KANSAS IMPLEMENTATION PLAN REVISION – KCMA OZONE MAINTENANCE PLAN, 2007

APPENDIX I

KANSAS
AIR QUALITY REGULATIONS

AUGUST 2006

Kansas Department of Health and Environment
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KANSAS AIR QUALITY REGULATIONS
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NOTICE

Please note that this copy of the Kansas Air Quality Regulations and Statutes may contain typographical errors. In the event of any conflict, the official volumes of the Kansas Administrative Regulations would control. That publication is available at many libraries, and available for purchase through the Secretary of State's office.

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Article 19.--- Ambient Air Quality Standards and Air Pollution Control
AMBIENT AIR QUALITY STANDARDS

28-19-1. (Authorized by K.S.A. 65-3001, 65-3005, 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1981.)

28-19-2. (Authorized by K.S.A. 65-3005, 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1981.)

28-19-3. Reserved.

28-19-4. (Authorized by K.S.A. 65-3005, 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1981.)

28-19-5. Reserved.

28-19-6. (Authorized by K.S.A. 65-3001, 65-3005, 65-3006, 65-3007, 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1981.)

28-19-7. General provisions; definitions. (Authorized by and implementing K.S.A. 1994 Supp. 65-3005; effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974; amended May 1, 1975; amended, T-84-39, Dec. 21, 1983; amended May 1, 1984; amended, T-85-29, Nov. 14, 1984; amended May 1, 1985; amended May 1, 1988; amended Oct. 16, 1989; amended Nov. 22, 1993; amended Jan. 23, 1995; amended Dec. 8, 1995; revoked Oct. 10, 1997.)

28-19-8. Reporting required. The references in K.A.R. 28-19-9 (a) and K.A.R. 28-19-16b to reporting requirements under this regulation, the reference in K.A.R. 28-19-16b to the information required to be included in a permit application by K.A.R. 28-19-8(a), and any other reference in these regulations to the requirements of K.A.R. 28-19-8, shall be interpreted to require compliance with K.A.R. 28-19-300 through K.A.R. 28-19-304. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005, 65-3007, 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974; amended May 1, 1975; amended, T-84-39, Dec. 21, 1983; amended May 1, 1984; amended, T-85-29, Nov. 14, 1984; amended May 1, 1985; amended May 1, 1988; amended Oct. 16, 1989; amended Jan. 23, 1995.)

28-19-9. Time schedule for compliance. Except as otherwise noted in specific emission control regulations, compliance with these regulations shall be according to the following schedules:

(a) All new air contaminant emission sources or alterations to emission sources that are required to be reported under the provisions of K.A.R. 28-19-8(a) shall be in compliance with all applicable emission control regulations at the time that they go into operation. The department may authorize the operation of a new or altered emission source for any additional specified time periods that are required to make necessary adjustments on the equipment before compliance can be demonstrated. This authorization shall be granted only at the request of the operator and under conditions that are approved by the department.

(b) Any air contaminant emission source that was operating, under construction or under purchase contract on January 1, 1971, and that has not previously been required to comply with any emission control requirement in these regulations shall comply with that emission control requirement or those requirements within 180 days after the department notifies the owner or operator that the emission source is required to be reported under the provisions of K.A.R. 28-19-8(a).

(c) The owner or operator of any portable stationary air contaminant emission source that has been issued a permit under K.A.R 28-19-14 and which is moved to another location within the state shall report the move to the department, in writing, at least 10 days before the source commences operation at the new location. The report shall identify the equipment being moved, describe the old and the new location, indicate the scheduled date that operation of the source at the new location is to begin, and indicate the expected operating period at this location. (Authorized by

K.S.A. 65-3005; implementing K.S.A. 65-3005, 65-3010; effective Jan. 1, 1971; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974; amended May 1, 1975; amended, T-84-39, Dec. 21, 1983; amended May 1, 1984.)

28-19-10. Circumvention of control regulations. (A) No person shall cause or permit the installation or use of any machine, equipment, device or other article, or alter any process in any manner which, without resulting in a reduction of the total amount of contaminants emitted, conceals or dilutes the emission of contaminants which would otherwise violate provisions of these control regulations.

(B) Exception to section A of this regulation may be granted by the department, upon request, provided that such action is intended to convert the physical and/or chemical nature of the contaminant emission and that failure to reduce total contaminant emissions results solely from the introduction of contaminants which are not deemed to be detrimental to the public interest. (Authorized by K.S.A. 1970 Supp. 65-3005, 65-3006, 65-3010; effective Jan. 1, 1971.)

28-19-11. Exceptions due to breakdowns or scheduled maintenance. (A) Abnormal operating conditions resulting from malfunction breakdown, and or necessary repairs to control or processing equipment and appurtenances which cause emissions in excess of the limitations specified in the emission control regulations shall not be deemed violations provided that:

(1) The person responsible for the operation of the emission source notifies the department of the occurrence and nature of such malfunctions, breakdown, or repairs, in writing, within ten (10) days of noted occurrence.

(2) The number of occurrences of such breakdowns is not deemed excessive by the department and appropriate reasonable action is taken to initiate and complete any necessary repairs and place the equipment back in operation as quickly as possible.

