the monthly gas volume report required under subsection (e) shall be punishable by a \$100 penalty.

(3) The failure to comply with the reporting requirements of subsection (c) of this regulation shall be punishable by a penalty of up to \$5,000 per occurrence.

(4) Each day that a violation of this regulation continues may be considered a separate violation. The penalties specified in this subsection may be increased by the commission if it finds that aggravating factors exist.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2001 Supp. 55-162, 55-164, 55-1,115, and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

82-3-1007. Identification signs. (a) Identification signs required. Each operator shall identify each gas storage well and associated compressor site by posting a sign immediately adjacent to the wellhead or compressor site. The sign shall be durable and shall be large enough to be legible under normal daytime conditions at a distance of 50 feet. The sign shall include all of the following information:

- (1) The name and license number of the operator;
- (2) the name of the storage facility and the gas storage well number or compressor site name or number;
- (3) the location of the gas storage well or compressor site by quarter section, section, township, range, and county; and
- (4) the emergency contact phone number or numbers for the operator of the storage facility.

(b) Penalty. The failure to comply with the requirements of subsection (a) of this regulation shall be punishable by a \$100 penalty per occurrence. Each day that a violation of this regulation continues may be considered a separate violation. The penalties specified in this subsection may be increased by the commission if it finds that aggravating factors exist.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2001 Supp. 55-1,115 and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

82-3-1008. Safety inspections. (a) Annual safety inspections required. Each operator of an underground porosity gas storage facility shall

conduct an annual safety inspection of the facility and shall file with the conservation division a written report consisting of the inspection procedure and results within 30 days following completion of the inspection. The operator shall notify the conservation division at least 10 days before each inspection so that a representative of the conservation division can be present to witness the inspection. An extension of time to conduct an inspection may be granted only upon a showing of good cause.

(b) Inspection criteria. Each inspection shall include verification of all of the following:

- (1) All gas storage well manual valves are in normal operating condition.
- (2) All surface automatic shut-in safety valves are in normal operating condition.
- (3) Wellheads and all related equipment are in normal operating condition.
- (4) All warning signs, safety fences or barriers, and security equipment meet the requirements of the operator's safety plan.

(c) Penalty. The failure to comply with the requirements of this regulation shall be punishable by a \$500 penalty per occurrence. Each day that a violation of this regulation continues may be considered a separate violation. The penalties specified in this subsection may be increased by the commission if it finds that aggravating factors exist.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2001 Supp. 55-162, 55-164, 55-1,115, and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

82-3-1009. Transfer of a gas storage permit; penalty. (a) Transfer authority required. Authority to operate an underground porosity gas storage facility under a permit from the conservation division shall not be transferred from one operator to another without the approval of the conservation division. The transferor operator shall notify the conservation division in writing of the intent to transfer authority to operate an underground porosity gas storage facility from one operator to another. The written notice shall contain the following information:

- (1) The name and address of the transferor operator and that operator's license number;
- (2) a list of all active and inactive gas storage wells on the storage facility authorized under the permit being transferred;

- (3) the permit number;
- (4) the gas storage reservoir or reservoirs covered by the permit;
- (5) the proposed effective date of transfer;
- (6) the signature of the transferor operator and the date signed;
- (7) the name and address of the transferee operator and that operator's license number; and
- (8) the signature of the transferee operator and the date signed.

(b) License required. Transfers shall not be made to any individual, partnership, corporation, or municipality that is not licensed as a gas storage operator at the time of the proposed transfer or that does not meet the applicable financial responsibility requirements under K.A.R. 82-3-120.

(c) Approval requirements; notification. A copy of the approved transfer shall be mailed by the conservation division to the transferee operator and the transferor operator. As a condition of approval of the transfer, the transferor operator may be required by the commission to show that the storage facility meets the regulatory requirements for mechanical integrity tests and safety inspections. The transferor operator may be required to provide annual pressure-monitoring reports for that operator's period of operation of the facility.

(d) Identification signs. Within 90 days after any approved transfer, the transferee operator shall change the identification signs specified in K.A.R. 82-3-1007 to show the transferee operator information.

(e) Penalties. Each attempted transfer in violation of this regulation shall be void. Additionally, each violation of this regulation shall be punishable by a penalty of up to \$1,000 for the first violation, \$2,000 for the second violation, and \$3,000 plus a license review for the third violation. Each day that a violation of this regulation continues may be considered a separate violation. The penalties specified in this subsection may be increased by the commission if it finds that aggravating factors exist.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 2001 Supp. 55-162, 55-164, 55-1,115, and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

82-3-1010. Notice of plugging, plugging methods and procedures, plugging report, and plugging fee for gas storage wells; penalty. (a) Plugging requirements. The plugging

of underground porosity gas storage wells shall be accomplished in accordance with K.A.R. 82-3-113, K.A.R. 82-3-114, K.A.R. 82-3-117, and K.A.R. 82-3-118, except as specifically provided below:

(1) To meet the requirement of K.A.R. 82-3-113(b)(2), the operator shall provide a written plugging plan to the conservation division and the appropriate district office no later than 30 days before the planned commencement of plugging operations.

(2) The operator of any gas storage well that shows a positive wellhead shut-in pressure or gas flow at the surface immediately before the commencement of plugging operations shall complete one of the following before commencing plugging operations:

(A) Have a mechanical bridge plug or other approved control device set immediately above the porosity storage reservoir or reservoirs before commencing cementing operations; or

(B) implement additional cementing procedures as approved by the appropriate district field office to ensure placement of a cement plug across and above the gas storage reservoir.

(3) The operator of each tubingless gas storage well shall plug the well by displacing cement inside the long string and any intermediate casing from the total depth or plug-back total depth of the well to the surface. The operator shall also ensure that there is adequate cement in the annular space between casing strings and the wellbore.

(b) Penalty. The failure of an operator to comply with subsection (a) of this regulation shall be punishable by a \$500 penalty and a requirement that the operator of the underground porosity gas storage well properly plug the well according to this regulation. Each day that a violation of this regulation continues may be considered a separate violation. The penalties specified in this subsection may be increased by the commission if it finds that aggravating factors exist.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 2001 Supp. 55-162, 55-164, 55-1,115, and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

82-3-1011. Temporary abandonment of storage wells; well plugging; temporary and permanent abandonment of a storage facility; penalties. (a) Requirements for cessation of

well operations. Within 90 days after injection, withdrawal, or observation operations cease on any well completed for the purpose of underground porosity gas storage, the operator of that well shall perform one of the following:

(1) Plug the well; or

(2) file an application with the conservation division requesting temporary abandonment, on a form furnished by the conservation division.

(b) Approval required for temporary abandonment. Each operator shall be required to obtain approval from the commission if the operator desires temporary abandonment status for any underground porosity gas storage well. If the operations on any temporarily abandoned gas storage well are not resumed within one year after the application has been approved, the well shall be deemed a permanently abandoned well, and the operator of the well shall comply with regulations of the commission relating to the plugging of gas storage wells. Upon submitting an application to the conservation division before the expiration of the one-year period and for good cause shown, temporary abandonment status may be extended by the conservation division for one year. Additional one-year extensions may be granted by the conservation division.

(c) Right of denial. After an application for temporary abandonment of an underground porosity gas storage well has been filed, the gas storage well shall be subject to inspection and record review by the conservation division to determine the likelihood that the temporary abandonment of the well might cause pollution, the waste of hydrocarbons, or a threat to public safety. If necessary to prevent pollution, the waste of hydrocarbons, or a threat to public safety, temporary abandonment may be denied by the conservation division, and the well may be required to be plugged or repaired according to the specifications received from the conservation division and in accordance with its regulations.

(d) Plugging of temporarily abandoned gas storage wells. At the expiration of the temporary abandonment period, the operator of each underground porosity gas storage well that is temporarily abandoned shall plug or repair the well or return the well to operation, in accordance with these regulations.

(e) Temporary abandonment of a storage facility. The operator of an underground porosity gas storage facility may temporarily abandon the storage facility upon submitting written notice to the

conservation division. This notice shall include the following:

(1) The date on which the storage facility is to be temporarily abandoned;

(2) the projected temporary abandonment period;

(3) the monitoring procedures to be utilized at the facility during the temporary abandonment period;

(4) the temporary abandonment applications for each gas storage well within the facility filed according to subsection (b) of this regulation, except any gas storage wells for which temporary abandonment has already been approved; and

(5) any other information required by the conservation division.

(f) Permanent abandonment and decommissioning of a storage facility. The operator of an underground porosity gas storage facility may permanently abandon and decommission the storage facility upon submitting written notice to the conservation division. This notice shall include the following:

(1) The anticipated date on which the storage facility is to be permanently abandoned and decommissioned;

(2) the anticipated field pressure at abandonment;

(3) a detailed plan and schedule approved by the conservation division for the orderly and timely abandonment and decommissioning of the facility, which shall address the following:

(A) The identification of all surface and below-ground facilities to be abandoned;

(B) the name or names of the person or persons who will be responsible for any surface facilities abandoned in place;

(C) the surface restoration of all well sites and surface facilities to original grade, including the proper closure of all surface impoundments;

(D) the removal of any unused concrete bases, machinery, operating materials, and other debris;

(E) the disposal of all wastes in accordance with applicable Kansas statutes and regulations;

(F) the plugging of all gas storage wells in conformance with K.A.R. 82-3-1008; and

(G) any other information required by the conservation division; and

(4) a demonstration of compliance with the requirements of K.S.A. 55-1208, and amendments thereto, if applicable to the underground porosity gas storage facility.

(g) Permit revocation upon permanent aban-

donment of storage facility. The underground porosity gas storage facility operating permit shall be revoked by the conservation division upon the completion of the requirements of the abandonment and decommissioning schedule and the delivery to the conservation division of final shut-in pressure data for each gas storage well plugged.

(h) Penalties.

(1) The failure to comply with subsection (a) or (b) of this regulation shall be punishable by a \$100 penalty per occurrence.

(2) The failure to file a notice of temporary abandonment of an underground porosity gas storage facility in accordance with subsection (e) of this regulation shall be punishable by a \$500 penalty.

(3) The failure to file a notice of permanent abandonment of an underground porosity gas storage facility in accordance with subsection (f) of this regulation shall be punishable by a \$1,000 penalty.

(4) Each day that a violation of this regulation continues may be considered a separate violation. The penalties specified in this subsection may be increased by the commission if it finds that aggravating factors exist.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 55-152, K.S.A. 2001 Supp. 55-162, 55-164, 55-1,115, and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

82-3-1012. Assessment of costs for underground porosity gas storage facilities and gas storage wells. (a) Annual well fee. An annual fee of \$240 shall be assessed for each active or inactive unplugged gas storage well located within the boundary of any underground porosity gas storage facility. The total annual well fee assessment shall be based on the number of the operator's gas storage wells in existence on the first day of November each year. The operator of the storage facility shall remit the total fee based on this well count in a single check to the conservation division on or before the last day of January each year.

(b) Application fees. The following fee or fees shall be submitted with each of the following applications:

(1)(A) For a provisional storage facility operating permit application filed according to K.A.R. 82-3-1002, each applicant shall submit a fee of \$2,000. In addition, for each gas storage well in-

cluded in this permit application, the applicant shall submit a fee of \$50.

(B) For any application to amend a provisional storage facility operating permit issued according to K.A.R. 82-3-1002, each applicant shall submit a fee of \$250.

(2)(A) For a fully authorized storage facility operating permit application filed according to K.A.R. 82-3-1003, each applicant shall submit a fee of \$2,500. In addition, for each gas storage well included in this permit application, the applicant shall submit a fee of \$75.

(B) For any application to amend a fully authorized storage facility operating permit issued according to K.A.R. 82-3-1003, each applicant shall submit a fee of \$250.

(c) Fees nonrefundable. Each fee shall be nonrefundable.

This regulation shall be effective on and after October 29, 2002. (Authorized by and implementing K.S.A. 2001 Supp. 55-1,115 and 74-623; effective, T-82-6-27-02, July 1, 2002; effective Oct. 29, 2002.)

Article 4.—MOTOR CARRIERS OF PERSONS AND PROPERTY

MOTOR CARRIERS

82-4-1. Definitions. The following terms used in connection with the regulations of the state corporation commission governing motor carriers shall be defined as follows:

(a) "Affiliate" means a person or company controlling, controlled by, or under common control or ownership with, another person or company.

(b) "Certificate" refers to a document evidencing a certificate of convenience and necessity or a certificate of public service issued to an intrastate common carrier to operate motor vehicles as a common carrier.

(c) "Commercial motor vehicle" means any of the following, except when used in 49 C.F.R. Part 382:

(1) A vehicle that has a gross vehicle weight rating or gross combination weight rating of 10,001 or more pounds;

(2) a vehicle designed to transport 16 or more passengers, including the driver;

(3) a vehicle designed to transport more than six passengers, including the driver operating in intrastate commerce for hours of service regulation under 49 C.F.R. Part 395 only; or

(4) a vehicle used in the transportation of haz-

ardous materials in a quantity requiring placarding under 49 C.F.R. Part 172, Subpart F.

(d) "Commission" means the Kansas corporation commission.

(e) "Conviction" means any of the following, regardless of whether or not the penalty is rebated, suspended, or probated:

(1) An unvacated adjudication of guilt or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal;

(2) an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court;

(3) a plea of guilty or nolo contendere accepted by the court;

(4) the payment of a fine or court cost; or

(5) violation of a condition of release without bail.

(f) "Director" means the director of the transportation division of the commission.

(g) "Distance" means airline distances.

(1) Distances shall be computed from the corporate limits of incorporated communities and from the post office of unincorporated communities.

(2) If there is no post office in the unincorporated community, the distance shall be computed from the center of the business district.

(h) "Docketing" means entering the proposal in the organization files and then giving notice of the proposal to other carrier members of the organization and shipper subscribers.

(i) "Driveaway operation" or "towaway operation" means any operation in which a motor vehicle is the commodity being transported and one or more sets of wheels of the vehicle being transported are on the surface of the roadway during transportation.

(j) "Driver" means a commercial motor vehicle operator.

(k) "Entire direct case" shall include, for the purpose of this article, all testimony, exhibits, and other documentation offered in support of the proposed rates.

(l) "Express carrier" means a common or contract carrier who carries packages or parcels, the maximum weight of which does not exceed 350 pounds for each package or parcel.

(m) "FHWA" refers to the federal highway administration.

(n) "General increase" or "general decrease" means a common or contract motor carrier rate

increase or decrease proposed as a general adjustment of substantially all the rates published in a tariff.

(o) "Industry average carrier cost information" means the average intrastate cost of the carriers who participate in an organization tariff and who have authority from the commission to transport the commodities indicated in the organization tariff.

(p) "Joint line rate" means a rate, charge, or allowance established by two or more common motor carriers of property or passengers that is applicable over the carriers' lines and for which the transportation can be provided by these carriers.

(q) "License" refers to the document or registration receipt evidencing the registration of an interstate common or contract motor carrier or interstate exempt motor carrier to operate motor vehicles in the state of Kansas in interstate commerce.

(r) "Licensed medical practitioner" means a person who meets one of the following conditions:

(1) Is licensed by the state board of healing arts to practice medicine and surgery, osteopathic medicine and surgery, or chiropractic;

(2) is licensed by the state board of healing arts as a physician assistant; or

(3) is licensed by the state board of nursing as a registered professional nurse qualified to practice as an advanced registered nurse practitioner.

(s) "Motor carrier" means any corporation, limited liability company, partnership, limited liability partnership, or individual subject to the provisions of the motor carrier law of Kansas and under the jurisdiction of the Kansas corporation commission.

(t) "Moving violation" means the commission or omission of an act by a person operating a motor vehicle that could result in injury or property damage and that is also a violation of a statute, ordinance, or regulation of this or any other state.

(u) "Notice" means advance notification to shipper subscribers through the organization's docket service.

(v) "Organization" means a legal entity that administers an agreement approved under K.A.R. 82-4-69.

(w) "Ownership" means an equity holding in a business entity of at least 5%.

(x) "Permit" refers to the document evidencing authority of a motor carrier to operate motor vehicles as a contract or private carrier.

(y) “Single line rate” means a rate, charge, or allowance established by a single common or contract motor carrier of property or passengers that is applicable only over its line and for which the transportation can be provided by that carrier.

(z) “Tariff publication” means the rates, charges, classification, ratings, or rules published by, for, or on behalf of common or contract motor carriers of property or passengers.

(aa) “USDOT” refers to the United States department of transportation. (Authorized by and implementing K.S.A. 1999 Supp. 66-1,112, 66-1,112a, K.S.A. 66-1,112g; effective Jan. 1, 1971; modified, L. 1981, Ch. 424, May 1, 1981; amended, T-83-45, Dec. 8, 1982; amended May 1, 1983; amended May 1, 1984; amended April 30, 1990; amended Sept. 16, 1991; amended July 6, 1992; amended May 10, 1993; amended Oct. 3, 1994; amended Jan. 30, 1995; amended Jan. 4, 1999; amended July 28, 2000.)

82-4-2. General duty of carrier. (a) Every motor carrier shall instruct its officers, agents, employees, and representatives to be familiar with and comply with all the regulations of the commission.

(b) Every motor carrier and its officers, agents, employees, and representatives shall comply with the regulations of the commission and with any reasonable requests of the commission or its authorized agents for inspection or examination of any operating credentials of motor carrier equipment or required parts and accessories.

(c) Every motor carrier who has obtained a certificate, license, or permit from the commission shall notify the commission within 10 days of any change of physical or mailing address. (Authorized by K.S.A. 2001 Supp. 66-1,112a, K.S.A. 2001 Supp. 66-1,112, and K.S.A. 66-1,112g; implementing K.S.A. 66-1,111; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1984; amended May 1, 1987; amended Sept. 16, 1991; amended Jan. 31, 2003.)

82-4-3. Exemption from the motor carrier safety regulations. The commission’s safety regulations and the federal safety regulations adopted by reference in this article shall not apply to the following:

(a) The occasional transportation of personal property by private motor carriers that is not for compensation and is not in the furtherance of a commercial enterprise;

(b) the operation of fire trucks and rescue ve-

hicles while involved in emergency and related operations;

(c) the operation of commercial motor vehicles designed or used to transport between nine and 15 passengers, including the driver, not for compensation, if the commercial motor vehicle does not otherwise meet the definition of a commercial motor vehicle, except that motor carriers operating these vehicles shall comply with 49 C.F.R. 390.15, 49 C.F.R. 390.19, and 49 C.F.R. 390.21(a), as adopted by K.A.R. 82-4-3f;

(d) the operation of commercial motor vehicles designed or used to transport between nine and 15 passengers, including the driver, for direct compensation, if the vehicle is not being operated beyond a radius of 75 air miles from the driver’s normal work-reporting location and if the vehicle does not otherwise meet the definition of a commercial motor vehicle, except that motor carriers operating these vehicles shall comply with 49 C.F.R. 390.15, 49 C.F.R. 390.19, and 49 C.F.R. 390.21(a), as adopted by K.A.R. 82-4-3f. (Authorized by and implementing K.S.A. 2003 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2003 Supp. 66-1,129, as amended by L. 2004, Ch. 152, § 7; effective Jan. 1, 1971; modified, L. 1981, ch. 424, May 1, 1981; amended May 1, 1984; amended May 1, 1985; amended May 1, 1987; amended April 30, 1990; amended Sept. 16, 1991; amended July 6, 1992; amended May 10, 1993; amended Oct. 3, 1994; amended Jan. 30, 1995; amended Jan. 4, 1999; amended, T-82-9-13-99, Sept. 13, 1999; amended March 3, 2000; amended, T-82-4-7-00, April 17, 2000; amended July 28, 2000; amended, T-82-10-25-01, Oct. 25, 2001; amended Dec. 28, 2001; amended, T-82-12-29-04, Dec. 29, 2004; amended April 29, 2005.)

82-4-3a. Hours of service. (a) With the following exceptions, 49 C.F.R. Part 395, as in effect on October 1, 2005, is hereby adopted by reference:

(1) 49 C.F.R. 395.0 shall be deleted.

(2) The following revisions shall be made to 49 C.F.R. 395.1:

(A) 49 C.F.R. 395.1(a)(2), 49 C.F.R. 395.1(h), and 49 C.F.R. 395.1(i) shall be deleted.

(B) 49 C.F.R. 395.1(k) shall be deleted and replaced by the following:

“(k)(1) The provisions of this regulation shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural pur-

poses in the state if the transportation meets the following conditions:

“(A) Is limited to an area within a 100-air-mile radius from the source of the commodities or the distribution point for the farm supplies; and

“(B) is conducted within the planting and harvesting seasons.

“(2) ‘Planting and harvesting seasons’ means the time periods for planting and harvesting that occur between January 1 and December 31.

“(3) ‘Agricultural commodities’ means the unprocessed products of agriculture, horticulture, and cultivation of the soil, including wheat, corn, hay, milo, sorghum, sunflowers, and soybeans. Agricultural commodities shall not include livestock and livestock products, milk, honey, poultry products, timber products, and nursery stock, nor shall the term include the transportation of hazardous materials of the type or quantity that requires the vehicle to be placarded.

“(4) ‘Farm supplies’ means supplies or equipment for use in the planting or harvesting of agricultural commodities, but shall not include the transportation of hazardous materials of the type or quantity that requires the vehicle to be placarded.

“(5) ‘Hazardous materials of the type or quantity that requires the vehicle to be placarded,’ as used in 49 C.F.R. 395.1(k)(3) and (4), means materials that require placarding pursuant to 49 C.F.R. Part 172, as adopted in K.A.R. 82-4-20, but shall not include fertilizer, animal waste used as fertilizer, anhydrous ammonia, and pesticides.”

(3) The following revisions shall be made to 49 C.F.R. 395.2:

(A) The definition of “sleeper berth” shall be deleted and replaced by the following: “‘Sleeper berth’ means a berth conforming to the requirements of 49 C.F.R. 393.76, as adopted in K.A.R. 82-4-3(a)(4).”

(B) The phrase “found by the Secretary to be hazardous under 49 U.S.C. 5103 in a quantity requiring placarding under regulations issued to carry out such section,” which appears in the definition of “transportation of construction materials and equipment,” shall be deleted and replaced by “requiring placarding pursuant to 49 C.F.R. Part 172, as adopted in K.A.R. 82-4-20.”

(4) The following revisions shall be made to 49 C.F.R. 395.8:

(A) The last sentence in 49 C.F.R. 395.8(a)(1) shall be deleted.

(B) The “Note” that appears between 49 C.F.R. 395.8(c) and (d) shall be deleted.

(C) The “Note” that appears between 49 C.F.R. 395.8(h)(5) and (i) shall be deleted.

(D) The “Note,” including the graphic, that appears after 49 C.F.R. 395.8(k)(2) shall be deleted.

(5) The following revisions shall be made to 49 C.F.R. 395.13:

(A) 49 C.F.R. 395.13(c)(2) shall be deleted and replaced by the following:

“Within fifteen days following the date any driver is placed out of service, the motor carrier that employed the driver shall personally deliver or place in the U.S. mail to the division administrator or the state director of the federal motor carrier safety administration a signed certification in a form acceptable to the commission. Any signed certification acceptable to the commission shall include the following information:

“(i) All violations have been corrected;

“(ii) action has been taken to assure compliance with 49 C.F.R. 395.1, 49 C.F.R. 395.2, 49 C.F.R. 395.3, 49 C.F.R. 395.5, 49 C.F.R. 395.8, 49 C.F.R. 395.13, and 49 C.F.R. 395.15; and

“(iii) the motor carrier understands that false certification can result in appropriate enforcement action.”

(B) The phrase “as adopted in K.A.R. 82-4-3k” shall be added before the phrase “pertaining to attendance and surveillance of commercial motor vehicles,” which appears in 49 C.F.R. 395.13(d)(4).

(6) The last sentence in 49 C.F.R. 395.15(b)(3) shall be deleted.

(7)(A) The phrase “special agent of the Federal Motor Carrier Safety Administration (as defined in appendix B to this subchapter),” which appears in 49 C.F.R. 395.1, 49 C.F.R. 395.2, 49 C.F.R. 395.3, 49 C.F.R. 395.5, 49 C.F.R. 395.8, 49 C.F.R. 395.13, and 49 C.F.R. 395.15, shall be deleted and replaced by “any authorized representative of the commission, and any member of the Kansas highway patrol or any other law enforcement officer in the state who has been certified in the inspection of motor carriers based on the motor carrier safety assistance program standards.”

(B) The phrases “Federal Motor Carrier Safety Administration” and “FMCSA,” which appear in 49 C.F.R. 395.1, 49 C.F.R. 395.2, 49 C.F.R. 395.3, 49 C.F.R. 395.5, 49 C.F.R. 395.8, 49 C.F.R. 395.13, and 49 C.F.R. 395.15, shall be deleted and replaced by “commission.”

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission's regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted.

(c) No wrecker or tow truck, as defined by K.S.A. 66-1329 and amendments thereto, with a gross vehicle weight rating or gross combination vehicle weight rating of 26,000 pounds or less shall be subject to this regulation. (Authorized by and implementing K.S.A. 2005 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2005 Supp. 66-1,129; effective, T-82-12-16-03, Jan. 4, 2004; effective, T-82-4-27-04, May 3, 2004; effective, T-82-8-23-04, Aug. 31, 2004; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended, T-82-10-25-05, Nov. 1, 2005; amended Feb. 17, 2006; amended, T-82-3-21-06, March 21, 2006; amended June 30, 2006.)

82-4-3b. Procedures for transportation workplace drug and alcohol testing programs.

(a) With the following exceptions, 49 C.F.R. Part 40, as in effect on October 1, 2003, is hereby adopted by reference:

(1) 49 C.F.R. 40.1 shall be deleted.

(2) The following revisions shall be made to 49 C.F.R. 40.3:

(A) The following definition of "approved test" shall be added after the definition of "Alcohol use":

"Approved test" means a drug or alcohol test conducted in compliance with this regulation and K.A.R. 82-4-3c."

(B) The following definition of "Custody and control form" shall be added after the definition of "Cancelled test":

"Custody and control form" (CCF) means a form as described in 49 C.F.R. 40.45."

(C) The definition of "Employee" shall be deleted and replaced by the following:

"Employee" means any person employed by a motor carrier subject to this regulation and K.A.R. 82-4-3c. 'Employee' shall include those currently performing safety-sensitive functions and applicants for employment subject to pre-employment testing."

(D) In the definition of "Employer," the phrase "subject to DOT agency regulations requiring compliance with this part" shall be deleted and

replaced by "subject to this regulation and K.A.R. 82-4-3c."

(E) In the definition of "Evidential Breath Testing Device," the phrase "as in effect on May 4, 2001, and hereby adopted by reference," shall appear after the phrase "NHTSA's Conforming Products List (CPL)."

(F) The following revisions shall be made to the definition of "Laboratory":

(i) The words "by DOT" shall be deleted.

(ii) The last sentence shall be deleted.

(G) The definition of "Office of Drug and Alcohol Policy and Compliance" shall be deleted.

(H) In the definition of "Qualification Training," the term "DOT" shall be deleted and replaced by "commission."

(I) In the definition of "Refresher Training," the phrase "DOT agency drug and alcohol testing regulations" shall be deleted and replaced by "K.A.R. 82-4-3c."

(J) The definition of "Secretary" shall be deleted.

(K) The following definition of "special agent or authorized representative" shall be added after the definition of "Shipping container":

"Special agent or authorized representative" means an authorized representative of the commission, and members of the Kansas highway patrol or any other law enforcement officers in the state who have been certified in the inspection of motor carriers based on the motor carrier safety assistance program standards."

(L) In the definition of "Substance Abuse Professional," the term "DOT" shall be deleted and replaced by "commission."

(M) The following definition of "unapproved test" shall be added after the definition for "Substituted specimen":

"Unapproved test" means a drug or alcohol test not conducted in compliance with this regulation or K.A.R. 82-4-3c."

(3) 49 C.F.R. 40.5 and 49 C.F.R. 40.7 shall be deleted.

(4) The following revisions shall be made to 49 C.F.R. 40.11:

(A) In paragraph (b), the phrase "the DOT agency regulations" shall be deleted and replaced by "this regulation and K.A.R. 82-4-3c."

(B) Paragraph (c) shall be deleted and replaced by the following:

"All agreements and arrangements, written or unwritten, between and among employers and service agents concerning the implementation of

the commission's drug and alcohol testing requirements shall require compliance with all applicable provisions of this regulation and K.A.R. 82-4-3c."

(5) The following revisions shall be made to 49 C.F.R. 40.13:

(A) The following revisions shall be made to paragraphs (a) and (b):

(i) The term "DOT" shall be deleted and replaced by "These approved."

(ii) The term "non-DOT" shall be deleted and replaced by "unapproved."

(B) In paragraph (b), the phrase "a DOT" shall be deleted and replaced by "an approved."

(C) The following revisions shall be made to paragraph (c):

(i) The first instance of the term "DOT" found in the first sentence shall be deleted and replaced by "an approved."

(ii) The phrase "DOT agency regulations" appearing in the first sentence shall be deleted and replaced by "K.A.R. 82-4-3c."

(iii) The phrase "a DOT" found in the second sentence shall be deleted and replaced by "an approved."

(D) The following revisions shall be made to paragraph (d):

(i) The phrase "a DOT" shall be deleted and replaced by "an approved."

(ii) The phrase "DOT agency" shall be deleted and replaced by "commission."

(E) The following revisions shall be made to paragraph (e):

(i) The first two instances of the term "DOT" shall be deleted and replaced by "approved."

(ii) The term "non-DOT" shall be deleted and replaced by "unapproved."

(iii) The last instance of the term "DOT" shall be deleted.

(F) The following revisions shall be made to paragraph (f):

(i) The words "the CCF or the ATF" shall be deleted and replaced by "an approved form."

(ii) The term "non-DOT" shall be deleted and replaced by "unapproved."

(iii) The term "DOT" shall be deleted and replaced by "approved."

(iv) The words "and agencies" shall be deleted.

(v) In the last sentence, the phrase "CCF and ATF" shall be deleted and replaced by "approved forms."

(vi) The term "DOT-mandated" shall be deleted and replaced by "approved."

(6) The following revisions shall be made to 49 C.F.R. 40.15:

(A) In paragraph (a), the term "DOT agency" shall be deleted and replaced by "commission."

(B) The following revisions shall be made to paragraph (c):

(i) The first and second instance of the term "DOT" shall be deleted and replaced by "approved."

(ii) All instances of the phrase "a DOT agency" shall be deleted and replaced by "the commission."

(7) The last sentence of 49 C.F.R. 40.17 shall be deleted.

(8) The following revisions shall be made to 49 C.F.R. 40.21:

(A) In paragraph (a), the phrase "a DOT agency" shall be deleted and replaced by "the commission."

(B) In paragraph (b), the term "concerned DOT agency" shall be deleted and replaced by "commission."

(C) Paragraphs (b)(1), (b)(2), and (b)(3) shall be deleted.

(D) Paragraph (c)(1)(iv) shall be deleted.

(E) The following revisions shall be made to paragraph (d):

(i) The phrase "Administrator of the concerned DOT agency" shall be deleted and replaced by "commission."

(ii) The words "he or she" shall be deleted and replaced by "the commission."

(F) In paragraph (d)(1), the phrase "Administrator, or his or her designee" shall be deleted and replaced by "commission."

(G) The following revisions shall be made to paragraph (d)(2):

(i) The phrase "Administrator, or his or her designee" shall be deleted and replaced by "commission."

(ii) The term "DOT agency" shall be deleted and replaced by "commission."

(H) In paragraph (e), the term "DOT agency" shall be deleted and replaced by "commission."

(9) The following revisions shall be made to 49 C.F.R. 40.25:

(A) In paragraph (b), the term "DOT-regulated" shall be deleted and replaced by "commission-regulated."

(B) In paragraph (b)(4), the term "DOT agency" shall be deleted and replaced by "commission."

(C) The following revisions shall be made to paragraph (b)(5):

(i) The phrase “a DOT” shall be deleted and replaced by “an approved.”

(ii) The remaining term “DOT” shall be deleted and replaced by “the commission’s.”

(D) The following revisions shall be made to paragraph (e):

(i) The phrase “a DOT agency drug and alcohol regulation” shall be deleted and replaced by “this regulation or K.A.R. 82-4-3c or both.”

(ii) The remaining term “DOT agency” shall be deleted and replaced by “commission.”

(10) 49 C.F.R. 40.26 shall be deleted and replaced by the following:

“Management information system (“MIS”) data shall be reported to the commission within 10 days of the commission’s request for the information. MIS data shall be reported in a certified form acceptable to the commission. A certified form acceptable to the commission shall include the following information:

“(a) Information regarding the employer, including:

“(1) The name of the employer’s business and, if applicable, the name it does business as;

“(2) the company’s physical address and, if applicable, e-mail address;

“(3) the printed name and signature of the company’s official certifying the MIS data;

“(4) the date the MIS data was certified;

“(5) the name and telephone number of the person preparing the form, if it is different from the person certifying the MIS data;

“(6) the name and telephone number of the C/TPA, if applicable; and

“(7) the employer’s motor carrier identification number.

“(b) Information regarding the covered employees, including:

“(1) the total number of safety-sensitive employees in all categories;

“(2) the total number of employee categories;

“(3) the name of the employee category or categories; and

“(4) the total number of employees for each category.

“(c) Information regarding the drug testing data, including:

“(1) The type of test, which includes:

“(A) Pre-employment;

“(B) random;

“(C) post-accident;

“(D) reasonable suspicion or cause;

“(E) return-to-duty; and

“(F) follow-up.

“(2) The number of tests by result, including:

“(A) Total number of test results;

“(B) verified negative results;

“(C) verified positive results for one or more drugs;

“(D) positive for marijuana;

“(E) positive for cocaine;

“(F) positive for PCP;

“(G) positive for opiates;

“(H) positive for amphetamines;

“(I) canceled results; and

“(J) refusal results, including:

“(i) Adulterated;

“(ii) substitutes;

“(iii) shy bladder with no medical explanation; and

“(iv) other refusals to submit to testing.

“(d) Information resulting alcohol testing data, including:

“(1) The type of test, including the same types as listed in paragraph (c)(1) above;

“(2) The number of tests by results, including:

“(A) Total number of screen test results;

“(B) screening tests with results below 0.02;

“(C) Screening tests with results of 0.02 or greater;

“(D) number of confirmation test results;

“(E) confirmation tests with results of 0.02 through 0.039;

“(F) confirmation tests with results of 0.04 or greater;

“(G) canceled results; and

“(H) refusal results, including:

“(i) Shy lung with no medical explanation; and

“(ii) other refusals to submit to testing.”

(11) 49 C.F.R. 40.29 shall be deleted.

(12) The following revisions shall be made to 49 C.F.R. 40.31:

(A) In paragraph (a), the term “DOT” shall be deleted and replaced by “approved.”

(B) In paragraph (c), the phrase “DOT agency” shall be deleted and replaced by “commission.”

(13) The following revisions shall be made to 49 C.F.R. 40.33:

(A) In the first paragraph, the term “DOT” shall be deleted and replaced by “approved.”

(B) The following revisions shall be made to paragraph (a):

(i) The words “this part, the current ‘DOT Urine Specimen Collection Procedures Guide-

lines,' and DOT agency" shall be deleted and replaced by "commission."

(ii) The last sentence of paragraph (a) shall be deleted.

(C) In paragraph (c)(2)(i), the term "DOT" shall be deleted and replaced by "approved."

(D) Paragraphs (d), (d)(1), (d)(2), and (d)(3) shall be deleted.

(E) In paragraph (g), the phrase "DOT agency" shall be deleted and replaced by "special agents and authorized."

(14) 49 C.F.R. 40.37 shall be deleted.

(15) In paragraph 49 C.F.R. 40.41(a), the term "a DOT" shall be deleted and replaced by "an approved."

(16) In 49 C.F.R. 40.43(e)(1), the term "DOT agency representatives" shall be deleted and replaced by "special agent or authorized representative."

(17) The following revisions shall be made to 49 C.F.R. 40.45:

(A) Paragraph (a) shall be deleted and replaced by the following:

"(1) A commission-approved CCF form shall be used to document every urine collection required by the approved drug testing program. A commission-approved CCF form shall be a form containing the information listed below. There shall be five copies of the CCF form. Each form shall be labeled as follows:

"(A) 'Copy 1 — Laboratory';

"(B) 'Copy 2 — Medical Review Officer Copy';

"(C) 'Copy 3 — Collector Copy';

"(D) 'Copy 4 — Employer Copy'; and

"(E) 'Copy 5 — Donor Copy.'"

"(2) All five copies of the CCF form shall contain the following information:

"(A) The following information on the form may be completed by either the collector or the employee representative:

"(i) Employer information, including the name, address, and identification number issued pursuant to K.A.R. 82-4-8h;

"(ii) the MRO name, address, telephone number, and fax number;

"(iii) the donor's social security or employee identification number;

"(iv) the reason for the testing;

"(v) the tests performed;

"(vi) the collection site address; and

"(vii) the collector's home telephone number and facsimile number;

"(B) The following information on the form shall be completed by the collector:

"(i) an indication of whether the specimen temperature within four minutes of collection was between 90 degrees and 100 degrees Fahrenheit;

"(ii) an indication regarding whether the specimen was single or split, or whether no specimen was provided; and

"(iii) a space for any other remarks the collector shall provide;

"(C) The collector shall certify the following information with his or her signature:

"(i) the collector's name, clearly printed;

"(ii) the date and time the collector released the specimen bottle for delivery to the laboratory; and

"(iii) the name of the delivery service transferring the specimen to the laboratory; and

"(D) The laboratory shall certify the following information by signature:

"(i) the name, printed clearly, of the person signing the certification as the employee of the laboratory receiving the specimen;

"(ii) an indication of whether the specimen bottle seal is intact; and

"(iii) an indication of who at the laboratory the specimen bottle was released to.

"(2) In addition to the information required in paragraph (a)(2) above, Copy 1 of the CCF shall include the following:

"(A) A specimen bottle seal, marked as 'A,' which shall contain the following information:

"(i) The specimen identification number;

"(ii) a circle in the center of the label which shall indicate which portion of the labels shall be positioned over the cap of the specimen bottle;

"(iii) the date the specimen was collected; and

"(iv) a space for the donor to initial the seal.

"(B) A specimen bottle seal, marked as 'B,' which shall contain the following information:

"(i) The specimen identification number;

"(ii) an indication that this is a split of the specimen bottle marked as 'A';

"(iii) a circle in the center of the label which shall indicate which portion of the labels shall be positioned over the cap of the specimen bottle;

"(iv) the date the specimen was collected; and

"(v) a space for the donor to initial the seal.

"(C) The following information, which shall be completed by the primary laboratory:

"(i) An indication of whether the test was negative or whether it contained evidence of the presence of a specific drug in the urine;

"(ii) a space for any additional remarks;

“(iii) the name of the testing laboratory, if it is a laboratory other than the one listed as having received the specimen according to paragraph (1)(D)(i);

“(iv) the printed name and signature of the scientist certifying the chain of custody and the test results; and

“(v) the date the certification was signed.

“(D) The following information, if split specimen results are tested by a secondary laboratory:

“(i) The secondary laboratory’s name and address;

“(ii) an indication of whether the secondary laboratory was able to confirm the primary laboratory’s results;

“(iii) if the secondary laboratory was unable to confirm the primary laboratory’s results, an indication of why;

“(iv) the printed name and signature of the scientist certifying the chain of custody and the test results; and

“(v) the date the certification was signed.

“(3) In addition to the information required in paragraph (a)(2) above, Copy 2, Copy 3, Copy 4, and Copy 5 shall contain the following:

“(A) The following information shall be provided by the donor:

“(i) The printed name and signature of the donor certifying that the donor provided his or her own urine to the collector, that the specimen was unadulterated, that the specimen bottle was sealed with a tamper-evident seal in the donor’s presence, and that the information provided on the seals and the CCF is correct;

“(ii) the date the CCF was signed by the donor;

“(iii) the donor’s daytime and evening telephone numbers; and

“(iv) the donor’s date of birth.

“(B) The medical review officer examining the primary specimen shall indicate whether:

“(i) the test was canceled;

“(ii) the donor refused to test because the sample was adulterated, substituted, or diluted;

“(iii) the test results were negative; or

“(iv) the test results were positive.

“(C) The medical review officer examining the primary specimen shall provide the following information:

“(i) Any remarks in addition to the test results;

“(ii) the printed name and signature of the medical review officer examining the specimen; and

“(iii) the date the medical review officer signed the CCF.

“(D) The medical review officer examining the split specimen shall provide the following information:

“(i) whether the primary medical review officer’s test results were confirmed or unconfirmed;

“(ii) if the primary medical review officer’s test results were not confirmed, a reason why;

“(iii) the printed name and signature of the medical review officer examining the split specimen; and

“(iv) the date the CCF was signed by the medical review officer examining the split specimen.”

(B) The following revisions shall be made to paragraph (b):

(i) In the first sentence, the term “non-Federal” shall be deleted and replaced by “unapproved.”

(ii) In the first sentence, the words “Federal” and “DOT” shall be deleted.

(iii) In the second sentence, the words “expired Federal” shall be deleted and replaced by “unapproved.”

(iv) The third sentence shall be deleted.

(C) Paragraph (c)(3) shall be deleted.

(D) Paragraph (e) shall be deleted.

(18) The following revisions shall be made to 49 C.F.R. 40.47:

(A) The last sentence of paragraph (a) shall be deleted.

(B) The term “non-Federal” shall be deleted and replaced by “unapproved.”

(C) The remaining uses of the term “DOT” shall be deleted and replaced by “approved.”

(19) The following revisions shall be made to 49 C.F.R. 40.49:

(A) The term “DOT” shall be deleted and replaced by “approved.”

(B) The phrase “as in effect on October 1, 2003, and hereby adopted by reference” shall be added after the phrase “Appendix A of this part.”

(20) The following revisions shall be made to 49 C.F.R. 40.61:

(A) In paragraph (b)(1), the phrase “a DOT” shall be deleted and replaced by “an approved.”

(B) The following revisions shall be made to paragraph (f)(3):

(i) The phrase “DOT agency authorized” shall be deleted.

(ii) The phrase “required by K.A.R. 82-4-6d, and by 49 C.F.R. 491.45, 391.45, and 391.49, as adopted by K.A.R. 82-4-3g” shall be added after “medical examination.”

(21) The following revisions shall be made to 49 C.F.R. 40.63:

(A) Paragraph (a) shall be deleted and replaced by the following: “Complete the appropriate portions of the CCF as set forth in 49 C.F.R. 40.45.”

(B) In paragraph (e), the term “(Step 2)” shall be deleted.

(22) The following revisions shall be made to 49 C.F.R. 40.65:

(A) Paragraph (b)(3) shall be deleted and be replaced by the following: “Indicate on the CCF whether the specimen temperature is within the acceptable range.”

(B) Paragraph (b)(4) shall be deleted and replaced by the following: “If the specimen temperature is outside the acceptable range, indicate that finding in the space provided on the CCF.”

(23) The following changes shall be made to 49 C.F.R. 40.67:

(A) Paragraph (e)(1) shall be deleted and replaced by the following: “Indicate the reason for the directly observed collection the same as for the first collection.”

(B) Paragraph (e)(2) shall be deleted and replaced by the following: “Indicate on the CCF that the collection was observed and the reasons why.”

(C) In paragraph (f), the term “(Step 2)” shall be deleted.

(24) In 49 C.F.R. 40.69(f), the term “(Step 2)” shall be deleted.

(25) The following revisions shall be made to 49 C.F.R. 40.71:

(A) In paragraph (a), the phrase “DOT agency drug testing regulations” shall be deleted and replaced by “this regulation and K.A.R. 82-4-3c.”

(B) Paragraph (b)(1) shall be deleted and replaced by the following: “Indicate on the CCF that this was a split specimen collection.”

(C) In paragraph (b)(7), the term “(Step 2)” shall be deleted.

(D) In paragraph (b)(8), the term “a DOT agency regulation” shall be deleted and replaced by “K.A.R. 82-4-6d or 49 C.F.R. 391.41, 391.43, 391.45, or 391.49, as adopted by K.A.R. 82-4-3g.”

(26) The following revisions shall be made to 49 C.F.R. 40.73:

(A) In paragraph (a)(1), the terms “(Step 5)” and “(Step 2)” shall be deleted.

(B) In paragraph (a)(9), the phrase “applicable DOT agency regulations” shall be deleted and replaced by “the commission.”

(27) 49 C.F.R. 40.81(b), (b)(1), (b)(2), (c), and (d) shall be deleted.

(28) The following revisions shall be made to 49 C.F.R. 40.83:

(A) Paragraph (b) shall be deleted.

(B) In paragraph (e), the phrase “in Step 4” shall be deleted.

(C) In paragraph (g), the phrase “a non-Federal form or an expired Federal” shall be deleted and replaced by “an unapproved.”

(D) Paragraph (g)(2) shall be deleted.

(29) In 49 C.F.R. 40.85, the first two sentences shall be deleted and replaced by “The urine specimens shall be tested for only the following five drugs:”.

(30) The following revisions shall be made to 49 C.F.R. 40.91:

(A) In paragraph (c), the second sentence shall be deleted.

(B) Paragraph (e) shall be deleted and replaced by the following: “If a substance appears in a specimen which cannot be identified, complete testing of the specimen for drugs to the extent technically feasible.”

(31) In 49 C.F.R. 40.99(b), the phrase “in accordance with HHS requirements” shall be deleted.

(32) In 49 C.F.R. 40.101(b), the words “the Department regards as creating” shall be deleted and replaced by “create.”

(33) The following revisions shall be made to 49 C.F.R. 40.103:

(A) In paragraphs (a) and (b), the term “DOT-covered” shall be deleted and replaced by “commission-regulated motor carrier.”

(B) In paragraph (c), the term “DOT” shall be deleted and replaced by “approved.”

(C) In paragraphs (c) and (c)(1), the phrase “with a substance cited in HHS guidance” shall be deleted.

(34) In 49 C.F.R. 40.105(c), the last two sentences shall be deleted.

(35) The following revisions shall be made to 49 C.F.R. 40.107:

(A) The words “ODAPC, a DOT agency, or a DOT-regulated” shall be deleted and replaced by “a special agent or authorized representative or a commission-regulated.”

(B) The remaining term “DOT” shall be deleted and replaced by “approved.”

(36) The following revisions shall be made to 49 C.F.R. 40.111:

(A) In paragraph (a), the phrase “as in effect on

October 1, 2003, and hereby adopted by reference," shall be added after the term "Appendix B to this part."

(B) In paragraph (b), the phrase "a DOT agency" shall be deleted and replaced by "the commission."

(37) 49 C.F.R. 40.113 shall be deleted.

(38) The following revisions shall be made to 49 C.F.R. 40.121:

(A) In the first paragraph, the term "DOT" shall be deleted and replaced by "approved."

(B) The following revisions shall be made to paragraph (b)(3):

(i) The first instance of the phrase "the DOT MRO Guidelines, and the DOT agency regulations" shall be deleted and replaced by "K.A.R. 82-4-3c."

(ii) The last sentence shall be deleted.

(C) Paragraph (c)(1)(vi) shall be deleted and replaced by "Provisions of this regulation and K.A.R. 82-4-3c, as well as issues that MROs confront in carrying out their duties under this regulation and K.A.R. 82-4-3c."

(D) In paragraph (c)(2), the term "DOT-mandated" shall be deleted and replaced by "approved."

(E) Paragraphs (c)(3), (c)(3)(i), (c)(3)(ii), (c)(3)(iii), and (d)(3) shall be deleted.

(F) In paragraph (e), the term "DOT agency" shall be deleted and replaced by "special agents and authorized."

(39) The following revisions shall be made to 49 C.F.R. 40.123:

(A) The following revisions shall be made to paragraph (b)(3):

(i) The words "the ODAPC or a relevant DOT agency" shall be deleted and replaced by "the commission."

(ii) The second occurrence of the term "DOT" shall be deleted.

(iii) The remaining occurrences of the term "DOT" shall be deleted and replaced by "the commission."

(B) In paragraph (e), the first parenthetical phrase shall be deleted.

(C) In paragraph (h), the term "other DOT agency regulations" shall be deleted and replaced by "this regulation and K.A.R. 82-4-3c."

(40) The following revisions shall be made to 49 C.F.R. 40.127:

(A) In paragraph (e) the words "place a check mark in the 'Negative' box (Step 6)" shall be de-

leted and replaced by "indicate whether the results were negative."

(B) In paragraph (g), the words "check the 'Test Cancelled' box (Step 6)" shall be deleted and replaced by "indicate that the test was cancelled."

(C) In paragraph (g)(4), the term "DOT agencies" shall be deleted and replaced by "the commission."

(41) The following revisions shall be made to 49 C.F.R. 40.129:

(A) In paragraph (c), the words "place a check mark in the 'Positive' box (Step 6)" shall be deleted and replaced by "indicate that the test was positive."

(B) In paragraph (d), the words "check the 'test cancelled' box (Step 6)" shall be deleted and replaced by "indicate that the test was cancelled."

(C) The following revisions shall be made to paragraph (f):

(i) The words "check the 'refusal to test because:' box (Step 6)" shall be deleted and replaced by "indicate that the test was refused because it was adulterated or substituted."

(ii) The words "check the 'Adulterated' or 'Substituted' box, as appropriate" shall be deleted.

(42) 49 C.F.R. 40.145 shall be revised as follows:

(A) In paragraph (g)(2)(ii)(A), the term "a DOT" shall be deleted and replaced by "an approved."

(B) In paragraph (g)(2)(ii)(B), the term "DOT agency regulation" shall be deleted and replaced by "commission statute, regulation, or order."

(C) In paragraph (g)(5), the term "ODAPC" shall be deleted and replaced by "the commission."

(43) The following revisions shall be made to 49 C.F.R. 40.151:

(A) In paragraph (a), the term "DOT" shall be deleted.

(B) In paragraph (c), the phrase "DOT agency drug or alcohol regulation" shall be deleted and replaced by "this regulation or K.A.R. 82-4-8c."

(C) In paragraph (e), a period shall be placed after the word "drug," and the remainder of the paragraph shall be deleted.

(44) In 49 C.F.R. 40.155(b), the words "check the 'dilute' box (Step 6)" shall be deleted and replaced by "indicate that the specimen is dilute."

(45) In 49 C.F.R. 40.159(a)(4)(i) and (a)(5)(i), and 49 C.F.R. 40.161(a), the words "Place a check mark in the 'Test Cancelled' box (Step 6)" shall

be deleted and replaced by “Indicate that the test was cancelled.”

(46) In 49 C.F.R. 40.163(e), the term “DOT” shall be deleted and replaced by “special agent or authorized.”

(47) 49 C.F.R. 40.169 shall be deleted.

(48) The following revisions shall be made to 49 C.F.R. 40.183:

(A) In paragraph (a), the words “checking the ‘Reconfirmed’ box or the ‘Failed to Reconfirm’ box (Step 5(b))” shall be deleted and replaced by “indicating whether the test was reconfirmed.”

(B) The following revisions shall be made to paragraph (b):

(i) The words “check the ‘Failed to Reconfirm’ box” shall be deleted and replaced by “indicate that the attempt to reconfirm failed.”

(ii) The term “(Step 5(b))” shall be deleted.

(49) The following revisions shall be made to 49 C.F.R. 40.187:

(A) The following revisions shall be made to paragraphs (b)(2), (c)(2), (d)(3), (e)(3), and (f)(3):

(i) The phrase “Appendix D to this part” shall be deleted and replaced by “paragraph (i).”

(ii) The term “ODAPC” shall be deleted and replaced by “commission.”

(B) In paragraph (g), the words “sign and date (Step 7) of” shall be deleted and replaced by “signature and date on.”

(C) The following paragraph shall be added after paragraph (h):

“(i) When there is a failure to reconfirm, the MRO shall inform the commission by telefacsimile to (785) 271-3283, or by mail to the transportation division, Kansas corporation commission, 1500 S.W. Arrowhead Road, Topeka, KS 66604. The following format shall be used to provide the information to the commission:

“(1) MRO name, address, phone number, and telefacsimile number;

“(2) collection site name, address, and phone number;

“(3) date of collection;

“(4) specimen identification number;

“(5) laboratory accession number;

“(6) primary specimen laboratory name, address, and telephone number;

“(7) date result reported or certified by primary laboratory;

“(8) split specimen laboratory name, address, and telephone number;

“(9) date split specimen result reported or certified by split specimen laboratory;

“(10) primary specimen results for the primary specimen;

“(11) reason for split specimen failure-to-reconfirm result;

“(12) actions taken by the MRO;

“(13) additional information explaining the reason for cancellation; and

“(14) name of individual submitting the report, if not the MRO.”

(50) 49 C.F.R. 40.189 shall be deleted.

(51) The following revisions shall be made to 49 C.F.R. 40.191:

(A) In paragraph (d)(1), the term “(Step 2)” shall be deleted.

(B) In paragraph (d)(2), the words “checking the ‘refused to test because’ box (Step 6)” shall be deleted and replaced by “indicating that the test was refused.”

(52) The following revisions shall be made to 49 C.F.R. 40.193:

(A) In paragraph (b)(2), (b)(3), and (b)(4), the term “(Step 2)” shall be deleted.

(B) In paragraph (d)(1)(i), the words “Check ‘Test Cancelled’ (Step 6)” shall be deleted and replaced by “Indicate that the test was cancelled.”

(C) In paragraph (d)(2)(i), the words “Check ‘Refusal to test because’ (Step 6)” shall be deleted and replaced by “Indicate that the test was refused.”

(53) In 49 C.F.R. 40.195(b)(1), the words “Check ‘Negative’ (Step 6)” shall be deleted and replaced by “Indicate that the results are negative.”

(54) The following revisions shall be made to 49 C.F.R. 40.203(d)(3):

(A) The words “a non-Federal form or an expired Federal” shall be deleted and replaced by “an unapproved.”

(B) The last two sentences shall be deleted.

(55) The following revisions shall be made to 49 C.F.R. 40.205(b)(2):

(A) In the first sentence, the words “a non-Federal form or an expired Federal” shall be deleted and replaced by “an unapproved.”

(B) The first instance of the term “DOT” shall be deleted and replaced by “commission.”

(C) In the third sentence, the words “non-Federal forms or expired Federal” shall be deleted and replaced by “unapproved.”

(D) The second instance of the term “DOT” shall be deleted and replaced by “approved.”

(56) The following revisions shall be made to 49 C.F.R. 40.207:

(A) In paragraphs (a)(1) and (b), the term “DOT” shall be deleted and replaced by “commission.”

(B) The following revisions shall be made to paragraph (c):

(i) The term “DOT” shall be deleted and replaced by “approved.”

(ii) The term “a non-DOT” shall be deleted and replaced by “an unapproved.”

(57) The following revisions shall be made to 49 C.F.R. 40.208:

(A) The following revisions shall be made to paragraph (a):

(i) The term “DOT” shall be deleted and replaced by “commission.”

(ii) The word “checked” shall be deleted and replaced by “noted.”

(B) Paragraph (c) shall be deleted.

(58) The following revisions shall be made to 49 C.F.R. 40.213:

(A) In the first paragraph, the term “DOT” shall be deleted and replaced by “commission.”

(B) In paragraph (a), the words “and the current DOT guidance” and the last sentence of the paragraph shall be deleted.

(C) Paragraph (b)(1) shall be deleted.

(D) Paragraphs (d), (d)(1), (d)(2), and (e) shall be deleted and replaced by the following:

“All BAT’s and STT’s shall, no less frequently than every five years from the date on which they met the requirements of paragraphs (b) and (c), complete refresher training which meets the requirements of paragraphs (b) and (c).”

(E) In paragraph (g), the phrase “DOT agency” shall be deleted and replaced by “special agent and authorized.”

(F) In paragraph (h)(2), the term “DOT” shall be deleted and replaced by “commission.”

(59) 49 C.F.R. 40.217 shall be deleted.

(60) In 49 C.F.R. 40.223(b), the phrase “DOT agency” shall be deleted and replaced by “special agent or authorized.”

(61) The following revisions shall be made to 49 C.F.R. 40.225:

(A) Paragraph (a) shall be deleted and replaced by the following:

“(a) (1) A commission-approved alcohol testing form (‘ATF’) shall be used for every approved alcohol test. There shall be three copies of the ATF form. Each form shall be labeled as follows:

“(A) ‘Copy 1 — Original — Forward to the Employer’;

“(B) ‘Copy 2 — Employee Retains’; and

“(C) ‘Copy 3 — Alcohol Technician Retains.’”

“(2) All three copies of the ATF form shall contain the following information:

“(A) The top of the form shall be referred to as ‘step 1’ and shall consist of information completed by the alcohol technician, and shall include:

“(i) The employee’s name;

“(ii) the employee’s social security number or employee identification number;

“(iii) the employer’s name and address;

“(iv) the DER’s name and telephone number; and

“(v) whether the test is being done at random, for reasonable suspicion, post-accident, for return to duty, as a follow-up, or for pre-employment.

“(B) The second part of the form shall be referred to as ‘step 2’ and shall be a dated certification signed by the employee that he or she is about to submit to alcohol testing and that the identifying information on the form is true and correct.

“(C) The third part of the form shall be referred to as ‘step 3’ and shall consist of information completed by the alcohol technician, including:

“(i) A signed and dated certification that the alcohol technician conducted the alcohol testing on the named employee in compliance with the alcohol testing regulations, that the alcohol technician is certified to conduct such testing, and that the results were properly recorded;

“(ii) an indication of whether the technician is a BAT or STT;

“(iii) an indication of whether a saliva or breath device was used to conduct the test;

“(iv) an indication of whether there was a 15-minute wait;

“(v) the test number;

“(vi) the testing device name;

“(vii) the testing device lot number and expiration date, or serial number;

“(viii) the testing device activation time;

“(ix) the time the testing device was read;

“(x) the result indicated by the testing device;

“(xi) the results of any confirmation test;

“(xii) any additional remarks;

“(xiii) the alcohol technician’s company name, address, and telephone number;

“(xiv) the alcohol technician’s printed name;

“(xv) the date the alcohol technician signed the form.

“(D) The fourth part of the form shall be referred to as ‘step 4’ and shall be a signed and dated certification completed by the employee if the test

result is 0.02 or higher. The certification shall state that the employee submitted to the alcohol test, and that the test results are accurately recorded on the form. The certification shall further state that the employee understands he or she shall not drive, perform safety-sensitive duties, or operate heavy equipment because the alcohol test result is 0.02 or higher.”

(B) Paragraph (c) shall be deleted.

(62) The following revisions shall be made to 49 C.F.R. 40.227:

(A) In paragraphs (a) and (b), the term “non-DOT” shall be deleted and replaced by “unapproved.”

(B) The term “DOT” as it appears in the first instance in paragraph (a) and in paragraph (b) shall be deleted and replaced by “approved.”

(C) In paragraph (a), the last sentence shall be deleted.

(63) In 49 C.F.R. 40.229, the phrase “adopted in this regulation” shall be added after “conforming products lists (CPL).”

(64) In 49 C.F.R. 40.231(a), the last sentence shall be deleted.

(65) The following revisions shall be made to 49 C.F.R. 40.233:

(A) Paragraphs (a), (a)(1), and (a)(2) shall be deleted.

(B) In paragraph (c)(2), the words “as in effect on August 13, 1997, and appearing in Volume 62 of the Code of Federal Regulations, beginning at page 43425, and hereby adopted by reference” shall be added after the phrase “Calibrating Units for Breath Alcohol Tests.”

(66) The following revisions shall be made to 49 C.F.R. 40.261(d):

(A) The phrase “a non-DOT” shall be deleted and replaced by “an unapproved.”

(B) The phrase “DOT agency” shall be deleted and replaced by “commission.”

(67) The following revisions shall be made to 49 C.F.R. 40.265:

(A) In paragraph (c)(1)(i), the term “DOT” shall be deleted and replaced by “commission.”

(B) In paragraph (c)(1)(ii), the phrase “of the appropriate DOT agency regulations” shall be deleted and replaced by “of the applicable commission statutes, regulations, and orders.”

(68) In 49 C.F.R. 40.269(c), the term “a non-DOT” shall be deleted and replaced by “an unapproved.”

(69) The following revisions shall be made to 49 C.F.R. 40.271(b)(2):

(A) The term “a non-DOT” shall be deleted and replaced by “an unapproved.”

(B) The phrase “valid DOT” shall be deleted and replaced by “approved.”

(C) The remaining term “non-DOT” shall be deleted and replaced by “unapproved.”

(D) The remaining term “DOT” shall be deleted and replaced by “approved.”

(70) The following revisions shall be made to 49 C.F.R. 40.273:

(A) In paragraph (b), the term “DOT” shall be deleted and replaced by “commission.”

(B) The following revisions shall be made to paragraph (d):

(i) The term “DOT” shall be deleted and replaced by “approved.”

(ii) The words “a non-DOT” shall be deleted and replaced by “an unapproved.”

(71) The following revisions shall be made to 49 C.F.R. 40.281:

(A) The following revisions shall be made to paragraph (b)(3):

(i) The term “DOT agency” shall be deleted and replaced by “commission.”

(ii) The words “and the DOT SAP guidelines” shall be deleted.

(iii) The last sentence shall be deleted.

(B) In paragraphs (c)(1)(iii) and (c)(1)(iv), the term “DOT” shall be deleted and replaced by “commission.”

(C) Paragraphs (c)(3), (c)(3)(i), (c)(3)(ii), and (c)(3)(iii) shall be deleted.

(D) In paragraph (d)(1), the term “DOT” shall be deleted and replaced by “commission drug and alcohol testing.”

(E) In paragraph (e), the phrase “DOT agency” shall be deleted and replaced by “special agent and authorized.”

(72) 49 C.F.R. 40.283 shall be deleted.

(73) The following revisions shall be made to 49 C.F.R. 40.285:

(A) The following revisions shall be made to paragraph (a):

(i) The term “DOT” shall be deleted and replaced by “commission.”

(ii) The term “DOT agency” shall be deleted and replaced by “commission.”

(B) The following revisions shall be made to paragraph (b):

(i) The first instance of the term “DOT” shall be deleted.

(ii) The words “a DOT” shall be deleted and replaced by “an approved.”

(iii) The words “DOT agency” shall be deleted and replaced by “commission.”

(iv) The last instance of the term “DOT” shall be deleted and replaced by “commission.”

(74) In 49 C.F.R. 40.287, the term “DOT” shall be deleted and replaced by “commission.”

(75) In 49 C.F.R. 40.289(a) and (b), the term “DOT” shall be deleted and replaced by “commission.”

(76) In 49 C.F.R. 40.293, the term “DOT” in the first paragraph and paragraphs (b), (b)(1), (f), and (f)(2) shall be deleted and replaced by “commission.”

(77) In 49 C.F.R. 40.295(a), the term “DOT” shall be deleted and replaced by “commission.”

(78) In 49 C.F.R. 40.305(c), the term “DOT agency” shall be deleted and replaced by “commission.”

(79) The following revisions shall be made to 49 C.F.R. 40.307:

(A) In paragraph (a), the term “DOT” shall be deleted and replaced by “commission.”

(B) In paragraph (c), the term “DOT agency” shall be deleted and replaced by “commission.”

(80) The following revisions shall be made to 49 C.F.R. 40.311:

(A) In paragraph (e)(3), the term “DOT” shall be deleted and replaced by “commission.”

(B) In paragraph (g), the words “DOT agency representatives (e.g., inspectors conducting an audit or safety investigation) and representatives of the NTSB in an accident investigation” shall be deleted and replaced by “special agents and authorized representatives.”

(81) 49 C.F.R. 40.313 shall be deleted.

(82) In the first paragraph of 49 C.F.R. 40.321, the term “DOT” shall be deleted and replaced by “commission.”

(83) In 49 C.F.R. 40.323(a)(1), the term “DOT” shall be deleted and replaced by “commission.”

(84) The following revisions shall be made to 49 C.F.R. 40.327:

(A) In paragraph (a)(1), the term “DOT agency” shall be deleted and replaced by “commission.”

(B) The following revisions shall be made to paragraph (b):

(i) The first instance of the term “DOT agency” shall be deleted and replaced by “commission.”

(ii) The words “the commission” shall be added before the phrase “a DOT agency.”

(85) In 49 C.F.R. 40.329(a), the term “DOT-

mandated” shall be deleted and replaced by “commission.”

(86) The following revisions shall be made to 49 C.F.R. 40.331:

(A) In paragraph (b), the phrase “DOT agency” shall be deleted and replaced by “special agent or authorized.”

(B) In paragraphs (b)(1), (b)(2), and (c)(1), the term “DOT agency” shall be deleted and replaced by “commission.”

(C) In paragraph (c), the term “DOT agency representatives” shall be deleted and replaced by “a special agent or authorized representative.”

(D) In paragraph (c)(2), the term “DOT agency” shall be deleted and replaced by “commission.”

(E) In paragraph (f), the term “ODAPC” shall be deleted and replaced by “the commission.”

(87) The following revisions shall be made to 49 C.F.R. 40.333:

(A) In paragraph (b), the parenthetical text shall be deleted.

(B) The following revisions shall be made to paragraph (d):

(i) The term “DOT agency” shall be deleted and replaced by “commission.”

(ii) The last sentence shall be deleted.

(C) In paragraph (e), the phrase “DOT agency personnel” shall be deleted and replaced by “a special agent or authorized representative.”

(88) In 49 C.F.R. 40.343, the term “DOT agency” shall be deleted and replaced by “commission.”

(89) In 49 C.F.R. 40.345(b), the phrase “to this part” shall be deleted and replaced by “as in effect on October 1, 2003, and hereby incorporated by reference.”

(90) The following revisions shall be made to 49 C.F.R. 40.347:

(A) In paragraph (b), the phrase “the DOT agency” shall be deleted and replaced by “commission.”

(B) In paragraph (b)(1), the phrase “each DOT agency” shall be deleted and replaced by “the commission.”

(C) The following revisions shall be made to paragraph (b)(2):

(i) The term “DOT agency” shall be deleted and replaced by “commission.”

(ii) The term “DOT covered” shall be deleted and replaced by “commission-regulated.”

(91) The following revisions shall be made to 49 C.F.R. 40.349:

(A) In paragraph (a), the term “DOT” shall be deleted and replaced by “commission.”

(B) In paragraph (e), the term “DOT agency” shall be deleted and replaced by “special agent or authorized.”

(92) In 49 C.F.R. 40.353(c), the term “DOT agency” shall be deleted and replaced by “commission.”

(93) The following revisions shall be made to 49 C.F.R. 40.355:

(A) The following revisions shall be made to paragraph (m):

(i) The term “DOT” shall be deleted and replaced by “commission.”

(ii) The last sentence shall be deleted.

(B) The following revisions shall be made to paragraph (o):

(i) The term “DOT agency” shall be deleted and replaced by “commission.”

(ii) The term “DOT” shall be deleted and replaced by “commission.”

(iii) The word “Department” shall be deleted and replaced by “commission.”

(94) 49 C.F.R. 40.361 through 49 C.F.R. 40.413 shall be deleted.

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2003 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2003 Supp. 66-1,129, as amended by L. 2004, Ch. 152, § 7; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005.)

82-4-3c. Testing for controlled substances and alcohol use. (a) With the following exceptions, 49 C.F.R. Part 382, as in effect on October 1, 2003, is hereby adopted by reference:

(1) 49 C.F.R. 382.101 shall be deleted.

(2) The following revisions shall be made to 49 C.F.R. 382.103:

(A) In paragraph (a), the phrase “any State” shall be deleted and replaced by “the state of Kansas.”

(B) In paragraph (a)(2), the word “or” shall be deleted.

(C) The following shall be added after paragraph (a)(3): “or (4) the Kansas uniform commer-

cial drivers’ license act, found at K.S.A. 8-2,126 *et seq.*”

(D) In paragraph (c), the phrase “Sec. 390.3(f) of this subchapter” shall be deleted and replaced by “49 C.F.R. 390.3(f), as adopted by K.A.R. 82-4-3f.”

(E) Paragraph (d)(1) shall be deleted.

(F) Paragraph (d)(2) shall be deleted and replaced by the following: “(2) operating vehicles exempted from the Kansas uniform commercial drivers’ license act by K.S.A. 8-2,127.”

(G) 49 C.F.R. 382.103(d)(3) shall be deleted.

(3) In 49 C.F.R. 382.105, the phrase “part 40 of this title” shall be deleted and replaced by “49 C.F.R. Part 40, as adopted by K.A.R. 82-4-3b.”

(4) The following revisions shall be made to 49 C.F.R. 382.107:

(A) In the first paragraph, the phrase “Secs. 386.2 and 390.5 of this subchapter, and Sec. 40.3 of this title” shall be deleted and replaced by “49 C.F.R. 390.5, as adopted by K.A.R. 82-4-3f, and 49 C.F.R. 40.3, as adopted by K.A.R. 82-4-3b.”

(B) The definition of “commerce” shall be deleted and replaced by the following: “Commerce” means any trade, traffic or transportation within the jurisdiction of the state of Kansas, and any trade, traffic and transportation which affects any trade, traffic and transportation within the jurisdiction of the state of Kansas.”

(C) The definition of “commercial motor vehicle” shall be deleted.

(D) In the definition of “consortium/third party administrator,” the phrase “DOT-regulated employers” shall be deleted and replaced by the phrase “Kansas-regulated or USDOT-regulated employers.” The phrase “DOT drug and alcohol testing programs” shall be deleted and replaced by “Kansas or USDOT drug and alcohol testing programs.”

(E) In the definition of “controlled substances,” the phrase “Sec. 40.85 of this title” shall be deleted and replaced by “49 C.F.R. 40.85, as adopted by K.A.R. 82-4-3b.”

(F) The definition of “DOT agency” shall be deleted and replaced by the following: “USDOT agency” means an agency of the United States department of transportation administering regulations requiring alcohol or drug testing or both in accordance with 49 C.F.R. Part 40, as adopted by K.A.R. 82-4-3b.”

(G) The definition of “driver” shall be deleted.

(H) The following revisions shall be made to the definition of “employer”:

(i) The phrase “DOT agency regulations” shall be deleted and replaced by “Kansas or USDOT agency regulations.”

(ii) The phrase “DOT drug and alcohol program requirements” shall be deleted and replaced by “Kansas or USDOT drug and alcohol program requirements.”

(iii) The phrase “DOT agency regulations” shall be deleted and replaced by “Kansas or USDOT agency regulations.”

(I) The definition of “licensed medical practitioner” shall be deleted.

(J) The following revisions shall be made to the definition of “refusal to submit”:

(i) The phrase “DOT agency regulations” shall be deleted and replaced by “Kansas and USDOT agency regulations.”

(ii) In paragraph (1), the phrase “Sec. 40.61(a) of this title” shall be deleted and replaced by “49 C.F.R. 40.61(a), as adopted by K.A.R. 82-4-3b.”

(iii) In paragraphs (2) and (3), the phrase “Sec. 40.63(c) of this title” shall be deleted and replaced by “49 C.F.R. 40.63(c), as adopted by K.A.R. 82-4-3b.”

(iv) In paragraph (4), the phrase “Secs. 40.67(l) and 40.69(g) of this title” shall be deleted and replaced by “49 C.F.R. 40.67(l) and 40.69(g), as adopted by K.A.R. 82-4-3b.”

(v) In paragraph (5), the phrase “Sec. 40.193(d)(2) of this title” shall be deleted and replaced by “49 C.F.R. 40.193(d)(2), as adopted by K.A.R. 82-4-3b.”

(vi) In paragraph (7), the phrase “Sec. 40.193(d) of this title” shall be deleted and replaced by “49 C.F.R. 40.193(d), as adopted by K.A.R. 82-4-3b.”

(K) The following revisions shall be made to the definition of “safety-sensitive function”:

(i) The phrase “Secs. 392.7 and 392.8 of this subchapter” shall be deleted and replaced by “49 C.F.R. 392.7 and 392.8, as adopted by K.A.R. 82-4-h.”

(ii) The phrase “Sec. 393.76 of this subchapter” shall be deleted and replaced by “49 C.F.R. 393.76, as adopted by K.A.R. 82-4-3i.”

(5) 49 C.F.R. 382.109 shall be deleted.

(6) In 49 C.F.R. 382.117, the phrase “49 CFR part 40, Subpart R” shall be deleted and replaced by “49 C.F.R. Part 40, Subpart R, as adopted by K.A.R. 82-4-3b.”

(7) The following revisions shall be made to 49 C.F.R. 382.119:

(A) The phrase “Federal Motor Carrier Safety Administration” shall be deleted and replaced by

“transportation division of the corporation commission.”

(B) The phrase “as adopted by K.A.R. 82-4-3b” shall be inserted after the phrase “49 CFR 40.21.”

(C) The last sentence of paragraph (b) shall be deleted and replaced by the following: “The employer shall send a written request, which shall include all of the information required by that section to the Director of the Transportation Division, Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, KS 66604.”

(D) In paragraphs (c) and (d), the phrase “Administrator or the Administrator’s designee” shall be deleted and replaced by “director of the transportation division of the Kansas corporation commission.”

(E) Paragraph (e) shall be deleted.

(8) In 49 C.F.R. 382.121(a), the phrase “part 40 of this title” shall be deleted and replaced by “49 C.F.R. Part 40, as adopted by K.A.R. 82-4-3b.”

(9) The following revisions shall be made to 49 C.F.R. 382.301:

(A) In paragraph (b)(3), the phrase “DOT agency” shall be deleted and replaced by “state or USDOT agency.”

(B) In paragraphs (c)(1)(iii) and (c)(2), the phrase “part 40 of this title” shall be deleted and replaced by “49 C.F.R. Part 40, as adopted by K.A.R. 82-4-3b.”

(C) In paragraph (d)(4), the phrase “49 CFR Part 40 of this title” shall be deleted and replaced by “49 C.F.R. Part 40, as adopted by K.A.R. 82-4-3b.”

(10) The following revisions shall be made to 49 C.F.R. 382.303(h)(3):

(A) The phrase “(as defined in Sec. 571.3 of this title)” shall be deleted.

(B) The phrase “Sec. 177.823 of this title” shall be deleted and replaced by “49 C.F.R. 177.823, as adopted by K.A.R. 82-4-20.”

(11) The following revisions shall be made to 49 C.F.R. 382.305:

(A) Paragraphs (c), (d), (e), (f), (g), (h), and (n) shall be deleted.

(B) In paragraph (j), the phrase “FMCSA Administrator” shall be deleted and replaced by “director of the transportation division of the Kansas corporation commission.”

(C) In paragraph (o), the phrase “DOT agency” shall be deleted and replaced by “USDOT or state agency.”

(12) In 49 C.F.R. 382.309, 382.311, and

382.605, the phrase “49 CFR part 40, Subpart O” shall be deleted and replaced by “49 C.F.R. Part 40, Subpart O, as adopted by K.A.R. 82-4-3b.”

(13) In 49 C.F.R. 382.403(c)(13), 382.403(d)(8), 382.503, and 382.601(b)(9), the phrase “part 40, subpart O, of this title” shall be deleted and replaced by “49 C.F.R. Part 40, Subpart O, as adopted by K.A.R. 82-4-3b.”

(14) The following revisions shall be made to 49 C.F.R. 382.401:

(A) In paragraph (b)(3), the phrase “part 40 of this title” shall be deleted and replaced by “49 C.F.R. Part 40, as adopted by K.A.R. 82-4-3b.”

(B) In paragraph (c)(2)(iii), the phrase “part 40, subpart G, of this title” shall be deleted and replaced by “49 C.F.R. Part 40, as adopted by K.A.R. 82-4-3b.”

(C) In paragraph (c)(5)(iv), the phrase “Sec. 40.213(a)” shall be deleted and replaced by “49 C.F.R. 40.213(a), as adopted by K.A.R. 82-4-3b.”

(D) In paragraph (c)(6)(iii), the phrase “Sec. 40.111(a)” shall be deleted and replaced by “49 C.F.R. 40.111(a), as adopted by K.A.R. 82-4-3b.”

(E) The following revisions shall be made to paragraph (d):

(i) The phrase “Sec. 390.31 of this subchapter” shall be deleted and replaced by “49 C.F.R. 390.31, as adopted by K.A.R. 82-4-3f.”

(ii) The phrase “Federal Motor Carrier Safety Administration” shall be deleted and replaced by “transportation division of the Kansas corporation commission.”

(F) Paragraph (e) shall be deleted.

(15) 49 C.F.R. 382.403 shall be revised as follows:

(A) In paragraph (a), the words “Secretary of Transportation, any DOT agency, or” shall be deleted.

(B) In paragraph (b), the words “Federal Motor Carrier Safety Administration” and “FMCSA” shall be deleted and replaced by “transportation division of the Kansas corporation commission.”

(C) In paragraphs (c)(2), (d)(2), and (e), the phrase “state or” shall be inserted before “DOT agency.”

(16) The following revisions shall be made to 49 C.F.R. 382.405:

(A) In paragraphs (c) and (d), the words “the Secretary of Transportation, any DOT agency, or” shall be deleted.

(B) Paragraph (e) shall be deleted.

(C) In paragraph (g), the phrase “state or” shall be added before the phrase “DOT drug.”

(D) In paragraph (g), the phrase “Sec. 40.323(a)(2)” shall be deleted and replaced by “49 C.F.R. 40.323(a)(2), as adopted by K.A.R. 82-4-3b.”

(E) In paragraph (h), the phrase “Sec. 40.321(b) of this title” shall be deleted and replaced by “49 C.F.R. 40.321(b), as adopted by K.A.R. 82-4-3b.”

(17) In 49 C.F.R. 382.407 and 382.409, the phrase “part 40, Subpart G, of this title” shall be deleted and replaced by “49 C.F.R. 40.321(b), as adopted by K.A.R. 82-4-3b.”

(18) In 49 C.F.R. 382.413, the phrase “Sec. 40.25 of this title” shall be deleted and replaced by “49 C.F.R. 40.25, as adopted by K.A.R. 82-4-3b.”

(19) The following revisions shall be made to 49 C.F.R. 382.501:

(A) The phrase “state or” shall be added before the phrase “DOT agency.”

(B) The phrase “part 390 of this subchapter” shall be deleted and replaced by “49 C.F.R. Part 390, as adopted by K.A.R. 82-4-3f.”

(20) 49 C.F.R. 382.507 shall be deleted.

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2003 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2003 Supp. 66-1,129, as amended by L. 2004, Ch. 152, § 7; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005.)

82-4-3d. Safety fitness procedures. (a)

With the following exceptions, 49 C.F.R. Part 385, as in effect on October 1, 2003, is hereby adopted by reference:

(1) In 49 C.F.R. 385.1, paragraphs (a) and (b) shall be deleted.

(2) The following revisions shall be made to 49 C.F.R. 385.3:

(A) In paragraph (1) of the definition of “Reviews,” the last sentence shall be deleted.

(B) The definition of “Safety ratings,” including paragraphs (1), (2), (3), and (4), shall be deleted.

(3) The first paragraph of 49 C.F.R. 385.5 shall be deleted and replaced by the following:

“In cooperation with the FMCSA, special agents and authorized representatives shall con-

duct reviews in order to gather the information necessary for the FMCSA to issue a safety rating for a motor carrier. Information gathered shall include information necessary to demonstrate that the motor carrier has adequate safety management controls in place which comply with the applicable safety requirements in order to reduce the risks associated with:”.

(4) The first paragraph of 49 C.F.R. 385.7 shall be deleted and replaced by the following:

“In cooperation with the FMCSA, special agents and authorized representatives shall conduct reviews in order to gather the information necessary for the FMCSA to determine an appropriate safety rating for a motor carrier. Information gathered shall be information the FMCSA may consider in assessing a safety rating, including:”.

(5) 49 C.F.R. 385.9 through 49 C.F.R. 385.19 shall be deleted.

(6) In 49 C.F.R. 385.103(d) and (e), the phrase “or the commission in cooperation with the FMCSA” shall be added after the phrase “The FMCSA” at the beginning of the sentence.

(7) 49 C.F.R. 385.105 shall be deleted.

(8) The following revisions shall be made to 49 C.F.R. 385.107:

(A) In paragraph (a), the words “as adopted by K.A.R. 82-4-3d(a)(12)” shall be added after the phrase “in Appendix A to this part.”

(B) Paragraphs (b), (c), and (d) shall be deleted.

(9) The following changes shall be made to 49 C.F.R. 385.109:

(A) In paragraph (a), the words “B to this part” shall be deleted and replaced by “A to 49 C.F.R. Part 385, as adopted in K.A.R. 82-4-3d(a)(12), and Section VII of Appendix B to 49 C.F.R. Part 385, as adopted in K.A.R. 82-4-3d(a)(13).”

(B) Paragraphs (b), (c), and (d) shall be deleted.

(10) 49 C.F.R. 385.111 through 49 C.F.R. 385.119 shall be deleted.

(11) 49 C.F.R. 385.301 through 49 C.F.R. 385.337 shall be deleted.

(12) The following revisions shall be made to Appendix A to 49 C.F.R. Part 385, as in effect on October 1, 2003, and hereby adopted by reference:

(A) Section I shall be deleted.

(B) In Section II, paragraphs (a), (b), (b)(1), (b)(2), and (b)(3) shall be deleted.

(C) The following revisions shall be made to Section III:

(i) In paragraph (a), the phrase “or a special

agent or authorized representative” shall be added after the phrase “the FMCSA.”

(ii) In paragraph (d), the phrase “as adopted by K.A.R. 82-4-3d(a)(13)” shall be added after the phrase “List of Acute and Critical Regulations.”

(iii) Paragraphs (g) and (h) shall be deleted.

(iv) Sections III.A, III.B, and III.C shall be deleted.

(D) Section IV shall be deleted.

(13) Section VII of Appendix B to 49 C.F.R. Part 385, as in effect on October 1, 2003, is hereby adopted by reference. However, the references to Sec. 395.1(h)(1)(i) through Sec. 395.1(h)(2)(iv) shall be deleted.

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2003 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2003 Supp. 66-1,129, as amended by L. 2004, Ch. 152, § 7; implementing K.S.A. 2003 Supp. 66-1,112, K.S.A. 66-1,112g, K.S.A. 2003 Supp. 66-1,129, as amended by L. 2004, Ch. 152, § 7, and K.S.A. 2003 Supp. 66-1,142a; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005.)

82-4-3e. Minimum levels of financial responsibility for motor carriers. (a) With the following exceptions, 49 C.F.R. Part 387, as in effect on October 1, 2003, is hereby adopted by reference:

(1) 49 C.F.R. 387.1 shall be deleted.

(2) The following revisions shall be made to 49 C.F.R. 387.3:

(A) The following revisions shall be made to paragraph (a):

(i) The phrase “for-hire” shall be deleted and replaced by “public.”

(ii) The words “interstate or foreign” shall be deleted and replaced by “intrastate.”

(B) In paragraph (b), the words “interstate, foreign, or” shall be deleted.

(C) In paragraph (c)(1), the phrase “in interstate or foreign commerce” shall be deleted and replaced by “as adopted by K.A.R. 82-4-20.”

(D) Paragraph (c)(2) shall be deleted.

(3) The following revisions shall be made to 49 C.F.R. 387.5:

(A) In the definition of “evidence of security,” the words “a surety bond or” shall be deleted.

(B) In the definition of “financial responsibility,” the words “or surety bonds” shall be deleted.

(C) In the definition of “for-hire carriage,” the term “for-hire” shall be deleted and replaced by “public.”

(D) In the definition of “insured and principal” the term “surety bond” shall be deleted.

(E) The definition of “motor carrier” shall be deleted.

(4) The following revisions shall be made to 49 C.F.R. 387.7:

(A) In paragraph (b)(1), the phrase “surety bonds” shall be deleted.

(B) In paragraph (b)(2), the phrase “and surety bonds” shall be deleted.

(C) Paragraphs (b)(3), (b)(3)(i), (b)(3)(ii), and (b)(3)(iii) shall be deleted.

(D) In paragraph (c), the phrases “and surety bonds,” “or surety bonds,” and “or surety” shall be deleted.

(E) Paragraphs (d)(1) and (d)(2) shall be deleted.

(F) The following revisions shall be made to paragraph (d)(3):

(i) The phrase “Federal Motor Carrier Safety Administration” shall be deleted and replaced by “Kansas Insurance Department.”

(ii) The words “Sec. 387.309, provided the motor carrier maintains a satisfactory safety rating as determined by the Federal Motor Carrier Safety Administration under part 385 of this chapter” shall be deleted and replaced by “K.S.A. 66-1,128.”

(G) The following revisions shall be made to paragraph (f):

(i) The words “United States by motor carriers domiciled in a contiguous foreign country” shall be deleted and replaced by “state.”

(ii) The words “or MCS-82” shall be deleted.

(H) In paragraph (g), the term “United States” shall be deleted and replaced by “state of Kansas.”

(5) The following revisions shall be made to the “schedule of limits—public liability” in 49 C.F.R. 387.9:

(A) The term “for-hire” shall be deleted and replaced by “public.”

(B) The phrase “interstate or foreign” shall be deleted and replaced by “intrastate.”

(C) The phrase “interstate, foreign, or” shall be deleted.

(D) The phrase “as adopted by K.A.R. 82-4-20”

shall be added after “49 CFR 171.8,” “49 CFR 173.403,” and “49 CFR 172.101.”

(6) The following revisions shall be made to 49 C.F.R. 387.11:

(A) In the first paragraph, the words “or surety bond” shall be deleted.

(B) In paragraph (a), the words “or bonds in each State in which the motor carrier operates” shall be deleted and replaced by “in the state of Kansas.”

(C) The following revisions shall be made to paragraph (b):

(i) The words “or bonds” shall be deleted.

(ii) The phrase “any State in which the motor carrier operates” shall be deleted and replaced by “the state of Kansas.”

(D) In paragraph (c), the words “any State in which the motor carrier operates” shall be deleted and replaced by “the state of Kansas.”

(7) The following revisions shall be made to 49 C.F.R. 387.15:

(A) The following revisions shall be made to the first paragraph:

(i) The phrase “and surety bonds (Illustration II)” shall be deleted.

(ii) The phrase “FMCSA and approved by the OMB” shall be deleted and replaced by “commission.”

(iii) The phrase “and surety bonds” shall be deleted.

(iv) The following sentence shall be deleted: “The continuous coverage requirement does not apply to Mexican motor carriers insured under Sec. 387.7(b)(3) of this subpart.”

(v) The phrase “and surety bond” shall be deleted.

(vi) The following sentence shall be added to the end of the paragraph: “A form approved by the Commission for liability insurance for the motor carriers listed in 49 C.F.R. 387.3 shall be called a Form MCS-90, and shall be in a form substantially similar to the following:”

(B) The following revisions shall be made to Illustration I:

(i) The terms “(3/82),” “Form Approved,” “OMB No. 2125-0074,” and “Under Sections 29 and 30 of the Motor Carrier Act of 1980,” appearing near the top of Illustration I, shall be deleted.

(ii) The term “FMCSA” shall be deleted and replaced by “commission.”

(iii) The term “FMCSA’s” shall be deleted and replaced by “commission’s.”

(iv) The phrase “at its office in Washington, DC” shall be deleted.

(v) The definition of “motor vehicle” shall be deleted.

(vi) The phrase “sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Motor Carrier Safety Administration,” which is in the paragraph that begins “The insurance policy to which this endorsement is attached,” shall be deleted and replaced by “K.S.A. 66-1,128 and K.A.R. 82-4-3e.”

(vii) The phrase “sections 29 and 30 of the Motor Carrier Act of 1980,” which is in the paragraph beginning “In consideration,” shall be deleted and replaced by “K.S.A. 66-1,128 and K.A.R. 82-4-3e.”

(C) Illustration II shall be deleted.

(8) 49 C.F.R. 387.17 shall be deleted.

(9) The following revisions shall be made to 49 C.F.R. 387.25:

(A) The term “for-hire” shall be deleted and replaced by “public.”

(B) The words “interstate or foreign” shall be deleted and replaced by “intrastate.”

(10) The following revisions shall be made to 49 C.F.R. 387.27(a):

(A) The term “for-hire” shall be deleted and replaced by “public.”

(B) The words “interstate or foreign” shall be deleted and replaced by “intrastate.”

(11) The following revisions shall be made to 49 C.F.R. 387.29:

(A) In the definition of “for-hire carriage,” the term “for-hire” shall be deleted and replaced by “public.”

(B) The definition of “motor carrier” shall be deleted.

(C) In the definition of “seating capacity,” the phrase “(measured in accordance with SEA Standards J1100(a))” shall be deleted.

(12) The following revisions shall be made to 49 C.F.R. 387.31:

(A) In paragraph (b), the term “surety bonds” shall be deleted.

(B) In paragraph (b)(2), the words “and surety bonds” shall be deleted.

(C) Paragraphs (3), (3)(i), and (3)(ii) shall be deleted.

(D) In paragraph (c), the phrases “and surety bonds,” “or surety bonds,” and “or surety bond” shall be deleted.

(E) Paragraph (d)(1) shall be deleted and replaced by “Form MCS-90B issued by an insurer.”

(F) Paragraph (d)(2) shall be deleted.

(G) The following revisions shall be made to paragraph (f):

(i) The phrase “within the United States” shall be deleted and replaced by “in intrastate commerce within the state of Kansas.”

(ii) The phrase “(Forms MC-90B or MCS-82B)” shall be deleted and replaced by “(Form MCS-90B).”

(H) In paragraph (g), the phrase “entry into the United States” shall be deleted and replaced by “the ability to operate within the state of Kansas.”

(13) The following revisions shall be made to 49 C.F.R. 387.33:

(A) The phrase “interstate or foreign” shall be deleted and replaced by “intrastate.”

(B) In the schedule of limits, the term “for-hire” shall be deleted and replaced by “public.”

(14) The following revisions shall be made to 49 C.F.R. 387.35:

(A) In the first paragraph, the phrases “or surety bond” and “or surety” shall be deleted.

(B) In paragraph (a), the words “or bonds in each State in which the motor carrier operates” shall be deleted and replaced by “in the state of Kansas pursuant to K.S.A. 66-1,128.”

(C) Paragraphs (b) and (c) shall be deleted.

(15) 49 C.F.R. 387.39 and the associated graphics shall be deleted and replaced by the following:

“Endorsements for policies of insurance shall be in a form approved by the commission. Endorsements to policies of insurance shall specify that coverage will remain in effect continuously until terminated, as required by 49 C.F.R. 387.31. The endorsement shall be issued in the exact name of the motor carrier. A form approved by the commission for liability insurance for the motor carriers described in 49 C.F.R. 387.27 shall be called a form MCS-90B and shall be in a form substantially similar to the form prescribed in 49 C.F.R. 387.9.”

(16) 49 C.F.R. 387.41 through 49 C.F.R. 387.419 shall be deleted.

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2003 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2003 Supp. 66-1,129, as amended by L. 2004, Ch. 152, § 7; effective, T-

82-12-29-04, Dec. 29, 2004; effective April 29, 2005.)

82-4-3f. General motor carrier safety regulations. (a) With the following exceptions, 49 C.F.R. Part 390, as in effect on October 1, 2003, is hereby adopted by reference:

(1) 49 C.F.R. 390.1 shall be deleted.

(2) The following revisions shall be made to 49 C.F.R. 390.3:

(A) In paragraph (a), the word “interstate” shall be deleted and replaced by “intrastate.”

(B) Paragraphs (b) and (c) shall be deleted.

(C) In paragraph (e)(1), the phrase “all regulations contained in this subchapter” shall be deleted and replaced by “K.A.R. 82-4-3a through K.A.R. 82-4-3m, and K.A.R. 82-4-20.”

(D) In paragraph (e)(2), the phrase “all applicable regulations contained in this subchapter” shall be deleted and replaced by “K.A.R. 82-4-3a through K.A.R. 82-4-3m, and K.A.R. 82-4-20.”

(E) Paragraphs (f), (f)(1), (f)(2), (f)(3), (f)(4), (f)(5), (f)(6)(i), and (f)(6)(ii) shall be deleted.

(3) The following revisions shall be made to 49 C.F.R. 390.5:

(A) The following definitions shall be deleted:

(i) Commercial motor vehicle;

(ii) conviction;

(iii) driveaway-towaway operation;

(iv) exempt motor carrier;

(v) farm vehicle;

(vi) for-hire motor carrier;

(vii) gross combination weight rating;

(viii) gross vehicle weight rating;

(ix) hazardous material;

(x) hazardous substance;

(xi) hazardous waste;

(xii) highway;

(xiii) interstate commerce;

(xiv) intrastate commerce;

(xv) medical examiner;

(xvi) motor carrier;

(xvii) motor vehicle;

(xviii) operator;

(xix) other terms;

(xx) person;

(xxi) private motor carrier;

(xxii) private motor carrier of passengers (business);

(xxiii) private motor carrier of passengers (non-business);

(xxiv) school bus;

(xxv) school bus operation;

(xxvi) secretary;

(xxvii) state; and

(xxviii) United States.

(B) In the definition of “Exempt intracity zone,” the following text shall be deleted: “of a municipality or the commercial zone of that municipality described in appendix F to subchapter B of this chapter. The term ‘exempt intracity zone’ does not include any municipality or commercial zone in the State of Hawaii.” The deleted text shall be replaced by the following: “described in section 8 of appendix F to Title 49, Chapter III, Subchapter B, as in effect on October 1, 2003, and hereby adopted by reference.”

(C) The definition of “Out of service order” shall be deleted and replaced by the following:

“Out-of-service order means a declaration by a special agent or authorized representative that a driver, a commercial motor vehicle, or a motor carrier operation is out-of-service pursuant to 49 C.F.R. 392.5, as adopted by K.A.R. 82-4-3h, 49 C.F.R. 395.13, as adopted by K.A.R. 82-4-3a, or 49 C.F.R. 396.9, as adopted by K.A.R. 82-4-3j.”

(D) The following revisions shall be made to the definition of “Principal place of business”:

(i) The phrase “parts 382, 387, 390, 391, 395, 396, and 397 of this subchapter” shall be deleted and replaced by “K.A.R. 82-4-3a, K.A.R. 82-4-3c, K.A.R. 82-4-3e, K.A.R. 82-4-3f, K.A.R. 82-4-3g, K.A.R. 82-4-3j, and K.A.R. 82-4-3k.”

(ii) The first instance of the term “Federal” shall be deleted.

(iii) The phrase “of the Federal Motor Carrier Safety Administration” shall be deleted.

(E) The definition of “Special agent” shall be deleted and replaced by the following:

“Special agent or authorized representative means an authorized representative of the commission, and members of the highway patrol or any other law enforcement officers in the state who have been certified in the inspection of motor carriers based on the motor carrier safety assistance program standards.”

(4) 49 C.F.R. 390.7 and 49 C.F.R. 390.9 shall be deleted.

(5) In 49 C.F.R. 390.11, the phrase “part 325 of subchapter A or in this subchapter” shall be deleted and replaced by “K.A.R. 82-4-3a through K.A.R. 82-4-3m, and K.A.R. 82-4-20.”

(6) The following revisions shall be made to 49 C.F.R. 390.15:

(A) The first instance of the phrase “of the Fed-

eral Motor Carrier Safety Administration” shall be deleted.

(B) The second instance of the phrase “of the Federal Motor Carrier Safety Administration” shall be deleted and replaced by “or special agent.”

(7) The following revisions shall be made to 49 C.F.R. 390.19:

(A) Paragraph (a) shall be deleted and replaced by the following:

“Each motor carrier that conducts intrastate operations in the state of Kansas shall file a motor carrier identification report, which shall be known as a Form MCS-150, at the following times:”

(B) Paragraph (b) shall be deleted and replaced by the following:

“The Form MCS-150 shall contain the following information:

“(1) The Kansas-specific USDOT number assigned to the carrier pursuant to K.A.R. 82-4-8h;

“(2) the legal name of the motor carrier;

“(3) the trade or ‘doing business as’ name of the motor carrier, if applicable;

“(4) the street address of the motor carrier, including city, state, and zip code;

“(5) the mailing address of the motor carrier, including city, state, and zip code;

“(6) the motor carrier’s principal telephone number and telefacsimile number;

“(7) whether the motor carrier conducts intrastate only carriage of hazardous materials or intrastate carriage of non-hazardous materials;

“(8) the motor carrier’s mileage, rounded to the nearest 10,000, for the last calendar year;

“(9) the type of operations the motor carrier conducts in the state;

“(10) the classification of cargo that the motor carrier transports;

“(11) the hazardous materials transported by the motor carrier;

“(12) the type of equipment owned or leased or both for transporting property or passengers;

“(13) the number of drivers that operate within a 100-mile radius;

“(14) the number of drivers that operate outside a 100-mile radius;

“(15) the number of drivers with commercial drivers’ licenses;

“(16) the total number of drivers; and

“(17) a signed and dated statement with the signatory’s printed name and title, certifying that the signatory is familiar with the commission’s safety

regulations and that the information contained in the report is accurate.”

(C) In paragraph (c), the words “FMCSA’s Office of Data Analysis and Information Systems” shall be deleted and replaced by “commission’s transportation division.”

(D) Paragraph (c)(1) shall be deleted and replaced by the following:

“The completed Form MCS-150 shall be filed with the Kansas corporation commission at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604.”

(E) Paragraph (c)(2) shall be deleted.

(F) Paragraphs (e), (f), and (g) shall be deleted.

(8) The following revisions shall be made to 49 C.F.R. 390.21:

(A) In paragraph (a), the words “as defined in Sec. 390.5, subject to subchapter B of this chapter must” shall be deleted and replaced by “required to be marked pursuant to K.A.R. 82-4-8h shall.”

(B) In paragraph (b)(2), the words “Kansas-specific” shall be added before the phrase “motor carrier.”

(C) Paragraphs (b)(5), (b)(5)(i), (b)(5)(ii), and (b)(5)(iii) shall be deleted.

(D) In paragraph (e)(2)(iii)(B)(1), the words “‘interstate’ or ‘intrastate’” shall be deleted and replaced by “‘intrastate.’”

(E) Paragraph (e)(2)(iii)(C) shall be deleted and replaced by the following:

“A statement that the lessor cooperates with all relevant special agents and authorized representatives to provide the identity of customers who operate the rental commercial motor vehicles; and.”

(F) The last sentence of paragraph (e)(2)(iv) shall be deleted.

(9) The following changes shall be made to 49 C.F.R. 390.23:

(A) In paragraph (a), the phrase “Parts 390 through 399 of this chapter” shall be deleted and replaced by “K.A.R. 82-4-3e, and K.A.R. 82-4-3f through K.A.R. 82-4-3m.”

(B) In paragraph (b), both instances of the phrase “parts 390 through 399 of this chapter” shall be deleted and replaced by “K.A.R. 82-4-3e, and K.A.R. 82-4-3f through K.A.R. 82-4-3m.”

(C) In paragraph (c)(1), the phrase “Secs. 395.3(a) and 395.5(a) of this chapter” shall be deleted and replaced by “49 C.F.R. 395.3(a) and 49 C.F.R. 395.5(a), as adopted by K.A.R. 82-4-3c.”

(10) The following revisions shall be made to 49 C.F.R. 390.25:

(A) The word “regional” shall be inserted before the term “FMCSA Field Administrator.”

(B) The words “in the region in which the motor carrier’s principal place of business is located” shall be deleted.

(11) 49 C.F.R. 390.27 shall be deleted.

(12) The following revisions shall be made to 49 C.F.R. 390.29:

(A) In paragraph (a), the phrase “this subchapter” shall be deleted and replaced by “K.A.R. 82-4-3a through K.A.R. 82-4-3m, and K.A.R. 82-4-20.”

(B) The following revisions shall be made to paragraph (b):

(i) The phrase “of the Federal Motor Carrier Safety Administration” shall be deleted.

(ii) The word “Federal” appearing in the last sentence shall be deleted.

(13) In 49 C.F.R. 390.33, the phrase “this subchapter and part 325 of subchapter A” shall be deleted and replaced by “K.A.R. 82-4-3a through K.A.R. 82-4-3m, and K.A.R. 82-4-20.”

(14) The following revisions shall be made to 49 C.F.R. 390.35:

(A) In paragraph (a), the phrase “by part 325 of subchapter A or this subchapter” shall be deleted and replaced by “K.A.R. 82-4-3a through K.A.R. 82-4-3m, and K.A.R. 82-4-20.”

(B) In paragraphs (b) and (c), the phrase “this subchapter or part 325 of subchapter A” shall be deleted and replaced by “K.A.R. 82-4-3a through K.A.R. 82-4-3m, and K.A.R. 82-4-20.”

(14) 49 C.F.R. 390.37 shall be deleted.

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2003 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2003 Supp. 66-1,129, as amended by L. 2004, Ch. 152, § 7; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005.)

82-4-3g. Qualifications of drivers. (a) With the following exceptions, 49 C.F.R. Part 391, as in effect on October 1, 2003, is hereby adopted by reference:

(1) In 49 C.F.R. 392.2(c), the phrase “Sec. 390.5” shall be deleted and replaced by “K.A.R. 82-4-1(c).”

(2) 49 C.F.R. 391.11(b)(1) shall be deleted.

(3) The following revisions shall be made to 49 C.F.R. 391.15:

(A) In paragraphs (c)(1)(i) and (c)(2)(iii), the phrase “of this subchapter” shall be deleted and replaced by “as adopted by K.A.R. 82-4-3a.”

(B) The phrase “as adopted by K.A.R. 82-4-3h” shall be added to the end of paragraph (c)(2)(i)(C).

(C) In paragraphs (c)(2)(ii) and (iii), the phrase “as adopted by K.A.R. 82-4-3h(b)” shall be added after the phrase “21 C.F.R. 1308.11 Schedule I.”

(4) In 49 C.F.R. 391.21(b)(11), the phrase “as defined by Part 383 of this subchapter” shall be deleted.

(5) In 49 C.F.R. 391.25(b)(1), the phrase “Federal Motor Carrier Safety Regulations in this subchapter or hazardous materials regulations (49 CFR chapter I, subchapter C)” shall be deleted and replaced by “commission motor carrier safety regulations.”

(6) The following revisions shall be made to 49 C.F.R. 391.27:

(A) In paragraph (c), the words “be prescribed by the motor carrier. The following form may be used to comply with this section” shall be deleted and replaced by “read substantially as follows.”

(B) Paragraph (e) shall be deleted.

(7) In 49 C.F.R. 391.33(a)(1), the phrase “as defined in Sec. 383.5 of this subchapter” shall be deleted.

(8) The following revisions shall be made to 49 C.F.R. 391.41:

(A) The paragraph that appears between paragraphs (a) and (b) shall be deleted.

(B) In paragraph (b)(11), the clause “when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5 1951” shall be deleted.

(C) In paragraph (b)(12)(i), the phrase “as adopted by K.A.R. 82-4-3h” shall be added after the phrase “21 C.F.R. 1308.11 Schedule I.”

(9) The following changes shall be made to 49 C.F.R. 391.43:

(A) In paragraph (a), the phrase “examiner as defined in Sec. 390.5 of this subchapter” shall be deleted and replaced by “licensed medical practitioner, as defined by K.A.R. 82-4-1.”

(B) In paragraph (b), the phrase “medical examiner” shall be deleted and replaced by “licensed medical practitioner, as defined by K.A.R. 82-4-1.”

(C) In paragraph (c)(1), the phrase “including

the medical advisory criteria prepared by the FMCSA as guidelines to aid the medical examiner in making the qualification determination” shall be deleted.

(D) In paragraph (f), the words “and examination form. Existing forms may be used until current printed supplies are depleted or until September 30, 2004, whichever occurs first” shall be deleted.

(E) In the portion titled “Extremities” in paragraph (f), the words “Field Service Center of the FMCSA, for the State in which the driver has legal residence” shall be deleted and replaced by “commission.”

(F) The last sentence of paragraph (h) shall be deleted.

(G) The editorial note found after paragraph (h) shall be deleted.

(10) The following revisions shall be made to 49 C.F.R. 391.47:

(A) Paragraph (b)(8) shall be deleted.

(B) In paragraph (b)(9), the word “interstate” shall be deleted and replaced by the word “intrastate.”

(C) In paragraphs (c) and (d), the phrase “Director, Office of the Bus and Truck Standards and Operations (MC-PSD)” shall be deleted and replaced by the phrase “director of the commission’s transportation division.”

(D) The last two sentences of paragraph (e) shall be deleted and replaced by the following sentence: “Petitions shall be filed in accordance with K.A.R. 82-1-225 and K.S.A. 77-601 *et seq.*”

(E) In paragraph (f), the first two occurrences of the phrase “Director, Office of the Bus and Truck Standards and Operations (MC-PSD)” shall be deleted and replaced by the phrase “director of the commission’s transportation division.” The clause “or until the Director, Office of Bus and Truck Standards and Operations (MC-PSD) orders otherwise” shall be deleted.

(11) The following revisions shall be made to 49 C.F.R. 391.49:

(A) The phrase “Division Administrator, FMCSA” in paragraph (a) and the phrase “State Director, FMCSA” in paragraphs (g), (h), (j)(1), and (k) shall be deleted and replaced by “the director of the commission’s transportation division.”

(B) The remainder of paragraph (b)(2) after “The application must be addressed to” shall be deleted and replaced by “: Director of the Transportation Division, Kansas Corporation Commis-

sion, 1500 S.W. Arrowhead Road, Topeka, KS 66604.”

(C) In paragraph (b)(3), the words “field service center, FMCSA, for the state in which the driver has legal residence” shall be deleted and replaced by “director of the commission’s transportation division at the address provided in paragraph (b)(2).”

(D) In paragraph (c)(1)(iii), the phrase “U.S. DOT” shall be deleted.

(E) Paragraph (c)(2)(i) shall be deleted.

(F) The phrase “Medical Program Specialist, FMCSA service center” in paragraph (e)(1), the words “Medical Program Specialist, FMCSA for the State in which the carrier’s principal place of business is located” in paragraph (e)(1)(i), and the words “Medical Program Specialist, FMCSA service center, for the State in which the driver has legal residence” in paragraph (e)(1)(ii) shall be deleted and replaced by “the director of the transportation division of the commission.”

(G) In paragraph (i), the words between “submitted to the” and “The SPE certificate renewal application” shall be deleted and replaced by “director of the transportation division of the commission.”

(H) The following revisions shall be made to paragraph (j)(2):

(i) The words “State Director, FMCSA, for the State where the driver applicant has legal residence” shall be deleted and replaced by “director of the transportation division of the commission.”

(ii) The phrase “the following form” shall be deleted and replaced by “a form substantially similar to the following.”

(iii) The phrase “subchapter B of the Federal Motor Carrier Safety Regulations” shall be deleted and replaced by the phrase “as adopted by K.A.R. 82-4-3g.”

(iv) The term “FMCSRs” shall be deleted and replaced by “commission’s regulations regarding motor carrier safety.”

(12) The following revisions shall be made to 49 C.F.R. 391.51(b)(8):

(A) The phrase “Field Administrator, Division Administrator, or State Director” shall be deleted and replaced by “the director of the transportation division of the commission.”

(B) The phrase “or under K.A.R. 82-4-6d” shall be added at the end of the paragraph.

(13) The following revisions shall be made to 49 C.F.R. 391.62:

(A) In paragraph (c), the phrase “as adopted by

K.A.R. 82-4-3f” shall be added after the phrase “49 C.F.R. 390.5.”

(B) In paragraph (d), the phrase “under regulations issued by the Secretary under 49 U.S.C. chapter 51” shall be deleted and replaced by “under the regulations adopted by K.A.R. 82-4-20.”

(C) In paragraph (e)(1), the phrase “Federal Motor Carrier Safety Regulations” shall be deleted and replaced by “commission’s motor carrier regulations found in Article 4.”

(14) 49 C.F.R. 391.64 shall be revised as follows:

(A) In paragraph (a)(2)(iii), the phrase “an authorized agent of the FMCSA” shall be deleted and replaced by “the director of the transportation division of the commission.”

(B) In paragraphs (a)(2)(v) and (b)(3), the phrase “duly authorized federal, state or local enforcement official” shall be deleted and replaced by the phrase “any authorized representative of the commission, and any member of the Kansas highway patrol or any other law enforcement officer in the state who has been certified in the inspection of motor carriers based on the motor carrier safety assistance program standards.”

(15) The form set out in 49 C.F.R. 391.65 shall be revised as follows:

(A) The phrase “as adopted by K.A.R. 82-4-3f” shall be added after the phrase “Sec. 390.5.”

(B) The phrase “Federal Motor Carrier Safety Regulations” shall be deleted and replaced by the phrase “as adopted by K.A.R. 82-4-3g.”

(16) 49 C.F.R. 391.67 shall be deleted.

(17) In 49 C.F.R. 391.68(a), “(b)(1)” shall be deleted.

(18) 49 C.F.R. 391.69 shall be deleted.

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by K.S.A. 2003 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2003 Supp. 66-1,129; implementing K.S.A. 2003 Supp. 66-1,112, K.S.A. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2003 Supp. 66-1,129, as amended by L. 2004, Ch. 152, § 7; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005.)

82-4-3h. Driving of commercial motor vehicles. (a) With the following exceptions, 49

C.F.R. Part 392, as in effect on October 1, 2003, is hereby adopted by reference:

(1) In 49 C.F.R. 392.2, the words after the word “jurisdiction,” including the last sentence of this section, shall be deleted and replaced by “of the state of Kansas.”

(2) 49 C.F.R. 392.4 shall be revised as follows:

(A) Paragraph (a)(1) shall be deleted and replaced by the following:

“(1) Any substance listed in schedule I of 21 C.F.R. 1308.11, which is hereby adopted by reference as in effect on April 1, 2003.”

(B) In paragraph (c), the phrase “Sec. 382.107” shall be deleted and replaced by “49 C.F.R. 382.107, as adopted by K.A.R. 82-4-3c.”

(3) 49 C.F.R. 392.5 shall be revised as follows:

(A) In paragraph (a)(1), the phrase “Sec. 382.107” shall be deleted and replaced by “49 C.F.R. 382.107, as adopted by K.A.R. 82-4-3c.”

(B) In paragraph (a)(3), the phrase “hereby adopted by reference as in effect on January 7, 2003” shall be added after the phrase “26 U.S.C. 5052(a).”

(C) In paragraph (a)(3), the phrase “section 5002(a)(8), of such Code” shall be deleted and replaced by “26 U.S.C. 5002(a)(8), hereby adopted by reference as in effect on January 7, 2003.”

(D) In paragraph (d)(2), a period shall be placed after the phrase “affirmation of the order”; the remainder of the paragraph shall be deleted.

(E) Paragraph (e) shall be deleted and replaced by the following:

“(e) Any driver who is subject to an out of service order may petition for reconsideration of that order in accordance with K.A.R. 82-1-235 and the provisions of the act for judicial review and civil enforcement of agency actions, found at K.S.A. 77-601 *et seq.*”

(4) In 49 C.F.R. 392.8, the phrase “Sec. 393.95 of this subchapter” shall be deleted and replaced by “49 C.F.R. 393.95, as adopted by K.A.R. 82-4-3i.”

(5) In 49 C.F.R. 392.9, the phrase “Secs. 393.100 through 393.142 of this subchapter” shall be deleted and replaced by “49 C.F.R. 393.100 through 393.142, as adopted by K.A.R. 82-4-3i.”

(6) 49 C.F.R. 392.9a shall be deleted.

(7) 49 C.F.R. 392.10 shall be revised as follows:

(A) In paragraph (a)(4), the phrase “Parts 107 through 180 of this title” shall be deleted and replaced by “49 C.F.R. 107.105, 107.502, and Parts

171, 172, 173, 177, 178, and 180, as adopted by K.A.R. 82-4-20.”

(B) In paragraph (a)(5), the phrase “Sec. 173.120 of this title” shall be deleted and replaced by “49 C.F.R. 173.120, as adopted by K.A.R. 82-4-20.”

(C) In paragraph (a)(6), the phrase “subpart B of part 107 of this title” shall be deleted and replaced by “49 C.F.R. 107.105, as adopted by K.A.R. 82-4-20.”

(D) In paragraph (b)(1), the phrase “Sec. 390.5 of this chapter” shall be deleted and replaced by “49 C.F.R. 390.5, as adopted by K.A.R. 82-4-3f.”

(8) The phrase “Sec 393.95 of this subchapter” in 49 C.F.R. 392.22(b) shall be deleted and replaced by “49 C.F.R. 393.95, as adopted by K.A.R. 82-4-3i.”

(9) The following revisions shall be made to 49 C.F.R. 392.51:

(A) In paragraph (b), the phrase “as adopted by K.A.R. 82-4-20” shall be inserted after the phrase “Parts 171, 172, 173, and 178.”

(B) In paragraph (b), the phrase “hereby incorporated by reference as in effect on July 1, 2003” shall be inserted after the phrase “29 CFR 1910.106.”

(10) 49 C.F.R. 392.62 shall be revised as follows:

(A) In paragraph (a), the phrase “Sec. 393.90 of this subchapter” shall be deleted and replaced by “49 C.F.R. 393.90, as adopted by K.A.R. 82-4-3i.”

(B) In paragraph (b), the phrase “Sec. 393.91 of this subchapter” shall be deleted and replaced by “49 C.F.R. 393.91, as adopted by K.A.R. 82-4-3i.”

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2003 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2003 Supp. 66-1,129, as amended by L. 2004, Ch. 152, § 7; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005.)

82-4-3i. Parts and accessories necessary for safe operation. (a) With the following exceptions, 49 C.F.R. Part 393, as in effect on October 1, 2003, is hereby adopted by reference:

(1) The following revisions shall be made to 49 C.F.R. 393.5:

(A) The following definition shall be added after the definition of “curb weight”:

“DOT C-2, DOT C-3, and DOT C-4. These terms shall be defined by figure 29, found in 49 C.F.R. 571.108 as in effect on October 1, 2003, and figure 29 is hereby adopted by reference.”

(B) In the definition of “low chassis vehicle,” the phrase “of Sec. 571.224 in effect on the date of manufacture, or a subsequent edition” shall be deleted and replaced by “found in S5.1.1, S5.1.2, and S5.1.3 of 49 C.F.R. 571.224, as in effect on October 1, 2003, and hereby adopted by reference.”

(C) The definition of “manufactured home” shall be deleted and replaced by the following:

“Manufactured home means a structure as defined by K.S.A. 58-4202(a), as in effect January 21, 2003, and hereby adopted by reference. The term shall also include structures that meet the requirements of K.S.A. 58-5202(a) except the size requirements. These structures shall be considered manufactured homes when the manufacturer files with the transportation division a certification that it intends that these structures shall be considered manufactured homes. The manufacturer shall also certify that, if at any time it manufactures structures it does not intend to be manufactured homes, it shall identify those structures by a permanent serial number placed on the structure during the first stage of production and that the series of serial numbers for such structures shall be distinguishable on the structures and in its records from the series of serial numbers used for manufactured homes.”

(D) The following definition shall be added after the definition of “manufactured home”:

“Optically combined. This term refers to two or more lights that share the same body and have one lens totally or partially in common.”

(E) The definition for “reflective material” shall be deleted.

(F) In the definition of “special purpose vehicle,” the phrase “of Sec. 571.224 (paragraphs S5.1.1 through S5.1.3), in effect on the date of manufacture or a subsequent edition” shall be deleted and replaced by “found in S5.1.1, S5.1.2, and S5.1.3 of 49 C.F.R. 571.224, as adopted by reference above.”

(2) 49 C.F.R. 393.7 shall be deleted.

(3) The following revisions shall be made to 49 C.F.R. 393.11:

(A) In the first paragraph, the third and fourth sentences shall be deleted.

(B) The phrase “Paragraphs 393.22 and S4.4 of 49 CFR 571.108, Equipment combinations” in the sentence between Table 1 and the footnotes shall be deleted and replaced by the following:

“49 C.F.R. 393.22. Lamp and reflector combinations which comply with the following shall also be permitted:

“Two or more lamps, reflective devices, or items of associated equipment may be combined if the requirements for each lamp, reflective device, and item of associated equipment are met, with the following exceptions:

“(a) No high-mounted stop lamp shall be combined with any other lamp or reflective device, other than with a cargo lamp.

“(b) No high-mounted stop lamp shall be combined optically with any cargo lamp.

“(c) No clearance lamp shall be combined optically with any tail lamp.”

(4) The following revisions shall be made to 49 C.F.R. 393.13:

(A) In paragraph (a), the phrase “Sec. 390.5 of this subchapter” shall be deleted and replaced by “49 C.F.R. 390.5, as adopted by K.A.R. 82-4-3f.” The last two sentences of paragraph (a) shall be deleted.

(B) Paragraph (b) shall be deleted and replaced by the following:

“(b) Retroflective sheeting and reflex reflectors. Unless otherwise preempted by federal law, motor carriers shall retrofit their trailers with a conspicuity system that meets the following requirements:

“(1) Conspicuity systems. Each trailer not exempted from the commission’s safety regulations found in Article 4 of these regulations shall be equipped with either retroflective sheeting that meets the requirements of paragraph (B), reflex reflectors that meet the requirements of paragraph (C), or a combination of retroflective sheeting and reflex reflectors that meets the requirements of paragraph (D).

“(2) Retroflective sheeting.

“(A) Construction. Retroflective sheeting shall consist of a smooth, flat, transparent exterior film with retroflective elements embedded or suspended beneath the film so as to form a non-exposed retroflective optical system.

“(B) Performance requirements. Retroflective sheeting shall meet the minimum photometric performance requirements specified in Figure 29

as found in 49 C.F.R. 571.108, and adopted by reference above.

“(C) Sheeting pattern. Retroflective sheeting shall be applied in a pattern of alternating white and red color segments to the sides and rear of each trailer, and to the rear of each truck tractor, and in white to the upper rear corners of each trailer and truck tractor as specified in this paragraph, and, as appropriate, as shown in figures 30-1 through 30-4, or figure 31 found in 49 C.F.R. 571.108. Figures 30-1 through 30-4 and figure 31, as found in 49 C.F.R. 571.108 and as in effect on October 1, 2003, are hereby adopted by reference.

“(D) Sheeting length. Except for a segment that is trimmed to clear obstructions or lengthened to provide red sheeting near red lamps, each white or red segment shall have a length of 300 mm plus or minus 150 mm. Neither white nor red sheeting shall represent more than two-thirds of the aggregate of any continuous strip marking the width of a trailer, or any continuous or broken strip marking its length.

“(E) Sheeting width. Retroflective sheeting shall have a width of not less than 50 mm for grade DOT-C2 sheeting, 75 mm for grade DOT-C3 sheeting, or 100 mm for grade DOT-C4 sheeting.

“(F) Sheeting retroflection. The coefficients for retroflection of each segment of red or white sheeting shall not be less than the minimum values specified in Figure 29 as adopted above for grades DOT-C2, DOT-C3, and DOT-C4.

“(G) Location. Retroflective sheeting shall be applied to each trailer and truck tractor as specified in paragraphs (c) and (d) below, but need not be applied to discontinuous surfaces such as outside ribs, stake post pickets on platform trailers, and external protruding beams, or to items of equipment such as door hinge and lamp bodies on trailers and body joints, stiffening beads, drip rails and rolled surfaces on truck tractors. The edge of white sheeting shall not be located closer than 75 mm to the edge of the luminous lens area of any red or amber lamp that is required by K.A.R. 82-4-3i. The edge of red sheeting shall not be located closer than 75 mm to the edge of the luminous lens area of any amber lamp that is required by K.A.R. 82-4-3i.

“(H) Certification. In order to demonstrate that the retroflective sheeting meets the standards of paragraphs (B)(i) and (ii), the letters DOT-C2, DOT-C3, or DOT-C4, as appropriate, shall appear at least once on the exposed surface of each

white or red segment of reflective sheeting, and at least once every 300 mm on the retroreflective sheeting that is white only. The characters shall not be less than 3 mm high, and shall be permanently stamped, etched, molded, or printed in indelible ink.

“(3) Reflex Reflectors. Each trailer or truck tractor to which paragraph (b)(1) applies that does not conform with either paragraph (B) or paragraph (D) shall be equipped with reflex reflectors as set forth in this paragraph.

“(A) Visibility of reflector by color.

“(i) Red reflex reflector. Each red reflex reflector shall provide, at an observation angle of 0.2 degree, not less than 33 millicandelas per lux at any light entrance angle between 30 degrees left and 30 degrees right, including an entrance angle of 0 degree, and not less than 75 millicandelas per lux at any light entrance angle between 45 degrees left and 45 degrees right.

“(ii) White reflex reflector. Each white reflex reflector shall also provide at an observation angle of 0.2 degree, not less than 1,250 millicandelas per lux at any light angle of 0.2 degree, not less than 1,250 millicandelas per lux at any light entrance angle between 30 degrees left and 30 degrees right, including an entrance angle of 0 degree, and not less than 33 millicandelas per lux at any light entrance angle between 45 degrees left and 45 degrees right. A white reflex reflector complying with this paragraph when tested in a horizontal orientation may be installed in all orientations specified for rear upper locations in paragraphs (viii) element 2, and (x), element 2 above if, when tested in a vertical orientation, it provides an observation angle of 0.2 degree not less than 1,680 millicandelas per lux at a light entrance angle of 0 degree, not less than 1,120 millicandelas per lux at any light entrance angle from 10 degrees down to 10 degrees up, and not less than 560 millicandelas per lux at any light entrance angle from 20 degrees right to 20 degrees left.

“(B) Certification. In order to demonstrate that the retroreflective sheeting meets the standards of K.A.R. 82-4-3i, the letters DOT-C shall appear on the exposed surface of each reflex reflector. The letters shall not be less than 3 mm high, and shall be permanently stamped, etched, molded, or printed in indelible ink.

“(4) Combination of sheeting and reflectors. Each trailer or truck tractor to which paragraph (b)(1) applies may use a combination of retroflec-

tive materials as long as they are located as specified by paragraphs (c) and (d) below.”

(5) In 49 C.F.R. 393.17(c)(1), the phrase “Sec. 392.30” shall be deleted and replaced by “49 C.F.R. 392.30, as adopted by K.A.R. 82-4-3h.”

(6) The following revisions shall be made to 49 C.F.R. 393.24:

(A) In paragraph (c), the clause “if there be at least one such lamp conforming to the appropriate SAE Standard \1\ for such lamps on each side of the vehicle” and the related footnote shall be deleted.

(B) In paragraph (d), the words “and shall conform to the appropriate specification set forth in the SAE Standards \1\ for ‘Electric Head Lamps for Motor Vehicles’ or ‘Sealed-Beam Head Lamp Units for Motor Vehicles’” and the related footnote shall be deleted.

(7) In 49 C.F.R. 393.25, paragraphs (c), (c)(1), (c)(2), (c)(3), (d), (d)(1), (d)(2), (d)(3), (d)(4), and (d)(5), and the related footnote, shall be deleted.

(8) The following revisions shall be made to 49 C.F.R. 393.26:

(A) Paragraphs (b) and (c) shall be deleted.

(B) In paragraph (d)(4), the phrase “Sec. 177.823 of this title” shall be deleted and replaced by “49 C.F.R. 177.823, as adopted by K.A.R. 82-4-20.”

(9) The following changes shall be made to 49 C.F.R. 393.27:

(A) In paragraph (a), the second sentence and paragraphs (a)(1), (a)(2), and (a)(3) shall be deleted.

(B) In paragraph (b), the phrase “to comply with FMVSS 571.108” shall be deleted.

(10) In 49 C.F.R. 393.33, the clause “which conform to the SAE Standard \1\ for ‘Cable Terminals’ or by cable terminals” and the related footnote shall be deleted.

(11) The following revisions shall be made to 49 C.F.R. 393.40(c)(2):

(A) The words “to which the emergency brake system requirements of Federal Motor Vehicle Safety Standard No. 105 (Sec. 571.105 of this title) applied at the time of its manufacture” shall be deleted and replaced by “using hydraulic or electrical brake systems.”

(B) Paragraph (c)(2)(i) shall be deleted.

(12) In 49 C.F.R. 393.41(a), the phrase “as required by FMVSS 571.121” shall be deleted.

(13) 49 C.F.R. 393.42(b)(1)(ii) shall be deleted and replaced by “Manufactured between July 24, 1980, and October 27, 1986, must have been re-

trofitted to meet the requirements of this section if the brake components have been removed.”

(14) In 49 C.F.R. 393.45, paragraphs (a)(6), (b), (b)(1), (b)(1)(i), (b)(1)(ii), (b)(1)(iii), (b)(1)(iv), (b)(1)(v), and (b)(2) shall be deleted.

(15) In 49 C.F.R. 393.46, paragraphs (e) and (f) shall be deleted.

(16) The following revisions shall be made to 49 C.F.R. 393.51:

(A) In paragraph (b), the phrase “performs as follows” shall be deleted and replaced by “must be readily audible or visible to the driver.” Paragraphs (b)(1) and (b)(2) shall be deleted.

(B) In paragraph (c), the phrase “must be equipped and perform, as follows” shall be deleted, and a period shall be added to the end of the sentence. Paragraphs (c)(1), (c)(1)(i), and (c)(1)(ii) shall be deleted and replaced by the following sentence: “The vehicle must have a low air pressure warning device that provides a readily audible or visible continuous warning to the driver whenever the pressure of the compressed air in the braking system is below a specified pressure, which must be at least one-half of the compressor governor cutout pressure.”

(17) 49 C.F.R. 393.53 shall be deleted.

(18) The following revisions shall be made to 49 C.F.R. 393.55:

(A) In paragraph (a), the clause “that meets the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 105 (49 CFR 571.105, S5.5)” shall be deleted.

(B) In paragraph (b), the clause “that meets the requirements of FMVSS No. 105 (49 CFR 571.105, S5.3)” shall be deleted.

(C) In paragraph (c)(1), the clause “that meets the requirements of FMVSS No. 121 (49 CFR 471.121, S5.1.6.1(b))” shall be deleted.

(D) In paragraph (c)(2), the clause “that meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.1.6.1(a) for trucks and buses, S5.2.3 for semitrailers, and converter dollies and full trailers” shall be deleted.

(E) In paragraph (d)(1), the phrase “(49 CFR 571.121, S5.1.6.2(a))” shall be deleted.

(F) In paragraph (d)(2), the last sentence shall be deleted.

(G) In paragraph (d)(3), the last sentence shall be deleted.

(H) In paragraph (e), the clause “which meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.2.3.3)” shall be deleted.

(19) 49 C.F.R. 393.60(a) shall be deleted.

(20) The following revisions shall be made to 49 C.F.R. 393.61:

(A) In paragraph (b)(2), the phrase “Federal Motor Vehicle Safety Standard No. 217, part 571 of this title” shall be deleted and replaced by “49 C.F.R. 571.217, as in effect on October 1, 2003, and hereby adopted by reference.”

(B) In paragraph (b)(3), the phrase “Federal Motor Vehicle Safety Standard No. 217, part 571 of this title” shall be deleted and replaced by “49 C.F.R. 571.217, as adopted by this regulation.”

(C) In paragraph (c)(1), the phrase “the required free opening when subjected to the drop test specified in Test 25 of the American Standard Safety Code referred to in Sec. 393.60” shall be deleted and replaced by “a free opening when subjected to a drop test.” The following words shall be deleted: “with the type of laminated glass specified in Test 25 of the Code. The sash for such windows shall be constructed of such material and be of such design and construction as to be continuously capable of complying with the above requirement.”

(D) In paragraphs (c)(2) and (c)(3), the phrase “Federal Motor Vehicle Safety Standard No. 217 (Sec. 571.217) of this title” shall be deleted and replaced by “49 C.F.R. 571.217, as adopted by this regulation.”

(21) In 49 C.F.R. 393.63(b) and (c), the phrase “Federal Motor Vehicle Safety Standard No. 217 (Sec. 571.217) of this title” shall be deleted and replaced by “49 C.F.R. 571.217, as adopted by this regulation.”

(22) The following revisions shall be made to 49 C.F.R. 393.67:

(A) Paragraph (a)(6) shall be deleted.

(B) Paragraph (c)(3) shall be deleted and replaced by “Threads. At least four full threads must be in engagement in each fitting.”

(C) In paragraph (f)(3), the clause “The certificate must be in the form set forth in either of the following:” and paragraphs (c)(3)(i), (c)(3)(ii), and (c)(3)(iii) shall be deleted.

(23) 49 C.F.R. 393.69 shall be deleted.

(24) The following revisions shall be made to 49 C.F.R. 393.71:

(A) Paragraph (h)(8) and the related footnote shall be deleted.

(B) The following revisions shall be made to paragraph (h)(9):

(i) The phrase “requirements of the Federal Motor Carrier Safety Administration” shall be de-

leted and replaced by “appropriate requirements.”

(ii) The following sentence shall be deleted: “Tow-bar certification manufactured before the effective date of this regulation must meet requirements in effect at the time of manufacture.”

(C) In paragraph (m)(8), the phrase “requirements of the Federal Motor Carrier Safety Administration” shall be deleted and replaced by “appropriate requirements.”

(25) The following revisions shall be made to 49 C.F.R. 393.75:

(A) In paragraphs (g)(1) and (g)(2), the clause “that are labeled pursuant to 24 C.F.R. 3282.362(c)(2)(i)” shall be deleted and replaced by “built.”

(B) In paragraph (g)(1), the phrase “Or, in the absence of such a marking, more than 18 percent over the load rating specified in any of the publications of any of the organizations listed in FMVSS No. 119 (49 CFR 571.119, S5.1(b))” shall be deleted.

(C) In paragraph (g)(2), the phrase “or, in the absence of such a marking, the load rating specified in any of the publications of any of the organizations listed in FMVSS No. 119 (49 CFR 571.119, S5.1(b))” shall be deleted.

(26) The following revisions shall be made to 49 C.F.R. 393.77(b):

(A) The note appearing between paragraphs (7) and (8) shall be deleted.

(B) In paragraph (15), the last sentence shall be deleted.

(C) In paragraph (15)(i), the phrase “Sec. 177.834(1) of this title” shall be deleted and replaced by “49 C.F.R. 177.834(a) as adopted by K.A.R. 82-4-20.”

(27) The following revisions shall be made to 49 C.F.R. 393.80:

(A) In paragraph (a), the last sentence shall be deleted.

(B) In paragraph (b), the following clause shall be deleted: “provided that if the mirrors are replaced they shall be replaced with mirrors meeting, as a minimum, the requirements of FMVSS No. 111 (49 CFR 571.111) in force at the time the vehicle was manufactured.”

(28) The following revisions shall be made to 49 C.F.R. 393.86:

(A) Paragraph (a)(1) shall be deleted and replaced by the following:

“General requirements for trailers and semi-

trailers manufactured on or after January 26, 1988. Each trailer and semitrailer with a gross vehicle weight rating of 10,000 pounds or more, and manufactured on or after January 26, 1998, must be equipped with a rear impact guard. The requirements of paragraph (a) of this section do not apply to pole trailers as defined by 49 C.F.R. 390.5 and adopted by K.A.R. 82-4-3f, pulpwood trailers, low chassis vehicles, special purpose vehicles, wheels back vehicles as defined in 49 C.F.R. 393.5, and trailers towed in driveaway-tow-away operations as defined in 49 C.F.R. 390.5 and adopted by K.A.R. 82-4-3f.”

(B) In paragraph (a)(6), the phrase “as required by FMVSS No. 223 (49 CFR 571.223, S5.3)” shall be deleted.

(C) Paragraph (a)(6)(iii) shall be deleted.

(29) In 49 C.F.R. 393.90, the phrase “of the Federal Motor Carrier Safety Administration’s regulations” shall be deleted.

(30) 49 C.F.R. 393.93 shall be deleted and replaced by the following:

“All motor vehicles shall be equipped with safety belts and shoulder harnesses in compliance with K.S.A. 8-1749.”

(31) The following revisions shall be made to 49 C.F.R. 393.94:

(A) The footnote in paragraph (c) shall be deleted.

(B) Paragraph (c)(4) shall be deleted and replaced by the following: “Set the sound level meter to the A-weighting network, ‘fast’ meter response.”

(C) Paragraph (d) shall be deleted.

(32) The following revisions shall be made to 49 C.F.R. 393.95:

(A) Paragraphs (a), (a)(1) and the related footnote, (a)(2)(i) and the related footnote, (a)(2)(ii), (a)(2)(ii)(A), (a)(2)(ii)(B), (a)(2)(iii), (a)(3), and (a)(4) shall be deleted and replaced by “Fire Extinguisher. Each motor vehicle shall be equipped with a fire extinguisher as set forth in K.A.R. 82-4-8a.”

(B) In paragraph (f)(1)(i), the clause “which satisfy the requirements of SAE Standard J597, ‘Liquid Burning Emergency Flares,’” shall be deleted.

(C) In paragraph (f)(1)(ii), the clause “which satisfy the requirements of SAE Standard J596, ‘Electric Emergency Lanterns,’” shall be deleted.

(D) In paragraph (f)(1)(v), the clause “that conform to the requirements of Federal Motor Vehicle Safety Standard No. 125, Sec. 571.125 of this title” shall be deleted.

(E) In paragraph (f)(2)(i), the clause “that conform to the requirements of Federal Motor Vehicle Safety Standard No. 125, Sec. 571.125 of this title” shall be deleted.

(F) In paragraph (f)(2)(ii), the clause “Sec. 392.22” shall be deleted and replaced by “49 C.F.R. 392.22, as adopted by K.A.R. 82-4-3h.”

(G) In paragraph (g), the phrase “as defined by 49 C.F.R. 171.101 and adopted by K.A.R. 82-4-20” shall be added after the words “Division 1.1, 1.2, 1.3 (explosives) hazardous materials; any cargo tank motor vehicle used for the transportation of Division 2.1 (flammable gas) or class 3 (flammable liquid) hazardous materials.”

(H) Paragraphs (h)(2), (h)(2)(i), and (h)(2)(ii) shall be deleted.

(I) In paragraph (i)(2), the words “Reflecting elements to be Class A. Each reflecting element or surface shall meet the requirement for a red Class A reflector contained in the SAE Recommended Practice \1 ‘Reflex Reflectors’” and the related footnote shall be deleted.

(J) In paragraph (j), the last three sentences, the second of which is in parentheses, shall be deleted.

(33) The following revisions shall be made to 49 C.F.R. 393.104:

(A) Paragraph (e), the related table, and the related footnotes shall be deleted.

(B) Paragraph (f)(2) shall be deleted and replaced by the following:

“If a tiedown is repaired, it must be repaired sufficiently either to support the working load limits set forth in 49 C.F.R. 393.108 or according to the manufacturer’s instructions.”

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2003 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2003 Supp. 66-1,129, as amended by L. 2004, Ch. 152, § 7; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005.)

82-4-3j. Inspection, repair, and maintenance. (a) With the following exceptions, 49 C.F.R. Part 396, as in effect on October 1, 2003, is hereby adopted by reference:

(1) In 49 C.F.R. 396.3(a)(1), the phrase “part

393 of this subchapter” shall be deleted and replaced by “49 C.F.R. Part 393, as adopted by K.A.R. 82-4-3i.”

(2) The following revisions shall be made to 49 C.F.R. 396.9:

(A) In paragraph (a), the phrase “Every special agent of the FMCSA (as defined in appendix B to this subchapter)” shall be deleted and replaced by “Any authorized representative of the commission, and any member of the Kansas highway patrol or any other law enforcement officer in the state who has been certified in the inspection of motor carriers based on the motor carrier safety assistance program standards.”

(B) In paragraph (b), the sentence after “Prescribed inspection report” shall be deleted and replaced by the following sentence: “Motor vehicle inspections conducted by authorized personnel as described in paragraph (a) shall be made on forms approved by the commission, as described in K.A.R. 82-4-3l(a)(2)(B).”

(C) In paragraph (c)(1), the term “‘Out of Service Vehicle’ sticker” shall mean “a form approved by the commission, as described in K.A.R. 82-4-3l(a)(6)(C).”

(D) In paragraph (c)(2), the term “Vehicle Examination Report” shall mean the form described in K.A.R. 82-4-3l(a)(6)(B).

(E) In paragraph (d)(3)(ii), the phrase “issuing agency” shall be deleted and replaced by “transportation division of the commission.”

(3) The following revisions shall be made to 49 C.F.R. 396.17:

(A) In paragraph (a), the phrase “of this subchapter” shall be deleted and replaced by “as in effect on October 1, 2001, which is hereby adopted by reference.”

(B) The “Note” appearing between paragraphs (a) and (b) shall be deleted.

(C) In paragraph (h), the words “penalty provisions provided by 49 U.S.C. 521(b)” shall be deleted and replaced by “civil penalties provided by K.S.A. 66-1,142b, K.S.A. 66-1,142c, and other applicable penalties.”

(4) The following revisions shall be made to 49 C.F.R. 396.19(a)(1):

(A) The phrase “as adopted by K.A.R. 82-4-3j” shall be added after “49 C.F.R. Part 393.”

(B) The phrase “as adopted by K.A.R. 82-4-3j” shall be added after the phrase “and appendix G.” The phrase “of this subchapter” shall be deleted.

(5) In 49 C.F.R. 396.21(b)(2) and (3), the word “Federal” shall be deleted.

(6) The following revisions shall be made to 49 C.F.R. 396.23:

(A) In paragraph (b)(1), the phrase “by the Administrator” shall be deleted.

(B) In paragraph (b)(2), the term “FMCSA” shall be deleted and replaced by “transportation division of the Kansas corporation commission.”

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2003 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2003 Supp. 66-1,129, as amended by L. 2004, Ch. 152, § 7; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005.)

82-4-3k. Transportation of hazardous materials; driving and parking rules. (a) With the following exceptions, 49 C.F.R. Part 397, as in effect on October 1, 2003, is hereby adopted by reference:

(1) In 49 C.F.R. 397.1(a), the phrase “of this title” shall be deleted and replaced by “as adopted by K.A.R. 82-4-20.”

(2) In 49 C.F.R. 397.2, the phrase “the rules in parts 390 through 397, inclusive, of this subchapter” shall be deleted and replaced by “K.A.R. 82-4-3f through K.A.R. 82-4-3k.” The phrase “of this title” shall be deleted and replaced by “as adopted by K.A.R. 82-4-20.”

(3) In 49 C.F.R. 397.3, the term “Department of Transportation” shall be deleted and replaced by “commission.”

(4) In 49 C.F.R. 397.5 (a), the phrase “as defined by 49 C.F.R. 172.101 and adopted by K.A.R. 82-4-20” shall be added after “(explosive) material.”

(5) In 49 C.F.R. 397.7(a), the phrase “as defined by 49 C.F.R. 172.101 and adopted by K.A.R. 82-4-20” shall be added after the words “Division 1.1, 1.2, or 1.3 materials.”

(6) The following revisions shall be made to 49 C.F.R. 397.13:

(A) In paragraph (a), the phrase “as defined by 49 C.F.R. 172.101 and adopted by K.A.R. 82-4-20” shall be added after the words “Division 2.1, Class 3, Divisions 4.1 and 4.2.”

(B) In paragraph (b), the phrase “of this title”

shall be deleted and replaced by “as adopted by K.A.R. 82-4-20.”

(7) The following revisions shall be made to 49 C.F.R. 397.19:

(A) In paragraph (a), the phrase “as defined by 49 C.F.R. 172.101 and adopted by K.A.R. 82-4-20” shall be added after the words “(explosive) materials.”

(B) In paragraph (c)(2), the phrase “of this title” shall be deleted and replaced by “as adopted by K.A.R. 82-4-20.”

(8) The following revisions shall be made to 49 C.F.R. 397.65:

(A) The definitions of “Administrator,” “FMCSA,” “Motor carrier,” and “Motor vehicle” shall be deleted.

(B) In the definition of “Indian tribe,” the phrase “as in effect on January 7, 2003, which is hereby adopted by reference” shall be added after “25 U.S.C. 450b.”

(C) In the definition of “NRHM,” the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 172.504.”

(D) In the definition of “Radioactive material,” the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 173.403.”

(9) The following changes shall be made to 49 C.F.R. 397.67:

(A) In paragraph (b), the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 177.823.”

(B) In paragraph (d), the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 173.50 and 173.53 respectively.”

(10) In 49 C.F.R. 397.69, paragraph (b) shall be deleted.

(11) The following revisions shall be made to 49 C.F.R. 397.71:

(A) In paragraph (b), the word “Federal” shall be deleted.

(B) Paragraph (b)(1)(ii) and the related footnote shall be deleted.

(C) Paragraph (b)(5) shall be deleted.

(12) The following revisions shall be made to 49 C.F.R. 397.73:

(A) Paragraph (a) and its related footnote shall be deleted and replaced by the following: “Information on NRHM routing designations shall be made available to the public by the States and Indian tribes in the form of maps, lists, road signs, or a combination thereof. If road signs are used, those signs and their placements must comply with all applicable laws.”

(B) Paragraph (b) shall be deleted and replaced by the following: “Each state or Indian tribe, through its routing agency, shall provide information identifying all NRHM routing designations which exist within their jurisdiction to the director of the transportation division, Kansas corporation commission, 1500 S.W. Arrowhead Road, Topeka, KS 66604. Information on any changes or new NRHM routing designations shall be furnished within 60 days after establishment to the director.”

(13) The following revisions shall be made to 49 C.F.R. 397.75:

(A) Unless otherwise noted in this subsection, the word “Administrator” shall be deleted and replaced by “commission.”

(B) Paragraph (b)(1) shall be deleted and replaced by the following: “Be submitted to the director of the transportation division, Kansas corporation commission, 1500 S.W. Arrowhead Road, Topeka, KS 66604.”

(C) In paragraph (b)(7), the word “Federal” shall be deleted.

(D) In paragraph (c)(2), the word “Federal” shall be deleted and replaced by “Kansas.”

(E) In paragraph (g), the last sentence shall be deleted.

(14) 49 C.F.R. 397.77 shall be deleted.

(15) The following revisions shall be made to 49 C.F.R. 397.101:

(A) In paragraph (a), the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 172.403” and after “49 CFR part 172.”

(B) In paragraph (b), the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 173.403(1).”

(C) In paragraph (b)(2), the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 173.403(l) and (y).”

(D) Paragraph (g) shall be deleted and replaced by the following: “Unless otherwise preempted, each motor carrier who accepts for transportation on a highway route a controlled quantity of Class 7 (radioactive) material, as defined by 49 C.F.R. 173.401(l), as adopted by K.A.R. 82-4-20, shall provide the following information with the director within 90 days following acceptance of the package:”

(E) In paragraph (g)(3), the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 172.202 and 172.203.”

(16) The following revisions shall be made to 49 C.F.R. 397.103:

(A) In paragraph (a), the words “‘Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials,’ or an equivalent” shall be deleted and replaced by “a.”

(B) Paragraph (c)(1) shall be deleted and replaced by the following: “The state gives written notice to the director.”

(C) In paragraph (c)(2), the term “FMCSA” shall be deleted and replaced by “director.”

(D) Paragraph (d) shall be deleted and replaced by the following: “A list of state-designated preferred routes shall be available from the director upon request.”

(17) Subpart E of 49 C.F.R. Part 397 shall be deleted.

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2003 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2003 Supp. 66-1,129, as amended by L. 2004, Ch. 152, § 7; effective T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005.)

82-4-31. Transportation of migrant workers. (a) With the following exceptions, 49 C.F.R. Part 398, as in effect on October 1, 2003, is hereby adopted by reference:

(1) The following revisions shall be made to 49 C.F.R. 398.1:

(A) The following revisions shall be made to 49 C.F.R. 398.1(a):

(i) A period shall be placed after the word “agriculture.”

(ii) The remainder of the paragraph shall be deleted and replaced by the following: “For the purposes of 49 C.F.R. Part 398 only, the definition of ‘agriculture’ found in 29 U.S.C. 203(b), as in effect on January 7, 2003, is hereby adopted by reference. For the purposes of 49 C.F.R. Part 398 only, the definition of ‘employment in agriculture’ shall be the same as the definition of ‘agricultural labor’ found in 26 U.S.C. 3121(g), as in effect on January 7, 2003, which is hereby adopted by reference.”

(B) In paragraph (b), the words “person, including any ‘contract carrier by motor vehicle’, but not including any ‘common carrier by motor vehicle’, who or which transports in interstate or for-

eign commerce” shall be deleted and replaced by “motor carrier transporting.”

(C) In paragraph (d), the definition of “motor vehicle” shall be deleted.

(2) The following revisions shall be made to 49 C.F.R. 398.2:

(A) In paragraph (a), the phrase “in interstate commerce, as defined in 49 C.F.R. 390.5” shall be deleted and replaced by “within the state of Kansas.”

(B) In paragraph (b)(2), the phrase “in interstate commerce, must comply with the applicable requirements of 49 CFR parts 385, 390, 391, 392, 393, 395, and 396” shall be deleted and replaced by “must comply with the applicable requirements of 49 C.F.R. Part 385, as adopted by K.A.R. 82-4-3d, 49 C.F.R. Part 390, as adopted by K.A.R. 82-4-3f, 49 C.F.R. Part 391, as adopted by K.A.R. 82-4-3g, 49 C.F.R. Part 392, as adopted by K.A.R. 82-4-3h, 49 C.F.R. Part 393, as adopted by K.A.R. 82-4-3i, 49 C.F.R. Part 395, as adopted by K.A.R. 82-4-3a, and 49 C.F.R. Part 396, as adopted by K.A.R. 82-4-3j.”

(3) In 49 C.F.R. 398.3(b)(9), the phrase “of the Federal Motor Carrier Safety Regulations of the Federal Motor Carrier Safety Administration” shall be deleted.

(4) The following revisions shall be made to 49 C.F.R. 398.4:

(A) In paragraph (b), the words “jurisdiction in which it is being operated, unless such laws, ordinances and regulations are at variance with specific regulations of this Administration which impose a greater affirmative obligation or restraint” shall be deleted and replaced by “state of Kansas.”

(B) In paragraph (k), the phrase “part 393 of this subchapter” shall be deleted and replaced by “49 C.F.R. Part 393, as adopted by K.A.R. 82-4-3i.”

(5) The following revisions shall be made to 49 C.F.R. 398.5:

(A) In paragraph (b), the phrase “part 393 of this subchapter” shall be deleted and replaced by “49 C.F.R. Part 393, as adopted by K.A.R. 82-4-3i.”

(B) In paragraph (c), the phrase “part 393 of this subchapter, except Sec. 393.44 of this subchapter” shall be deleted and replaced by “49 C.F.R. Part 393, as adopted by K.A.R. 82-4-3i.”

(6) The following revisions shall be made to 49 C.F.R. 398.8:

(A) In paragraph (a), the phrase “Special Agents of the Federal Motor Carrier Safety Administra-

tion, as detailed in appendix B of chapter III of this title” shall be deleted and replaced by “any authorized representative of the commission, and any member of the Kansas highway patrol or any other law enforcement officer in the state who has been certified in the inspection of motor carriers based on the motor carrier safety assistance program standards.”

(B) Paragraph (b) shall be deleted and replaced by the following: “(b) Prescribed inspection report. A compliance report form approved by the commission shall be used to record findings from motor vehicles selected for final inspection by any authorized representative of the commission, and any member of the Kansas highway patrol or any other law enforcement officer in the state who has been certified in the inspection of motor carriers based on the motor carrier safety assistance program standards. A compliance report form approved by the commission shall contain the following information:

“(1) The name, MCID number, and address of the motor carrier;

“(2) information regarding the inspection location;

“(3) the date of the inspection;

“(4) the name, birth date, license number, and employment status of the driver;

“(5) whether hazardous material were being transported, and if so, what type;

“(6) shipping information regarding the commodity transported;

“(7) identification of the vehicle used;

“(8) brake adjustment information;

“(9) identification of the alleged violations;

“(10) information regarding the authority under which the vehicle could be put out of service for alleged violations discovered during the inspection;

“(11) information regarding the individual who prepares the inspection report; and

“(12) a statement to be signed by the motor carrier that the violations have been corrected.”

(C) In paragraph (c)(1), the last sentence shall be deleted and replaced by the following: “A form approved by the commission shall be used to mark vehicles as ‘out of service.’ An out of service form approved by the commission shall contain the following information:

“(1) A statement that the motor vehicle has been declared out of service;

“(2) a statement that the out of service marking may be removed only under the conditions out-

lined in the out of service order or the accompanying vehicle inspection report;

“(3) a statement that operation of the vehicle prior to making the required repairs will subject the motor carrier to civil penalties;

“(4) the number and dates of the inspection; and

“(5) a place for the signature of the authorized individual making the inspection.”

(D) The following revisions shall be made to paragraph (c)(2):

(i) The phrase “on Form MCS 63” shall be deleted and replaced by “on a form approved by the commission for driver-equipment compliance reporting.”

(ii) The phrase “Sec. 393.52” shall be deleted and replaced by “49 C.F.R. 393.52, as adopted by K.A.R. 82-4-3i.”

(E) In paragraph (c)(3), the phrase “on Form MCS 63” shall be deleted and replaced by “on a form approved by the commission for driver-equipment compliance reporting.”

(F) Paragraph (c)(4) shall be deleted and replaced by the following: “The person or persons completing the repairs required by the out of service notice shall complete a form to certify repairs approved by the commission, which shall include the person’s name and the name of the person’s shop or garage as well as the date and time the repairs were completed. If the driver completes the required repairs, then the driver shall complete the same form.”

(G) In paragraph (d)(1), the phrase “MCS Form 63” shall be deleted and replaced by “on a form approved by the commission for driver-equipment compliance reporting.”

(H) In paragraph (d)(1), the phrase “Federal Motor Carrier Safety Regulations” shall be deleted and replaced by the phrase “commission’s regulations.”

(I) In paragraph (d)(2), the phrase “‘Motor Carrier Certification of Action Taken’ on Form MCS 63” and the phrase “Form MCS 63” shall be deleted and replaced by “form approved by the commission for driver-equipment reporting.”

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2003 Supp. 66-1,112, K.S.A.

66-1,112g, and K.S.A. 2003 Supp. 66-1,129, as amended by L. 2004, Ch. 152, § 7; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005.)

82-4-3m. Employee safety and health standards. (a) With the following exceptions, 49 C.F.R. Part 399, as in effect on October 1, 2003, is hereby adopted by reference:

(1) 49 C.F.R. 399.201 shall be deleted.

(2) In 49 C.F.R. 399.205, the definition of “person” shall be deleted.

(3) In 49 C.F.R. 399.209, paragraph (b) shall be deleted.

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2003 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2003 Supp. 66-1,129, as amended by L. 2004, Ch. 152, § 7; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005.)

82-4-4 and 82-4-5. (Authorized by and implementing K.S.A. 66-1,129; effective Jan. 1, 1971; amended May 1, 1981; revoked May 1, 1984.)

82-4-6. (Authorized by K.S.A. 66-1,129; effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-79-23, Sept. 21, 1978; amended May 1, 1979; revoked May 1, 1981.)

82-4-6a. Minimum requirements of drivers. Each driver shall be familiar with the regulations established by the federal department of transportation, the state traffic laws and regulations of the Kansas department of transportation, and the regulations issued by the commission pertaining to the driving of motor vehicles. (Authorized by and implementing K.S.A. 1990 Supp. 66-1,129; effective May 1, 1981; amended Sept. 16, 1991.)

82-4-6b. (Authorized by and implementing K.S.A. 66-1,129; effective May 1, 1981; revoked Sept. 16, 1991.)

82-4-6c. (Authorized by and implementing K.S.A. 66-1,129; effective May 1, 1981; revoked May 1, 1984.)

82-4-6d. Waiver of physical requirements. (a) Any person failing to meet the requirements of 49 C.F.R. 391.41 may be permitted to drive a vehicle, other than a vehicle transporting passengers, if the director finds that the granting of a waiver is consistent with highway safety and the public interest.

(b) The application for a waiver shall meet these requirements:

(1) The application shall be submitted jointly by the person seeking the waiver and by the motor carrier wishing to employ the person as a driver.

(2) The application shall be accompanied by the following:

(A) A copy of the driver applicant's motor vehicle driving record. Any changes to this record occurring after submission of the application shall be immediately forwarded to the commission;

(B) Reports of medical examinations, administered by a licensed medical practitioner, that are satisfactory to the director; and

(C) letters of recommendation from at least two licensed medical practitioners, written on their personalized or institutional letterhead.

(i) The reports and letters of recommendation shall indicate the opinions of the licensed medical practitioners regarding the ability of the driver to safely operate a commercial vehicle of the type to be driven.

(ii) Letters of recommendation regarding vision impairments shall be provided by a licensed ophthalmologist or optometrist who treated the driver applicant.

(iii) Letters of recommendation regarding limb impairment or amputation shall include a medical summary conducted by a board of qualified, or board-certified, psychiatrists or orthopedic surgeons, preferably associated with a rehabilitation center.

(iv) Letters of recommendation shall include a description of any prosthetic or orthopedic devices worn by the driver applicant.

(3) The application shall contain a description that is satisfactory to the director of the type, size, and special equipment of the vehicle or vehicles to be driven, the general area and type of roads to be traversed, the distances and time period contemplated, the nature of the commodities to be transported and the method of loading and securing them, and the experience of the applicant in driving vehicles of the type to be driven.

(A) If the applicant motor carrier is a corpo-

ration, the application shall be signed by a corporation officer and the driver applicant.

(B) If the applicant motor carrier is a limited liability company, the application shall be signed by a company officer and the driver applicant.

(C) If the applicant motor carrier is a limited liability partnership, the application shall be signed by at least one of the members of the partnership and the driver applicant.

(D) If the applicant motor carrier is a partnership, the application shall be signed by at least one of the members of the partnership and the driver applicant.

(E) If the applicant motor carrier is a sole proprietorship, the application shall be signed by the proprietor and the driver applicant.

(4) The application shall specify that both the person and the carrier will file periodic reports as required with the director. These reports shall contain complete and truthful information regarding the extent of the person's driving activity, accidents in which the person may have been involved, and all suspensions or convictions in which the person is or has been involved.

(5) By completing the application, both the driver applicant and the motor carrier applicant shall be deemed to agree that upon grant of the waiver, they will fulfill all conditions of the waiver.

(c) Each driver applicant shall complete a skill performance evaluation administered by a commission driver waiver program manager or a commission handicapped driver waiver specialist. The driver and motor carrier applicants shall secure the vehicle and provide the necessary insurance for the skill performance evaluation. The skill performance evaluation may be waived if the driver applicant has otherwise met the regulatory requirements of 49 C.F.R. 391.49.

(d) If the application is approved, a driver medical waiver card signed by the director and accompanied by a letter acknowledging approval shall be issued by the commission. While on duty, the driver medical waiver card shall be in the driver's possession. The motor carrier shall retain the accompanying letter in its files at its principal place of business during the period the driver is in the motor carrier's employment. The motor carrier shall retain this letter for a period of 12 months after the termination of the driver's employment.

(e) If the application is denied, an order setting forth an explanation for the denial and specifying the procedure for appeal of the decision shall be issued by the commission.

(f) The waiver shall not exceed two years and may be renewable upon submission and approval of a new application.

(g) All intrastate vision waiver recipients shall be subject to the following conditions:

(1) Each driver shall be physically examined every year by the following individuals:

(A) A licensed ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard set forth in 49 C.F.R. 391.41(b)(10); and

(B) a licensed medical practitioner who attests that the individual is otherwise physically qualified under the standards set forth in 49 C.F.R. 391.41.

(2) Each driver shall provide a copy of the ophthalmologist's or optometrist's report to the medical practitioner at the time of the annual medical examination.

(3) Each driver shall provide the motor carrier with a copy of the annual medical reports for retention in the motor carrier's driver qualification files.

(4) Each driver shall provide a copy of the annual medical reports to the commission.

(h) The waiver may be revoked by the director after the applicant has been given notice of the proposed revocation and has been given a reasonable opportunity to show cause, if any, why the revocation should not be made.

(i) Each motor carrier and driver shall notify the director within 72 hours upon any conviction of a moving violation or any revocation or suspension of driving privileges.

(j) Transfers.

(1) Written notice shall be given to the director when any of the following occurs:

(A) A driver ceases employment with the "original employer" with whom the waiver was first granted.

(B) A change occurs in employment duties or functions.

(C) A change occurs in the driver's medical condition.

(2) Written notice shall be given by both the motor carrier and the driver within 10 days of any change in employment, duties, or functions, except in cases of termination of employment. Notice of termination of employment shall be given by both the motor carrier and the driver within 72 hours of termination.

(3) A waiver shall become void upon termination of employment from the motor carrier joint-

applicant and until all requirements in this subsection are met.

(k) Renewals. An application for renewal of waiver shall be submitted 30 days before the expiration date of the existing waiver. (Authorized by and implementing K.S.A. 1999 Supp. 66-1,112; effective May 1, 1981; amended Sept. 16, 1991; amended May 10, 1993; amended Oct. 3, 1994; amended Jan. 30, 1995; amended Jan. 4, 1999; amended July 14, 2000.)

82-4-6e. Not in active use.

Editor's Note:

Proposed regulation 82-4-6e, relating to operator licenses was rejected by L. 1981, ch. 424.

82-4-7. (Authorized by K.S.A. 66-1,129; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1981.)

82-4-7a. (Authorized by and implementing K.S.A. 66-1,129; effective May 1, 1981; revoked May 1, 1984.)

82-4-7b. (Authorized by and implementing K.S.A. 66-1,129; modified, L. 1981, ch. 424, May 1, 1981; modified, L. 1983, ch. 357, May 1, 1983; revoked May 1, 1984.)

82-4-7c to 82-4-7f. (Authorized by and implementing K.S.A. 66-1,129; effective May 1, 1981; revoked May 1, 1984.)

82-4-7g. (Authorized by and implementing K.S.A. 66-1,112, 66-1,112a, 66-1,112g; effective May 1, 1981; revoked May 1, 1984.)

82-4-7h and 82-4-7i. (Authorized by and implementing K.S.A. 66-1,129; effective May 1, 1981; revoked May 1, 1984.)

82-4-8. (Authorized by K.S.A. 66-1,129; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1981.)

82-4-8a. Accessories and equipment. Every motor vehicle that meets the definition of commercial motor vehicle shall be equipped with a fire extinguisher.

(a)(1) Every motor vehicle shall be equipped with a fire extinguisher that is properly filled and is readily accessible.

(2) The fire extinguisher shall be securely mounted on the vehicle.

(3) The fire extinguisher shall be designed, constructed, and maintained to permit visual determination of whether it is fully charged.

(4) The extinguisher shall have an extinguish-

ing agent that does not need protection from freezing.

(b)(1) The classification and rating of fire extinguishers in this regulation shall conform to the laboratory standards published in section 1-4.2 of NFPA 10, "standard for portable fire extinguishers," 1998 edition, by the national fire protection association and adopted by reference.

(2) Each fire extinguisher shall be labeled or marked with its rating.

(c) The fire extinguisher shall not use a vaporizing liquid that gives off vapors more toxic than those produced by substances shown as having a toxicity rating of five or six in the classification of comparative life hazard of gases and vapors.

(d)(1) Motor vehicles that are not used to transport hazardous materials shall be equipped with either a fire extinguisher having a rating of five B:C or two fire extinguishers, each of which has a rating of four B:C.

(2) Motor vehicles that are used to transport hazardous materials shall be equipped with a fire extinguisher having a rating of not less than 10 B:C.

(3) Cargo tank vehicles requiring flammable liquid placards shall be provided with at least one approved handheld fire extinguisher, whether a dry chemical or carbon dioxide type, having a rating of not less than 20 B:C. Two approved handheld fire extinguishers, either a dry chemical or carbon dioxide type, having a rating of not less than 10 B:C for each extinguisher, may be used in lieu of one 20 B:C rated extinguisher.

(e) Fire extinguishers shall be kept in good operating condition, shall be located in an accessible place on each motor vehicle or tank vehicle, and shall be housed in a weather-tight enclosure.

(f) The requirements of this regulation shall not apply to any bus having a seating capacity of eight or fewer persons or to a driveaway or tow-away operation. (Authorized by and implementing K.S.A. 66-1,129; effective May 1, 1981; amended May 1, 1984; amended April 30, 1990; amended May 10, 1993; amended July 14, 2000.)

82-4-8b to 82-4-8g. (Authorized by and implementing K.S.A. 66-1,129; effective May 1, 1981; revoked May 1, 1984.)

82-4-8h. Marking of intrastate commercial motor vehicles. On and after January 1, 2001, each intrastate commercial motor vehicle shall obtain a Kansas-specific USDOT number that complies with the requirements for the motor

carrier identification report and markings of commercial motor vehicles established under the provisions of 49 C.F.R. 390.21. (Authorized by and implementing K.S.A. 1999 Supp. 66-1,112; effective July 14, 2000.)

82-4-9 to 82-4-11. (Authorized by and implementing K.S.A. 66-1,129; effective Jan. 1, 1971; amended May 1, 1981; revoked May 1, 1984.)

82-4-12. (Authorized by and implementing K.S.A. 66-1,129; effective Jan. 1, 1971; modified, L. 1981, ch. 424, May 1, 1981; revoked May 1, 1984.)

82-4-13. (Authorized by and implementing K.S.A. 66-1,129; effective Jan. 1, 1971; amended May 1, 1981; revoked May 1, 1984.)

82-4-14. (Authorized by and implementing K.S.A. 66-1,129; effective Jan. 1, 1971; modified, L. 1981, ch. 424, May 1, 1981; revoked May 1, 1984.)

82-4-15 and 82-4-16. (Authorized by and implementing K.S.A. 66-1,129; effective Jan. 1, 1971; amended May 1, 1981; revoked May 1, 1984.)

82-4-17. (Authorized by and implementing K.S.A. 66-1,129; effective Jan. 1, 1971; amended May 1, 1981; revoked May 1, 1985.)

82-4-18. (Authorized by K.S.A. 66-1,129; effective Jan. 1, 1971; revoked May 1, 1981.)

82-4-19. (Authorized by and implementing K.S.A. 66-1,129; effective Jan. 1, 1971; amended May 1, 1981; revoked May 1, 1985.)

82-4-19a. (Authorized by and implementing K.S.A. 1984 Supp. 66-1,129, as amended by L. 1985, Ch. 227, Sec. 1; effective May 1, 1986; revoked Sept. 16, 1991.)

82-4-20. Transportation of hazardous materials by motor vehicles. (a) Title 49 C.F.R. 107.105, 107.502, and Parts 171, 172, 173, 177, 178, and 180 of the federal hazardous materials regulations promulgated by the U.S. department of transportation are adopted by reference except for the referenced materials listed below under 49 C.F.R. 171.7(a)(3), as in effect on October 1, 2000:

(1) ASTM A 242-81 standard specification for high-strength, low-alloy structural steel;

(2) ASTM A 370-94 standard test methods and

definitions for mechanical testing of steel products;

(3) ASTM A 441-81 standard specification for high-strength, low-alloy structural manganese vanadium steel;

(4) ASTM A 514-81 standard specification for high-yield-strength quenched and tempered alloy steel plate, suitable for welding;

(5) ASTM A 516/A 516M-90 standard specification for pressure vessel plates, carbon steel, for moderate and lower-temperature service;

(6) ASTM A 537/A 537M-91 standard specification for pressure vessel plates, heat-treated, carbon manganese-silicon steel;

(7) ASTM A 588-81 standard specification for high-strength, low-alloy structural steel with 50 Ksi minimum yield point to 4 in. thick;

(8) ASTM A 606-75 standard specification for steel sheet and strip hot-rolled and cold-rolled, high-strength, low alloy, with improved atmospheric corrosion resistance, 1975 (reapproved 1981);

(9) ASTM A 633-79a standard specification for normalized high-strength, low-alloy structural steel, 1979 edition; and

(10) ASTM A 715-81 standard specification for steel sheet and strip, hot-rolled, high-strength, low-alloy with improved formability, 1981.

(b) Packaging requirements shall be subject to the provisions of K.S.A. 66-1,129b, and amendments thereto.

(c) Whenever the adopted federal hazardous materials regulations refer to portions of the federal hazardous materials regulations that are not included under subsection (a), those references shall not be applicable to this regulation. (Authorized by K.S.A. 2001 Supp. 66-1,112, 66-1,112a, K.S.A. 66-1,112g, K.S.A. 2001 Supp. 66-1,129, and K.S.A. 2001 Supp. 66-1,129b; implementing K.S.A. 2001 Supp. 66-1,112, 66-1,129, and K.S.A. 2001 Supp. 66-1,129b; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1984; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended April 30, 1990; amended Sept. 16, 1991; amended July 6, 1992; amended May 10, 1993; amended Oct. 3, 1994; amended Jan. 30, 1995; amended Jan. 4, 1999; amended July 14, 2000; amended Jan. 31, 2003.)

INSURANCE

82-4-21. Requiring insurance. The following types of carriers shall not operate a motor vehicle, trailer, or semitrailer for the transporta-

tion of persons or property within the provisions of the motor carrier law of this state until an insurance policy is filed in compliance with K.S.A. 66-1,128, and amendments thereto, and in accordance with the regulations of the commission:

(a) Public motor carriers of property, household goods, or passengers;

(b) contract motor carriers of property, household goods, or passengers; and

(c) private motor carriers of property or household goods. (Authorized by K.S.A. 2001 Supp. 66-1,112, 66-1,112a, K.S.A. 66-1,112g; implementing K.S.A. 2001 Supp. 66-1,128; effective Jan. 1, 1971; amended May 1, 1981; amended, T-85-48, Dec. 19, 1984; amended May 1, 1985; amended Jan. 4, 1999; amended Jan. 31, 2003.)

82-4-22. Insurance requirements. (a)

(1) Before the commission issues a certificate, permit, or license to an applicant, the following types of applicant carriers shall obtain and keep in force a public liability and property damage insurance policy pursuant to K.S.A. 66-1,128, and amendments thereto:

(A) Public motor carriers of property, household goods, or passengers;

(B) contract motor carriers of property, household goods, or passengers; and

(C) private motor carriers of property or household goods.

(2) The applicant shall submit proof of the required policy by filing the uniform standard insurance form as required by K.A.R. 82-4-24a. This policy shall be issued by an insurance company or association meeting the requirements of K.S.A. 66-1,128, and amendments thereto.

(3) The insurance policy shall bind the obligors to pay compensation for the following:

(A) Injuries or death to persons, except injury to the insured's employees while engaged in the course of their employment; and

(B) loss of, or damage to, property of others, not including property usually designated as cargo, resulting from the negligent operation of the carrier.

(4) Each carrier shall file proof of insurance in amounts not less than those required in K.S.A. 66-1,128, and amendments thereto. In special cases and for good cause shown, a carrier may be required by order of the commission to file insurance in additional amounts.

(b) Each public and contract motor carrier of property and household goods that conducts in-

trastate business shall keep in force a cargo insurance policy in a minimum amount of \$3,000. The motor carrier shall submit proof of the required policy by filing the uniform standard insurance form established in 49 C.F.R. Part 387 and adopted in K.A.R. 82-4-3. This policy shall be issued by an insurance company or association meeting the requirements of K.S.A. 66-1,128, and amendments thereto.

(c) If a motor carrier is unable to provide the uniform standard insurance form required in subsection (a) or (b), the original or a certified copy of the policy with all endorsements attached may be temporarily accepted by the commission for a period of 30 days. The motor carrier shall then file the form required in subsection (a) or (b) within the 30-day period.

(d) Before the expiration date or cancellation date of an insurance policy filed in compliance with the law and the regulations of the commission, either the motor carrier shall file with the commission a new policy for the vehicle, or the vehicle shall immediately be withdrawn from service and notification of the action shall be given to the commission.

(e) Operation by a motor carrier without compliance with this regulation shall result in emergency proceedings pursuant to K.S.A. 77-536, and amendments thereto, to suspend the certificate, permit, or license issued to the carrier. Each emergency order issued by the commission shall be followed by a notice and a hearing to cancel the certificate, permit, or license, pursuant to K.S.A. 77-536, and amendments thereto. (Authorized by K.S.A. 2001 Supp. 66-1,112a, 66-1,112, K.S.A. 66-1,112g; implementing K.S.A. 2001 Supp. 66-1,128; effective Jan. 1, 1971; modified, L. 1981, ch. 424, May 1, 1981; amended May 1, 1983; amended, T-85-48, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended Oct. 3, 1994; amended Jan. 4, 1999; amended, T-82-7-26-02, July 26, 2002; amended Oct. 18, 2002.)

82-4-23. General requirements. (a) Each insurance policy shall be written in the full and correct name of the individual, partnership, limited liability partnership, limited liability company, or corporation to whom the certificate, permit, or license has been issued, and in case of a partnership, all partners shall be named.

(b) Policies filed with the commission shall be

deemed the property of the commission and shall not be returnable.

(c) Cancellation notices and expiration notices shall be filed in duplicate with the commission on the uniform notice of cancellation of motor carrier insurance policies (form K) or in compliance with 49 C.F.R. Part 387. The original copy shall be retained by the commission, and the duplicate copy shall be stamped with the date it is received and returned to the insurance company for its files.

(d) A policy that has been accepted by the commission under article 4 may be replaced by filing a new policy. If the commission determines that the replacement policy is acceptable, then the earlier-filed policy shall no longer be considered the effective policy.

(e) Public liability and property damage insurance policies filed with the commission and motor carriers registered pursuant to 49 C.F.R. Part 387 shall fulfill the insurance requirements of K.S.A. 66-1,128, and amendments thereto, and the regulations adopted by the commission.

(f) Each policy of insurance filed with the commission for approval shall be in amounts not less than the minimum of liability required under K.S.A. 66-1,128 and amendments thereto. (Authorized by K.S.A. 2001 Supp. 66-1,112, 66-1,112a, K.S.A. 66-1,112g; implementing K.S.A. 2001 Supp. 66-1,128; effective Jan. 1, 1971; amended May 1, 1981; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000; amended Jan. 31, 2003.)

82-4-24. (Authorized by K.S.A. 66-1,128; effective Jan. 1, 1971; revoked May 1, 1981.)

82-4-24a. Standard insurance forms. (a) All motor carriers shall use the uniform standard insurance forms established under the provisions of 49 C.F.R. Part 387.

(b) The uniform motor carrier bodily injury and property damage liability certificate of insurance shall be form E for intrastate regulated and interstate exempt motor carriers.

(c) The uniform motor carrier cargo certificate of insurance shall be form H for intrastate common and contract carriers.

(d) Form BMC 91 and BMC 91X shall be required for interstate regulated motor carriers in accordance with 49 C.F.R. Part 387.

(e) The uniform notice of cancellation of motor carrier insurance policies shall be form K. (Authorized by K.S.A. 1999 Supp. 66-1,112a, 66-1,112, K.S.A. 66-1,112g; implementing K.S.A.

1999 Supp. 66-1,128; effective May 1, 1981; amended May 1, 1984; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000.)

82-4-25. (Authorized by K.S.A. 66-1,128; effective Jan. 1, 1971; revoked May 1, 1981.)

82-4-25a. Endorsements. There shall be attached to all insurance policies filed with and approved by the commission an endorsement of the policy on a form specified by the commission.

The uniform motor carrier bodily injury and property damage liability insurance endorsement shall be form F.

The uniform motor carrier cargo insurance endorsement shall be form I. (Authorized by K.S.A. 66-1,112, 66-1,112a, 66-1,112g; implementing K.S.A. 66-1,128; effective May 1, 1981.)

APPLICATIONS AND OTHER GENERAL PROVISIONS

82-4-26. General requirements for certificates, permits, and licenses. (a) Except as otherwise specifically requested by the commission or its staff, each application for a certificate, permit, or license by a partnership shall be accompanied by a copy of the articles of partnership, if in writing. If the articles of partnership are not in writing, a statement of the partnership agreement shall accompany the application. Each limited liability partnership shall provide a copy of its partnership agreement. Each corporation applying for a certificate, permit, or license shall provide a copy of the articles of incorporation. Each limited liability company shall provide a copy of its articles of organization.

(b) In order to demonstrate that it is fit, willing, and able to serve, each applicant shall meet the following criteria:

(1) The applicant shall attend an educational seminar on motor carrier operations conducted by the commission, in compliance with both of the following requirements:

(A) The person attending the seminar shall be the employee of the applicant responsible for the applicant's safety functions.

(B) The person responsible for the applicant's safety functions shall submit written verification on a form provided by the commission to verify that person's attendance at the seminar.

(2) The applicant shall successfully complete a written, open-book examination on motor carrier safety issues, provided by the commission, in compliance with all of the following requirements:

(A) The person completing the examination shall be the employee of the applicant responsible for the applicant's safety functions.

(B) The person responsible for the applicant's safety functions shall submit written verification on a form provided by the commission to verify that person's completion of the examination.

(C) In order to achieve a passing score, the applicant shall score at least 80 out of 100 possible points on the written, open-book examination.

(c) Subsection (b) of this regulation shall not apply to interstate carriers filing any application according to K.A.R. 82-4-30a. (Authorized by K.S.A. 2001 Supp. 66-1,112, 66-1,112a, K.S.A. 66-1,112g; implementing K.S.A. 2001 Supp. 66-1,116, 66-1,117; effective Jan. 1, 1971; amended May 1, 1981; amended Jan. 4, 1999; amended Jan. 31, 2003.)

82-4-26a. Certain private motor carriers exempt from obtaining commission authority. (a) A private motor carrier engaged in the occasional transportation of personal property that is not for compensation and is not in the furtherance of a commercial enterprise shall not be required to apply for a certificate, permit, or license.

(b) An interstate private motor carrier shall not be required to perform any of the following to enter the state of Kansas if that private motor carrier is exempt from safety regulations pursuant to 49 C.F.R. 390.23 and 49 C.F.R. 390.25:

(1) Obtain commission authority under K.A.R. 82-4-29;

(2) carry a registration receipt pursuant to K.A.R. 82-4-30a(c); or

(3) obtain a permit and pay the special clearance fee required by K.A.R. 82-4-42(b). (Authorized by K.S.A. 2001 Supp. 66-1,112, 66-1,112a, K.S.A. 66-1,112g, K.S.A. 2001 Supp. 66-1,114, and K.S.A. 2001 Supp. 66-1,115; implementing K.S.A. 2001 Supp. 66-1,114, K.S.A. 2001 Supp. 66-1,115, K.S.A. 2001 Supp. 66-1,116, and K.S.A. 66-1,117; effective, T-82-10-25-01, Oct. 25, 2001; effective Dec. 28, 2001; amended Jan. 31, 2003.)

82-4-27. Applications for certificates of convenience and necessity and certificates of public service. (a) Each application for a certificate of convenience and necessity or a certificate of public service shall be typewritten or printed on forms furnished by the commission. An original and two copies shall be filed and shall contain the following information:

(1) The address of the principal office or place of business and the address of the residence of the applicant;

(2) a list of each motor vehicle, by make, year, and vehicle identification number (VIN), to be used by the applicant. If buses are to be used, the seating capacity of each bus shall be included;

(3) the commodity or commodities that the applicant intends to transport;

(4) a current balance sheet and income statement reflecting the most recent 12 months of data available or pro forma statement of the applicant; and

(5) evidence of compliance with the requirements of K.A.R. 82-4-26(b).

(b) Each applicant for a certificate of convenience and necessity shall file testimony that details how the applicant is fit, willing, and able to serve.

(c) In cases in which the commission deems a hearing necessary in order to evaluate an application for a certificate of public service, the applicant shall file testimony that details how the applicant is fit, knowledgeable of, and in compliance with safety regulations. (Authorized by K.S.A. 2001 Supp. 66-1,112 and 66-1,117; implementing K.S.A. 2001 Supp. 66-1,117 and K.S.A. 2001 Supp. 66-1,139; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1984; amended May 1, 1987; amended Sept. 16, 1991; amended Oct. 3, 1994; amended Jan. 4, 1999; amended Jan. 31, 2003.)

82-4-27a. Applications for transfer of certificates of convenience and necessity, certificates of public service, and permits. (a)

A certificate of convenience and necessity or a certificate of public service issued to common motor carriers under the provisions of K.S.A. 66-1,114 and K.S.A. 66-1,114b, and amendments thereto, and permits issued to contract carriers under K.S.A. 66-1,112a, and amendments thereto, shall not be assigned or transferred without the consent of the commission. The terms and provisions of any certificate may reasonably be altered, restricted, or modified by the commission, or restrictions may be imposed by the commission on any transfers when the public interest may be best served.

(b) An application for the commission's approval of the transfer of the common carrier certificate shall be completed by both transferor and transferee and filed on forms prescribed by the commission. The applicants shall file an original

and two copies of the application with the commission. The application shall contain a certified or sworn contract entered into by the parties that shall meet the following criteria:

(1) Is filed as an exhibit with the application;

(2) sets out in full the agreement between the parties; and

(3) details all transferred items including equipment, property, goodwill, assumption of debt, covenants not to compete, and any other items relevant to the financial stability of the parties.

(c) The transferor or present owner of the certificate shall file a sworn statement containing the following information:

(1) The name and address of the present owner of the certificate;

(2) the date the certificate was obtained;

(3) the reason for the transfer;

(4) an indication of whether the transferor is currently under citation or suspension by the commission;

(5) an indication of whether all ad valorem taxes have been paid to the state of Kansas, or a statement that clearly indicates which party shall be responsible for filing any delinquent rendition statement and who shall be responsible for paying any outstanding ad valorem tax obligation; and

(6) a statement that the vehicle maintenance records, driver qualification files, driver logs, and bills of lading of the transferor for the three years before the date of the transfer will be in the transferee's possession upon conclusion of the transfer.

(d) The transferee of the certificate shall file a sworn statement containing the following information:

(1) The name and address of the transferee according to one of the following:

(A) If the transferee is a corporation, the application shall designate the state in which the articles of incorporation were issued and shall provide the name and address of all officers;

(B) if the transferee is a limited liability company, the applicant shall designate the state in which the articles of organization were issued, provide the name and address of all officers, and provide a copy of the statement of foreign qualification;

(C) if the transferee is a limited liability partnership, the applicant shall designate the state in which the statement of qualification was issued, provide the name and address of all partners, and provide a copy of its statement of qualification; or

(D) if the transferee is an individual, partnership, or association, the application shall indicate the names and addresses of all parties owning an interest in the transferee and the percentage each owns;

(2) a financial statement showing in detail the financial ability and responsibility of the transferee;

(3) a statement specifying the amount the transferee borrowed or otherwise obtained to make the purchase of the items detailed in subsection (b) and specifying all details regarding the transactions;

(4) a sworn statement from the transferee that the vehicle maintenance records, driver qualification files, driver logs, and bills of lading of the transferor will be in the transferee's possession for a period of three years from the date of the transfer. The transferee shall accept all responsibility for the books and records, and shall have them available at any time for inspection by the commission or the commission's employees; and

(5) if the transferee is not currently a motor carrier holding authority from the commission, evidence of compliance with K.A.R. 82-4-26(b). (Authorized by K.S.A. 66-1,117, K.S.A. 2001 Supp. 66-1,112; implementing K.S.A. 2001 Supp. 66-1,112a, K.S.A. 2001 Supp. 66-1,117 and K.S.A. 2001 Supp. 66-1,118; modified, L. 1981, ch. 424, May 1, 1981; amended May 1, 1983; amended May 1, 1987; amended Sept. 16, 1991; amended May 10, 1993; amended Oct. 3, 1994; amended Jan. 4, 1999; amended Jan. 31, 2003.)

82-4-27b. (Authorized by K.S.A. 1982 Supp. 66-1,112; implementing K.S.A. 66-1,117, K.S.A. 1982 Supp. 66-1,112, 66-1,114; effective May 1, 1983; revoked May 1, 1985.)

82-4-27c. Applications for transfer for purposes of change in the form of a business organization. (a) Any application to transfer a certificate of convenience and necessity or a certificate of public service issued to a common motor carrier or to transfer any permit issued to a contract carrier shall be considered by the commission without a hearing, pursuant to K.S.A. 66-1,115a, and amendments thereto, when the transfer is required because of any change in the form of business organization, including the following:

(1) Incorporation of the limited liability company, sole proprietorship, limited liability partnership, or partnership holding the certificate or permit to be transferred;

(2) the dissolution of the corporation holding the certificate or permit and the formation of a limited liability company, partnership, limited liability partnership, or sole proprietorship by the entities comprising the former corporation;

(3) the dissolution of the limited liability company holding the certificate or permit and the formation of a partnership, limited liability partnership, or sole proprietorship by the entities comprising the former limited liability company;

(4) the dissolution of the limited liability partnership holding the certificate or permit and the formation of a limited liability company, partnership, or sole proprietorship by the entities comprising the former limited liability partnership; or

(5) the dissolution of the partnership holding the certificate or permit and formation of a sole proprietorship by a former partner.

(b) The application for transfer shall contain all applicable information required by K.A.R. 82-4-27a and a signed affidavit from the transferor stating both of the following:

(1) That the transfer is for any of the following:

(A) The incorporation of the present limited liability company, sole proprietorship, partnership, or limited liability partnership;

(B) the dissolution of a corporation to form a limited liability company, partnership, limited liability partnership, or sole proprietorship;

(C) the dissolution of a limited liability company to form a partnership, limited liability partnership, or sole proprietorship;

(D) the dissolution of a limited liability partnership to form a limited liability company, partnership, or sole proprietorship;

(E) the dissolution of partnership to form a sole proprietorship; or

(F) any other change in the form of business; and

(2) that the management, operations, and equipment of the transferee will be the same as that of the transferor. (Authorized by K.S.A. 1999 Supp. 66-1,112, 66-1,112a, K.S.A. 66-1,117; implementing K.S.A. 1999 Supp. 66-1,112, 66-1,112a, 66-1,114, 66-1,115, 66-1,115a, K.S.A. 66-1,117; effective May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended Sept. 16, 1991; amended July 6, 1992; amended Jan. 4, 1999; amended July 14, 2000.)

82-4-27d. (Authorized by K.S.A. 1983 Supp. 66-1,112, K.S.A. 66-1,112a, K.S.A. 66-1,117; implementing K.S.A. 1983 Supp. 66-1,112,

K.S.A. 66-1,112a, K.S.A. 1983 Supp. 66-1,114 and K.S.A. 66-1,115; effective May 1, 1985; revoked May 1, 1986.)

82-4-27e. Application to merge or consolidate intrastate common or contract authority; or to acquire control or management of an intrastate common or contract motor carrier operation. (a) All individuals, partnerships, limited liability companies, limited liability partnerships, and corporations who intend to merge, consolidate, or acquire control or management of a motor carrier operation that possesses common or contract interstate authority as well as intrastate authority, or possesses intrastate authority, shall first apply to the commission for authority to do so. The merger, consolidation, or acquisition may be accomplished by means including stock acquisition by a new motor carrier, new owner, or new majority stockholder; transfer of a partnership interest; or a conditional sales contract.

(b) Each entity who has received approval or exemption from the relevant federal agency to make any transaction described in subsection (a) shall send a copy of that approval or exemption to the commission and provide the information specified in subsection (d) of this regulation on the required application.

(c) Each entity that desires to make any transaction described in subsection (a) and has not received approval or exemption of the relevant federal authority shall provide the information specified in subsections (d) and (e) of this regulation and comply with the requirements of subsection (f) of this regulation.

(d) The applicant shall file an original and two copies of the application with the commission. The application shall contain the following information:

(1) The background of the transaction, including the names of the entities involved, their addresses, the reasons for the transaction, and items to be retained, including equipment, property, and any other item relevant to the transaction; and

(2) a signed affidavit stating whether or not all ad valorem taxes have been paid to the state of Kansas, and who shall be responsible for paying any outstanding ad valorem tax obligation.

(e) Those applicants who have not received approval or exemption from the relevant federal agency shall also provide the following information:

(1) With respect to a partnership transaction, the percentage of the partnership being transferred and the percentage of each partner as a result of the transaction;

(2) with respect to a stock transaction, the total number of shares outstanding, the total number of shares being transferred and to whom, and the total number of shares any transferee held before the stock transaction; and

(3) unless preempted by federal law, evidence of compliance by the acquiring party or transferee with K.A.R. 82-4-26(b).

(f) Any application filed under this regulation may be granted without hearing if no protests are lodged and the commission does not require further information to make a determination on the application. (Authorized by K.S.A. 2001 Supp. 66-1,112 and K.S.A. 2001 Supp. 66-1,112a; implementing K.S.A. 2001 Supp. 66-1,112a, K.S.A. 66-1,112c, K.S.A. 2001 Supp. 66-1,114, 66-1,114b, and 66-1,118; effective May 1, 1986; amended July 6, 1992; amended Jan. 4, 1999; amended July 14, 2000; amended Jan. 31, 2003.)

82-4-27f. (Authorized by K.S.A. 1997 Supp. 66-1,112, K.S.A. 66-1,112a, K.S.A. 66-1,117; implementing K.S.A. 1997 Supp. 66-1,112, K.S.A. 66-1,112a, K.S.A. 66-1,114, and 66-1,115; effective May 1, 1986; amended May 1, 1987; amended Oct. 3, 1994; amended Jan. 4, 1999; revoked July 14, 2000.)

82-4-27g. Applications for transfer for purposes of name change of a motor carrier.

(a) Any application to transfer a certificate of convenience and necessity or a certificate of public service because of a name change of an entity holding a certificate or permit shall be considered by the commission without a hearing, pursuant to K.S.A. 66-1,115a, and amendments thereto. The application shall state the reasons for the name change.

(b) Any name change requested because of a change in the form of business shall be filed pursuant to K.A.R. 82-4-27c. (Authorized by and implementing K.S.A. 1999 Supp. 66-1,115a; effective July 6, 1992; amended Jan. 4, 1999; amended July 14, 2000.)

82-4-28. Application for contract carrier permit. Each application for a contract carrier permit shall be typewritten or printed on forms furnished by the commission. An original and two copies shall be filed and shall contain the following

information: (a) The name, street address, and mailing address of the applicant, and the title under which the applicant proposes to operate;

(b) a list of the motor vehicles by make, year, and vehicle identification number (VIN) to be used by the applicant. If buses are to be used, the seating capacity of the buses shall be included;

(c) the commodities that the applicant intends to transport;

(d) full and detailed information concerning the financial condition of the applicant; and

(e) evidence of compliance with K.A.R. 82-4-26(b). (Authorized by K.S.A. 2001 Supp. 66-1,112a, 66-1,117; implementing K.S.A. 2001 Supp. 66-1,112b, 66-1,115, 66-1,117, and 66-1,139; effective Jan. 1, 1971; amended May 1, 1981; amended Oct. 3, 1994; amended Jan. 4, 1999; amended Jan. 31, 2003.)

82-4-28a. Application to transfer contract carrier permits. Each application for approval by the commission of the transfer or assignment of a contract carrier permit shall be filed on a form prescribed by the commission and shall contain the following information:

(a) The full and accurate name and address of the transferor and transferee (purchaser);

(b) a designation of the transferee as an individual, partnership, limited liability partnership, limited liability company, corporation, or other;

(c) the name and address of the officers if the transferor is a corporation, and the name of the state where incorporated;

(d) the name and address of the officers if the transferor is a limited liability company, and the name of the state where organized;

(e) the name and address of the partners of the transferor if the transferor is a limited liability partnership, and the name of the state where organized;

(f) if the transferor is an individual or partnership, the names and addresses of all parties owning an interest in the motor carrier line of the organization;

(g) a complete statement of financial condition of the transferee showing all assets of every kind and character and all liability of every kind and character, including debts secured by mortgages, judgments, current indebtedness, and all other liabilities;

(h) a list of the motor vehicles by make, year, and vehicle identification number (VIN) to be used by the applicant;

(i) a written contract of transfer or assignment entered into by the transferor and transferee; and

(j) if the transferee is not currently a motor carrier holding authority from the commission, evidence of compliance with K.A.R. 82-4-26(b). (Authorized by K.S.A. 2001 Supp. 66-1,112a, 66-1,117; implementing K.S.A. 66-1,112c, K.S.A. 2001 Supp. 66-1,117; effective May 1, 1981; amended Jan. 4, 1999; amended Jan. 31, 2003.)

82-4-28b. Consolidation of motor carrier certificate. If any motor carrier holds more than one certificate, it may apply to the commission for consolidation of its common carrier authority into one certificate. (Authorized by and implementing K.S.A. 1997 Supp. 66-1,112; effective May 1, 1983; amended Jan. 4, 1999.)

82-4-29. Applications for private carrier permits. All applications for private carrier permits shall be on forms furnished by the commission and shall contain the following: (a) The name, street address, and mailing address of the applicant, and the title under which the applicant proposes to operate;

(b) the financial condition of the applicant;

(c) a list of motor vehicles to be used by the applicant by make, year, and vehicle identification number;

(d) the commodities that the applicant intends to transport;

(e) the nature of the enterprise or enterprises for which commodities are to be transported; and

(f) evidence of compliance with K.A.R. 82-4-26(b). (Authorized by K.S.A. 66-1,112g, K.S.A. 2001 Supp. 66-1,117; implementing K.S.A. 66-1,112g, K.S.A. 2001 Supp. 66-1,115, K.S.A. 2001 Supp. 66-1,117; effective Jan. 1, 1971; amended May 1, 1981; amended May 10, 1993; amended Jan. 31, 2003.)

82-4-29a. Application for authorization of joint registration of equipment. (a) Each application for authorization of joint registration of equipment shall be typewritten or printed on forms furnished by the commission. An original and two copies shall be filed and shall contain the following:

(1) The full and accurate names and addresses of the applicants;

(2) the motor carrier identification number under which authority for joint registration of equipment is sought;

(3) a balance sheet and income statement is-

sued for the most recent 12 months of data available; and

(4) a certified or sworn statement by each applicant indicating all of the following:

(A) The applicant will jointly be in compliance with the state laws and regulations of the commission.

(B) Equipment utilized by the applicant will be properly marked and identified to reflect the authority under which the equipment is being jointly operated.

(C) The applicant presently has registered and is operating units of motor carrier equipment pursuant to the operating authority issued by the commission.

(D) The applicant will provide a list of the names of other carriers with whom the applicant currently has joint registration issued by the commission.

(E) The applicant will provide a list of the equipment to be registered under the joint application.

(b) If either applicant does not currently hold authority from the commission to operate as a motor carrier, that carrier shall also provide evidence of compliance with K.A.R. 82-4-26(b). (Authorized by K.S.A. 2001 Supp. 66-1,112; implementing K.S.A. 2001 Supp. 66-1,112 and 66-1,139; effective May 1, 1983; amended Oct. 3, 1994; amended Jan. 4, 1999; amended Jan. 31, 2003.)

82-4-30. (Authorized by K.S.A. 66-1,112; effective Jan. 1, 1971; revoked May 1, 1981.)

82-4-30a. Applications for interstate registration. (a) (1) For the purposes of this regulation, "base state" shall have the meaning assigned to "base-state" in 49 U.S.C. 14504a(a)(2), as adopted in paragraph (a)(2) of this regulation.

(2) The following federal laws, as in effect on August 10, 2005, are hereby adopted by reference:

(A) 49 U.S.C. 14504a(a)(2); and

(B) 49 U.S.C. 14504a(e).

(3) Each interstate motor carrier designating Kansas as the carrier's base state and operating in interstate commerce over the highways of this state under authority issued by the relevant federal agency shall file the uniform application for registration issued by the relevant federal agency. The carrier shall file this application for registration with the transportation division of the state corporation commission.

(b) Each interstate motor carrier designating

Kansas as the carrier's base state shall pay a fee to the state corporation commission. This fee shall be in accordance with the fee schedule in 49 C.F.R. 367.20, as in effect on February 26, 2008 and hereby adopted by reference.

(c) An interstate regulated motor carrier shall not operate in interstate commerce over the highways of this state unless the carrier is registered in the carrier's base state pursuant to 49 U.S.C. 14504a(a)(2). (Authorized by K.S.A. 2007 Supp. 66-1,112; implementing K.S.A. 2007 Supp. 66-1,108b and 66-1,116, as amended by 2008 SB 462, Sec. 3; modified, L. 1981, ch. 424, May 1, 1981; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000; amended Jan. 31, 2003; amended, T-82-10-8-07, Oct. 8, 2007; amended, T-82-12-10-07, Dec. 10, 2007; amended July 18, 2008.)

82-4-30b. (Authorized by K.S.A. 1984 Supp. 66-1333; implementing K.S.A. 1984 Supp. 66-1329, 66-1330, 66-1331, 66-1332, 66-1334; effective, T-85-48, Dec. 19, 1984; effective May 1, 1985; revoked Jan. 4, 1999.)

82-4-31. Issuance of registration receipts to interstate regulated common and contract carriers. (a) A registration receipt shall not be issued to an interstate regulated motor carrier with Kansas as its registration state until the motor carrier is in full compliance with all of the provisions of the Kansas laws.

(b) Before any interstate regulated motor carrier operates a vehicle within the borders of the state of Kansas in interstate commerce, the motor carrier shall place one current registration receipt issued by the carrier's registration state in each motor vehicle, pursuant to the provisions of federal law, 49 C.F.R. Part 367.

(c) The registration receipt shall be maintained in the cab of the vehicle for which prepared whenever the vehicle is operated under the authority of the carrier identified on the receipt.

(d) Upon demand, a driver shall show the registration receipt to any authorized agent or representative of the commission, or to the Kansas highway patrol or any other law enforcement officer in the state.

(e) Each registration receipt issued by the commission shall be valid through December 31 in the calendar year for which it is issued.

(f) A motor carrier with Kansas as its registration state shall operate only the number of motor

vehicles in Kansas for which it has paid the appropriate fees.

(g) Fees may be remitted by personal check, cash, certified check, money order, or electronic transfer of funds. (Authorized by K.S.A. 1999 Supp. 66-1,112 and 66-1,112a; implementing K.S.A. 1999 Supp. 66-1,112, 66-1,112a, and 66-1a01; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1984; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000.)

82-4-32. Completing motor carrier applications. (a) Each applicant filing an application for an intrastate common carrier certificate, interstate license, intrastate contract carrier permit, or private carrier permit shall provide the commission with all information required to complete the application within 30 days of the original filing date. Any application that is not completed within 30 days of the original filing date may be dismissed without further notice at the discretion of the commission.

(b) All information required to complete a filing for a certificate of convenience and necessity, certificate of public service, intrastate contract carrier permit, or a private carrier permit shall be provided to the commission within 90 days of the date of application, or within 30 days after the date of the hearing if the application requires a hearing. If the required information is not provided within the applicable time period, the application may be dismissed by the commission without further notice.

(c) Required application fees shall not be refunded if the application is dismissed by the applicant or the commission.

(d) Fees may be remitted by personal check, cash, certified check, money order, or electronic transfer of funds. (Authorized by K.S.A. 2001 Supp. 66-1,112, 66-1,112a, K.S.A. 66-1,112g and K.S.A. 2001 Supp. 66-1,117; implementing K.S.A. 2001 Supp. 66-1,117; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1987; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000; amended Jan. 31, 2003.)

82-4-33. Service of process. (a) The applicant for a certificate, permit, or license who is not a resident of Kansas shall not be granted a certificate, permit, or license until the applicant designates an agent who is a resident of the state of Kansas to be a process agent for and on behalf of the applicant.

(b) Each interstate regulated carrier shall provide and maintain the name of the carrier's agent for service of process with the carrier's registration state, pursuant to 49 C.F.R. Part 367.

(c) This regulation shall not apply to private carrier applicants. This regulation shall not be construed to relieve motor carriers from the obligation to comply with K.S.A. 60-305a, and amendments thereto. (Authorized by K.S.A. 1999 Supp. 66-1,112 and 66-1,112a; implementing K.S.A. 1999 Supp. 66-1,112, 66-1,112a, and 66-1,112b; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1985; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000.)

82-4-34. (Authorized by K.S.A. 66-1,112, 66-1,112a, 66-1,112g; implementing K.S.A. 66-1,112, 66-1,112a, 66-1,112g; effective Jan. 1, 1971; amended May 1, 1981; revoked May 10, 1993.)

82-4-35. Preserving certificates or permits. (a) All motor carriers and drivers of vehicles registered under certificates or permits shall, at all times, carry on every vehicle operated under the certificate or permit an authority card, issued by the commission, that defines the operating authority granted by the commission under the certificate or permit.

(b) Copies of certificates or permits issued by the commission shall be carefully preserved by the holders. (Authorized by K.S.A. 2001 Supp. 66-1,112a, K.S.A. 2001 Supp. 66-1,112, K.S.A. 66-1,112g; implementing K.S.A. 2001 Supp. 66-1,112a, K.S.A. 2001 Supp. 66-1,112, K.S.A. 66-1,112g, K.S.A. 2001 Supp. 66-1,139; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1984; amended May 1, 1987; amended Jan. 31, 2003.)

82-4-35a. Inspections of motor carrier documents. The following documents shall be held available upon request for inspection by any duly authorized representative of the commission, the state highway patrol, or other law enforcement officers:

- (a) Registration receipts;
- (b) authority cards;
- (c) driver logs;
- (d) bills of lading or shipping receipts;
- (e) way bills;
- (f) freight bills;
- (g) run tickets, or equivalent documents, and orders;

(h) cab cards;
 (i) fuel receipts;
 (j) toll road receipts; and
 (k) other documents that would indicate compliance with hours of service requirements. (Authorized by K.S.A. 1999 Supp. 66-1,112a, 66-1,112, and K.S.A. 66-1,112g; implementing K.S.A. 1999 Supp. 66-1,112a, 66-1,112, K.S.A. 66-1,112g, 66-1,131, and K.S.A. 1999 Supp. 66-1,139; effective May 1, 1987; amended May 10, 1993; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000.)

82-4-36. (Authorized by K.S.A. 66-1,112, 66-112a, 66-1,112f, 66-1,112g; implementing K.S.A. 66-123, 66-1,112g; effective Jan. 1, 1971; amended May 1, 1981; revoked May 1, 1984.)

82-4-37. Identification cards. Holders of certificates, permits, or licenses shall carry on every vehicle operated under the certificates, permits, or licenses, or pursuant to 49 C.F.R. Part 367, an identification card issued by the commission during the current calendar year showing the certificate, permit, or license number, and either a complete description of the vehicle or a registration receipt, or both, issued by their registration state. The identification card or registration receipt, or both, shall be carried in the driver's compartment of the vehicle. (Authorized by K.S.A. 1999 Supp. 66-1,112, 66-1,112a, K.S.A. 66-1,112g; implementing K.S.A. 1999 Supp. 66-1,112, 66-1,112a, K.S.A. 66-1,112g, K.S.A. 1999 Supp. 66-1,139; effective Jan. 1, 1971; amended May 1, 1981; amended May 10, 1993; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000.)

82-4-38. (Authorized by K.S.A. 66-1,112, K.S.A. 66-1,112a, K.S.A. 66-1,112g, K.S.A. 66-1333; implementing K.S.A. 66-1,129 as amended by L. 1988, ch. 356 §242, K.S.A. 66-1,139 as amended by L. 1989, ch. 208, §1, K.S.A. 66-1329; effective Jan. 1, 1971; amended May 1, 1981; amended, T-85-48, Dec. 19, 1984; amended May 1, 1985; amended April 30, 1990; revoked May 10, 1993.)

82-4-39. Surrender of identification cards. (a) If operations are abandoned under any certificate, permit or license or upon cancellation or revocation thereof by the commission, all identification cards, authority cards and registration receipts issued under the certificate, permit or li-

cense shall be immediately forwarded to the commission.

(b) If by order of the commission or otherwise, operations are suspended under any certificate, permit or license, the carrier shall immediately remove all identification cards issued under the certificate, permit or license, from all vehicles. The identification cards shall be preserved by the carrier who shall, at the request of the commission, immediately forward them to the commission.

(c) If a motor vehicle is removed from service and withdrawn from registration with the commission, all identification cards issued to the motor vehicle shall be immediately forwarded to the commission. (Authorized by and implementing K.S.A. 66-1,112, 66-1,112a, 66-1,112g; effective Jan. 1, 1971; amended May 1, 1981; amended May 10, 1993; amended Oct. 3, 1994.)

82-4-40. Passengers on property-carrying vehicles. A certificate, permit or license authorizing transportation of property does not authorize the transportation of persons. Motor carriers operating solely as carriers of property shall not transport passengers or permit passengers to be transported with or without compensation. The owner of the property being transported, or his or her lawful agent, may be carried in the same vehicle that is transporting his or her property. (Authorized by K.S.A. 66-1,112, 66-1,112a, 66-1,112g; implementing K.S.A. 66-1,108, 66-1,112, 66-1,112a, 66-1,112g; effective Jan. 1, 1971; amended May 1, 1981.)

82-4-41. (Authorized by K.S.A. 66-1,112; effective Jan. 1, 1971; revoked May 1, 1981.)

82-4-42. Emergency and occasional equipment. (a) Holders of certificates, permits, and licenses who have motor vehicles properly registered with the commission and who have complied with all lawful requirements may in case of emergency be authorized by the commission by fax, or otherwise, to operate additional equipment or special equipment in substitution of regular registered equipment.

(1) Regular registered equipment for which special equipment is being substituted shall not be operated at the same time that the special equipment is being operated.

(2) The registration fee for the additional or special equipment shall be \$2.50 for each truck or truck-tractor for a period of 72 hours.

(3) In the event of seasonal emergency, a 30-

day temporary wire or letter of authority may be issued.

(b) Each truck or truck-tractor operator that enters the state of Kansas on occasional trips and is qualified under the law to enter the state on a special permit shall pay a special clearance fee of \$5.00 per trip if the operator meets the following conditions:

(1) Is operating as a private motor carrier of property or an interstate exempt motor carrier;

(2) is not operating under commission authority and has no commission permit, license, or certificate number; and

(3) is not operating in interstate commerce with proper registration in a base state other than Kansas. The \$5.00 fee shall be paid when the truck or truck-tractor is loaded or will be loaded or unloaded in Kansas, regardless of the number of miles traveled.

(c) The time, manner, and method of operating the additional or special equipment shall be entirely within the discretion of, and shall be determined solely by, the commission.

(d) A motor carrier operating in interstate commerce under the provisions of 49 C.F.R. Part 367 shall not be eligible to register equipment under subsections (a) and (b) of this regulation. (Authorized by K.S.A. 1999 Supp. 66-1,112, 66-1,112a, K.S.A. 66-1,112g, 66-1,140; implementing K.S.A. 66-1,140; effective Jan. 1, 1971; amended May 1, 1981; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000.)

RULES APPLICABLE ONLY TO PUBLIC CARRIERS

82-4-43. (Authorized by and implementing K.S.A. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; revoked May 1, 1984.)

82-4-44. Discontinuing service. Discontinuance of service by a common motor carrier without approval of the commission shall be deemed grounds for forfeiture of the certificate. (Authorized by K.S.A. 66-1,112, 66-1,119; effective Jan. 1, 1971.)

82-4-45. (Authorized by K.S.A. 66-1,112, 66-1,116; effective Jan. 1, 1971; revoked May 1, 1981.)

82-4-46. Uniform system of accounts and annual reports. Each Kansas intrastate common motor carrier of household goods shall maintain a uniform system of accounts, as for-

mulated and compiled by the commission, and shall file an annual financial report on forms prescribed or approved by the commission. The annual financial report for the preceding calendar year shall be filed on or after January 1, but not later than May 1, of each year. (Authorized by K.S.A. 2001 Supp. 66-1,112; implementing K.S.A. 2001 Supp. 66-123 and K.S.A. 2001 Supp. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1986; amended Jan. 4, 1999; amended Jan. 31, 2003.)

82-4-47. Loss or damage to baggage. A common motor carrier's liability in case of loss or damage to baggage while in the carrier's possession shall be determined in accordance with the provisions of the motor carrier's tariff on file with the commission, provided, that the provisions are not in conflict with the statutes or the established common law of the state of Kansas. (Authorized by and implementing K.S.A. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981.)

82-4-48. Bills of lading, way and freight bills. (a) Every common and contract motor carrier of household goods electing to be governed by K.A.R. 82-4-48a, K.S.A. 66-304, and K.S.A. 84-7-101 through K.S.A. 84-7-603, and amendments thereto, shall issue a bill of lading for household goods tendered for intrastate commerce.

(b) Every common and contract motor carrier transporting property, other than household goods, and electing to be governed by K.A.R. 82-4-48a, K.S.A. 66-304, and K.S.A. 84-7-101 through K.S.A. 84-7-603, and amendments thereto, shall issue a bill of lading for property tendered for intrastate commerce.

(c) All bills of lading shall include the following:

- (1) The name and address of the motor carrier;
- (2) the name and address of the consignor and consignee;
- (3) the date of shipment;
- (4) the origin and destination of the shipment;
- (5) the signature of the motor carrier or its agent;

(6) a description of the shipment, including the number of packages, or the weight or volume,

(7) a released value clause as prescribed in K.S.A. 84-7-309, and amendments thereto, printed on the front of the document, if applicable; and

(8) on request of the shipper, a written or electronic copy of the rate, classification, rules, and practices upon which any rate applicable to a ship-

ment, or agreed to between the shipper and the carrier, is based. The copy provided by the carrier shall clearly state the dates of applicability of the rate, classification, rules, or practices.

(d) Bills of lading, way bills, and freight bills may be included on one form.

(e) All transporters of crude petroleum oil, sediment oil, water, or brine shall require their drivers to possess a run ticket or equivalent documents as specified in K.A.R. 82-3-127.

(f) The documents required in subsections (a), (b), and (e) shall be held available upon request for inspection by any duly authorized representative of the commission, the state highway patrol, or other law enforcement officers.

(g) The bill of lading, way bill, freight bill, run ticket, or equivalent documents as specified in K.A.R. 82-3-127 shall be retained by the transporter for at least three years from the date of shipment. (Authorized by K.S.A. 1997 Supp. 66-1,112; implementing K.S.A. 1997 Supp. 66-1,112a, K.S.A. 55-1504, K.S.A. 1997 Supp. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended, T-83-45, Dec. 8, 1982; modified, L. 1983, ch. 362, May 1, 1983; amended Jan. 4, 1999.)

82-4-48a. Motor carriers of property other than household goods carriers electing to be subject to uniform bills of lading and antitrust immunity regulations. (a) Every intrastate common and contract motor carrier of property, other than household goods carriers, may elect to be subject to regulations related to the following:

(1) Uniform cargo liability rules for property being transported pursuant to K.S.A. 66-304 and amendments thereto, and K.A.R. 82-4-48 through K.A.R. 82-4-85;

(2) uniform bills of lading or receipts for property being transported pursuant to K.S.A. 66-304 and amendments thereto, K.A.R. 82-4-48, and K.S.A. 84-7-101 through 84-7-603 and amendments thereto; or

(3) antitrust immunity for joint line rates or routes, classification, and mileage guides, pursuant to K.A.R. 82-4-68 through K.A.R. 82-4-85.

(b) All motor carriers electing to be subject to an existing commission regulation dealing with one or more of the above subjects shall file written notice with the commission. The written notice filed with the commission shall specify the commission regulations that apply and provide one-

day notice of adoption. If the motor carrier elects to opt out of any prior commission regulation listed above, it shall file written notice with the commission providing 30-day notice of abrogation. (Authorized by and implementing K.S.A. 1997 Supp. 66-1,112, 66-1,112a, K.S.A. 66-1,112g and 66-1,129; effective Jan. 4, 1999.)

82-4-49. (Authorized by K.S.A. 66-1,112; effective Jan. 1, 1971; revoked May 1, 1981.)

82-4-49a. (Authorized by and implementing K.S.A. 1983 Supp. 66-1,112; effective May 1, 1981; amended May 1, 1984; revoked May 1, 1986.)

82-4-49b. (Authorized by and implementing K.S.A. 1984 Supp. 66-1,112; effective May 1, 1986; revoked Jan. 31, 2003.)

82-4-49c. (Authorized by and implementing K.S.A. 1997 Supp. 66-1,112; effective May 1, 1986; amended Jan. 4, 1999; revoked Jan. 31, 2003.)

82-4-49d. (Authorized by and implementing K.S.A. 1984 Supp. 66-1,112; effective May 1, 1986; revoked Jan. 31, 2003.)

82-4-49e. (Authorized by and implementing K.S.A. 1984 Supp. 66-1,112; effective May 1, 1986; revoked Jan. 31, 2003.)

82-4-50. Passenger waiting rooms. A common motor carrier of passengers shall provide a suitable place adequately heated and ventilated at points where it is necessary that paid passengers wait an appreciable time before boarding buses or where it is necessary that paid passengers, holding tickets for through transportation, wait for a connection with another carrier to proceed on to final destination. Nothing in this rule shall be construed as requiring common motor carriers of passengers to provide waiting places along rural roadsides between villages or cities. (Authorized by and implementing K.S.A. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981.)

82-4-51. Treatment of passengers by common carrier. (a) Common motor carriers of persons and drivers or operators of a motor vehicle used in the transportation of persons the motor carrier shall not refuse to carry any person offering himself or herself for carriage at any regular stopping place, if the person tenders the regular fare to any regular stopping place on the route operated by the motor carrier. The carrier oper-

ating the motor vehicle has the right to carry passengers for hire to that point under a certificate regularly issued by the commission under the provisions of the motor carrier law, unless at the time the person offers himself or herself the seats of the motor vehicle are fully occupied.

(b) Transportation shall be refused to any person who is in an intoxicated condition or who is conducting himself or herself in a boisterous or disorderly manner, or is using profane language, or is unable to reasonably care for himself or herself unless accompanied by a capable attendant. The driver or operator of motor vehicles used in the transportation of persons as a common motor carrier shall have the right to supervise the seating of his or her passengers at all times. (Authorized by and implementing K.S.A. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981.)

82-4-52. (Authorized by K.S.A. 66-1,112, 66-1,112a, 66-1,112f; implementing K.S.A. 66-1,112f; effective Jan. 1, 1971; amended May 1, 1981; revoked May 1, 1983.)

COMMON CARRIER TARIFFS

82-4-53. Common and contract motor carrier rates and charges. (a) Common motor carriers and contract motor carriers of property or passengers that are engaged in intrastate commerce in Kansas shall maintain on file with the commission a copy of the tariff publications applicable to their lines between points in Kansas. The carriers shall keep open for public inspection, at their principal offices and locations at which they have employed exclusive agents, all intrastate tariff publications applicable to their lines from or to their stations.

(b) Tariff publications changes shall be made subject to 30-day notice to the public and the commission, unless otherwise authorized by the commission. Tariff publications of contract motor carriers effecting changes resulting in increases in charges, either directly or by means of any change in the regulation or practice affecting a charge or value of service, may be filed on one day's notice to the commission and the public. Applicants granted new authority may file tariffs to be effective on one day's notice. Transferees may adopt the existing tariffs of transferors to be effective on one day's notice.

(c) Tariff publication, except general rate increases, shall not go into effect without prior approval of the commission. The publications shall

be subject to protest and suspension. All publications shall be accompanied by a full and complete statement citing the reasons and justifications for the changes.

(d) General rate increases shall be made only by filing an application and after approval of the commission by written order.

(e) Protests of tariff publications shall be considered only if received by the commission at least 12 days before the published effective date of publications. Pursuant to protest or on the commission's own motion without protest, postponement of an effective date may be ordered by the commission to permit the matter to be properly investigated. Unless otherwise ordered by the commission, publication shall become effective as filed. Publications shall not be postponed to exceed 90 days.

(f) All tariff publications shall be made in compliance with the commission's regulations governing the publication and filing of common and contract motor carrier rates and charges. (Authorized by K.S.A. 1997 Supp. 66-1,112, 66-1,112a, K.S.A. 66-1,112f; implementing K.S.A. 1997 Supp. 66-117, 66-1,112, 66-1,112a, 66-1,112e, K.S.A. 66-1,112f; effective Jan. 1, 1971; amended May 1, 1981; amended Jan. 4, 1999.)

82-4-54. Tariff publication to become effective on less than 30 days notice. (a) Departure from the commission's requirement in K.A.R. 82-4-53(b) that tariff publications become effective on 30 days' notice may be permitted by the commission, if good and sufficient cause is shown to convince the commission that publication should be made on short notice.

(b) The applicant shall provide all related facts or circumstances that may aid the commission in determining if the request is justified. If permission to establish provisions on less than required notice is sought, the applicant shall state why the proposed provisions could not have been established upon 30 days' notice.

(c) Permission to allow a tariff to become effective on less than 30 days' notice shall be granted in cases for which good cause is shown. The desire to meet tariff publications of a competing carrier that has been filed on 30 days' notice or one-day notice may be considered a factor for permitting publication on short notice. (Authorized by K.S.A. 1997 Supp. 66-1,218, 66-1,112, 66-1,112a and K.S.A. 66-1,112f; implementing K.S.A. 1997 Supp. 66-1,218, 66-1,112, 66-1,112e

and K.S.A. 66-1,112f; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1987; amended Jan. 4, 1999.)

82-4-55. Procedure for filing a request for postponement of tariff publications. (a) The protested tariff publication sought to be postponed shall be identified by making reference to the name of the publishing carrier or agent, to the motor carrier's K.C.C. tariff number, and to the specific items or particular provisions protested. The protest shall state the grounds, indicate in what respect the protested tariff publication is considered unlawful, and state what the protestant offers as a substitution. Protests shall be considered as addressed to the discretion of the commission. A protest shall not include a request that it also be considered as a formal complaint. Should a protestant desire to proceed further against a tariff publication that is not postponed or that has been postponed and the postponement vacated, a separate, later, formal complaint or petition shall be filed.

(b) Protests against, and requests for, postponement of tariff publications filed under this regulation shall not be considered unless made in writing and filed with the commission at Topeka, Kansas. The original and five copies of each request for postponement shall be filed with the commission at least 12 days before the effective date of the tariff publication, unless the protested publication was filed on less than 30 days' notice under the authority of this commission, in which event the protests shall be filed at the earliest possible date. In an emergency, protests submitted by fax shall be acceptable if they fully comply with subsection (a) of this regulation and copies are immediately faxed by protestants to the respondent carriers or their publishing agents. An original and five copies of the fax shall immediately be mailed by the protestants to the commission at Topeka.

(c) An original and five copies of each protest or reply filed under this regulation shall be filed with the commission, and one copy of the protest shall simultaneously be served upon the publishing carrier or agent and upon other known interested parties.

(d) A reply to a protest filed under this regulation shall be filed and served promptly.

(e) An order instituting an investigation shall be served by the commission upon respondents. If the respondent fails to comply with any require-

ments or time period specified in the order, the respondent shall be deemed to be in default and to have waived any further hearing. The investigation may then be decided without further proceedings. (Authorized by K.S.A. 1997 Supp. 66-1,112; implementing K.S.A. 66-108, K.S.A. 1997 Supp. 66-1,112e, K.S.A. 66-1,112f; effective Jan. 1, 1971; amended May 1, 1981; amended Jan. 4, 1999.)

82-4-56. (Authorized by K.S.A. 66-1,112; effective Jan. 1, 1971; revoked May 1, 1981.)

82-4-56a. Common and contract motor carrier tariffs. (a) Tariffs shall be typewritten, printed, or reproduced by other similar, durable process, upon paper of good quality, 8 by 11 or 8½ by 11 inches in size.

(b) The title page shall show the following information:

(1) In the upper right-hand corner, the K.C.C. number of the tariff, and, immediately below that, the K.C.C. number of the tariff canceled, if any. The first tariff issued by each carrier shall be numbered "K.C.C. no. 1"; succeeding tariffs shall be numbered consecutively. This information may be shown elsewhere on the page or on the second page of the tariff, if it applies to interstate as well as intrastate traffic;

(2) the name of the carrier, individual, or organization issuing the tariff;

(3) the names of the participating carriers or a reference to the page in the tariff containing that information;

(4) if the tariff is a passenger or household goods tariff, the tariff names' class rates, commodity rates, mileages, rules, one-way fares, round-trip fares, excursion fares, and appropriate designation, if the tariff applies to local traffic, joint traffic, or both;

(5) the territories or points between which the tariff applies, briefly stated;

(6) specific reference to the classification and to publications containing any exceptions to the classification governing the rates named in the tariff;

(7) the issued and effective dates;

(8) the commission's motor carrier identification number assigned; and

(9) the name, title, and complete address of the party issuing the tariff.

(c) The requirements of subsection (a) of this regulation shall be observed in the construction of circulars and other governing tariff publications.

Tariff supplements shall be numbered consecutively, beginning with the number one, and shall show the K.C.C. number of the publication amended, the number of any previous supplements or tariffs canceled, and numbers of the supplements containing all changes from the original publication. This information shall appear in the upper right-hand corner of the supplement unless the supplement applies to interstate as well as intrastate traffic, in which case it may be shown elsewhere on the title page or on the second page.

(d) All household goods tariffs shall contain the following information:

(1) In clear and explicit terms, all rules, additional charges, and privileges applicable in connection with the rates and charges named in the tariff, or specific reference to publications naming these rules, additional charges, and privileges;

(2) any exceptions to the application of rates and charges named in the tariff;

(3) a full explanation of reference marks and technical abbreviations used in the tariff;

(4) rates in cents or dollars and cents per 100 pounds or per ton of 2,000 pounds or other definite measure; and

(5) the method by which the distance rates shall be determined. Specific point-to-point rates shall be published whenever practicable.

(e) All passenger tariffs shall show the following information:

(1) Adult fares, definitely and specifically stated in cents or in dollars and cents, per passenger, together with the names of the stations or the stopping places for which they apply, arranged in a simple and systematic manner;

(2) rules that are applicable or that contain specific reference to the publications in which they will be found. (Authorized by K.S.A. 1997 Supp. 66-1,112, 66-1,112a; implementing K.S.A. 66-108, K.S.A. 1997 Supp. 66-117, K.S.A. 66-1,112f; effective May 1, 1981; amended Jan. 4, 1999.)

82-4-57. Powers of attorney and concurrences. (a) A common or contract carrier desiring to give a power of attorney to an agent to issue and file tariffs and supplements for the carrier shall file notice of this intention on a form approved by the commission.

(b) If a common or contract carrier desires to concur in tariffs issued and filed by another carrier or by its agent, a concurrence in substantially the same form as that prescribed by the USDOT for use in similar instances, with reference to the in-

terstate tariffs, shall be issued in favor of the issuing carrier.

(c) The original of all powers of attorney and concurrences shall be filed with the commission, and a duplicate of the original shall be sent to the agent or carrier on whose behalf the document is issued.

(d) If a common or contract carrier wishes to revoke a power of attorney or concurrence, a notice shall be filed with the commission, the carrier's agent or agents, and any other carrier affected by the revocation. The notice shall be filed no fewer than 30 days before the effective date. (Authorized by K.S.A. 66-108, K.S.A. 1999 Supp. 66-1,112 and 66-1,112a; implementing K.S.A. 1999 Supp. 66-1,112e, K.S.A. 66-1,112f; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1984; amended Jan. 4, 1999; amended July 14, 2000.)

82-4-58. Suspension or modification of tariff rules. Upon written application and a showing of good cause, the commission may suspend or modify common carrier tariff rules to cover unusual instances. (Authorized by K.S.A. 66-108, 66-1,112; implementing K.S.A. 66-108, 66-1,112, 66-1,112e, 66-1,112f; effective Jan. 1, 1971; amended May 1, 1981.)

82-4-58a. (Authorized by K.S.A. 1983 Supp. 66-1,112; implementing K.S.A. 66-117, effective May 1, 1984; revoked Jan. 4, 1999.)

82-4-58b. (Authorized by K.S.A. 1983 Supp. 66-1,112; implementing K.S.A. 66-117, effective May 1, 1984; revoked Jan. 4, 1999.)

82-4-58c. (Authorized by K.S.A. 1983 Supp. 66-1,112; implementing K.S.A. 66-117, effective May 1, 1984; revoked Jan. 4, 1999.)

82-4-58d. Financial filing requirements for abandonment of motor carrier passenger service. In addition to the formal filing of an application for abandonment of intrastate motor carrier passenger service, the applicant shall also provide the following financial data on each route proposed to be abandoned:

(a) U.S. department of transportation or federal highway administration reports or shareholder annual reports for the three previous years;

(b) expense data of the intrastate route or routes in question for the three previous years and an explanation of the methodology used to determine costs;

(c) actual intrastate revenue by category, associated with the route or routes in question, on a monthly basis for the three previous years;

(d) an estimate of the off-route revenue that will be lost as a result of the abandonment and an explanation of how the estimates were derived;

(e) monthly intrastate ridership data for the intrastate route or routes in question for the three previous years;

(f) monthly intrastate variable cost computations for the three previous years; and

(g) copies of interstate tariffs applicable to the routes in question. (Authorized by and implementing K.S.A. 1997 Supp. 66-1,112; effective May 1, 1987; amended Jan. 4, 1999.)

RULES APPLICABLE ONLY TO CONTRACT CARRIERS

82-4-59. (Authorized by K.S.A. 66-1,112a; implementing K.S.A. 66-1,112e, 66-1,112f; effective Jan. 1, 1971; amended May 1, 1981; revoked Jan. 4, 1999.)

82-4-60. (Authorized by K.S.A. 66-1,112; effective Jan. 1, 1971; revoked May 1, 1981.)

82-4-61. (Authorized by K.S.A. 66-1,112a; implementing K.S.A. 66-1,112e, 66-1,112f; effective Jan. 1, 1971; modified, L. 1981, ch. 424, May 1, 1981; revoked May 1, 1983.)

82-4-62. Contract carrier bills of lading or freight bills, or both. Every contract carrier shall issue a bill of lading, a freight bill, or both, for property transported, on which shall be indicated the name of the carrier, the date and place of shipment, the name of the consignor, the name of the consignee, a description of the shipment, the destination of the shipment, the rate, the weight, and the charge. (Authorized by K.S.A. 1997 Supp. 66-1,112; effective Jan. 1, 1971; amended Jan. 4, 1999.)

RULES APPLICABLE TO COMMON CARRIERS AND CONTRACT CARRIERS

82-4-63. Contested and uncontested motor carrier hearings. An application for a contract carrier permit or a common carrier certificate of convenience and necessity, certificate of public service, or abandonment of a common carrier certificate shall be considered as contested when either protestants or intervenors, or both, appear at the hearing held on the application and present testimony or evidence in support of their contentions, present a question or questions of

law, or cross-examine the applicant's witnesses with regard to the application. When neither protestants nor intervenors appear and offer testimony or evidence in support of their contentions, raise a question of law, or cross-examine the applicant's witnesses with reference to any pending application, the same shall be considered as uncontested. (Authorized by K.S.A. 1997 Supp. 66-106, 66-1,112, 66-1,112a; implementing K.S.A. 1997 Supp. 66-106, 66-1,114, 66-1,115 and K.S.A. 66-1,119; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1987; amended Jan. 4, 1999.)

82-4-64. (Authorized by K.S.A. 66-108, 66-1,112, 66-1,112a; implementing K.S.A. 66-108, 66-1,118; effective Jan. 1, 1971; amended May 1, 1981; revoked Jan. 4, 1999.)

82-4-65. Protestants. Any protest against the granting of a permit, certificate, extension, abandonment, or transfer shall be considered under the following conditions:

(a) Any interested person who believes that the public will be adversely affected by a proposed application may file a written protest. The protest shall clearly identify the name and address of the protestant and the title and docket number of the proceeding. The protest shall include specific allegations as to how the applicant is not either fit, willing, and able, or fit, knowledgeable, and in compliance with the commission safety regulations, to perform these services or how the proposed services are otherwise inconsistent with the public convenience and necessity.

(b) If the protestant opposes only a portion of the proposed application, the protestant shall state with specificity the objectionable portion.

(c) The protest shall be filed in triplicate with the commission within 10 days after publication of the notice in the Kansas Register. Failure to file a timely protest shall preclude the interested person from appearing as a protestant.

(d) Each protestant shall serve the protest upon the applicant at the same time or before the protestant files the protest with the commission. The protest shall not be served on the applicant by the commission.

(e) To secure consideration of a protest, the protestant, intervenor, or a designated representative, as defined in K.A.R. 82-4-63, shall offer evidence or a statement or shall participate in the hearing. (Authorized by K.S.A. 1997 Supp. 66-1,112, K.S.A. 66-1,112a; implementing K.S.A.

1997 Supp. 66-1,114; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended Jan. 4, 1999.)

82-4-66. Intrastate carriers serving specified incorporated or specified unincorporated municipalities. A certificate issued to any intrastate general commodity carrier of property that operates intrastate in Kansas, and that is authorized to serve at a specified municipality, shall authorize service within the limits of that municipality and at the points, places and areas, indicated in (a) and (b) of this regulation. The certificate shall not authorize service beyond the territorial limits, if any, fixed in the certificate. (a) Operating authority to serve a specified incorporated municipality shall also authorize service to all areas within eight miles of the corporate limits of the specified municipality.

(b) Operating authority to serve a specified unincorporated community shall also authorize services to all places within eight miles of the post office of the same name in the unincorporated community. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1983.)

82-4-67. (Authorized by and implementing K.S.A. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; revoked Jan. 4, 1999.)

COLLECTIVE RATES

82-4-68. Collective rate-making agreements. (a) Motor carriers of property and passengers, joint line rates, and national motor freight classification may enter into an agreement with one or more of these carriers concerning rates, allowances, classifications, divisions, or rules related to them or procedures for joint consideration, initiation, or establishment of them. The agreement and all amendments shall be submitted to the commission for approval by the carriers that are parties to the agreement and shall be approved by the commission upon a finding that the agreement fulfills the requirements of K.S.A. 66-1,112, and amendments thereto, and the rules and regulations of the commission. The agreement shall be administered by an organization designated by the carriers who are parties to the agreement.

(b) The agreement shall contain, at a minimum, provisions for the following:

- (1) Election of rate committees and procedures for appointments to fill vacancies;
- (2) initiation of rate proposals;
- (3) record keeping;
- (4) tariff participation fees for services;
- (5) open meetings;
- (6) quorum standards;
- (7) proxy voting by members;
- (8) role of employees in docketing proposals;
- (9) notice of docket proposals and rate committee hearings;
- (10) voting on rate proposals by member carriers;
- (11) right of independent action;
- (12) docketing of independent action;
- (13) the names, addresses, and telephone numbers of carriers who are parties to the agreement;
- (14) the names and addresses of each of its affiliates and of officers and directors of the carriers who are parties to the agreement;
- (15) the carriers' motor carrier identification number assigned by the commission;
- (16) the name, address, and telephone number of the organization that will administer the agreement;
- (17) final disposition of cases docketed;
- (18) prohibitions of the organization from protesting carrier proposals;
- (19) amendments to the agreement; and
- (20) powers of attorney. (Authorized by and implementing K.S.A. 1997 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983; amended Jan. 4, 1999.)

82-4-69. Applications for approval of collective rate-making agreements. (a) The carriers' party to the agreement shall submit an application to the commission and attach a copy of the organization's articles of incorporation, by-laws, or other documents, specifying the powers, duties, and procedures of the organization. The organization for the carriers shall provide the commission with an organization chart, a complete description of the organization, including any subunits and their functions and methods of operations, together with the territorial scope of its operation.

(b) The application and supporting documents shall specify the following items:

- (1) The full and correct name and business address of the carriers who seek approval of the agreement and whether carrier applicants are cor-

porations, limited liability companies, individuals, partnerships, or limited liability partnerships. If a corporation, the laws under which it was incorporated shall be included. If a limited liability company, the laws under which it was organized shall be included. If a limited liability partnership, the laws under which it was organized shall be included. If a partnership, the names and addresses of all partners and the date of formation of partnership shall be included;

(2) the motor carrier identification number assigned by the commission to each participating applicant;

(3) the name and business address of the organization that will administer the agreement;

(4) the facts and circumstances relied upon to establish that the agreement is in the public interest;

(5) the name, title, and business address of counsel, officers, or any other person to whom correspondence and notice are to be addressed;

(6) a true copy of the agreement and an opinion of a counsel for the applicant that the application made meets the requirements of K.S.A. 66-1,112, and amendments thereto, and commission regulations; and

(7) a prepared public notice to be published in the Kansas Register stating the fact that an application has been filed under these rules, and the date of the hearing, if required by the commission. (Authorized by and implementing K.S.A. 1997 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983; amended Jan. 4, 1999.)

82-4-70. Record keeping responsibilities. The organization shall maintain records and minutes of all acts pertaining to joint consideration, initiation and establishment of tariff publications and shall submit written reports to the commission on these activities as the commission from time to time may require. Minutes and voting records shall be made available to the commission upon written request. Minutes, voting records and a complete file of all tariffs issued under the agreement shall be maintained by the organization for at least three years. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

82-4-71. Charges for services. The organization shall, in the agreement, provide the commission with a basic schedule of its tariff participation fees applicable to parties to the agree-

ment. If expenses are divided among parties to the agreement, the organization shall provide a statement showing how the expenses are divided. The organization shall also provide the commission with any amendments to the basic charges. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

82-4-72. Open meetings. (a) An organization shall admit any person to any meeting at which rates or rules will be discussed or voted upon.

(b) Upon written request, the organization shall divulge to any person the name of the proponent of a rule or rate docketed with it, and shall divulge to any person the vote by any member carrier on any proposal before the organization. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

82-4-73. Quorum standard. (a) At any meeting of carriers party to the agreement or carrier committees at which rates, rules or classifications are discussed or considered, 30 percent of the carriers party to the agreement or 50 percent of the committee shall constitute a quorum. The quorum requirement shall apply to any meeting when discussion includes general rate increases and decreases, tariff restructuring, commodity classification, or rules and classifications changes proposed for tariff publication. Carrier members present by means of a proxy shall count towards the satisfaction of the quorum requirement. There shall be no voting unless at least one member carrier is present and possesses the authority for a lawful vote.

(b) Exceptions to the quorum standard may be granted upon a showing to the commission of genuine hardship. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

82-4-74. Voting on rate proposals. The organization shall allow any participating member carrier to discuss any rate proposal docketed. Only those carriers with authority to participate in the transportation to which the rate proposal applies shall vote upon the rate proposal. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

82-4-75. Proxy voting. (a) The organiza-

tion shall not allow a carrier to vote for one or more other carriers without specific written authority from the carrier being represented.

(b) While any member carrier may discuss any collectively established rate proposals docketed, only carriers with authority to participate in the transportation to which the proposed rates apply shall vote on the rates.

(c) To vote for an absentee, a carrier shall possess a written proxy containing the grantor or grantors signature, the specific items or items for which the vote is released, directions on voting, and certification of authority. A written affirmation shall be made by each carrier for itself and by each grantor of a proxy.

(d) The organization shall provide standard proxy forms to members, and a copy of all proxies exercised and the written certification of authority executed by the proxy holder for the grantor shall be made part of the voting record. There is no limit to the number of proxies a carrier may hold. A proxy may be revoked at any time by a subsequent written revocation or by the carrier appearing at the meeting and voting on its own behalf. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

82-4-76. Notification and consideration of rate proposals. General rate increases or decreases, joint rates, changes in commodity classification, changes in tariff structures and publishing of tariffs may be discussed and voted on at any meeting only if: (a) Shippers receive detailed notice of meetings and agenda, through docket service, at least 15 days prior to the time a proposal is to be discussed or voted upon;

(b) shippers are accorded the opportunity to present either oral or written comments for consideration at the meeting;

(c) shippers' comments are given appropriate weight and consideration in discussion and voting upon the proposals;

(d) discussion of general rate increase or decrease is limited to industry average carrier cost information;

(e) any person attending those meetings is permitted to take notes and make sound recordings; and

(f) the organization maintains detailed minutes of all meetings. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

82-4-77. Right of independent action.

(a) The organization shall not interfere with each carrier's right to independent action. The organization shall not change or cancel any rate established by independent action other than a general increase or broad rate restructuring. However, changes in the rates may be effected, with the written consent of the carrier or carriers that initiated the independent action, for the purpose of tariff simplification, removal of discrimination, or elimination of obsolete items.

(b) Collective adjustments as authorized in K.S.A. 1982 Supp. 66-1,112 shall not cancel rate or rule differentials or differences in rates or rules existing as a result of any independent action taken previously, unless the proponent and any other participant in that independent action desires to eliminate the rate differential or application and notifies the organization in writing of its consent.

(c) Independent action means any action taken by a common or contract carrier member of an organization to:

(1) Establish a rate to be published in the appropriate rate tariff, or to cancel a rate for that carrier's account;

(2) instruct the organization publishing the rate tariff that an existing rate (whether established by independent action or collective action), that is proposed to be changed or cancelled be retained for that carrier's account and published in the appropriate tariff; or

(3) have published for its account, in the appropriate tariff, a rate established by the independent action of another carrier. This definition shall apply regardless of the manner in which the carrier joins in the rate, as long as the rate published for the joining carrier's account is the same as the rate established by the other carrier under independent action. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

82-4-78. Docketing of independent action.

(a) Proponents of independent actions shall have the absolute right to decide whether or when organizations will docket these actions.

(b) The organization shall comply with the instructions of the proponent of an independent action with regard to whether or not the action should be docketed, and in the absence of explicit instructions shall refrain from docketing until the proposal has been filed with the commission.

(c) There shall be no collective discussion of independent actions as defined in K.A.R. 82-4-77 until they have been filed with the commission. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

82-4-79. Organization employee limitations. (a) Employees and employee committees of the organization shall not initiate a proposal nor determine whether to adopt, reject, or otherwise dispose of a proposal effecting a change in any tariff item published by or for the account of any member carrier.

(b) Employees and employee committees may provide expert analysis and technical assistance to any member carriers or shippers in developing or evaluating a carrier or shipper initiated rate or rule proposal.

(c) Any advice concerning an independent action as defined in K.A.R. 82-4-77 proposal shall remain confidential. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

82-4-80. Final disposition of dockets. The organization shall make a final disposition of a rule or rate docketed with it by the 120th day after the proposal is docketed. However, if unusual circumstances require, the organization may extend that period, subject to review by the commission. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

82-4-81. Organization protest. The organization shall not file a protest or complaint with the commission against any tariff item published by or for the account of any motor carrier of property or passengers. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

82-4-82. Burden of proof of violations and effects of violations. In any proceeding in which a party alleges that a carrier voted, discussed, or agreed on a rate or allowance in violation of collective ratemaking regulations of the commission, that party shall have the burden of showing that the vote, discussion, or agreement occurred. A showing of parallel behavior shall not satisfy that burden by itself. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

82-4-83. Commission review of collective rate making agreements. The commission shall review each collective rate making agreement approved under these rules at least once every three years to determine whether the agreement or an organization established or continued under an approved agreement still complies with the requirements of the statutes and applicable rules. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

82-4-84. Revoking collective rate making agreements. Upon proper notice and hearing, and a finding that the collective rate making procedures are not being followed, the commission may revoke its approval or order corrections to the activities and procedures of persons, groups, agencies, bureaus and other entities engaging in collective rate making before the commission. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983.)

82-4-85. Rate applications filed by carriers party to a collective rate-making agreement. (a) Carriers party to a collective rate-making agreement who file an application proposing a general increase or decrease in rates shall submit with the application schedules indicating to the commission the nature and extent of the proposed changes to be effected.

(b) Applications shall be based upon data submitted for a test year. The commission may disapprove, for good cause, the test year selected by the applicant.

The original and nine copies of the application and schedules shall be filed with the commission. Each application and schedule shall be bound together under one loose-leaf binder. If the bulk of the material would make this handling impractical, two or more volumes in loose-leaf form shall be filed. The size of print used in the application and schedules shall be clearly legible. Negative numbers shall be shown in parentheses. Amounts included in the application shall be cross-referenced between the appropriate summary schedule and supporting schedules, as well as among the various sections. Referencing shall include allocation ratios, when appropriate. All items shall be self-explanatory. Additional information, cross-references, or explanatory footnotes shall be presented on the schedule. The application shall be supported by schedules as set out below and shall

be assembled under topical sections, with index tabs for each section and a page number for each schedule. The form, order, and titles of each section shall be prescribed as follows.

(1) Application, letter of transmittal, and authorization. This section shall contain a copy of the application, a copy of the letter of transmittal, and an appropriate document or documents authorizing the filing of the application, if any.

(2) General information and publicity. This section shall list the means employed by the carriers to acquaint the general public affected by the proposed rate change with the nature and extent of the proposal. These methods may include meetings with public officials, shippers, and citizen groups; newspaper articles; and advertisements. This section shall include general information concerning the application that will be of interest to the public and suitable for publication. That information shall include the following, when applicable:

(A) The percent and dollar amount of the aggregate annual increase or decrease that the application proposes; and

(B) any other pertinent information that the applicant may desire to submit.

(3) List of carriers participating in the application. This list shall show the motor carrier identification number and the name and address of each carrier that is a participant in the application.

(4) List of carriers in the study group. The list shall state the carriers used in the study group. A detailed explanation of how the study group of carriers was selected shall also accompany this section.

(5) Study group carriers' operating ratios. This section shall contain the Kansas intrastate operating ratios for the actual test year for the study group carriers.

(6) Study group carriers—test year and pro forma income statements. This section shall present the following:

(A) An operating income statement for each of the study group carriers and a composite statement of all the study group carriers depicting the unadjusted test year operations for the total system; and

(B) a second schedule that expands the actual system composite income statement to a Kansas intrastate operations income statement. This statement shall be adjusted to show pro forma test year operations. Supporting schedules shall set forth a full and complete explanation of the pur-

pose and rationale for the pro forma adjustments. The pro forma adjustments may include adjustments to reflect the elimination or normalization of nonrecurring and unusual items, and adjustments for known or determinable changes in revenue and expenses.

(7) Capital and cost of money. This section shall be prepared for each participating carrier having total Kansas intrastate system revenue of one million dollars or more. It shall contain the following:

(A) A schedule indicating the amounts of the major components of the capital structures of the carrier that are outstanding at the beginning and at the end of the test year. This schedule shall contain the ratios of each component to the total capital;

(B) a schedule disclosing the cost of each issue of debt and preferred stock outstanding, with due allowance for premiums, discounts, and issuance expense. Data relating to the other components of capital shall be shown, if appropriate; and

(C) if the applicant is a part of a consolidated group or a division of another company, the consolidated capital structure shall be included in this section.

(8) The proposed tariffs. The application shall contain the proposed tariffs requested for approval.

(9) Prefiled testimony shall be required in all transportation rate cases filed by a tariff publishing organization, and all prefiled testimony shall be filed simultaneously with the filing of the application.

(10) All of the above requirements shall be completed and in proper form. Applications found to be incomplete or not in the form prescribed above shall be rejected by the commission. (Authorized by and implementing K.S.A. 1997 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983; amended Jan. 4, 1999.)

82-4-86. Vehicle inspection stations. (a)

Each commission authorized inspection station shall be located in Kansas. Any carrier with vehicles that are registered with the commission may file an application to serve as an authorized inspection station.

(b) Each application shall be submitted in the form of a letter on company stationery or letterhead and shall be signed by the owner of the company or an authorized officer of the corporation. The letter shall include the following:

(1) the carrier's name, address and telephone number;

(2) geographic description, location or address of the proposed inspection station;

(3) the current number of motor vehicles and trailers operated by the carrier;

(4) the name of the proposed, company-authorized and certified mechanic or mechanics;

(5) a non-refundable check, payable to the state corporation commission of Kansas, for \$100.

(c) An investigation of the application shall be conducted by a designated representative of the state corporation commission who shall report all findings. Upon approval by the commission, an order shall be issued designating the carrier and inspection station as an approved inspection location. The order or a copy shall be retained at the approved inspection station and shall be made available upon request to any representative of the commission and any state or local law enforcement officer.

(d) Any relocation of approved inspection stations or any revision in the name or names of the company-authorized and certified mechanic shall be approved by the commission.

(e) Each approved inspection station shall have:

(1) a minimum of one authorized and certified mechanic on duty or on call.

(2) an inspection area suitable for inspections; and

(3) sufficient tools and equipment to inspect each type of vehicle. All tools and equipment shall be maintained in good operating condition.

(f) The company-authorized and certified mechanic shall inspect the motor vehicle or trailer in accordance with K.A.R. 82-4-3 and K.A.R. 82-4-20. Vehicles in compliance shall be issued a certificate which shows the date of the inspection. The certificate shall be signed by the company-authorized and certified mechanic performing the inspection.

(g) One copy of the certificate shall remain with the motor vehicle or trailer, one copy of the certificate shall be retained by the authorized inspection station for a period of one year from the date of issuance, and one copy shall be forwarded to the Kansas corporation commission within 30 days of the inspection. Each certificate issued shall be valid for 12 months from the date of issue.

(h) Certificates may be purchased from the commission by an approved inspection station for \$5.00 each. The motor carrier purchasing the cer-

tificates shall be accountable for the disposition of each certificate. Abuse of the authority to inspect or abuse of its accountability for the certificate shall be grounds for suspension or revocation of the carrier's authority by the Commission. (Authorized by K.S.A. 1983 Supp. 66-1,112 and K.S.A. 1984 Supp. 66-1313a; implementing K.S.A. 1984 Supp. 66-1313a; effective, T-85-48, Dec. 19, 1984; effective May 1, 1985.)

Article 5.—RAILROAD SAFETY

82-5-1. (Authorized by K.S.A. 66-141, K.S.A. 1971 Supp. 66-101; effective, E-71-15, March 5, 1971; effective Jan. 1, 1972; revoked May 1, 1984.)

82-5-2. (Authorized by K.S.A. 66-141; effective, E-71-15, March 5, 1971; amended, E-71-22, May 28, 1971; effective Jan. 1, 1972; amended, E-82-2, Jan. 21, 1981; amended May 1, 1981; revoked May 1, 1984.)

82-5-3. General duty of carriers. The officers, officials and agents of every carrier shall comply with the rules and regulations of this commission and with reasonable requests of the commission or its duly authorized agents for inspection of the carrier's right-of-way. (Authorized by K.S.A. 66-231b; and implementing K.S.A. 66-156; effective, E-71-15, March 5, 1971; amended, E-71-22, May 28, 1971; effective Jan. 1, 1972; amended May 1, 1984.)

82-5-4. Regulations relating to inspection of bridges and other structures. Every railroad operating in the state of Kansas shall inspect its bridges, trestles and culverts at least once a year and certify to the commission that the bridges, trestles and culverts are safe for the loads imposed upon them. (Authorized by and implementing K.S.A. 66-231b; effective, E-71-15, March 5, 1971; amended, E-71-22, May 28, 1971; effective Jan. 1, 1972; amended May 1, 1984.)

82-5-5. (Authorized by K.S.A. 66-141, 66-156; effective, E-71-15, March 5, 1971; amended, E-71-22, May 28, 1971; effective Jan. 1, 1972; revoked May 1, 1984.)

82-5-6. Regulation relating to inspection, maintenance and repair of trackage, road bed, right-of-way, bridges and other structures. If, on the inspector's report, the commission has reasonable ground to believe that any track, bridge or other structure of the railroad is

in a condition which renders it dangerous, unfit or unsafe, the commission shall immediately give the superintendent or other executive officer of the company operating that railroad notice of the condition thereof and of the repairs or reconstruction necessary to place it in a safe condition. The commission may prescribe the time in which the repairs or reconstruction necessary to place it in a safe condition must be made and the maximum speed that trains may be operated over the dangerous or defective track, bridge or other structure until the repairs or reconstruction required are made. The commission may forbid the running of trains over the defective track, bridge or other structure, if it is of the opinion that such action is necessary and proper. However, the railroad affected by such a prohibition may request a hearing to determine whether or not such action is necessary and proper. Any company operating a railroad in Kansas may designate a representative to confer with the commission or any member thereof, at the time and place designated by the commission, in order to discuss the condition of the railroad property affected by this section. (Authorized by and implementing K.S.A. 66-231b; effective, E-71-15, March 5, 1971; effective Jan. 1, 1972; amended May 1, 1984.)

82-5-7. (Authorized by K.S.A. 66-141, 66-156; effective, E-71-15, March 5, 1971; amended, E-71-22, May 28, 1971; effective Jan. 1, 1972; revoked May 1, 1984.)

82-5-8. Trackage and grade crossings. (a) "Track Safety Standards," 49 CFR Part 213, as in effect on September 15, 1983 is hereby adopted by reference.

(b) Grade crossing surfaces shall be adequately maintained for rail movement.

(c) The railroad shall keep its right-of-way clear, for a reasonable distance, of weeds and vegetation and other unnecessary obstructions, including railroad cars, when the vegetation and obstructions may interfere with the visibility of approaching motor vehicles. (Authorized by and implementing K.S.A. 66-231b; effective, E-71-15, March 5, 1971; amended, E-71-22, May 28, 1971; effective Jan. 1, 1972; amended May 1, 1984.)

82-5-9. Regulations relating to construction, reconstruction and maintenance of walkways adjacent to the railroad trackage; control of vegetation and removal of debris and trash. (a) In all switching areas within and

outside of the yard limits, each railroad shall provide reasonably safe and adequate walkways adjacent to its tracks. All such walkways shall be maintained and kept as reasonably free of vegetation, trash and debris as may be appropriate to prevailing conditions. Each railroad shall provide for the abatement of weeds and brush adjacent to and upon walkways that is necessary to prevent the objectionable vegetation from encroaching upon such walkways.

(b) The commission may order the railroad corporation to eliminate any unsafe walkway condition and may specify a reasonable time for completion of the improvement as may be appropriate under the circumstances.

(c) If any railroad shows good cause and submits an application for a deviation from the provisions of this regulation. The requested deviation may be authorized by the commission. The application shall include a full statement of the conditions which prevail at the time and place involved and the reasons why deviation is deemed necessary. (Authorized by and implementing K.S.A. 66-231b; effective, E-71-15, March 5, 1971; effective Jan. 1, 1972; amended May 1, 1984.)

82-5-10. Speed restrictions. Whenever a railroad deems it necessary to protect the movement of trains by placing a speed restriction on a portion of trackage, and the speed restriction remains in force over sixty (60) days, the existence of the speed restriction must be reported to the commission, the reasons stated for the speed restriction and the reasons why corrective action has not been completed. (Authorized by K.S.A. 66-141, 66-156; effective, E-71-15, March 5, 1971; effective Jan. 1, 1972.)

82-5-11. Regulation relating to transportation of hazardous materials by railroads. (a) When the track condition on any railroad makes the transportation of explosives and other dangerous articles hazardous, restriction of the movement over the track may be imposed by the state corporation commission until track conditions are corrected or a satisfactory alternate route is available.

(b) The following parts of the federal hazardous materials rules and regulations promulgated by the U.S. department of transportation are incorporated by reference as the rules and regulations of the state corporation commission of the state of Kansas: Title 49 CFR, Parts 171, 172, 173, 174, 177, 178, and 393.77, except sections 49 CFR

174.45, 174.104(c) and (d), 174.700, 177.825, 177.842, 177.843 and 177.861, as in effect on September 26, 1986.

(c) Whenever the incorporated federal regulations refer to portions of the federal regulations that are not included under subsection (b), that reference shall not be applicable to this regulation.

(d) Any reference to the following publications listed in 49 CFR 171.7. (d)(1); (d)(3)(ii), (iii) and (iv); (d)(5)(i), (ii), (vi), (vii), (ix), (xix), (xx), (xxi), (xxii), (xxiii), (xxiv), (xxv), (xxvi), (xxvii), (xxviii), (xxix), (xxx), (xxxi), (xxxii) and (xxxiii); (d)(6); (d)(7)(i), (ii), (iii) and (iv); (d)(13); (d)(14); (d)(15)(i) and (ii); (d)(16)(i); (d)(17); (d)(18); (d)(19); (d)(20); (d)(21); (d)(22); (d)(25); (d) 26; (d) 27; (d) 28; "Manual on Roof Coverings," NFPA 203M-1970; and "Specifications, Properties, and Recommendations for Packaging, Transportation, Storage, and Use of Ammonium Nitrate" are excepted from these regulations. Any regulation subsections in which these exceptions appear are not incorporated by reference in this regulation. (Authorized by K.S.A. 66-1,222, 66-141; implementing K.S.A. 66-1223, 66-156; effective, E-71-15, March 5, 1971; amended, E-71-22, May 28, 1971; effective Jan. 1, 1972; amended May 1, 1985; amended May 1, 1987.)

82-5-12. Regulations relating to the filing of rules and regulations of the operating departments of railroad corporations. (a) Each railroad corporation operating in the state of Kansas shall file with the commission, the existing rules and regulations of the operating department and any future changes or revisions thereof in accordance with the provisions of the following paragraphs:

(1) The rules and regulations of operating departments presently in effect on any railroad operating in the state of Kansas shall be filed no later than 60 days from the effective date of this order and rules.

(2) Each railroad operating in the state of Kansas shall file with the commission any change or re-issue, either in whole or in part, of the rules and regulations of the operating department within 30 days after any change or reissue. (Authorized by K.S.A. 66-141; effective, E-71-15, March 5, 1971; amended, E-71-22, May 28, 1971; effective Jan. 1, 1972.)

82-5-13. Overhead clearance. Each railroad shall comply with the following provisions

regarding the minimum overhead clearance allowed for railroad safety.

(a) Overhead clearance shall be a minimum of 22 feet, six inches, unless excepted in another subsection of this regulation.

(b) In buildings, clearances may be reduced to 18 feet, for those tracks terminating:

(1) within the building; or

(2) in the immediate plant area, if the tracks extend through the building. Overhead clearance of doors may be reduced to 17 feet, no inches.

(c) In tunnels, the minimum clearance shall be defined by the half-circumference of a circle having a radius of eight feet and a tangent to a horizontal line 23 feet above the top of the rail at a point directly over the center line of track.

(d) The clearance under bridges shall be a minimum of 22 feet.

(e) All other structures, except as specifically provided in these regulations, shall have a minimum clearance as defined by starting at the center of the track at the top of the rail, then eight feet, six inches laterally from the center line of track, then vertically upward to a point 16 feet above the top of the rail, then diagonally upward to a point 22 feet, six inches above the top of the rail and four feet horizontally from the center of track, then horizontally to the center of the track. Overhead clearance may be reduced if overhead tell-tales are maintained for clearance less than 22 feet, six inches. However, any reduction of clearance below 22 feet, six inches shall be approved by the commission.

The minimal vertical clearance requirements under all wires, including wires, conductors, and cables over railroad tracks, shall be those specified in K.A.R. 82-12-2. (Authorized by and implementing K.S.A. 66-231b and 66-1201; effective, E-82-2, Jan. 21, 1981; effective May 1, 1981; amended May 1, 1984; amended Aug. 11, 1995.)

82-5-14. Regulations relating to side clearance between railroad equipment and other structures. The minimum side clearances from center line of track shall be as follows:

(a) in general eight (8) feet six (6) inches;

(b) at platforms eight (8) inches or less above the top of the rail, five (5) feet from the center of the track;

(c) platforms more than eight (8) inches but less than four (4) feet above the top of rail shall be either six (6) feet two (2) inches or eight (8) feet from center line of track with no intermediate

clearance permitted. Further, if side clearance is reduced to six (6) feet two (2) inches on one side, a full clearance of eight (8) feet shall be maintained on the opposite side;

(d) platforms on main line tracks or passing tracks shall be eight (8) feet six (6) inches;

(e) platforms more than four (4) feet above the top of the rail shall be a minimum of eight (8) feet six (6) inches on main line, passing tracks, or side tracks;

(f) icing platforms shall be a minimum of six (6) feet eight (8) inches. Further, the supports of this platform shall provide a minimum clearance of eight (8) feet;

(g) retractable platforms, either sliding or hinged, which are attached to a permanent structure, shall be so constructed that, when retracted or in a nonworking position and firmly secured or anchored, the resulting clearance is a minimum of eight (8) feet;

(h) Platforms defined under subsection (b) of this regulation may be combined with platforms defined under subsections (c) and (e) of this regulation, provided that the lower platform presents a level surface to the face of the wall of the platform with which it is combined. No other combinations will be permitted.

(i) bridges and tunnels shall have a minimum side clearance of eight (8) feet. Further, the lower section with structure of bridges including bridges supporting track affected; handrails, water barrels and refuge platforms on bridges and trestles, water columns, oil columns, block signals, cattle guards, or portions thereof, four (4) feet or less above the top of the rail may have clearances decreased to the extent defined by a line extending diagonally upward from a point level with the top of the rail and five (5) feet six (6) inches distant laterally from the center line of track to a point four (4) feet above the top of the rail and eight (8) feet distant laterally from the center line of track. However, the clearance authorized in this subsection is not permitted on through bridges where the work of trainmen or yardmen requires them to be upon the decks of such bridges for the purpose of coupling or uncoupling cars in the performance of switching service on a switching lead;

(j) switch boxes, switch operating mechanism necessary for the control and operation of signals, and interlockers projecting four (4) inches or less above the top of the rail shall have a minimum clearance of three (3) feet;

(k) signals and switch stands three (3) feet or

less above the top of the rail when located between tracks shall have minimum clearance of six (6) feet;

(l) signals and switch stands over three (3) feet above the top of the rail shall have a minimum clearance of eight (8) feet six (6) inches;

(m) mail cranes and train order stands when not in the operative position shall have a minimum clearance of eight (8) feet six (6) inches;

(n) minimum clearances at building entrances shall be seven (7) feet. However, inside clearance of buildings may be reduced on one side of the track to six (6) feet two (2) inches provided eight (8) feet is maintained on the opposite side. Further, clearance at doors may be reduced to six (6) feet two (2) inches on one side of the track provided, full clearance of eight (8) feet three (3) inches is maintained on the opposite side;

(o) minimum clearance on curved track shall be increased to allow for overhang and the tilting of a car eighty-five (85) feet long, sixty (60) feet between centers of trucks and fourteen (14) feet high;

(p) material, merchandise and other articles adjacent to tracks shall be located at a minimum of eight (8) feet six (6) inches from the tracks. (Authorized by K.S.A. 66-141; effective, E-82-2, Jan. 21, 1981; effective May 1, 1981.)

82-5-15. Regulations relating to track clearance. (a) Track clearance on main and subsidiary tracks shall be a minimum of fourteen (14) feet as measured between the center lines of parallel standard gauge railroad tracks;

(b) minimum clearance between parallel team, house or industry tracks shall be thirteen (13) feet between center lines;

(c) minimum clearance between ladder track and any parallel track shall be seventeen (17) feet except that the clearance between ladder track and another parallel ladder track shall be at least twenty (20) feet between center lines. (Authorized by K.S.A. 66-141; effective, E-82-2, Jan. 21, 1981; effective May 1, 1981.)

82-5-16. General conditions. The space between or beside such tracks as is ordinarily used by train and yard personnel and other employees in the discharge of their duties shall be kept clear of air and water pipes, grass, weeds, and other foreign obstacles which might interfere with the work of the employees or subject the employees to unnecessary hazard. Such space between or beside the tracks and between the rails of the track

must be kept in such condition as to permit the employees to pass over or between the tracks or to use the same day or night and under all weather conditions without unnecessary hazard. (Authorized by K.S.A. 66-141; effective, E-82-2, Jan. 21, 1981; effective May 1, 1981.)

82-5-17. Special provisions. (a) Exemptions from any of the requirements contained in these rules shall be considered by the commission upon proper application from a carrier, industry or other interested person. A request for such exemption shall be accompanied by a full statement of the conditions existing, and the reasons for requesting the exemption. Any exemption shall be limited to the particular case covered by the application.

(b) No restricted clearance set out in this article shall apply to false works, shoofly tracks or other temporary emergency conditions caused by derailments, washouts, slides, or other unavoidable disasters.

(c) None of the restricted clearances set out shall apply to ballast, track material, or construction material unloaded on or adjacent to tracks for contemplated use thereon or in the immediate vicinity, nor shall they apply to falseworks or temporary construction necessary on any construction project.

(d) All existing structures, operating appurtenances, pole lines, service facilities, and track arrangements shall be exempt from these regulations except as specifically provided.

(e) No change in track location or elevation shall be made which will reduce existing vertical or horizontal structural clearance below the minimum allowed by these rules, except where tracks are constructed as part of the existing facility, and in such cases the clearance shall conform to existing conditions.

(f) No repair or maintenance work shall be done on structures, facilities or appurtenances adjacent to tracks which will reduce existing vertical or horizontal structural clearance below the minimum allowed by these rules.

(g) Where an existing structure does not provide clearance equal to the minimum set out in K.A.R. 82-5-13 or such other minimum herein specified, the portion of the structure producing the impaired clearance may be repaired and maintained by partial replacements, which shall in no case reduce the clearance available at the time this order takes effect.

(h) When the owner shall replace in its entirety the portion of a structure which has not previously provided standard clearance, the rebuilt portion must, when complete, provide the full standard clearance unless otherwise ordered by the commission.

(i) Existing tracks of all kinds may be maintained by reballasting, resurfacing and replacing rails and ties subject to the limitations of these rules. Where existing yards are completely replaced or are partially replaced as a unit or section of a master plan, the arrangement must meet the provisions of the rules both as to track centers and clearances to structures and other facilities being built in connection with and as a part of such plan. Existing structures which are to remain and which do not provide the minimum clearance with respect to the proposed new track must be approved by the commission for exemption from the requirements of these rules. Existing tracks having less vertical clearance than that specified by these rules may be maintained but the top of the rail may not be raised without a corresponding raise of the overhead structure to maintain the existing available clearance. Existing tracks having less horizontal clearance between them than is specified for new construction or having less horizontal clearance to structures than is specified by these rules may be maintained but they may not be shifted horizontally to reduce either the existing track centers or the existing structural clearance. (Authorized by K.S.A. 66-141; effective, E-82-2, Jan. 21, 1981; effective May 1, 1981.)

Article 6.—SUPPRESSION OF DIESEL LOCOMOTIVE ORIGINATED FIRES ON RAILROAD RIGHT-OF-WAY

82-6-1. Definitions. The following terms used in connection with rules and regulations governing suppression of diesel locomotive originated fires on railroad right-of-way shall be defined as follows: (1) The term “commission” refers to the state corporation commission of the state of Kansas.

(2) The term “carrier” means any railroad, railway company or corporation subject to commission jurisdiction, which operates a railroad in the state of Kansas.

(3) The term “right-of-way” is the property on which the road bed, tracks and fixed facilities necessary for the operation of trains are located. (Authorized by K.S.A. 66-101, 66-106, 66-156; effective May 1, 1981.)

tive, E-72-22, July 28, 1972; effective Jan. 1, 1973.)

82-6-2. Spark arresters. (a) No carrier shall use or operate a non-turbo charged diesel locomotive for over-the-road service in the state of Kansas unless it is equipped with a spark arrester. The spark arrester shall be constructed of nonflammable materials that are at least 80 percent efficient in the retention or destruction of all carbon particles .023 inch in diameter and larger for 30 to 100 percent of the locomotive engine's exhaust flow rate. With the addition of the arrester, the total manifold exhaust back leg pressure shall not exceed 3½ inches of mercury.

(b) Any carrier may make application to the commission for an extension of time to meet the standards of subsection (a) on the grounds of non-availability of parts and material, or on the grounds of financial inability to meet the provisions of subsection (a). (Authorized by and implementing K.S.A. 66-231b; effective, E-72-22, July 28, 1972; effective Jan. 1, 1973; amended May 1, 1984.)

82-6-3. High fire areas. (a) The term "high fire area" means any 10-mile section of a carrier's right-of-way wherein there has been, during the immediate past three-calendar-year period, an average of three or more diesel locomotive originated fires per year.

(b) Every carrier shall treat high fire areas by either plowing, burning, cutting, or chemically spraying all vegetation for a distance of not less than 25 feet from the outside rails and between all rails on its right-of-way. Periodic inspections of the high fire areas shall be made by the commission to assure compliance with this standard.

(c) On or before March 1 of each year, every carrier shall report to the commission all high fire areas on its right-of-way in the state of Kansas.

(d) The report shall state the location of the high fire areas by railroad mile post numbers, county, and nearest town or city. The report shall also include, but not be limited to, the date of each fire, the number of fires and the total acres burned in each of the specific high fire areas.

(e) The report shall state the nature of the treatment of high fire areas, and the date of that treatment for each area in the preceding calendar year. (Authorized by K.S.A. 66-231b; implementing K.S.A. 66-156; effective, E-72-22, July 28, 1972; effective Jan. 1, 1973; amended May 1, 1984.)

Article 7.—RAILROAD GRADE CROSSING PROTECTION RULES

82-7-1. (Authorized by K.S.A. 66-231b; effective, E-72-26, Sept. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1984.)

82-7-2. (Authorized by K.S.A. 66-231b; effective, E-72-26, Sept. 1, 1972; effective Jan. 1, 1973; revoked Jan. 31, 2003.)

82-7-3. (Authorized by K.S.A. 66-231b; effective, E-72-26, Sept. 1, 1972; effective Jan. 1, 1973; revoked Jan. 31, 2003.)

82-7-4. (Authorized by K.S.A. 66-231b; implementing K.S.A. 66-231a; effective, E-72-26, Sept. 1, 1972; effective Jan. 1, 1973; amended May 1, 1984; revoked Jan. 31, 2003.)

82-7-5. (Authorized by K.S.A. 66-231b; and implementing K.S.A. 66-231a; effective, E-72-26, Sept. 1, 1972; effective Jan. 1, 1973; amended May 1, 1984; revoked Jan. 31, 2003.)

Article 8.—SITING OF NUCLEAR GENERATION FACILITIES

82-8-1. Definitions. As used in this article, the following definitions shall apply: (a) "Applicant" means any electric utility making application for a permit pursuant to K.S.A. 66-1,159, and amendments thereto.

(b) "Application" means a request for issuance of a permit authorizing the site preparation for, or the construction of a nuclear generation facility, which is also referred to as proposed facility or facility, or an addition to a nuclear generation facility at a particular site in accordance with K.S.A. 66-1,159, and amendments thereto.

(c) "Permit" means the authorization granted by the commission that permits the applicant to begin preparation for, or construction of a nuclear generation facility or addition to a nuclear generation facility on the proposed site.

(d) "Site" means any proposed location of a nuclear generation facility or an addition to a nuclear generation facility. (Authorized by K.S.A. 2001 Supp. 66-106; implementing K.S.A. 2001 Supp. 66-1,159; effective May 1, 1981; amended Jan. 31, 2003.)

82-8-2. Formal requirements for a permit application and supporting documents.

(a) Each application for a permit shall contain the following:

(1) A summary statement of the applicant's proposal, including a specific statement describing the proposed facility or addition to it;

(2) a legal description of the land to be used, including the total number of acres intended to be used; and

(3) a statement showing the need for the proposed facility or addition to it.

(b) The supporting documents to be filed along with the application shall consist of the following:

(1) The exhibits, information, and plans required by K.S.A. 66-1,158 et seq., and amendments thereto, and these regulations;

(2) the prepared testimony that shall comprise the applicant's direct case in support of its application and shall meet the requirements of K.A.R. 82-1-229;

(3) a list of all landowners as defined by K.S.A. 66-1,158(c), and amendments thereto, who are to be given notice in connection with the application; and

(4) any additional information that the applicant deems necessary or desirable to support the application.

(c) The applicant's prepared testimony in support of its application shall meet the following criteria:

(1) Summarize the information contained in any exhibits;

(2) demonstrate the necessity for additional generation capacity;

(3) for each alternate site proposed, compare the site and size of the proposed facility, in relation to K.A.R. 82-8-3(a) through (k), except that an application for a permit to construct an addition to an existing nuclear generation facility shall not require comparison with an alternate site or sites; and

(4) evaluate the construction, operation, and maintenance of the proposed facility in relation to all applicable federal, state, and municipal laws, ordinances, rules, regulations, land use plans, and interstate contracts or agreements.

(d) The application for a site permit for a nuclear generation facility shall be printed or typed on paper that shall not exceed 8½ inches wide by 11 inches long and that shall be contained in a loose-leaf binder.

(e) If any information required by statute or these regulations is not available, the applicant shall state the reasons it is not available. If this information becomes available or if changes occur in material presented in the application or sup-

porting documents, the applicant shall provide the commission with appropriate amendments to the application or supporting documents. Amendments shall be in the form of page-for-page substitutions.

(f) The applicant shall file the original and 14 copies of the application, supporting documents, and testimony with the commission. (Authorized by K.S.A. 2001 Supp. 66-106; implementing K.S.A. 2001 Supp. 66-1,159; effective May 1, 1981; modified, L. 1981, ch. 425, May 1, 1981; amended Jan. 31, 2003.)

82-8-3. Requirements for applications.

Each application for a permit shall be accompanied by supporting documents as specified below and shall be assembled under topical sections corresponding to the subsections below, with index tabs for each section. The order and material to be included in each section shall be as follows: (a) An economic feasibility study on the proposed facility, setting forth the following:

(1) The estimated capital investment in the site, the proposed facility, and other related facilities;

(2) the anticipated source and the amount of funds to finance the project from each source;

(3) the period proposed for construction and the source of the labor force; and

(4) an economic comparison of the proposed facility and site, with other alternatives. The applicant shall include expansion at existing sites, as well as a discussion of power loss associated with the transmission distance, using a present-value revenue requirement comparison and a levelized mill per kilowatt-hour cost over the planning horizon with and without estimated cost escalation effects. This analysis shall compare the expected present value or the expected levelized cost with the proposed generation and transmission facility and without the proposed facility. The data used in developing this comparison shall be submitted in the format specified by the commission and shall be consistent with the data used in subsections (c) and (g);

(b) financial information sufficient to demonstrate the financial qualifications of the applicant to construct and operate the proposed facility. This information shall show that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover the estimated construction costs, the operating cost for the design lifetime of the facility, including related fuel costs,

and the estimated costs of permanently shutting the facility down and maintaining it in a safe condition;

(c) information and data demonstrating the need for a facility, including the following:

(1) The power requirements for the applicant's electrical system for 10 years before the application date. These requirements shall include the following, at a minimum:

- (A) Monthly peak demands;
- (B) the date and hour of annual peak;
- (C) annual load duration curves;
- (D) annual energy requirements; and
- (E) the purchases and sales at monthly peak, identified by purchaser and seller; and

(2) a schedule identifying by unit all of the applicant's existing generation facilities, including the following:

(A) The facility location and type, unit number, typical use, and fuel type;

(B) the net capacity;

(C) the on-line date;

(D) forced outage rates, including dates and duration of outage for the last five years;

(E) the annual capacity factor and equivalent availability factor for the last five years; and

(F) estimated unit deratings or projected retirement for 15 years and the reason for the derating. Projections shall be on a year-by-year basis;

(d) a general site description, which shall include the following:

(1) The proposed site location identified by section, township, range, and county, and the total number of acres involved;

(2) a state map, drawn to a scale not less than 1/2 inch equals 10 miles, showing the site location with respect to state, county, and other political subdivisions, and prominent features including cities, lakes, rivers, and highways;

(3) detailed maps, drawn to a scale not less than four inches equal one mile, showing the location of the facility perimeter, present and proposed utility development within three miles of the location, utility property abutting adjacent properties, nearby water bodies, wooded areas, farm settlements, parks and other public facilities; and

(4) the location of transmission substations and transmission lines associated with the proposed facility and interconnection with the applicant's electrical transmission system in Kansas;

(e) a general description of the proposed facility, which shall include the following:

(1) The principal design features;

(2) the expected operating and performance characteristics, including the following:

(A) the estimated maximum capacity of the facility;

(B) the estimated capacity if the facility is limited by condenser water;

(C) the estimated annual equivalent availability factors for each of the first five years of commercial operation;

(D) the estimated average operating heat rate (BTU/KWH) at 50%, 75%, and 100% of capacity;

(E) the estimated maintenance schedule for the first five years of commercial operation;

(F) the estimated gross generation, in megawatt hours, for each of the first five years of commercial operation;

(G) the estimated fraction of gross generation attributable to primary fuel for each of the first five years of commercial operation; and

(H) a schedule outlining the proposed plan for testing the unit for commercial operation including an approximate time schedule for this testing;

(3) the general arrangement of typical major structures and equipment by the use of scale plans and elevation drawings in sufficient number and detail to provide understanding of the general layout of the facility;

(4) extrapolation of any significant technology as represented by the design;

(5) the names and addresses, if known, of the prime contractors and major vendors for the project; and

(6) a time chart showing estimated engineering, construction, and start-up schedules for the proposed facility;

(f) approvals by other governmental agencies, according to the following:

(1) A list of all federal, state, and local permits, licenses, and certificates required for construction and operation of the facility, and the status of the application for approval of each. The applicant shall provide copies of all these documents, if issued;

(2) a list of all federal, state, and local government permits, licenses, and certificates required for the construction and operation of the facility in the following categories:

(A) Required before the expiration of the statutory time period for a determination concerning a site permit as provided in K.S.A. 66-1,162, and amendments thereto;

(B) required concurrent with the determination of the site permit by this commission; and

(C) required after a site permit determination by this commission; and

(3) copies submitted of all studies submitted to other agencies as directed by the commission;

(g) information on any transmission lines required to connect the proposed facility to the bulk power transmission network, including the following:

(1) The point or points at which facility transmission lines are planned for connection to the bulk power transmission network;

(2) the length, voltage, and capacity of any required new transmission line;

(3) the probable type of construction of any new line;

(4) a map, drawn to a scale not less than ½ inch equals 10 miles, showing the proposed route, and any alternate routes, for each transmission line necessary to connect the proposed facility with the bulk power transmission network;

(5) base case load flow studies as data is available from the Southwest Power Pool, of the existing Kansas interconnected electrical system for a year before the addition of the proposed facility of application modeled with the following:

(A) All Kansas interconnected loads simulated at 115 KV and higher bus;

(B) all out-of-state interconnected load flows simulated at the Kansas state line; and

(C) any unsatisfactory results highlighted;

(6) base case load flow studies of the existing Kansas interconnected electrical system modeled as specified in paragraphs (g)(5)(A) and (B) above, with the addition of the proposed generation and transmission facilities in one of the two years following completion and biennially thereafter through the tenth year as data is available from the Southwest Power Pool; and

(7) a full explanation of the applicant's load forecasting technique as used in paragraphs (g)(5) and (6) above. The applicant shall include the following at a minimum:

(A) A study of 10 years of historical load growth. Data for each year shall be subdivided into actual or modeled simulation by residential, commercial, industrial, and other load components;

(B) a trending methodology and detailed explanation of it, making use of the historical load growth study and modifying the study results to account for trend changes caused by conservation,

load management, price elasticity, econometrics, and additional factors that are themselves trend makers; and

(C) a load forecasting methodology incorporating the results of paragraph (g)(7)(B) above and a detailed explanation of it;

(h) data on the geology and seismology of the site and region surrounding the proposed site including the following:

(1) Maps and charts showing the topography, which shall include the following:

(A) A location map of the proposed structures, test holes, and excavation;

(B) a geologic map of rock types and structural features;

(C) geologic cross sections showing subsurface conditions; and

(D) a map, drawn to a scale not less than four inches equal one mile, showing bedrock contours where the site is covered by unconsolidated material;

(2) the physiographic significance of topographic features and their relationship to the regional pattern;

(3) the stratigraphic significance of the genesis, composition, extent, sequence, and correlation of rock units;

(4) the lithologic significance of the composition and textural character, including the results of any studies necessary to obtain a complete determination, of rock type and mineral composition;

(5) the subsurface structure showing faults, joints, distortion, alteration, weathering, slip planes, fissures, and cavities, and an explanation of the relationship of significant regional structure to site geology, including faulting;

(6) a description of soil types at the site;

(7) information concerning slope stability at the site; and

(8) copies of all studies or other bases used to furnish any information in this subsection;

(i) information on fuel to be used at the proposed facility, including the following:

(1) The specific type of fuel expected to be used; and

(2) a description of the method of fuel delivery to the site as well as the frequency of delivery that will be necessary;

(j) an evaluation of the effect on the environment, which shall be prepared for each alternative site for a new generating facility. The evaluation shall consider the following, at a minimum:

(1) The cultural, scenic, archaeological, and historical characteristics of the site; and

(2) the fauna and flora and, in particular, any endangered species existing in or traversing the site; and

(k) a discussion of the anticipated noise level of the proposed facility and the need and proposals for noise control. (Authorized by K.S.A. 2001 Supp. 66-106; implementing K.S.A. 2001 Supp. 66-1,159; effective May 1, 1981; modified, L. 1981, ch. 425, May 1, 1981; amended Jan. 31, 2003.)

82-8-4. Waiver provisions. The commission may for good cause shown waive any of the requirements of these regulations to the extent permitted by law. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-1,159; effective May 1, 1981.)

82-8-5 to 82-8-99. Reserved.

82-8-100. (Authorized by and implementing K.S.A. 66-183; effective May 1, 1983; amended July 23, 1990; revoked Aug. 11, 1995.)

82-8-101. (Authorized by and implementing K.S.A. 66-183; effective May 1, 1983; amended May 1, 1985; amended July 23, 1990; revoked Aug. 11, 1995.)

82-8-102 to 82-8-107. (Authorized by and implementing K.S.A. 66-183; effective May 1, 1983; revoked Aug. 11, 1995.)

82-8-108. (Authorized by and implementing K.S.A. 66-183; effective July 23, 1990; revoked Aug. 11, 1995.)

Article 9.—RAILROAD RATES

82-9-1. Railroad tariff filing requirements. (a)(1) Each railroad tariff for rates or provisions published in connection with a new service, and each railroad tariff change that would result in increased rates, shall be on file with the commission at least 20 days prior to its effective date.

(2) Each railroad tariff which would result in decreased rates or increased value of service shall be on file at least 10 days prior to its effective date.

(3) Each rate publication filed with the commission shall be on forms prescribed by the commission and shall contain such information as the commission may require, including, but not limited to:

(A) a tariff containing all relevant and material provisions relating to the rate and its application; and

(B) a statement as to whether the rate will increase, decrease, or produce no change in the carrier's revenue.

(4) Each railroad tariff which would result in a decrease in the value of service shall be on file at least 20 days prior to its effective date.

(5) Each railroad tariff which would result in neither increases or reductions of rate or services shall be filed at least 10 days prior to its effective date.

(6) Independently filed new and reduced rail rates may become effective on one day's notice pursuant to 3 I.C.C. 323 (1987) and 49 C.F.R. § 1312.39(h) as in effect on October 1, 1989.

(7) Shorter notice will be available for changes in rail rates upon a showing of good cause pursuant to 49 C.F.R. § 1312.2 as in effect on October 1, 1989.

(b) The interstate commerce commission's decision in ex parte No. 355, cost standards for railroad rates 364 I.C.C. 898 (1981) is hereby adopted by reference in implementing minimum rate regulation.

(c) Rate Discrimination.

(1) Differences between rates, classifications, rules and practices of rail carriers providing transportation subject to the jurisdiction of this commission shall not constitute unlawful discrimination if such differences result from different services provided by rail carriers.

(2) The commission recognizes that the following matter are not unjust, unreasonably discriminating or unduly preferential:

(A) contracts approved by the commission except as provided in 49 U.S.C. 10713;

(B) surcharges or cancellations pursuant to 49 U.S.C. 10705a;

(C) separate rates for distinct rail services;

(D) rail rates applicable to different routes; and

(E) expenses authorized under 49 U.S.C. 10751.

(3) The discrimination limitations of 49 U.S.C. § 10741 do not restrict the commission's mandate to eliminate discrimination in the rail transportation of recyclables.

(d) The commission hereby adopts 49 U.S.C. § 10730 by reference, authorizing railroads to publish rates under which the liability of the carrier is limited to a value established by the written dec-

laration of the shipper or by written agreement between the carrier and the shipper.

(e) All actions regarding the operation of railroads within the state of Kansas will be consistent with 49 U.S.C. § 10101a. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-107, 66-110 and K.S.A. 1989 Supp. 66-146; effective May 1, 1984; amended May 1, 1985; amended Oct. 29, 1990.)

82-9-2. Commencement of proceedings.

(a) To determine whether a new individual or joint rate, or an individual or joint classification, rule, or practice related to a rate filed with the commission by a rail carrier, is discriminatory, unreasonable or in any way violates the law, the commission may:

- (1) on its own initiative, commence an investigation proceeding; or
- (2) upon protest of an interested party, commence an investigation proceeding; or
- (3) upon protest of an interested party, commence an investigation and suspension proceeding.

The provisions of this subsection shall not apply to general rate increases, inflation-based increases, or fuel adjustment surcharges filed under the provisions of 49 U.S.C. § 11051(b)(6), over which the commission has no jurisdiction.

(b) Rates based on limited carrier liability may be published and filed with the commission, without prior approval. However, those rates shall be subject to protest on grounds including unreasonableness or nonconformance with the tariff publication requirements found in 49 CFR 1300.4 (i) (11), as in effect on September 23, 1983, which are hereby adopted by reference.

(c) The commission shall give reasonable notice to each interested party before beginning a proceeding. However, the commission may begin the proceeding without allowing an interested party to file an answer.

(d) The commission recognizes that the interstate commerce commission has exclusive authority to prescribe an intrastate rate for transportation provided by a rail carrier, pursuant to 49 U.S.C. § 11051 (d) when:

(1) a rail files with the appropriate state authority a change in an intrastate rate, or a change in a classification, rule, or practice that has the effect of changing an intrastate rate, that adjusts the rate to the rate charged on similar traffic moving in interstate or foreign commerce; and

(2) the state authority does not act finally on

the change by the 120th day after it was filed. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984; amended May 1, 1985.)

82-9-3. Grounds for suspension. (a) A proposed rate, classification, rule, or practice shall not be suspended unless it appears, from the specific facts shown by a verified statement of a protestant, that:

(1) there is a substantial probability that the protestant will prevail on the merits;

(2) without suspension, the proposed rate change will cause substantial injury to the protestant or the party represented by the protestant; and

(3) because of the peculiar economic circumstances of the protestant, the provisions of K.A.R. 82-9-11 of these rules do not protect the protestant.

(4) A state agency shall not suspend a proposed rail rate classification, rule or practice on its own motion. (Authorized by K.S.A. 66-106; implementing K.S.A. 1989 Supp. 66-146; effective May 1, 1984; amended Oct. 29, 1990.)

82-9-4. Duration of suspension period.

(a) Each proceeding commenced under these procedures shall be completed within five months from the effective date of the proposed rate, classification, rule or practice. However, if the commission reports to the interstate commerce commission that it cannot make a final decision within that time and explains the reason for the delay, an extension of three months may be allowed to complete the proceeding and make a final decision.

(b) If the commission does not render a final decision within the applicable time period, the rate, classification, rule or practice shall become effective immediately or, if already in effect, shall remain in effect. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

82-9-5. Market dominance. (a) When any new individual or joint rate is alleged to be unreasonably high, a determination of whether or not the railroad proposing the rate has market dominance over the transportation to which the rate applies shall be made by the commission within 90 days after the start of a proceeding under these rules.

(b) If the railroad proposing the rate has market dominance over the transportation to which

the rate applies, a determination of whether or not the proposed rate exceeds a maximum reasonable level for that transportation shall be made.

(c) If the railroad proposing the rate does not have market dominance over the transportation to which the rate applies, no determination on the issue of reasonableness will be made.

(d) Any finding by the commission that the proposed rate has a revenue-variable cost percentage which is equal to or greater than the percentages found in 49 U.S.C. § 10709(d)(2) as in effect on September 23, 1983, which is hereby adopted by reference, shall not establish a presumption that:

(1) The railroad has or does not have market dominance over such transportation; or

(2) the proposed rate exceeds or does not exceed a reasonable maximum level.

(e) The interstate commerce commission's decision in Market Dominance Determinations 365 ICC 118, applying to the market dominance standards, is hereby adopted by reference.

(f) Evidentiary guidelines in determining market dominance as set out in 365 I.C.C. 118 (1981) and 2 I.C.C.2d 1 (1985) are hereby adopted by reference. (Authorized by K.S.A. 66-106; implementing K.S.A. 1989 Supp. 66-146; effective May 1, 1984; amended May 1, 1985; amended Oct. 29, 1990.)

82-9-6. Reasonableness. (a) Except for nonferrous recyclables, the reasonableness of a rate shall be evaluated by the commission only after market dominance has been established. Authority to determine and prescribe reasonable rules, classifications and practices may not be used directly or indirectly to limit the rates that rail carriers are otherwise authorized to establish. Unless prohibited by specific statutory provision, any reasonable rate may be established. The standards set out in 1 I.C.C.2d 520 (1985) and ex parte no. 347 (Sub.-No. 2) (unpublished) as served April 8, 1987, are hereby adopted by reference. In determining whether a rate is reasonable, evidence of the following shall be considered:

(1) The amount of traffic that is transported at revenues which do not contribute to going concern value and the efforts made to minimize that traffic;

(2) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on the traffic can be changed to maximize the revenues from the traffic; and

(3) the carrier's mix of rail traffic, to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues.

(b) Any rate on nonferrous recyclable material shall be presumed to be unreasonable when it is set at a revenue to variable cost ratio greater than 147.7 percent.

(c) Revenue adequacy standards as set out in standards for railroad revenue adequacy, 364 I.C.C. 803 (1981) shall be established by the commission. Where there is a prior interstate commerce commission ruling on revenue adequacy of a particular carrier, a certified state agency is bound by the ICC ruling and may not determine revenue adequacy independently. The return on investment/cost of capital standards as set out in 3 I.C.C.2d 261 (1986) are also adopted by reference.

(d) Intrastate rates in existence on October 1, 1980, shall be conclusively presumed reasonable unless a complaint that was filed under § 229 of the staggers rail act of 1980 with the interstate commerce commission not later than March 31, 1981, was submitted to the commission for disposition.

(1) The cost adjustment factor determined by the interstate commerce commission on a quarterly basis shall be used by the commission to determine the adjusted base rate.

(2) Complaints on adjustments to the base rate which cover inflation will not be investigated, suspended or accepted.

(3) Increases within the zone will not be suspended or investigated unless the increases produce ratios exceeding the year's market dominance threshold plus 20%, or 190%, whichever is less. In deciding whether to investigate, the following shall be considered by the commission:

(A) The amount of traffic below going concern value and efforts to minimize it;

(B) amount of traffic contributing marginally to fixed costs;

(C) traffic impact on revenue adequacy and energy; and

(D) cross subsidization of traffic.

(e) The protestant shall have the burden of justifying an investigation.

(f) A rail carrier may petition the interstate commerce commission to review a decision regarding intrastate rates pursuant to 49 U.S.C. § 11501(c). (Authorized by K.S.A. 66-106; implementing K.S.A. 1989 Supp. 66-146; effective May

1, 1984; amended May 1, 1985; amended May 1, 1986; amended Oct. 29, 1990.)

82-9-7. Burden of proof. (a) General. The burden shall be on the protestant to prove the matters described in K.A.R. 82-9-3 of these rules.

(b) Jurisdiction. The respondent railroad shall bear the burden of showing that the commission lacks jurisdiction to review the proposed rate because the rate produces a revenue—variable cost percentage that is less than the percentages found in 49 U.S.C. Sec. 10709(d)(2), which is hereby adopted by reference, as in effect on September 23, 1983. The railroad may meet its burden of proof by showing the revenue—variable cost percentage for that transportation to which the rate applies is less than the threshold percentage cited in 49 U.S.C. Sec. 10709(d)(2). The protestant may rebut the railroad's evidence with a showing that the revenue—variable cost percentage is equal to or greater than the threshold percentage in 49 U.S.C. Sec. 10709(d)(2).

(c) Intramodal and intermodal competition. The protestant shall bear the burden of demonstrating that there exists no effective intramodal or intermodal competition for the transportation to which the rate applies. The respondent railroad may rebut the protestant's showing with evidence that effective intramodal or intermodal competition exists.

(d) Product and geographic competition. The railroad shall also introduce evidence of product or geographic competition by identifying such competition. Once the railroad has made this identification, the party opposing the rate shall have the burden of proving that the product or geographic competition identified by the railroad is not effective.

(e) Reasonableness of rate increases. Each party protesting a rate increase shall bear the burden of demonstrating its unreasonableness if the rate:

(1) is authorized under 49 U.S.C. § 10707a, as in effect on September 23, 1983; and

(2) results in a revenue—variable cost percentage for the transportation to which the rate applies that is less than the lesser of the percentages described in clauses (i) and (ii) of 49 U.S.C. § 10707a(e)(2)(A), as in effect on September 23, 1983.

(f) Respondents's burden of proof. The respondent railroad shall bear the burden of demonstrating the reasonableness of a rate increase if:

(A) The rate is greater than that authorized under paragraph (e)(1) of this regulation; or

(B) The rate results in a revenue—variable cost percentage, for the transportation to which the rate applies, that is equal to or greater than the lesser of the percentages described in clauses (i) and (ii) of 49 U.S.C. § 10707a(e)(2)(A), as in effect on September 23, 1983; and

(2) the commission initiates an investigation.

(g) Rate decreases. A party protesting a rate decrease shall bear the burden of demonstrating that the rate does not contribute to the going concern value of the railroad, and is therefore unreasonably low. A party may meet its burden by making a showing that the rate is less than the variable cost for the transportation to which the rate applies. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984; amended May 1, 1985.)

82-9-8. Zone of rate flexibility. (a)(1) Any rail carrier may raise any rate subject to the limitations described in 49 U.S.C. Sec. 10707a as in effect on September 23, 1983. Base rates increased by the quarterly rail cost adjustment factor shall not be investigated or suspended.

(2) In addition, any railroad may increase any rate by 6% per annum until October 1984. Railroads not earning adequate revenues, as defined by the interstate commerce commission, after that period, may raise rates 4% per year. Neither the 6% or 4% increase shall be suspended. If either increase results in a revenue to variable cost ratio that equals or exceeds 190%, the rate may be investigated either upon the commission's own motion or on complaint of an interested party. The preceding standards regarding the regulation of intrastate rail rates are adopted by the commission to conform to the staggers rail act of 1980.

(b) In determining whether or not to investigate the rate, the following shall be considered:

(1) the amount of traffic which the railroad transports at revenues which do not contribute to going concern value and efforts made to minimize that traffic;

(2) the amount of traffic which contributes only marginally to fixed costs and the extent to which rates on that traffic can be changed to maximize the revenues from that traffic;

(3) the impact of the challenged rate on national energy goals;

(4) state and national transportation policy; and

(5) the revenue adequacy goals incorporated in

the interstate commerce act, as in effect on September 23, 1983.

(6) Increased rates resulting from application of the rail cost adjustment factor (RCAF) are conclusively presumed lawful so long as they do not exceed the adjusted base rate. (Authorized by K.S.A. 66-106; implementing K.S.A. 1989 Supp. 66-146; effective May 1, 1984; amended May 1, 1985; amended Oct. 29, 1990.)

82-9-9. Monetary adjustments for suspension actions. (a) Rate increases with no suspensions. If the commission does not suspend, but investigates, a proposed rate increase under K.A.R. 82-9-3, the rail carrier shall account for all amounts received under the increase until the commission completes its proceedings under K.A.R. 82-9-4. The accounting shall specify by whom and for whom the amounts are paid. When the commission takes final action, the carrier shall refund to the persons for whom the amounts were paid that part of the increased rate found to be unreasonable, plus interest at a rate equal to the average yield, on the date that the "statement of monetary adjustment" is filed, of marketable securities of the United States government having a duration of 90 days.

(b) Rate increases with suspension. If a rate is suspended and any portion of that rate is later found to be reasonable, the carrier shall collect from each person using the transportation to which the rate applies the difference between the original rate and the portion of the suspended rate found to be reasonable for any services performed during the period of suspension. The carrier shall also collect, from such persons, interest at a rate equal to the average yield, on the date that the "statement of monetary adjustment" is filed, of marketable securities of the United States government having a duration of 90 days.

(c) Rate decreases with suspension. If the commission suspends a proposed rate decrease which is later found to be reasonable, the rail carrier may refund any part of the decrease found to be reasonable if the carrier makes the refund available to each shipper who participated in the rate, in accordance with the relative amount of that shipper's traffic which was transported at that rate. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

82-9-10. Filing requirements. (a) The protest, reply and any other pleadings relating to

the proceeding shall not be considered unless made in writing and filed with the commission.

(b) The protest, reply or other pleadings relating to the proceeding shall be received for filing at the commission's office within the time limits, if any, for that filing. The date of receipt at the commission, and not the date of deposit in the mail, is determinative.

(c) If, after examination, the commission finds that the protest, reply, "statement of monetary adjustment" or other pleadings relating to the proceeding are not in substantial compliance with the provisions of these regulations, the commission may decline to accept the documents for filing, advise the party submitting the documents of the deficiencies, and require correction of the deficiencies.

(d) The protest, reply, tariff and other pleadings relating to the proceeding shall be signed in ink and the signer's address shall be stated.

(e) The facts alleged in a protest, reply, tariff or other pleading shall be verified by the person on whose behalf it is filed. If a protest or pleading is filed on behalf of a corporation or other organization, it shall be verified by an officer of that corporation or organization.

(f) Identification. The protested tariff shall be identified by making reference to the name of the railroad or its publishing agent, to the KCC docket number, to the specific items of particular provisions protested and to the effective date of the protested publication. Reference shall also be made to the tariff and specific provisions of the tariff that are proposed to be superseded.

(g) Ground for suspension. The protest shall incorporate:

(1) Sufficient facts to meet the criteria for suspension, as set forth in K.A.R. 82-9-3;

(2) Sufficient facts to sustain the applicable burdens of proof, as set forth in K.A.R. 82-9-7; and

(3) Any additional information that would support suspension of the proposed rate.

(h) Timing. When a proposed change is to become effective upon not less than 20 days notice, each protest and request for suspension of a tariff filed by a railroad shall be received by the commission at least 10 days prior to the effective date. When the proposed change is to become effective upon not less than 10 days notice, such protests and requests shall be received at least five days prior to the effective date.

(i) Reply to protest. The reply shall adequately

identify the protested tariff. Further, it shall contain sufficient facts to rebut the allegations made in the protest and to sustain the applicable burdens of proof.

(j) When the proposed change is to become effective upon not less than 20 days notice, a reply to a protest shall be received by the commission not later than the fourth working day prior to the effective date. When the proposed change is to become effective upon not less than 10 days notice, the reply shall be received no later than the second working day prior to the effective date. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

82-9-11. Refund or collection of freight charges based upon commission findings. (a)

Except as otherwise provided, when the commission finds that a railroad must make refunds on freight charges collected, or that the railroad is entitled to collect additional freight charges, but the amount cannot be ascertained upon the record before it, the party entitled to the refund or the railroad entitled to collect additional monies shall immediately prepare a statement showing details of the shipments involved in the proceeding.

(b) The statement shall not include any shipment not covered by the commission's findings. If the shipments moved over more than one route, a separate statement shall be prepared for each route and each statement shall be separately numbered. However, shipments which, in each instance, have the same collecting carrier may be listed in a single statement if grouped according to routes.

(c) Each prepared, certified statement shall be filed with the commission and it shall then consider entry of an order awarding refunds or authorizing collection of additional freight charges.

(d) If a rail carrier wishes to waive the collection of amounts due when such amounts are more than \$2,000, a petition for appropriate authority shall be filed by the carrier on the special docket by submitting a letter of intent to waive insignificant amounts. These petitions shall contain the following information:

- (1) The name and address of the customer for whom the carrier wishes to waive collection;
- (2) The name and addresses of the carriers involved in the intended waiver and a statement certifying that all carriers concur in the action;
- (3) The amount intended to be waived;

(4) The points of origin and destination of the shipments and the routes of movement; and

(5) A brief statement of justification for the intended waiver, including the anticipated costs of billing, collection and/or litigation if the waiver is not permitted.

(e) If the amount to be waived is \$2,000 or less, no petition need be filed prior to the waiver. A letter of disposition informing the commission of the action taken, the date of the action, and the amount waived shall be submitted to the commission within 30 days of the waiver.

(f) Petitions to waive the collection of undercharges or waive the collection of insignificant amounts shall be made available by the commission for public inspection five days after receipt, and shall remain available for 25 days. Any interested person may protest the granting of a petition by filing a letter of objection with the commission within 30 days of commission receipt of the petition. Letters of objection shall clearly state the reasons for the objection, and shall certify that a copy of the letter of objection has been served on all parties named in the petition. A period of 15 days shall be allowed for reply from the respondent.

(g) Any petition which is not contested within 30 days shall be considered an order of the commission authorizing the action contemplated in the petition. In such a case the order shall take effect 45 days after commission receipt of the petition. Within 30 days after the expiration of the 45-day period, the carrier filing the petition shall file a letter of disposition informing the commission of the date of the action and the amount paid or waived. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984; amended May 1, 1985.)

82-9-12. Zone of rate flexibility. Base rates increased by the quarterly rail cost adjustment factor shall not be found to exceed a reasonable maximum for the transportation involved. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

82-9-13. Market dominance. (a) The commission shall determine, within 90 days of the start of a complaint proceeding, whether the carrier has market dominance over the transportation to which the rate applies. If the commission finds that the carrier has market dominance, it may then determine that rate to be unreasonable if it

exceeds a reasonable maximum for that transportation.

(b) If the rail carrier establishing the challenged rate proves that the rate charged results in a revenue-variable cost percentage which is less than that allowed in K.A.R. 82-9-5, the rail carrier shall not be considered to have market dominance over the transportation to which the rate applied.

(c) If the commission determines that a rail carrier does not have market dominance over the transportation to which a particular rate applies, the rate established by that carrier for the transportation shall be reasonable. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

82-9-14. Maximum rates. (a) Rail rates shall not be established below a reasonable minimum. Any rate for transportation by a rail carrier that does not contribute to the going concern value for that carrier is presumed to be not reasonable.

(b) Rail rates which equal or exceed the variable cost of providing the transportation shall be conclusively presumed to contribute to the going concern value of that rail carrier, and therefore shall be presumed not to be below a reasonable minimum.

(c) In determining whether a rate is reasonable, the policy that railroads earn adequate revenues, as well as evidence of the following factors, shall be considered:

(1) the amount of traffic which is transported at revenues which do not contribute to going concern value and efforts made to minimize such traffic;

(2) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on that traffic can be changed to maximize the revenues from such traffic; and

(3) the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues. (Authorized by K.S.A. 66-106; implementing K.S.A. 1989 Supp. 66-146; effective May 1, 1984; amended Oct. 29, 1990.)

82-9-15. Burden of proof. (a) Jurisdiction. Each defendant railroad shall bear the burden of showing that the commission lacks jurisdiction to review a rate because the rate produces a revenue—variable cost percentage that is less than the percentages incorporated in K.A.R. 82-9-7. The railroad shall meet its burden of proof by showing

the revenue-variable cost percentage for the transportation to which the rate applies is less than the threshold percentage incorporated in K.A.R. 82-9-7. Any complainant may rebut the railroad's evidence with a showing that the revenue-variable cost percentage is equal to or greater than the applicable threshold percentage.

(b) Reasonableness of existing rates. Any party complaining that an existing rate is unreasonably high shall bear the burden of proving that the rate is not reasonable. Any party complaining that an existing rate is unreasonably low shall bear the burden of demonstrating that the rate does not contribute to the going concern value of the carrier, and that the rate is, for that reason, unreasonably low.

(c) Nonapplicability. Complaints shall not be entertained by the commission to the extent that they challenge the reasonableness of the following rate adjustments:

- (1) general rate increases;
- (2) inflation-based rate increases; or
- (3) fuel adjustment surcharges.

(Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

82-9-16. Contracts. (a) Definitions. (1) "Contract," as used in this regulation, means a written agreement entered into by one or more rail carriers with one or more purchasers of rail services, to provide specified services under specified rates, charges, and conditions.

(2) "Amendment" means written contract modifications signed by the parties.

(b) Filing and approval. Each rail carrier providing transportation subject to commission jurisdiction shall file, with the commission, an original and one copy of all contracts entered into with one or more purchasers of rail services. These contracts shall be accompanied by two copies of the contract tariff that contains a summary of the non-confidential elements of the contract in the form specified in 49 C.F.R. 1300.300-1300.315, as in effect on September 23, 1983, which is hereby adopted by reference. The following parts of the federal rules and regulations promulgated by the interstate commerce commission, as they existed on September 23, 1984, are hereby incorporated by reference: 49 C.F.R. 1300.300 through 1300.315.

(c) Each contract filed under the section shall specify that the contract is made pursuant to

K.A.R. 82-9-16, and shall be signed by duly authorized parties.

(d) Each amendment shall be treated as a new contract. Each amendment shall be lawful only if it is filed and approved in the same manner as a contract. To the extent terms affecting the lawfulness of the underlying contract are changed, remedies shall be revived and review shall again be available.

(e) Grounds for review of contract. A proceeding to review a contract may be initiated within 30 days of its filing date upon the commission's own motion or complaint of an interested party. Such a review shall be based only on an allegation of violations as described in K.A.R. 83-9-17. For purposes of this subsection, the definition of the term for "agricultural commodities," "forest products," and "paper" will be decided on a case-by-case basis.

(f) Enforcement. The exclusive remedy for an alleged breach of a contract approved by the commission shall be an action in an appropriate state district court, unless the parties otherwise agree in the contract. A rail carrier shall not be required to violate the terms of a contract, except to the extent necessary to comply with 49 U.S.C. § 11128.

(g) A rail carrier may enter into contracts for the transportation of agricultural commodities that involve the use of carrier-owned or based equipment if the involved equipment does not exceed 40 percent of the total number of the carrier's owned or leased equipment, by major car type. Agricultural commodities shall include forest products, excluding wood pulp, wood chips, pulpwood or paper.

(h) Any transportation or service performed under a contract or amendment may begin, without specific commission authorization, on or after the date the contract and contract summary or contract amendment and supplement are filed and before commission approval.

(i) Rules governing railroad contracts as set forth in 4 I.C.C.2d 288 (1988) are hereby adopted by reference. (Authorized by K.S.A. 66-105; implementing K.S.A. 1989 Supp. 66-146; effective May 1, 1984; amended May 1, 1985; amended Oct. 29, 1990.)

82-9-17. Grounds for complaints. Any contract may be reviewed by the commission on its motion, or upon complaint. Contracts shall be reviewed only on the following grounds:

(a) In the case of a contract other than a contract for the transportation of agricultural commodities, including forest products and paper, a shipper may file a complaint only on the grounds that the shipper individually will be harmed because the contract unduly impairs the ability of the contracting carrier or carriers to meet their common obligations under 49 U.S.C. Sec. 11101 (a), as in effect on September 23, 1983.

(b) In the case of a contract for the transportation of agricultural commodities, including forest produce and paper, a shipper may file a complaint only on the grounds that:

(1) The shipper individually will be harmed because the contract unduly impairs the ability of the contracting carrier or carriers to meet common carrier obligations;

(2) The rail carrier or carriers unreasonable discriminated against the shipper; or

(3) The contract constitutes a destructive, competitive practice.

(c) "Unreasonable discrimination," as used in these rules and when applied to agricultural shippers, means that the railroad has refused to enter into a contract with the shipper for rates and services for transportation of the same type of commodity under similar conditions to the contract at issue, and that the shipper was ready, willing, and able to enter into a contract at a time essentially contemporaneous with the period during which the contract at issue was offered. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

82-9-18. Filing and service of complaints. (a) An original and six copies of a complaint shall be filed with the commission by the 18th day after the filing date of the contract. A copy of the complaint shall also be served on each railroad listed as a railroad participating in the contract, by hand, express mail, or other overnight delivery service.

(b) An original and six copies of a reply shall be filed by the 23rd day after the filing of the contract and a copy shall be served upon the complainants.

(c) Any appeal of the commission's decision shall be made at least two work days prior to the contract approval date. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

82-9-19. Commission decision upon review of contract. (a) Within 30 days after the date a proceeding is begun to review a contract

upon the grounds specified in 82-9-17(b), the commission shall decide whether the contract violates the provisions of 49 U.S.C. Sec. 10713, as in effect on September 23, 1983. If the commission finds that a violation exists, it shall:

- (1) disapprove the contract;
- (2) in the case of agricultural contracts where the commission finds unreasonable discrimination by a carrier, order the carrier to provide rates and services substantially similar to the contract at issue with any differences in terms and conditions that are justified by the evidence; or
- (3) allow the carrier to cancel the contract.

(b) Approval date of contract. Each contract shall be approved on the 30th day after the filing date of that contract. If the commission does not institute a proceeding to review the contract, the contract shall be considered "expressly approved" by the commission.

(c) If the commission institutes a proceeding to review a contract, that contract shall be approved:

- (1) on the date the commission approves the contract, if the date of approval is 30 or more days after the filing date of the contract;
- (2) on the 30th day after the filing date of the contract, if the commission approves the contract prior to the 30th day after the filing date of the contract; or
- (3) on the 60th day after the filing date of a contract, if the commission fails to disapprove the contract. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984; amended May 1, 1985.)

82-9-20. Limitation of rights of a rail carrier to enter future contracts. The commission may limit the right of any rail carrier to enter into future contracts if it determines that additional contracts would impair the ability of the rail carrier to fulfill its common carrier obligations. That determination shall be handled on a case-by-case basis. The commission may investigate either on its own initiative or upon the filing of a verified complaint, by a shipper, which demonstrates that the carrier's inability to fulfill its common carrier obligations, as a result of existing contracts, harmed that shipper. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

82-9-21. Common carrier responsibility. (a) The terms of each contract approved by the commission shall completely determine the duties and service obligations of the parties to the

contract with respect to the services provided under the contract. The contract shall not affect the parties' responsibilities for any services which are not included in the contract.

(b) The exclusive remedy for an alleged breach of a contract approved by the commission shall be an action in an appropriate state court or United States district court, unless the parties otherwise agree in the contract. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

82-9-22. Filing a contract and contract tariff. (a) Each railroad entering into a contract for railroad transportation services (or the originating railroad for a contract involving movement over more than one railroad) with one or more purchasers of rail service shall file, with the commission, the original and one copy of the contract and two copies of the contract tariff.

(b) Each contract filed under these rules shall not be available for inspection by persons other than the parties to the contract and authorized commission personnel, except by a petition demonstrating that the petitioner is likely to succeed on the merits of the complaint and that the matter complained of could not be proved without access to the complete contract.

(c) The contract tariff filed under these rules shall include the information specified in 49 CFR 1300.300-1300.315, as in effect on September 23, 1983, which are hereby adopted by reference. The contract tariff shall be made available for inspection by the general public.

(d) Copies of contract summaries shall be available from the commission. When requesting a summary, reference shall be made to the contract docket number.

(e) Each contract and contract tariff shall be filed with the commission at least 30 days, and not more than 60 days, before the date on which it is to become effective, except as otherwise authorized by the commission. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

82-9-23. Exempt transportation. (a) The commission may exempt a person, class of person, transaction or service from further rail regulation by the commission when it finds that:

- (1) further regulation is not necessary to carry out state and national transportation policy; and
- (2) either the transaction or service is of limited

scope, or further regulation is not needed to protect shippers from the abuse of market power.

(b) The commission may, on its own initiative, or on application by any interested party, begin a proceeding to exempt rail carrier transportation.

(c) The commission may specify the period of time during which the exemption granted is effective.

(d) The commission may revoke, in whole or in part, an exemption if it determines that a revocation is necessary to carry out state and national transportation policy.

(e) When the interstate commerce commission concludes that a particular category of interstate traffic is exempted, this commission will adopt it as a standard for intrastate traffic. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984; amended May 1, 1985.)

82-9-24. Joint rate surcharges and cancellations. (a) 49 U.S.C. 10705a, as it existed on September 15, 1984, is adopted by reference.

(b) Rail variable cost and revenue determinations for joint rates subject to surcharge or cancellation shall be made pursuant to 3 I.C.C.2d 703 and 49 C.F.R. Part 1138 as in effect October 1, 1989.

(c) Cancellation of joint rates and complaints seeking prescription of joint rates and reciprocal switching arrangements shall be made pursuant to I.C.C.2d 822 and 49 C.F.R. Part 1144 as in effect October 1, 1989. (Authorized by K.S.A. 66-106; implementing K.S.A. 1989 Supp. 66-146; effective May 1, 1984; amended May 1, 1985; amended Oct. 29, 1990.)

82-9-25. Rate discrimination. Differences between rates, classifications, rules and practices of rail carriers that provide transportation which is subject to the jurisdiction of the commission shall not constitute unlawful discrimination if the differences result from different services provided by rail carriers. (Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984.)

Article 10.—OIL AND NATURAL GAS LIQUID PIPELINES

82-10-1. Definitions. The following terms as used in this regulation and the identified sections of the regulations adopted by reference are defined as follows:

(1) The term “carrier” as used in 18 C.F.R.

352, means an oil or natural gas liquid pipeline company as defined as a common carrier in K.S.A. 55-501 and 66-1,215.

(2) The term “commission” as used in 18 C.F.R. 352, means the state corporation commission of Kansas. (Authorized by K.S.A. 55-504 and K.S.A. 66-1,218; implementing K.S.A. 55-501 and K.S.A. 66-1,215, effective May 1, 1987.)

82-10-2. Rate applications of oil and natural gas liquid pipeline companies.

(a) **Scope.** An oil or natural gas liquid pipeline company whose rates are under review by this commission at the request of the applicant, or as a result of investigation, complaint or any other procedure, shall comply with this regulation. The applicant shall be prepared to establish by appropriate schedules and competent testimony all relevant facts and data pertaining to its business and operations which will assist the commission in arriving at a determination of rates which will be fair, just and reasonable both to the applicant and the public.

(b) In preparing justification statements, pre-filed testimony and supporting schedules, the applicant shall utilize the following format:

(1) The first section shall contain a copy of the application, a copy of the letter of transmittal, and the appropriate document or documents authorizing the filing of the application, if any.

(2) The second section shall give general information and shall include:

(A) the amount of dollars of the aggregate annual increase which the application proposes;

(B) a summary of the reasons for filing the application;

(C) such other pertinent information which the applicant may desire to submit or which the commission may in its discretion require;

(D) copies of any press releases issued by the applicant prior to or at the time of filing the application for a rate review, relating to that review; and

(E) a copy of the system diagram map.

(3) The annual report or Federal Energy Regulatory Commission Form 6 shall be included.

(4) The last sections shall include all other schedules, exhibits and data deemed pertinent to the application which may not be properly included under the preceding sections. Such additional evidence may be submitted at the option of the applicant and shall be submitted upon the direction of the commission.

(c) Prefiled testimony shall be filed simultaneously with the filing of the application.

(d) For good cause shown the commission may waive any of the requirements of this rule. (Authorized by K.S.A. 55-504, K.S.A. 66-106 and K.S.A. 66-1,218; implementing K.S.A. 55-504 and K.S.A. 66-1,218; effective May 1, 1987.)

82-10-3. Revisions of application and schedules. (a) If an oil or natural gas liquid pipeline company desires to make revisions to its application and schedules, other than minor corrections and insertions which can only be made by interlineation without unduly prolonging a hearing with respect to the application or schedules, the applicant shall file with the commission revised schedules as are necessary to reflect the desired revisions:

(1) Each page of the revised section or schedule shall bear the same section letter designation, schedule number, and page number as the original page with the word "Revised" and the date of the revision immediately below the original section, schedule, or page designation.

(2) There shall be filed the same number of copies of any revised sections, schedules, or pages as the number of copies originally required to be filed.

(3) A copy of each revised section, schedule or page shall also be served upon each party whose intervention has previously been permitted by the commission pursuant to K.A.R. 82-1-225.

(4) All revised sections, schedules and pages shall be filed according to the provisions of K.A.R. 82-1-221, unless otherwise ordered by the commission for good cause shown.

(5) Substantial revisions of the schedules, such as changing to a different test year, may constitute grounds for the commission to continue any scheduled hearing to a later date, if necessary for its staff to conduct further investigation or revise its schedules with respect to these revisions.

(6) Revised prefiled testimony shall be filed simultaneously with the filing of the revised application.

(b) For good cause shown the commission may waive any of the requirements of this rule. (Authorized by K.S.A. 55-504, K.S.A. 66-106 and K.S.A. 66-1,218; implementing K.S.A. 55-504 and K.S.A. 66-1,218; effective May 1, 1987.)

82-10-4. Annual report. Every oil or natural gas liquid pipeline company subject to the commission's jurisdiction shall file with the com-

mission a copy of form No. 6, "Annual Report of Oil Pipeline Companies" which has been filed with the Federal Energy Regulatory Commission. This report shall be filed by March 31 of each year for the previous calendar year. (Authorized by K.S.A. 55-504, K.S.A. 66-106, and K.S.A. 66-1,218; implementing K.S.A. 55-504 and K.S.A. 66-1,218; effective May 1, 1987.)

82-10-5. Suspension of certificate for failure to comply with regulations. The certificate of any oil or natural gas liquid pipeline company who fails to comply with the rules and regulations of the commission or the laws of the state of Kansas may be suspended. This failure shall be full and sufficient cause for the commission to cancel the certificate upon citation and hearing. (Authorized by and implementing K.S.A. 66-1,216; effective May 1, 1987.)

Article 11.—NATURAL GAS PIPELINE SAFETY

82-11-1. Definitions. The following terms as used in K.A.R. 82-11-2 through K.A.R. 82-11-10, and in the identified sections of the regulations adopted by reference, shall be defined as specified in this regulation:

(a) "Area of residential development" means a location in which over 25 residential customers are being, or are expected to be, added over the period in which the area is to be developed.

(b) "Barhole" means a small hole made near gas piping to extract air from the ground.

(c) "Combustible gas indicator" means a type of leak detection equipment capable of detecting and measuring gas concentrations in the atmosphere with minimum detection accuracy of 0.5% gas in the air.

(d) "Commission" means the state corporation commission of Kansas.

(e) "Confined space" means any subsurface structure, including vaults, tunnels, catch basins and manholes, that is of sufficient size to accommodate a person and in which gas could accumulate.

(f) "Construction project" means the construction of either of the following:

(1) Any jurisdictional pipeline installation, including new, replacement, or relocation projects, in which the total piping installed during the project is in excess of 400 feet for small gas operators, or 1,000 feet for all other gas operators; or

(2) any other significant pipeline installation that is subject to these safety standards.

(g) "Department of transportation" means the U.S. department of transportation.

(h) "Exposed pipeline" means buried pipeline that has become uncovered due to erosion, excavation, or any other cause.

(i) "Flame ionization" means a type of leak detection equipment that uses a technology that continuously draws ambient air through a hydrogen flame and thereby provides an indication of the presence of hydrocarbons.

(j) "Gas-associated structure" means a device or facility utilized by a gas company, including a valve box, vault, test box, and vented casing pipe, that is not intended for storing, transmitting, or distributing gas.

(k) "Gas pipeline safety section" means the gas pipeline safety section of the state corporation commission of Kansas.

(l) "Inspector" means an employee of the gas pipeline safety section of the state corporation commission of Kansas.

(m) "Leak detection equipment" means a device, including a flame ionization unit, combustible gas indicator, and other equipment as approved by the gas pipeline safety section, that measures the amount of hydrocarbon gas in an ambient air sample.

(n) "Lower explosive limit (LEL)" means the lowest percent of concentration of natural gas in a mixture with air that can be ignited at normal ambient atmospheric temperature and pressure.

(o) "Odorometer" means an instrument capable of determining the percentage of gas in air at which the odor of the gas becomes detectible to an individual with a normal sense of smell.

(p) "Small gas operator" means an operator who engages in the transportation or distribution of gas, or both, in a system having fewer than 5,000 service lines.

(q) "Small substructure" means any subsurface structure, other than a gas-associated structure, that is of sufficient size to accommodate a person and in which gas could accumulate, including telephone and electrical ducts and conduit, and non-associated valve and meter boxes.

(r) "Sniff test" means a qualitative test performed by an individual with a normal sense of smell. The test is conducted by releasing small amounts of gas in order to determine whether an odorant is detectible.

(s) "Underground leak classification" means the process of sampling the subsurface atmosphere for gas using a combustible gas indicator in a series of available openings or barholes over, or adjacent to, the gas facility. If applicable, the sampling pattern shall include sample points that indicate sustained readings of 0% gas in air in the four cardinal directions.

(t) "Utility division" means the utility division of the state corporation commission of Kansas.

(u) "Yard line" means the buried, customer-owned piping between the outlet of the meter and the building wall. (Authorized by and implementing K.S.A. 66-1,150; effective, T-82-10-28-88, Oct. 28, 1988; effective, T-82-2-25-89, Feb. 25, 1989; revoked, T-82-3-31-89, April 30, 1989; effective May 1, 1989; amended July 7, 2003; amended Jan. 25, 2008.)

82-11-2. Enforcement procedures. Regulations adopted by the commission under the authority of K.S.A. 66-1,150 and 66-1,151 shall be enforced by the gas pipeline safety section. (Authorized by and implementing K.S.A. 66-1,150 and 66-1,151; effective, T-82-10-28-88, Oct. 28, 1988; effective, T-82-2-25-89, Feb. 25, 1989; revoked, T-82-3-31-89, April 30, 1989; effective May 1, 1989.)

82-11-3. Transportation of natural and other gas by pipeline; annual reports and incident reports. The federal rules and regulations titled "transportation of natural and other gas by pipeline; annual reports, incident reports, and safety-related condition reports," 49 C.F.R. Part 191, as in effect on October 1, 2006, with the exception of portions that include jurisdiction beyond the state of Kansas, including off-shore pipelines, the outer continental shelf, and states other than Kansas, are adopted by reference with the following exceptions, deletions, additions, and modifications:

(a) The following sentence shall be deleted from 49 C.F.R. 191.3: "Administrator means the Administrator, Pipeline and Hazardous Materials Safety Administration or his or her delegate."

(b) 49 C.F.R. 191.5(b) shall be deleted and replaced by the following: "(b) Each notice required by paragraph (a) of this section shall be made by telephone to the gas pipeline safety section and to the U.S. department of transportation. Both notices shall include the following information:

(1) The names of the operator and the person making the report and their telephone numbers;

(2) the location of the incident;

(3) the time of the incident;

(4) the number of fatalities and personal injuries, if any; and

(5) all other significant facts known by the operator that are relevant to the cause of the incident or extent of the damages.”

(c) 49 C.F.R. 191.7 shall be deleted.

(d) 49 C.F.R. 191.9(a) shall be deleted and replaced by the following: “(a) Except as provided in paragraph (c) of this section, each operator of a distribution pipeline system shall submit U.S. department of transportation form PHMSA F 7100.1 to the commission as soon as practicable but not more than 30 calendar days after detection of an incident required to be reported under 49 C.F.R. 191.5.”

(e) 49 C.F.R. 191.9(b) is deleted and replaced by the following: “(b) If additional relevant information is required after the report is submitted under paragraph (a), each operator shall submit to the commission a written report providing the additional information pertaining to the incident within 15 calendar days of the commission’s request.”

(f) 49 C.F.R. 191.11(a) shall be deleted and replaced by the following: “(a) Except as provided in paragraph (b) of this section, each operator of a distribution pipeline system shall submit an annual report in duplicate for that system to the commission on U.S. department of transportation form PHMSA F 7100.1-1. This report shall be submitted to the gas pipeline safety section of the commission not later than March 1 of each year, for the preceding calendar year.”

(g) 49 C.F.R. 191.15(a) shall be deleted and replaced by the following: “(a) Except as provided in paragraph (c) of this section, each operator of a transmission or a gathering pipeline system shall submit U.S. department of transportation form PHMSA F 7100.2 to the commission as soon as practicable but not more than 30 calendar days after detection of an incident required to be reported under 49 C.F.R. 191.5.”

(h) 49 C.F.R. 191.15(b) shall be deleted and replaced by the following: “(b) If additional relevant information is required by the commission after the report is submitted under paragraph (a), each operator shall submit to the commission a written report providing the additional informa-

tion pertaining to the incident within 15 calendar days of the commission’s request.”

(i) 49 C.F.R. 191.17(a) shall be deleted and replaced by the following: “(a) Except as provided in paragraph (b) of this section, each operator of a transmission or gathering pipeline system shall submit an annual report in duplicate for that system to the commission on U.S. department of transportation form PHMSA F 7100.2-1. This report shall be submitted to the gas pipeline safety section not later than March 1 of each year, for the preceding calendar year.”

(j) 49 C.F.R. 191.19 shall be deleted and replaced by the following: “Report Forms. The prescribed report forms are available without charge upon request from the gas pipeline safety section, Topeka, Kansas. Reproduced copies of the forms may be used if they are of the same size and kind of paper.”

(k) 49 C.F.R. 191.21 shall be deleted.

(l) The term “Associate Administrator, OPS,” as used in 49 C.F.R. 191.25, means commission. (Authorized by and implementing K.S.A. 66-1,150; effective, T-82-10-28-88, Oct. 28, 1988; effective, T-82-2-25-89, Feb. 25, 1989; revoked, T-82-3-31-89, April 30, 1989; effective May 1, 1989; amended April 16, 1990; amended March 12, 1999; amended July 7, 2003; amended Jan. 25, 2008.)

82-11-4. Transportation of natural and other gas by pipeline; minimum safety standards. The federal rules and regulations titled “transportation of natural and other gas by pipeline: minimum federal safety standards,” 49 C.F.R. Part 192, including appendices A, B, C, and D, as in effect on October 1, 2006, with the exception of portions that include jurisdiction beyond the state of Kansas, including off-shore pipelines, the outer continental shelf, and states other than Kansas, are adopted by reference with the following exceptions, deletions, additions, and modifications:

(a) 49 C.F.R. 192.7(b) shall be deleted and replaced by the following: “(b) Any incorporated document shall be available for inspection at the gas pipeline safety section’s Topeka, Kansas office. All incorporated materials are also available for inspection in the Pipeline and Hazardous Materials Safety Administration, 400 Seventh Street, S.W., Washington, D.C., or at the National Archives and Records Administration (NARA). For information on the availability of this material at

NARA, call 202-741-6030 or access the following website: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. These materials have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. In addition, the incorporated materials are available from the respective organizations listed in paragraph (c)(1) of this section.”

(b) 49 C.F.R. 192.181(a) shall be deleted and replaced by the following: “(a) Each high-pressure distribution system shall have valves spaced to reduce the time to shut down a section of main in an emergency. Each operator shall specify in its operation and maintenance manual the criteria as to how valve locations are determined using, as a minimum, the considerations of operating pressure, the size of the mains, and the local physical conditions. The emergency manual shall include instructions on where operating personnel can find maps and other means of locating emergency valves during an emergency. Each area of residential development constructed after May 1, 1989 shall be provided with at least one valve to isolate it from other areas.”

(c) 49 C.F.R. 192.199(e) shall be deleted and replaced by the following: “(e) Have discharge stacks, vents, or outlet ports designed to prevent accumulation of water, ice, or snow, located where gas can be discharged into the atmosphere without undue hazard. At town border stations and district regulator settings, the gas shall be discharged upward at a minimum height of six feet from the ground or past the overhang of any adjacent building, whichever is greater.”

(d) 49 C.F.R. 192.199(h) shall be deleted and replaced by the following: “(h) Except for a valve that will isolate the system under protection from its source of pressure, shall be designed to prevent unauthorized access to or operation of any stop valve that will make the pressure relief valve or pressure limiting device inoperative including:

“(1) valves that would bypass the pressure regulator or relief devices; and

“(2) shut-off valves in regulator control lines that, if operated, would cause the regulator to be inoperative.”

(e) The following shall be added to 49 C.F.R. 192.199: “(i) At town border stations and district regulator settings, this section shall require pressure relief or pressure limiting devices regardless of installation date.”

(f) 49 C.F.R. 192.307 shall be deleted and replaced by the following: “Inspection of materials. Except for pipe with external coating applied after installation, each length of pipe that is externally coated and each other component shall be visually inspected at the site of installation to ensure that it has not sustained any visually determinable damage that could impair its serviceability. Each coated length of pipe shall be checked for defects in the coating using an instrument that is calibrated according to manufacturer’s specifications prior to lowering the pipe into the ditch.”

(g) The following subsection shall be added to 49 C.F.R. 192.317: “(d) Each aboveground pipeline shall be placed underground, with the following exceptions:

“(1) Regulator station piping;

“(2) bridge crossings;

“(3) aerial crossings or spans;

“(4) short segments of piping for valves intentionally brought above the ground, including risers, piping at compressor, processing or treating facilities, block gate settings, sectionalizing valves and district regulator sites;

“(5) distribution mains specifically designed to be above the ground and have the approval of the landowner to provide service to commercial customers from the aboveground main and associated service line or lines; or

“(6) pipelines in class 1 locations that were in natural gas service before May 1, 1989.”

(h) The following shall be added to 49 C.F.R. 192.317: “(e) Each pipeline constructed after May 1, 1989, shall be placed under ground, with the following exceptions:

“(1) Regulator station piping;

“(2) bridge crossings;

“(3) aerial crossings or spans;

“(4) short segments of piping for valves intentionally brought above ground, including risers, piping at compressor, processing or treating facilities, block gate settings, sectionalizing valves and district regulator sites; or

“(5) distribution mains specifically designed to be above ground and have the approval of the landowner to provide service to commercial customers from the aboveground main and associated service line or lines.”

(i) 49 C.F.R. 192.453 shall be deleted and replaced by the following: “(a) The corrosion control procedures required by 49 C.F.R. 192.605(b)(2), including those for the design, installation, operation, and maintenance of cathodic protection sys-

tems, must be carried out by, or under the direction of, a person qualified in pipeline corrosion control methods.

“(b) Any unprotected steel service or yard line found to have active corrosion shall be either provided with cathodic protection and monitored annually as required by K.A.R. 82-11-4(m) or replaced. In areas where there is no active corrosion, each operator shall, at intervals not exceeding three years, reevaluate these pipelines.

“(c) In lieu of conducting electrical surveys on unprotected steel service lines and yard lines, each operator may implement one of the following options:

“(1) Conduct annual leakage surveys at intervals not exceeding 15 months, but at least once each calendar year, on all unprotected steel service lines and yard lines and initiate a program to apply cathodic protection for all unprotected steel service lines and yard lines; or

“(2) conduct annual leakage surveys at intervals not exceeding 15 months, but at least once each calendar year, on all unprotected steel service lines and yard lines and initiate a preventative maintenance program for replacement of service and yard lines. The preventative maintenance program to be used in conjunction with the annual leak survey of unprotected steel service and yard lines shall include the following:

“(A) After the annual leakage survey of all unprotected steel service and yard lines is completed, the operator shall prepare a summary listing of the leak survey results.

“(B) The summary listing shall include the number of leaks found and the number of lines replaced in a defined area.

“(C) An operator’s replacement program for all service or yard lines in the defined area shall be initiated no later than when the sum of the number of unprotected steel service or yard lines with existing or repaired corrosion leaks and the number of unprotected steel service or yard lines already replaced due to corrosion equals 25% or more of the unprotected steel service or yard lines installed within that defined area.

“(D) The replacement program, once initiated for a defined area, shall be completed by an operator within 18 months.

“(E) Operators, at their option, may have separate preventative maintenance programs for service lines and yard lines but must consistently follow their selection.

“(d) For a city of the third class, or a city having

a population of 2,000 or less, which is an operator of a natural gas distribution system, a replacement program for unprotected steel yard lines may comply with paragraph (c)(2)(D) of this section or include the following requirements in their replacement plan:

“(1) Perform leakage surveys at six month intervals;

“(2) Notify all customers in the defined area with a written recommendation that all unprotected steel yard lines should be scheduled for replacement; and

“(3) Replace all unprotected steel yard lines in the defined area that exhibit active corrosion.”

(j) 49 C.F.R. 192.455(a) shall be deleted and replaced by the following: “(a) Except as provided in paragraphs (c) and (f) of this section, each buried, submerged pipeline, or exposed pipeline, installed after July 31, 1971, shall be protected against external corrosion by various methods, including the following:

“(1) An external protective coating meeting the requirements of 49 C.F.R. 192.461; and

“(2) A cathodic protection system designed to protect the pipeline in accordance with this subpart, installed and placed in operation within one year after completion of construction.”

(k) 49 C.F.R. 192.455(b) shall be deleted.

(l) 49 C.F.R. 192.457(b) shall be deleted and replaced by the following: “(b) Except for cast iron or ductile iron pipelines, each of the following buried, exposed or submerged pipelines installed before August 1, 1971, shall be cathodically protected in accordance with this subpart in areas in which active corrosion is found:

“(1) Bare or ineffectively coated transmission lines;

“(2) bare or coated pipes at compressor, regulator, and measuring stations; and

“(3) bare or coated distribution lines.”

(m) 49 C.F.R. 192.465(a) shall be deleted and replaced by the following: “Each pipeline that is under cathodic protection shall be tested at least once each calendar year, but in intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of 192.463. If tests at those intervals are impractical for separately protected short sections of mains or transmission lines not in excess of 100 feet, or separately protected service lines, these pipelines may be surveyed on a sampling basis. At least one-third of the separately protected short sections, distributed over the entire system, shall be sur-

veyed each calendar year, with a different one-third checked each subsequent year, so that the entire system is tested in each three-year period.”

(n) 49 C.F.R. 192.465(d) shall be deleted and replaced by the following: “(d) Each operator shall begin corrective measures within 30 days, or more promptly if necessary, on any deficiencies indicated by the monitoring.”

(o) 49 C.F.R. 192.465(e) shall be deleted and replaced by the following: “(e) After the initial evaluation required by 49 C.F.R. 192.455 (b) and K.A.R. 82-11-4(l), each operator shall, at least every three calendar years at intervals not exceeding 39 months, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey, where practical.”

(p) The following shall be added to 49 C.F.R. 192.465: “(f) It shall be considered practical to conduct electrical surveys in all areas, except the following:

“(1) Where the pipe lies under wall-to-wall pavement;

“(2) where the pipe is in a common trench with other utilities;

“(3) in areas with stray current; or

“(4) in areas where the pipeline is under pavement, regardless of depth, and more than two feet away from an unpaved area.”

“(g) Where an electrical survey is impractical as listed in paragraph (f) of this section, the operator shall conduct leakage surveys using leak detection equipment in accordance with K.A.R. 82-11-4(dd) and evaluate for areas of active corrosion. The evaluation for active corrosion shall include review and analysis of leak repair records, corrosion monitoring records, exposed pipe inspection records, and the analysis of the pipeline environment.

“(h) for unprotected steel transmission lines and mains, a repair/replacement program shall be established based upon the number of leaks in a defined area.

“(i) In this section:

“(1) ‘Active corrosion’ means continuing corrosion which, unless controlled, could result in a condition that is detrimental to public safety.

“(2) ‘Electrical survey’ means a series of closely spaced pipe-to-soil readings and/or earth current readings over a pipeline that are subsequently analyzed to identify locations where a corrosive current is leaving the pipeline.

“(3) Pipeline environment includes soil resistivity (high or low), soil moisture (wet or dry), soil contaminants that may promote corrosive activity, and other known conditions that could affect the probability of active corrosion.”

(q) 49 C.F.R. 192.491(a) shall be deleted and replaced by the following: “(a) For as long as the pipeline remains in service, each operator shall maintain records and maps to show the locations of all cathodically protected piping, cathodic protection facilities other than unrecorded galvanic anodes installed before August 1, 1971, and neighboring structures bonded to the cathodic protection system.”

(r) 49 C.F.R. 192.491(b) shall be deleted.

(s) 49 C.F.R. 192.509(b) shall be deleted and replaced by the following: “(b) Each steel main that is to be operated at less than 1 p.s.i.g. shall be tested to at least 10 p.s.i.g. and each main to be operated at or above 1 p.s.i.g. shall be tested to at least 100 p.s.i.g.”

(t) The following shall be added to 49 C.F.R. 192.517(a): “(8) Test date. (9) Description of facilities being tested.”

(u) 49 C.F.R. 192.517(b) shall be deleted and replaced by the following: “For any pipeline installed after May 1, 1989, each operator shall make, and retain for the useful life of the pipeline, a record of each test performed under §§ 192.509, 192.511 and 192.513.”

(v) 49 C.F.R. 192.553(a)(1) shall be deleted and replaced by the following: “(1) At the end of each incremental increase, the pressure shall be held constant while the entire segment of pipeline that is affected is checked for leaks. This leak survey by flame ionization shall be conducted within eight hours after the stabilization of each incremental pressure increase provided in the uprating procedure. If the operator elects to not conduct the leak survey within the specified time frame because of nightfall or other circumstance, the pressure increment in the line shall be reduced that day with repetition of that particular increment during the next day that the uprating procedure is continued.”

(w) 49 C.F.R. 192.603(b) shall be deleted and replaced by the following: “(b) Each operator shall establish a written operating and maintenance plan meeting the requirements of this part and keep records necessary to administer the plan. This plan and future revisions shall be submitted to the gas pipeline safety section.”

(x) The following shall be added to 49 C.F.R. 192.603:

“(d) Each operator shall have regulator and relief valve test, maintenance and capacity calculation records in its possession whether the town border station is owned by the operator or by a wholesale supplier, if the supplier’s relief valve capacity is utilized to provide protection for the operator’s system.

“(e) Each operator shall be responsible for ensuring that all work completed by its consultants and contractors complies with this part.”

(y) The following shall be added to 49 C.F.R. 192.605(b):

“(12) Classifying underground leaks according to K.A.R. 82-11-4(bb).

“(13) Performing leakage surveys of underground pipelines.

“(14) Identifying conditions which will require patrols of a distribution system at intervals shorter than the maximum intervals listed in K.A.R. 82-11-4 (cc).”

(z) 49 C.F.R. 192.617 shall be deleted and replaced by the following: “Investigation of failures.

(a) Each operator shall establish procedures for analyzing accidents and failures, including:

“(1) The maintenance of records that contain information for each failure including the type of pipe and the reason for failure.

“(2) The selection of samples of the failed facility or equipment for laboratory examination, where appropriate, for the purpose of determining the causes of the failure and minimizing the possibility of recurrence.

“(b) Each operator shall investigate each accident and failure.”

(aa) 49 C.F.R. 192.625(f) shall be deleted and replaced by the following:

“(f) Each operator shall assure the proper concentration of odorant and shall maintain records of these samplings for at least two years in accordance with this section. Proper concentration of odorant shall be assured by conducting periodic sampling of combustible gases as follows:

“(1) Conduct monthly odorometer sampling of combustible gases at selected points in the system; and

“(2) conduct sniff tests during each service call where access to a source of gas in the ambient air is readily available.

“(g) Operators of master meter systems may comply with this requirement by the following:

“(1) Receiving written verification from their

gas source that the gas has the proper concentration of odorant; and

“(2) Conducting periodic sniff tests at the extremities of the system to confirm that the gas contains odorant.”

(bb) 49 C.F.R. 192.703 shall be deleted and replaced by the following: “General. (a) No person shall operate a segment of pipeline unless it is maintained in accordance with this subpart.

“(b) Odorimeters and leak detection equipment shall be calibrated according to manufacturer’s specifications. Leak detection equipment shall be tested monthly with a calibration gas of known hydrocarbon concentration, except if equipment is not used, then testing with calibration gas shall be performed prior to the next use.

“(c) Each segment of pipeline that becomes unsafe shall be replaced, repaired or removed from service within five days of the operator being notified of the existence of the unsafe condition.

“(d) Each operator shall inspect and classify all reports of gas leaks within two hours of notification. Class 1 leaks as defined in paragraph (e) of this section shall be replaced, repaired, or removed from service within five days of the operator being notified of its existence.

“(e) Each underground leak shall be classified using the operator’s underground leak classification procedure as follows:

“(1) A class 1 leak means a leak that represents an existing or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous. This class of leak may include the following conditions:

“(A) Any leak which, in the judgment of operating personnel at the scene, is regarded as an immediate hazard;

“(B) any leak in which escaping gas has ignited;

“(C) any indication that gas has migrated into or under a building, or into a tunnel;

“(D) any percentage reading gas in air at the outside wall of a building, or where gas would likely migrate to an outside wall of a building;

“(E) any reading of 4% gas in air, or greater, in a confined space;

“(F) any reading of 4% gas in air, or greater, in a small substructure from which gas would likely migrate to the outside wall of a building; or

“(G) any leak that can be seen, heard, or felt, and which is in a location that may endanger the general public or property.

“(2) A class 2 leak means a leak that is non-

hazardous at the time of detection, but justifies scheduled repair based on probable future hazard. Class 2 leaks shall be repaired within six months after detection. Under adverse soil conditions, a Class 2 leak shall be monitored weekly to assure that the leak will not represent a probable hazard and that it reasonably can be expected to remain nonhazardous. This class of leak may include the following conditions:

“(A) any reading of 2% gas in air, or greater, under a sidewalk in a wall-to-wall paved area that does not qualify as a class 1 leak;

“(B) any reading of 5% gas in air, or greater, under a street in a wall-to-wall paved area that has significant gas migration and does not qualify as a class 1 leak;

“(C) any reading less than 4% gas in air in a small substructure from which gas would likely migrate creating a probable future hazard;

“(D) any reading between 1% gas in air and 4% gas in air in a confined space;

“(E) any reading on a pipeline operating at 30% SMYS, or greater, in a class 3 or 4 location, which does not qualify as a class 1 leak;

“(F) any reading of 4% gas in air, or greater, in a gas associated substructure; or

“(G) any leak which, in the judgment of operating personnel at the scene, is of significant magnitude to justify scheduled repair.

“(3) A class 3 leak means a leak that is non-hazardous at the time of detection and can reasonably be expected to remain nonhazardous. These leaks shall be rechecked at least every six months and repaired or replaced within 30 months. This class of leak may include the following conditions:

“(A) any reading of less than 4% gas in air in a small gas associated substructure;

“(B) any reading under a street in areas without wall-to-wall paving where it is unlikely the gas could migrate to the outside wall of a building; or

“(C) any reading of less than 1% gas in air in a confined space.”

(cc) 49 C.F.R. 192.721(a) shall be deleted and replaced by the following two paragraphs: “(a) The frequency with which mains are patrolled shall be determined by the severity of the conditions which could cause failure or leakage, and the consequent hazards to public safety. Intervals between patrols shall not be longer than those prescribed in the following table:

Maximum Intervals Between Patrols

Location of Line	Mains in places or on structures where anticipated physical movement or external loading could cause failure or leakage	Mains at all other locations
Inside business districts	4½ months, but at least four times each calendar year	7½ months, but at least twice each calendar year
Outside business districts	7½ months, but at least twice each calendar year	18 months, but at least once each calendar year”

“(b) Service lines and yard lines shall be patrolled at least once every three calendar years at intervals not exceeding 42 months.”

(dd) 49 C.F.R. 192.723 shall be deleted and replaced by the following:

“Distribution systems: leak surveys and procedures.

“(a) Each operator of a distribution system shall conduct periodic leakage surveys using leak detection equipment in accordance with this section. The leak detection equipment used for this survey shall utilize a continuously sampling technology.

“(b) The type and scope of the leakage control program shall be determined by the nature of the operations and the local conditions. A leakage survey using leak detection equipment shall be conducted on all distribution mains and shall meet the following minimum requirements:

“(1) In business districts, a leakage survey shall include tests of the atmosphere in gas, electric, telephone, sewer and water system manholes, at cracks in pavement and sidewalks, and at other locations providing an opportunity for finding gas leaks This survey shall be conducted on the distribution mains within the business district as frequently as necessary with the maximum interval between surveys not exceeding 15 months, but at least once each calendar year.

“(2) A leakage survey with leak detection equipment shall be conducted on the distribution mains outside the business areas. The survey shall be made as frequently as necessary, but it shall meet the following minimum requirements:

“i. Cathodically unprotected steel mains and ductile iron mains located in Class 2, 3, and 4 areas shall be surveyed at least once each calendar year at intervals not exceeding 15 months.

“ii. Cathodically unprotected steel mains located in Class 1 areas, cathodically protected bare steel mains, cast iron mains, and mains con-

structed of PVC plastic shall be surveyed at least once every three calendar years at intervals not exceeding 39 months.

“iii. Cathodically protected externally coated steel mains and mains constructed of polyethylene plastic shall be surveyed at least once every five calendar years at intervals not exceeding 63 months.

“(3) Operators in existence on January 1, 2007 must be in compliance with paragraph (b)(2) of this section no later than June 1, 2009. Prior to compliance with paragraph (b)(2) of this section, a leakage survey with leak detection equipment of the distribution system shall be conducted outside business districts as frequently as necessary, but it shall be performed at least once every 3 calendar years at intervals not exceeding 39 months.

“(c) Except for the service lines and yard lines described in paragraph (d) of this section, a leakage survey using leak detection equipment shall be conducted for all service lines and yard lines as follows:

“(1) In business districts, this survey shall be conducted as frequently as necessary with the maximum interval between surveys not exceeding 15 months, but at least once each calendar year.

“(2) Outside business districts, the survey shall be made as frequently as necessary, but it shall meet the following minimum requirements:

“i. Cathodically unprotected steel service or yard lines and service or yard lines constructed of PVC plastic or cast iron shall be surveyed at least once each calendar year at intervals not exceeding 15 months.

“ii. Cathodically protected bare steel service or yard lines shall be surveyed at least once every three years at intervals not exceeding 39 months.

“iii. Cathodically protected externally coated steel service or yard lines and service or yard lines constructed of polyethylene plastic shall be surveyed at least once every five calendar years at intervals not exceeding 63 months.

“(d) For yard lines more than 300 feet in length and operating at a pressure less than 10 p.s.i.g., only the portion within 300 feet of a habitable dwelling must be leak surveyed in accordance with these regulations.

“(e) Each operator’s operations and maintenance manual shall state that company-designated employees are to be trained in and conduct vegetation leak surveys where vegetation is suitable to such analysis.

“(f) Each leakage survey record shall be kept for at least six years.”

(ee) The following shall be added to 49 C.F.R. 192.755: “(c) Each operator with cast iron piping shall institute all of the following for the purposes of evaluation and replacement of cast iron pipelines:

“(1) Collect a coupon each time a leak in the body of a cast iron pipe is discovered. If long stretches of pipe are uncovered or if a series of short sections of pipe are uncovered, it shall not be necessary to take coupons at less than 200-foot intervals.

“(2) Take additional coupons, if necessary, to obtain a random sample of the entire system. The minimum annual rate of such sampling shall be one coupon for each two miles of cast iron pipe installed. The maximum required annual rate is one coupon for each one mile of cast iron pipe installed.

“(3) Conduct laboratory analysis on all coupons to determine the percentage of graphitization. Using the following equation:

$$\text{Percent of Graphitization} = \frac{(\text{Maximum Depth of Graphitization})}{(\text{Wall Thickness})} \times 100$$

“(4) Replace at least one city block (approximately 500 feet) within 120 days of the operator’s knowledge of the laboratory test results, each time the results show graphitization equal to or greater than the following in a coupon:

Diameter	Percent Graphitization
2.0 inch	25%
3.0 inch and 4.0 inch	60%
6.0 inch and 8.0 inch	75%
10.0 inch or greater	90%

“(5) Coupons shall be submitted for analysis within 30 days of collection. Retain all sampling records for the life of the facility, but not less than five years.

“(6) Each operator with cast iron piping that is 3 inches or less in nominal diameter shall have a replacement program that will remove all cast iron piping with nominal diameter of 3 inches and smaller from natural gas service by January 1, 2011.”

(ff) 49 C.F.R. 192.801(b)(3) shall be deleted and replaced by the following: “(3) Is performed

as requirement of K.A.R. 82-11-4; and.” (Authorized by and implementing K.S.A. 66-1,150; effective, T-82-10-28-88, Oct. 28, 1988; effective, T-82-2-25-89, Feb. 25, 1989; revoked, T-82-3-31-89, April 30, 1989; effective May 1, 1989; amended April 16, 1990; amended March 12, 1999; amended July 7, 2003; amended Jan. 25, 2008.)

82-11-5. Addressee for written reports.

Each written report required by the regulations of this article shall be made to the commission, gas pipeline safety section, Topeka, Kansas. Annual reports and incident reports shall be submitted in duplicate. A copy of the distribution system incident report shall be submitted by the executive director of the commission to the U.S. department of transportation within 10 calendar days of receipt. Safety-related reports required by K.A.R. 82-11-3 for intrastate pipeline transportation shall be submitted concurrently to the gas pipeline safety section and to the resources manager, office of pipeline safety, research and special programs administration, U.S. department of transportation, Washington, DC. (Authorized by and implementing K.S.A. 66-1,150; effective, T-82-10-28-88, Oct. 28, 1988; effective, T-82-2-25-89, Feb. 25, 1989; revoked, T-82-3-31-89, April 30, 1989; effective May 1, 1989.)

82-11-6. Procedures to insure compliance with minimum safety standards. The following procedures may be utilized by the commission to insure compliance with the minimum safety standards of this article.

(a) Annual audit-inspection. Inspectors from the gas pipeline safety section may visit each operator annually, or as needed, to inspect the operator’s operation and maintenance records, and to perform field surveys and tests as required by the regulations of this article. Inspection guides shall be used to record information and test results obtained in each field inspection.

(b) Return of evaluation form. Each completed evaluation form in subsection (a) shall be signed by the operator and returned to the gas pipeline safety section within 30 calendar days of the date that the evaluation letter and evaluation form were received by the operator. Each evaluation form shall detail the actions taken by the operator, or shall set forth a proposed plan, to bring the operator’s system into compliance with the safety standards of this article.

(c) Follow-up inspection. If the inspection reveals any instances of non-compliance, the in-

pector shall return to the operator’s premises within 90 calendar days of the date of the inspection evaluation letter, or as soon as is practicable, to perform a follow-up inspection. The inspector shall re-inspect the operator’s system and record any instance of non-compliance. A follow-up inspection evaluation letter shall then be sent to the operator detailing any further action required by the operator.

(d) Meeting with commission staff. If the inspector determines on the follow-up inspection that the instances of non-compliance have not been corrected, the operator may be requested to attend an informal meeting at the commission offices to discuss the operator’s non-compliance with the minimum safety standards of this article.

(e) Show cause hearing. A show cause hearing may be held by the commission when all other reasonable measures have failed to produce operator compliance, or when the non-compliance presents an imminent danger to persons or property.

(f) Waiver of procedures. The requirements of this regulation may be waived by the commission and an interim order issued pursuant to K.A.R. 82-1-232(c) if any instance of non-compliance with the safety standards of this article presents a probable danger to persons or property. (Authorized by and implementing K.S.A. 66-1,150 and 55-106; effective, T-82-10-28-88, Oct. 28, 1988; effective, T-82-2-25-89, Feb. 25, 1989; revoked, T-82-3-31-89, April 30, 1989; effective May 1, 1989.)

82-11-7. Reporting requirements. (a) Annual report. Each operator subject to the jurisdiction of the commission shall submit, in duplicate, an annual report for each calendar year. This report shall be submitted on forms as prescribed by K.A.R. 82-11-3.

(b) Incident reports.

(1) Each operator shall notify the gas pipeline safety section by telephone within two hours following discovery of any incident within their certified areas or operating areas. If an incident occurs outside the commission’s working hours of 7:50 a.m. through 4:50 p.m., Monday through Friday, or on a holiday, the operator shall contact an employee of the gas pipeline safety section. A list of these employees and their telephone numbers shall be provided by the commission to each operator.

(2) One copy of each written incident report

shall be transmitted by the gas pipeline safety section within 10 business days of receipt to the information systems manager, materials transportation bureau, office of pipeline safety, pipeline and hazardous materials safety administration, U.S. department of transportation.

(c) Small gas operators.

(1) Each small gas operator shall notify the gas pipeline safety section when the small gas operator has contracted with a consultant to perform a survey or inspection in order to comply with the minimum safety standards. Each small gas operator shall forward written notice indicating the probable month of the inspection or survey at the time the consultant is authorized to conduct the survey or inspection. In addition, each small gas operator shall forward written notice to the gas pipeline safety section at least 10 business days before the survey or inspection is to be conducted by the consultant. The form for each type of notification shall be available from the gas pipeline safety section.

(2) Each small gas operator shall maintain complete records relating to the gas system for the life of the system for the purposes of ensuring compliance with the minimum safety standards. Each record shall be made available when an inspector conducts a field inspection.

(d) Construction notices. Each operator shall submit to the gas pipeline safety section written notice, on commission-supplied forms, at least 10 business days before the commencement of any construction project. (Authorized by and implementing K.S.A. 66-1,150; effective, T-82-10-28-88, Oct. 28, 1988; effective, T-82-2-25-89, Feb. 25, 1989; revoked, T-82-3-31-89, April 30, 1989; effective May 1, 1989; amended Jan 25, 2008.)

82-11-8. Customer installations: location and monitoring responsibility. (a) For residential and small commercial customers, the operator may locate a meter at either the customer's building wall or the customer's property line or easement.

(b) For industrial and large commercial customers, the operator's meter location shall be determined by mutual agreement between the operator and the customer. Each location shall provide for an adequate margin of safety from public road and on-site traffic. Each customer shall be responsible for notifying the operator of any changes in on-site traffic patterns or other conditions that could subsequently render the

agreed-upon meter location unsafe. Before installing the meter, each operator shall provide written notice to the customer of the customer's obligation to monitor and report potential unsafe conditions.

(c) For each residential customer installation placed in service after May 1, 1989, the operator shall ensure that the installation or repair of all yard lines meets the design, installation, testing, maintenance, and replacement requirements specified in K.A.R. 82-11-4, K.A.R. 82-11-6, K.A.R. 82-11-7, K.A.R. 82-11-9, and K.A.R. 82-11-10.

(d) For each residential customer installation placed in service before May 1, 1989, the operator shall ensure that the installation or repair of all yard lines meets the testing, maintenance, and replacement requirements specified in K.A.R. 82-11-4, K.A.R. 82-11-6, K.A.R. 82-11-7, K.A.R. 82-11-9, and K.A.R. 82-11-10.

(e) Notwithstanding the requirements of subsections (c) and (d), the following requirements shall apply to residential customer installations located in class 1 areas with maximum operating pressures of 10 p.s.i.g. or less:

(1) For each residential customer installation placed in service before May 1, 1989, the operator shall perform leak surveys in accordance with K.A.R. 82-11-4(dd). All other installation, testing, maintenance, and replacement requirements specified in K.A.R. 82-11-4, K.A.R. 82-11-6, K.A.R. 82-11-7, K.A.R. 82-11-9, and K.A.R. 82-11-10 shall apply only to that portion of the yard line within 150 feet of a building wall.

(2) For each residential customer installation placed in service on or after May 1, 1989, the operator shall perform leak surveys in accordance with K.A.R. 82-11-4(dd). All other design, installation, testing, maintenance, and replacement requirements specified in K.A.R. 82-11-4, K.A.R. 82-11-6, K.A.R. 82-11-7, K.A.R. 82-11-9, and K.A.R. 82-11-10 shall apply only to that portion of the yard line within 150 feet of a building wall.

(f) Each residential, customer-owned installation shall be provided with odorized gas and maintained according to the requirements of K.A.R. 82-11-4(dd). (Authorized by and implementing K.S.A. 66-1,150; effective, T-82-10-28-88, Oct. 28, 1988; effective, T-82-2-25-89, Feb. 25, 1989; revoked, T-82-3-31-89, April 30, 1989; effective May 1, 1989; amended July 7, 2003; amended Jan. 25, 2008.)

82-11-9. Waiver provisions. (a) Upon application by any person engaged in the transportation of gas or the operation of pipeline facilities, compliance with any regulation of this article that is not incorporated by reference from 49 CFR 191-192 may be waived, in whole or in part, by the commission if the commission determines that the waiver is consistent with pipeline safety. The provision of notice of the proposed waiver and an opportunity for hearing on the application for waiver may be required by the commission. In addition, the waiver shall be granted only under these circumstances:

- (1) By order of the commission; and
- (2) after notice and opportunity for hearing, if ordered by the commission. The waiver shall be subject to any terms, conditions, and limitations deemed appropriate by the commission.

(b) Upon application by any person engaged in the transportation of gas or the operation of pipeline facilities, compliance with any regulation of this article that is incorporated by reference from 49 CFR 191-192 may be waived, in whole or in part, by the commission if the commission determines that the waiver is consistent with pipeline safety. The provision of notice of the proposed waiver and an opportunity for hearing on the application for waiver may be required by the commission. In addition, the waiver shall be granted only under these circumstances:

- (1) By order of the commission;
- (2) after notice and opportunity for hearing, if ordered by the commission; and
- (3) upon approval of the US department of transportation under 49 USC 1671 et seq. The waiver shall be subject to any terms, conditions, and limitations deemed appropriate by the commission. (Authorized by and implementing K.S.A. 66-1,150; effective, T-82-10-28-88, Oct. 28, 1988; effective, T-82-2-25-89, Feb. 25, 1989; revoked, T-82-3-31-89, April 30, 1989; effective May 1, 1989; amended March 12, 1999.)

82-11-10. Drug and alcohol testing. The federal regulations titled "drug and alcohol testing," 49 C.F.R., Part 199, as in effect October 1, 2002, are adopted by reference only as they apply to operators of pipeline facilities that deal in the transportation of natural gas by pipeline. (Authorized by and implementing K.S.A. 66-1,150; effective April 16, 1990; amended March 12, 1999; amended July 7, 2003.)

82-11-11. Fees. (a) The fee for each public

utility covered under K.S.A. 66-1,153 and K.S.A. 66-1,154, and amendments thereto, shall be as follows:

- (1) For assessments made during calendar year 1998, the fee shall be \$0.50 per meter.
- (2) For assessments made during calendar year 1999, the fee shall be \$0.75 per meter.
- (3) For assessments made during calendar year 2000 and succeeding years, the fee shall be \$1.00 per meter.

(b) Subsection (a) above notwithstanding, the minimum annual assessment shall not be less than \$50.00 during calendar year 1998, \$75.00 during calendar year 1999, and \$100.00 during calendar year 2000 and succeeding years. (Authorized by and implementing K.S.A. 66-1,153 and K.S.A. 66-1,154; effective March 12, 1999.)

Article 12.—WIRE-STRINGING RULES

82-12-1. Definitions. The following terms shall have the meaning set out below when applied to these regulations.

(a) "Commission" means the state corporation commission of Kansas.

(b) "Electric supply line" means any overhead or underground transmission or distribution line for electric energy transfer.

(c) "Inductive coordination" means the location, design, construction, operation and maintenance of electric and communication systems methods which will prevent inductive interference.

(d) "Inductive interference" means an effect due to the inductive influence of an electric system, the inductive susceptiveness of a communication system, and the inductive coupling between the two systems of such character and magnitude as to prevent the communication system from rendering satisfactory and economical service.

(e) "Inductive susceptiveness" means those characteristics of a communication circuit with its associated apparatus which determine the extent to which its operation may be affected by inductive influence.

(f) "Overbuilding" means construction of one supply line above another supply line.

(g) "Supply line" means any overhead or underground transmission or distribution line for either telecommunication or electric energy transfer.

(h) "Telecommunication supply line" means

any overhead or underground transmission or distribution line for telecommunication transfer.

(i) "Underbuilding" means construction of one supply line under another supply line.

(j) "Utility" means organizations, individuals or others whose supply line construction comes under the jurisdiction of the commission as provided in K.S.A. 66-104. (Authorized by and implementing K.S.A. 66-183; effective Aug. 11, 1995.)

82-12-2. Adoption by reference of the National Electrical Safety Code, or NESC, 1997 edition. The standard entitled the "National Electrical Safety Code," or NESC, of the American National Standards Institute, 1997 edition, ANSI C2-1997, approved June 6, 1996, and published by the Institute of Electrical and Electronic Engineers, or IEEE, is adopted by reference. However, the standard for minimum vertical clearance of wires, conductors, and cables over railroad tracks shall be the greatest of the applicable values specified in the NESC Table 232-1, K.S.A. 66-183, and K.S.A. 66-320, and amendments thereto. Copies of the NESC are available from the IEEE. A reference copy of the NESC shall also be available at the commission. (Authorized by and implementing K.S.A. 66-183; effective Aug. 11, 1995; amended March 12, 1999.)

82-12-3. Utility applications for electric supply lines. Each utility proposing to build a new electric supply line, or contemplating a change in an existing electric supply line located outside the corporate limits of any city, shall present an application to the commission for approval. The application shall consist of a completed application form as approved by the commission, and any other information required by the form or these regulations including:

(a) Maps and plats, of a scale of at least one inch to the mile, showing any changes or additions to the electric supply lines; and

(b) a cost breakdown of the construction or extensions with unit cost of the plant.

On or before the day the application is submitted to the commission, the utility shall send written notice of the proposed construction or changes as required by K.A.R. 82-12-5. (Authorized by and implementing K.S.A. 66-183; effective Aug. 11, 1995.)

82-12-4. Exceptions to 82-12-3 application. (a) Any utility may proceed with necessary construction, in cases of emergency, after written

or telephone communication with the commission establishing need and securing emergency approval from the commission, if:

(1) The utility complies with the rules and regulations to the extent practicable under the circumstances; and

(2) the utility files immediately with the commission an application as approved by the commission showing that the construction will ultimately be brought into full conformity with the regulations.

(b) A utility may proceed with construction of any electric supply line without submitting an application under K.A.R. 82-12-3, if all of the following requirements are met.

(1) Prior to beginning construction, the utility shall give written notice to railroads and other utilities having facilities within ½ mile of any contemplated electric supply line construction or change in construction.

(2) The proposed electric supply line shall:

(A) be within the utility's certified area;

(B) not interfere with the supply lines, tracks or facilities of other utilities or railroads; and

(C) be no longer than ½ mile. However, if the proposed extension is to an extension previously made under this exception, then the combined length of the proposed and original extensions shall be considered as the length of the proposed extension for purposes of this subsection. If the combined length exceeds ½ mile, then K.A.R. 82-12-3 application is required for the combined length. (Authorized by and implementing K.S.A. 66-183; effective Aug. 11, 1995.)

82-12-5. Notice of construction of electric supply lines. On or before the day a utility makes an application to the commission for any contemplated electric supply line construction, change in construction, or change in operating conditions to be located outside the corporate limits of any city, the utility shall send written notice of their plan:

(a) To the commission, at least 10 days before commencing construction;

(b) to railroads within ½ mile of the contemplated construction. The application shall not be considered for approval until at least 15 days after that notice is sent; and

(c) to all other utilities within ½ mile of the contemplated construction unless the utilities have executed a joint use or other agreement covering the area in which the construction is pro-

posed. The application shall not be considered for approval until at least 10 days after this notice is sent. (Authorized by and implementing K.S.A. 66-183; effective Aug. 11, 1995.)

82-12-6. Requirements for the installation of warning buoys and warning spheres installed in connection with electric lines crossing water areas suitable for sailboating.

(a) Each electric utility in Kansas that maintains electric lines over water areas, other than rivers, streams and creeks, which are suitable for sailboating, or other water sports, shall place warning buoys in the water under electric lines and warning spheres on the electric lines, where they cross water.

(b) A waiver, as deemed appropriate, of the sphere and buoy requirement may be granted by the commission for good cause upon application by the utility. Applications for waivers may be submitted by each electric utility at the same time it supplies the information required by subsection (c). Each application for waiver shall specify the reasons for the requested waiver and assess the safety implications of the commission's waiver of the buoy and sphere requirement.

(c) For each newly constructed or reconstructed electric supply line which crosses water areas suitable for sailboating or other water sports, each electric utility shall report the following facts in an attachment to the application form at the time of application:

- (1) The name, type, configuration, and location of the electric line that crosses one or more water areas that are subject to this regulation;
- (2) the length and primary voltage of the electric line crossing the water area;
- (3) the approximate clearance height of the electric line above water, at its lowest point, using the design high water level;
- (4) the number of spheres and buoys installed under and on each line; and
- (5) the expected date of the installation of the line, spheres and buoys, and the expected date for which the line will initially be energized.

(d) The placement of warning buoys and warning spheres is the minimum level of safety which shall be provided. Each utility may, at its option, provide a greater level of protection for the general public by relocating the electric line or taking other equivalent measures. (Authorized by and implementing K.S.A. 66-183; effective Aug. 11, 1995.)

82-12-7. Utility requirements for telecommunication supply lines.

(a) A utility may proceed with construction of any telecommunication supply line if all of the following requirements are met.

(1) Prior to beginning construction, the utility shall give written notice to all of the following entities that have facilities within ½ mile of any contemplated telecommunication supply line construction or change in construction:

- (A) railroads; and
- (B) other utilities, unless the utilities have executed a joint use or other agreement covering the area in which the construction is proposed.

(2) The proposed telecommunication supply line construction shall:

- (A) be within the utility's certified area; and
- (B) not result in any objection from other utilities or railroads that have been given written notice as required by paragraph (a)(1) above.

(b) Each utility owning or operating one or more telecommunication supply lines shall file with the commission, in an annual telecommunication supply line report, a map or maps showing routes for all of its existing telecommunication supply lines. Annual reports shall be due on March 31 of each calendar year. Maps provided shall indicate the following:

- (1) any specific additions or changes to the telecommunication supply lines in the previous calendar year;
- (2) whether lines are toll, interexchange, or local exchange lines;
- (3) whether lines are constructed of fiberoptic, copper or other material;
- (4) whether lines are analog or digital; and
- (5) the location of microwave towers.

The format of the filed maps shall be on a scale of at least one inch to the mile, or in electronic form approved by the commission. (Authorized by and implementing K.S.A. 66-183; effective Aug. 11, 1995.)

82-12-8. Coordinated location of lines.

In order to provide for the efficient and effective use of the public and private roads, each utility constructing supply lines shall locate those lines in conformance with the following requirements.

(a) When there are two or more practical methods of locating supply lines in a manner that avoids conflicts or prevents objectionable interference between lines, the method involving the

least total cost shall be used regardless of which party takes precautionary or special measures.

(b) Each utility shall, to the extent possible, construct and locate supply lines so as to avoid crossing roads or any other features which will cause unnecessary discontinuities. (Authorized by and implementing K.S.A. 66-183; effective Aug. 11, 1995.)

82-12-9. Inductive coordination. When there is inductive interference, each affected utility shall work out an agreement to attain inductive coordination. When such an agreement is necessary, the most convenient and economical method consistent with effectiveness shall be employed whether that method limits inductive influence of the electric circuits, the inductive susceptiveness of the communication circuits, the inductive coupling between the two kinds of circuits or employs a combination of these methods. If there is a choice of methods, the one selected shall be applied to one or both systems according to the best engineering solution regardless of which circuit will require the greatest cost in corrective measures. (Authorized by and implementing K.S.A. 66-183; effective Aug. 11, 1995.)

Article 13.—TELECOMMUNICATIONS

82-13-1. Definitions. The following terms shall have the meanings specified below when used in these regulations: (a) “Commission” means the state corporation commission of the state of Kansas.

(b) “Competitive local exchange carrier” means a corporation, company, individual, or association of persons, and any trustees, lessees, or receivers of that corporation, company, individual, or association of persons providing switched telecommunications service within the state of Kansas. This term shall not include local exchange carriers or incumbent local exchange carriers as defined in this regulation.

(c) “Incumbent local exchange carrier” shall have the same meaning as that assigned to “local exchange carrier” in K.S.A. 66-1,187, and amendments thereto.

(d) “Underlying local exchange carrier” means the incumbent local exchange carrier or competitive local exchange carrier that owns, operates, or controls the facilities being provided on a wholesale or unbundled basis to another competitive local exchange carrier for the provision of switched telecommunications service to the customer, or

the incumbent local exchange carrier that has been issued a certificate to serve the customer. (Authorized by and implementing K.S.A. 66-1,188; effective Jan. 24, 2003.)

82-13-2. Procedures to protect customers from loss of telephone service when carriers cease operations. (a) Each competitive local exchange carrier providing local service through a resale arrangement shall provide its customers with at least a 30-day notice before discontinuing service.

(1) The notice shall clearly state the steps that customers must take in order to select another local service provider and shall include a toll-free number that customers with questions can call. The exiting competitive local exchange carrier shall provide sufficient customer support to answer calls to the toll-free number during the 30-day period before discontinuing service. The notice shall also include the customer’s billing address and service address, circuit identification number, telephone number, specific service being provided, the date on which service will be discontinued, and any other information that is reasonably necessary to assist the customer in obtaining service from another local service provider. If a customer had a preferred carrier freeze on the account, the exiting carrier shall remove this freeze, and the notice shall inform the customer that the preferred carrier freeze has been removed.

(2) A copy of the notice shall be provided to the commission, each underlying local exchange carrier, and all affected customers’ presubscribed interexchange carriers.

(3) Within 10 days after the commission receives a copy of the notice, additional notice requirements may be prescribed by the commission, as it deems necessary.

(4) The exiting competitive local exchange carrier shall not market or solicit the sale of its customer base after notice is provided to customers in accordance with this subsection.

(b) If the competitive local exchange carrier providing local service through a resale arrangement either abandons service without providing notice consistent with the requirements of subsection (a) of this regulation or abandons service after notice is provided but before 30 days have passed, the underlying local exchange carrier shall provide the customer with equivalent service for a limited time as required in this subsection.

(1) Within five days after the transfer of service, the underlying local exchange carrier shall notify each transferred customer that service is now being provided by the underlying local exchange carrier at that carrier's usual rate for the service. The notice shall inform customers that they have 30 days to select a local service provider. The notice shall include a list of providers approved by the commission and a toll-free number that customers with questions can call. The underlying local exchange carrier shall provide a copy of the notice to the commission when the notice is provided to the customers.

(2) At least 15 days but not more than 20 days after the transfer of service, the underlying local exchange carrier shall send a final notice to the transferred customers that have not chosen a new local service provider, reminding the customers of the date by which they must select a local service provider in order to avoid loss of service. The underlying local exchange carrier may discontinue service to customers who have not chosen a new provider by the specified date.

(3) The exiting competitive local exchange carrier that abandoned service without notice to its customers shall be required to reimburse the underlying local exchange carrier for the expense of the notices required in this subsection.

(4) The exiting competitive local exchange carrier shall not market or solicit the sale of its customer base after notice is provided to customers in accordance with this subsection.

(c) Each competitive local exchange carrier providing local service through an arrangement other than resale shall provide the commission and the underlying local exchange carrier with notice at least 45 days before discontinuing service. The notice shall include the billing address and service address, telephone number, circuit identification number, the specific service being provided, the date for discontinuance of service for each affected customer in the underlying local exchange carrier's service area, and any other information that is reasonably necessary to protect the customer from loss of service.

(1) The exiting competitive local exchange carrier and the underlying local exchange carrier shall be contacted by the commission's staff to arrange for continuing service to the affected customers.

(2) Unless otherwise directed by the commission, the exiting competitive local exchange carrier shall provide the affected customers with notice at least 30 days before discontinuing service.

The notice shall include the information required in subsection (c), a list of providers available to the customer, and a toll-free number that customers with questions can call. The exiting competitive local exchange carrier shall provide sufficient customer support to answer calls to the toll-free number during the 30-day period before discontinuing service. A copy of the notice shall be provided to the commission, the underlying local exchange carrier, and all affected customers' pre-subscribed interexchange carriers. Within 10 days after the commission receives a copy of the notice, additional notice requirements may be prescribed by the commission, as it deems necessary.

(3) The exiting competitive local exchange carrier shall not market or solicit the sale of its customer base after notice is provided to customers in accordance with this subsection.

(d) The underlying local exchange carrier shall provide notice to the commission and the competitive local exchange carrier before discontinuing service to the competitive local exchange carrier for lack of payment or any other reason. The notice shall be provided in a manner that provides the competitive local exchange carrier with adequate time to comply with the notification requirements in this regulation.

(e) Each carrier that reaches an agreement to purchase or otherwise agrees to serve the entire customer base of another carrier shall provide notice to the affected customers pursuant to 47 C.F.R. 64.1120, as in effect on April 18, 2002, which is adopted by reference. Each carrier shall furnish the commission with a copy of each notice provided pursuant to 47 C.F.R. 64.1120 when the notice is sent to the federal communications commission.

(f) An underlying local exchange carrier shall not be subject to claims of unwanted or unlawful provision of service if the transfers of service are consistent with the requirements of this regulation.

(g) Each competitive local exchange carrier that has discontinued service shall relinquish all assigned central office codes and all assigned blocks of numbers and shall provide written notice of the relinquishment to the North American numbering plan administrator in accordance with the current guidelines of the industry numbering committee. The competitive local exchange carrier shall furnish the commission with a copy of the notice when the notice is sent to the North American numbering plan administrator. (Authorized

by and implementing K.S.A. 66-1,188; effective Jan. 24, 2003.)

**Article 14.—THE KANSAS
UNDERGROUND UTILITY DAMAGE
PREVENTION ACT**

82-14-1. Definitions. The following terms as used in the administration and enforcement of the Kansas underground utility damage prevention act, K.S.A. 66-1801 et seq. and amendments thereto, shall be defined as specified in this regulation.

(a) “Backreaming” means the process of enlarging the diameter of a bore by pulling a specially designed tool through the bore from the bore exit point back to the bore entry point.

(b) “Commission” means the state corporation commission of Kansas.

(c) “Drill head” means the mechanical device connected to the drill pipe that is used to initiate the excavation in a directional boring operation. This term is sometimes referred to as the drill bit.

(d) “Excavation scheduled start date” means the start date stated in the notice of intent of excavation filed by the excavator pursuant to K.S.A. 66-1804(d) and amendments thereto.

(e) “Excavation site” means the area where excavation is to occur.

(f) “Locate ball” means an electronic marker device that is buried with the facility and is used to enhance signal reflection to a facility detection device.

(g) “Meet on site” means a meeting between an operator and an excavator that occurs at the excavation site in order for the excavator to provide an accurate description of the excavation site.

(h) “Notice of intent of excavation” means the written notification required by K.S.A. 66-1804 and amendments thereto.

(i) “Pullback operation” means the installation of facilities in a directional bore by pulling the facility from the bore exit point back to the bore entry point.

(j) “Pullback device” means the apparatus used to connect drilling tools to the facility being installed in a directional bore.

(k) “Reasonable care” means the precautions taken by an excavator to conduct an excavation in a careful and prudent manner. Reasonable care shall include the following:

(l) Providing for proper support and backfill around all existing underground facilities;

(2) using nonintrusive means, as necessary, to expose the existing facility in order to visually determine that there will be no conflict between the facility and the proposed excavation path when the path is within the tolerance zone of the existing facility;

(3) exposing the existing facility at intervals as often as necessary to avoid damage when the proposed excavation path is parallel to and within the tolerance zone of an existing facility; and

(4) maintaining the visibility of the markings that indicate the location of underground utilities throughout the excavation period.

(1) “Trenchless excavation” means any excavation performed in a manner that does not allow the excavator to visually observe the placement of the new facility. This term shall include underground boring, tunneling, horizontal auguring, directional drilling, plowing, and geoprobing. (Authorized by and implementing L. 2006, ch. 26, sec. 1; effective Jan. 19, 2007.)

82-14-2. Excavator requirements. In addition to the provisions of K.S.A. 66-1804, K.S.A. 66-1807, K.S.A. 66-1809, and K.S.A. 66-1810 and amendments thereto, the following requirements shall apply to each excavator:

(a) Unless all facilities notified by the notification center have provided a response to the excavator, excavation shall not begin at any excavation site before the excavation scheduled start date.

(b) If a meet on site is requested by the excavator, the excavation scheduled start date shall be no earlier than the fifth working day after the date on which the notice of intent of excavation was given to the notification center.

(c) Each notice of intent of excavation shall include the name and telephone number of the individual who will be representing the excavator at the excavation site.

(d) Each description of the excavation site shall include the following:

(1) The street address, if available, and the specific location of the proposed excavation site at the street address; and

(2) an accurate description of the proposed excavation site using any available designations, including the closest street, road, or intersection, and any additional information requested by the notification center.

(e) If the excavation site is outside the boundaries of any city or if a street address is not avail-

able, the description of the excavation site shall include one of the following:

(1) An accurate description of the excavation site using any available designations, including driving directions from the closest named street, road, or intersection;

(2) the specific legal description, including the quarter section; or

(3) the longitude and latitude coordinates.

(f) An excavator shall not claim preengineered project status, as defined in K.S.A. 66-1802 and amendments thereto, unless the public agency responsible for the project performed the following before allowing excavation:

(1) Identified all operators that have underground facilities located within the excavation site;

(2) requested that the operators specified in paragraph (f)(1) verify the location of their underground facilities, if any, within the excavation site;

(3) required the location of all known underground facilities to be noted on updated engineering drawings as specifications for the project;

(4) notified all operators that have underground facilities located within the excavation site of the project of any changes to the engineering drawings that could affect the safety of existing facilities; and

(5) complied with the requirements of K.S.A. 66-1804(a), and amendments thereto.

(g) If an excavator wishes to conduct an excavation as a permitted project, as defined in K.S.A. 66-1802 and amendments thereto, the permit obtained by the excavator shall have been issued by a federal, state, or municipal governmental entity and shall have been issued contingent on the excavator's having met the following requirements:

(1) Notified all operators with facilities in the vicinity of the excavation of the intent to excavate as a permitted project;

(2) visually verified the presence of the facility markings at the excavation site; and

(3) complied with the requirements of K.S.A. 66-1804(a) and amendments thereto.

(h) If the excavator requests a meet on site as part of the description of the proposed excavation site given to the notification center, the excavator shall document the meet on site and any subsequent meetings regarding facility locations with a record noting the name and company affiliation for the representative of the excavator and the representative of the operator that attend the meeting. The excavator shall keep this record for

at least three years. This documentation shall include the following:

(1) Verification that the description of the excavation site is understood by both parties;

(2) the agreed-upon excavation scheduled start date;

(3) the date and time of the meet on site; and

(4) the name and company affiliation of each attendee of the meet on site.

(i) Each excavator using trenchless excavation techniques shall develop and implement operating guidelines for trenchless excavation techniques. At a minimum, the guidelines shall require the following:

(1) Training in the requirements of the Kansas underground utility damage prevention act;

(2) training in the use of nonintrusive methods of excavation used if there is an indication of a conflict between the tolerance zone of an existing facility and the proposed excavation path;

(3) calibration procedures for the locator and sonde if this equipment is used by the excavator;

(4) recordkeeping procedures for measurements taken while boring;

(5) training in the necessary precautions to be taken in monitoring a horizontal drilling tool when backreaming or performing a pullback operation that crosses within the tolerance zone of an existing facility;

(6) training in the maintenance of appropriate clearance from existing facilities during the excavation operation and during the placement of new underground facilities;

(7) for horizontal directional drilling operations, a requirement to visually check the drill head and pullback device as they pass through potholes, entrances, and exit pits; and

(8) emergency procedures for unplanned utility strikes.

(j) If any contact with or damage to any underground facility or the facility's associated tracer wire or locate ball occurs, the excavator shall immediately inform the operator. (Authorized by L. 2006, ch. 26, sec. 1; implementing K.S.A. 66-1803 and K.S.A. 66-1809; effective Jan. 19, 2007.)

82-14-3. Operator requirements. In addition to the provisions of K.S.A. 66-1806, K.S.A. 66-1807, and K.S.A. 66-1810 and amendments thereto, the requirements specified in this regulation shall apply to each operator.

(a) Each operator shall perform the following:

(1) File and maintain maps of the operator's

underground facilities or a map showing the operator's service area with the notification center; and

(2) file and maintain, with the notification center, the operator's telephone contact number that can be accessed on a 24-hour-per-day basis.

(b) Except in cases of emergencies or separate agreements between the parties, each operator shall perform one of the following, within the two working days before the excavation scheduled start date assigned by the notification center:

(1) Inform the excavator of the location of the operator's underground facilities in the area described in the notice of intent of excavation; or

(2) notify the excavator that the operator has no facilities in the area described in the notice of intent of excavation.

(c) The requirement to inform the excavator of the facility location shall be met by marking the location of the operator's facility and identifying the name of the operator with flags, paint, or any other method by which the location of the facility is marked in a clearly visible manner.

(d) In marking the location of its facilities, each operator shall use safety colors substantially similar to three of the colors specified in the American national standards institute standard no. Z535.1-2002, "American national standard for safety color code," not including annex A, dated July 25, 2002 and hereby adopted by reference, according to the following table:

Facility Type	Color
Electric power distribution lines and transmission lines	Safety red
Gas distribution and transmission lines, hazardous liquid distribution and transmission lines	Safety yellow
Telephone, telegraph, and fiber optic system lines; cable television lines; alarm lines; and signal lines	Safety orange

(e) If the facility has any outside dimension that is eight inches or larger, the operator shall mark its facility so that the outside dimensions of the facility can be easily determined by the excavator.

(f) If the facility has any outside dimension that is smaller than eight inches, the operator shall mark its facility so that the location of the facility can be easily determined by the excavator.

(g) The requirement to notify the excavator that the operator has no facilities in the area described in the notice of intent of excavation shall be met by performing one of the following:

(1) Marking the excavation site in a manner indicating that the operator has no facilities at that site; or

(2) contacting the excavator by telephone, facsimile, or any other means of communication. Two documented attempts by the operator to reach an excavator by telephone during normal business hours shall constitute compliance with this paragraph.

(h) If the notice of intent of excavation contains a request for a meet on site, the operator shall meet with the excavator at a mutually agreed-upon time within two working days after the day on which the notice of intent of excavation was given.

(i) After attending a meet on site, the operator shall inform the excavator of the tolerance zone of the operator's facilities in the area of the planned excavation within two working days before the excavation scheduled start date that was agreed to at the meet on site.

(j) Any operator may request that the excavator whitenline the proposed excavation site only if the description of the excavation site as required by K.A.R. 82-14-2(d) or (e) does not provide an accurate description of the excavation site.

(k) If the operator requests that the excavator whitenline the excavation site, the operator shall have two working days after the whitenlining is completed to provide the location of the tolerance zone.

(l) If the operator requests that the excavator use whitenlining at the excavation site, the operator shall document the whitenlining request and any subsequent meetings regarding the facility location for that excavation site. The operator shall maintain records of the whitenlining documentation for six months after the excavation scheduled start date. The documentation shall include the following:

(1) A record signed by the operator stating the name of the excavator contacted for the request for whitenlining;

(2) verification that both parties understand the description of the excavation site;

(3) the agreed-upon excavation scheduled start date;

(4) the date and time of the request for whitenlining; and

(5) the name and company affiliation of each person contacted about the request for whitenlining.

(m) Each operator that received more than

2,000 requests for facility locations in the preceding calendar year shall file a damage summary report at least semiannually with the Kansas corporation commission. The report shall include information on each incident of facility damage resulting from excavation activity that was discovered by the operator during that period. For each incident, at a minimum the following data, if known, shall be included in the report:

- (1) The type of operator;
- (2) the type of excavator;
- (3) the type of excavation equipment;
- (4) the city or county, or both, in which the damage occurred;
- (5) the type of facility that was damaged;
- (6) the date of damage, specifying the month and year;
- (7) the type of locator;
- (8) the existence of a valid notice of intent of excavation; and
- (9) the primary cause of the damage.

(n) The damage summary report for the first six months of the calendar year shall be due on or before August 1 of the same calendar year. The damage summary report for the last six months of the calendar year shall be due on or before February 1 of the next calendar year. No semiannual report shall be due for a period if any portion of the period falls within the six months immediately following the effective date of this regulation. (Authorized by L. 2006, ch. 26, sec. 1; implementing K.S.A. 66-1806; effective Jan. 19, 2007.)

82-14-4. Notification center requirements. In addition to the provisions of K.S.A. 66-1805 and amendments thereto, the executive director of the notification center shall ensure that the following requirements are met:

(a) Notice shall be provided to each affected operator of any excavation site for which the location has been requested pursuant to K.S.A. 66-1804(d), and amendments thereto, and K.A.R. 82-14-2 (d) or (e) if the affected operator is a member of the notification center and has facilities recorded with the notification center in the area of the proposed excavation site.

(b) A record of receipts for each notice of intent of excavation shall be maintained for four years, including an audio record of each notice of intent of excavation and a written or electronic version of the notification sent to each operator that is a member.

(c) A copy of the record documenting the notice

of intent of excavation shall be provided to the commission or to the person giving the notice of intent of excavation, upon request.

(d) A quality control program shall be established and maintained. The program shall ensure that the employees receiving and recording the notices of intent of excavation are adequately trained. (Authorized by L. 2006, ch. 26, sec. 1; implementing K.S.A. 66-1805; effective Jan. 19, 2007.)

82-14-5. Violation of act; enforcement procedures. (a) After investigation, if the commission staff believes that there has been a violation or violations of K.S.A. 66-1801 et seq. and amendments thereto or any regulation or commission order issued pursuant to the Kansas underground utility damage prevention act and the commission staff determines that penalties or remedial action is necessary to correct the violation or violations, the commission staff shall serve a notice of probable noncompliance on the person or persons against whom a violation is alleged. Service may be made by registered mail or hand delivery.

(b) Any notice of probable noncompliance issued under this regulation may include the following:

(1) A statement of the provisions of the statutes, regulations, or commission orders that the respondent is alleged to have violated and a statement of the evidence upon which the allegations are based;

(2) a copy of this regulation; and

(3) any proposed remedial action requested by the commission staff.

(c) Within 30 days of receipt of a notice of probable noncompliance, the recipient shall respond by mail in at least one of the following ways:

(1) Submit written explanations, a statement of general denial, or other materials contesting the allegations;

(2) submit a signed agreement to the terms of the noncompliance findings; or

(3) submit a signed acceptance of any remedial action proposed by the commission staff in the notice of noncompliance, if the respondent agrees to undertake the remedial action.

(d) The commission staff may amend a notice of probable noncompliance at any time before issuance of a show cause order. If an amendment includes any new material allegations of fact or if the staff proposes an increased civil penalty

amount or additional remedial action, the respondent shall have 30 days from service of the amendment to respond.

(e) Unless good cause is shown or a consent agreement is executed by the commission staff and the respondent before the expiration of the 30-day time limit, the failure of a party to mail a timely response to a notice of probable noncompliance shall constitute an admission to all factual allegations made by the commission staff and may be used against the respondent in a show cause proceeding.

(f) At any time before an order is issued assessing penalties or requiring remedial action or before a hearing, the commission staff and the respondent may agree to dispose of the case by joint execution of a consent agreement. The consent agreement may allow for a smaller penalty than otherwise required. The consent agreement may also allow for nonmonetary remedial penalties. Upon joint execution, the consent agreement shall become effective when the commission issues an order approving the consent agreement.

(g) Each consent agreement shall include the following:

(1) An admission by the respondent of all jurisdictional facts;

(2) an express waiver of any further procedural steps and of the right to seek judicial review or otherwise challenge or contest the validity of the commission's show cause order;

(3) an acknowledgment that the notice of probable noncompliance may be used to construe the terms of the order approving the consent agreement; and

(4) a statement of the actions required of the respondent and the time by which the actions shall be completed.

(h) If any violation resulting in a notice of probable noncompliance is not settled with a consent agreement, a show cause proceeding may be initiated by the commission no sooner than 30 days after the respondent has been served with a notice of probable noncompliance.

(i) The respondent shall respond to a show cause order within 30 days of service of the order by filing an answer with the commission conforming to the requirements of K.A.R. 82-1-218 and K.A.R. 82-1-219. The respondent's failure to respond within 30 days shall be considered an admission of noncompliance, unless good cause is shown.

(j) The respondent may request a hearing to

challenge the allegations set forth in the show cause order by filing a motion with the commission within 30 days of the issuance of a show cause order.

(k) An order may be issued by the commission to open a formal investigation docket regarding any potential noncompliance with the Kansas underground utility damage prevention act, and amendments thereto, or any regulations or orders pursuant to that act. If the commission finds evidence that any party to the investigation docket was not in compliance, a show cause order may be issued by the commission. If a show cause order is issued during the course of a formal investigation, the staff shall not be required to issue a notice of probable noncompliance. (Authorized by K.S.A. 66-106 and K.S.A. 66-1812; implementing K.S.A. 66-1812; effective Jan. 19, 2007.)

Article 15.—VIDEO SERVICE AUTHORIZATION

82-15-1. Application for a video service authorization certificate. (a) Each entity seeking to provide cable or video service on or after July 1, 2006 shall file an application with the commission for a video service authorization certificate. Each cable operator providing video service pursuant to a franchise that is in effect on July 1, 2006 shall file an application for a state-issued video service authorization certificate at least 30 days before the expiration of its franchise agreement in order to continue to provide video service.

(1) Each applicant shall use the application for video service authorization available from the commission, which shall include the information specified in the video competition act, 2006 SB 449, § 3(a)(1) through (5) and amendments thereto.

(2) Each applicant shall file the original and seven copies of the application with the commission, addressed to the executive director of the commission at its Topeka office.

(b)(1) Each entity that seeks statewide authorization to offer cable or video service on or after July 1, 2006 shall file an initial application.

(2) Each entity that holds a video service authorization certificate and wants to revise its original application shall file an amended application, except as provided in subsection (e).

(3) Each entity that holds a video service authorization certificate and wants to terminate its

authority to provide cable or video service shall file a termination application.

(4) Each entity that holds a video service authorization certificate and wants to transfer its authority to provide cable or video service shall file a transfer application. Each entity to which the authority to provide cable or video service is transferred shall file an initial or amended application.

(c) Each applicant shall submit an electronic copy of the map of the area where the applicant will provide service, which is also known as the applicant's footprint. This map shall be provided on a compact disc and in the format specified in the application for video service authorization.

(d) Each applicant shall submit one or more of the following fees, as applicable:

(1) A filing fee of \$1,000 with an initial application; and

(2) a filing fee of \$250 with each type of application specified in paragraphs (b)(2) and (4).

(e) Each entity holding a video service author-

ization certificate shall provide notice of any change in the name of the entity, contact personnel, mailing address, and phone number by sending a notification letter specifying the number of the docket in which the certificate was granted. The notice shall be provided within 14 business days after the effective date of the change.

(f)(1) Each applicant that submits an incomplete application shall be notified that its application is incomplete within 14 calendar days after the date of filing. If the applicant does not provide a complete application within seven calendar days after the date of the notice, the application shall be dismissed without prejudice within 30 days after the date of filing.

(2) A video service authorization certificate shall be issued in the form of a commission order within 30 days after the date of filing a complete application, if the applicant meets all application requirements. (Authorized by 2006 SB 449, § 3; implementing 2006 SB 449, §§ 3 and 6; effective, T-82-7-5-06, July 5, 2006; effective Oct. 13, 2006.)