(B) Emissions in excess of the limitations specified in these emission control regulations resulting from scheduled maintenance of control equipment and appurtenances will be permitted only on the basis of prior approval by the department and upon demonstration that such maintenance cannot be accomplished by maximum reasonable effort, including off-shift labor where required, during periods of shutdown of any related equipment.

(C) Excessive contaminant emission from fuel burning equipment used for indirect heating purposes resulting from fuel or load changes, start up, soot blowing, cleaning of fires, and rapping of precipitators will not be deemed violations provided that they do not exceed a period or periods aggregating more than five (5) minutes during any consecutive one (1) hour period. Provided, however, That where the operator of such equipment can demonstrate to the satisfaction of the department that any such specific operational procedures will require that the allowable time period for excessive emissions be extended beyond five (5) minutes during any one hour, the department may authorize, upon request of the operator, an adjusted time schedule for permitting such excessive emissions. Such authorization shall require that visible emissions not exceed an opacity of 60 percent; and shall specify an appropriate time and daily frequency schedule for such excessive emissions. (Authorized by K.S.A. 1974 Supp. 65-3005, 65-3006, 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-74-7, Jan. 1, 1974; amended May 1, 1975.)

28-19-12. Measurement of emissions. (A) The department may require any person responsible for the operation of an emission source to make or have tests made to determine the rate of contaminant emissions from the source whenever it has reason to believe on the basis of estimates of potential contaminant emission rates from the source and due consideration to probable efficiency of any existing control device, or visible emission determinations made by an official observer, that existing emissions exceed the limitations specified in these control regulations. Such tests may also be required pursuant to verifying that any newly installed controlled device meets performance specifications. If such a test demonstrates that the applicable emission requirement is met, no more than one (1) such test shall be required during any twelve (12) consecutive calendar month period: Provided, however, That should the department determine that the test did not represent normal operating conditions or emissions additional tests may be required. Such a requirement shall be considered as an order as provided for in K.S.A. 1970 Supp. 65-3011 and subject to all administrative and legal requirements specified therein.

Required tests shall be conducted in accordance with procedures approved by the director as being in accordance with sound analytical and sampling procedures. Such tests shall be conducted by reputable, qualified individuals, as approved by the department, and a certified written copy of the test results signed by the person conducting the test shall be provided to the department.

(B) The department may conduct tests of emissions of contaminants from any source. Upon written request from

the department, the person responsible for the source to be tested shall cooperate with the department in providing all necessary test ports in stacks or ducts and such other safe and proper facilities, exclusive of instruments and sensing devices, as may be reasonably required to conduct the test with due regard being given to expenditures and possible disruption of normal operation of the source. A report concerning the findings of such tests shall be furnished to the person responsible for the source upon request.

(C) The director may require the owner or operator of any emission source which is subject to the provisions of these regulations to install, use, and maintain such stationary monitoring equipment as is required to demonstrate continuing compliance with any applicable emission limitations, and to maintain records and make reports regarding such measured emissions to the department in a manner and on a schedule to be determined by the director. (Authorized by K.S.A. 1971 Supp. 65-3005, 65-3006, 65-3007, 65-3009, 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972.)

28-19-13. Interference with enjoyment of life and property. Compliance with the provisions of these emission control regulations (including exemptions included therein) notwithstanding, should it be found after public hearing that any specific emission source is, tends to be, will be, or will tend to be significantly injurious to human health or welfare, animal or plant life, or property or is or will be unreasonably interfering with the enjoyment of life and property of any inhabitant of the state, or will interfere with the attainment or maintenance of any national ambient air quality standard an appropriate order may be issued to require such additional prevention, abatement or control of the emission involved as is necessary to effect the purposes of the enabling act. (Authorized by K.S.A. 65-3001, 65-3002, 65-3005, 65-3011; effective Jan. 1, 1971; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974.)

28-19-14. Permits required. The reference in K.A.R. 28-19-19 to a permit condition under this regulation, the reference in K.A.R. 28-19-31 to a permit issued under this regulation, and any other reference in these rules to a permit under this regulation, shall be interpreted to include permits issued under K.A.R. 28-19-300 through 28-19-304 and K.A.R. 28-19-500 through 28-19-578. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005, 65-3008; effective, E-78-8, Dec. 27, 1972; effective Jan. 1, 1974; amended, T-84-39, effective Dec. 21, 1983; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; amended Oct. 16, 1989; amended Jan. 24, 1994; amended Jan. 23, 1995.)

28-19-15. Severability. If any clause, paragraph, subsection or section of these regulations shall be held invalid, it shall be conclusively presumed that the board would have enacted the remainder of these regulations not directly related to such clause, paragraph, subsection or section. (Authorized by K.S.A. 65-3005; effective Jan. 1, 1971.)

28-19-16. New source permit requirements for designated nonattainment areas. Each permit issued for the construction or major modification of a major stationary source under the provisions of K.A.R. 28-19-16b shall become void if the construction has not commenced within 18 months after the applicant's receipt of such permit or if such construction is discontinued for 18 months or more. The secretary may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project, in which case the construction shall be commenced on each phase within eighteen (18) months of the projected and approved commencement date. (Authorized by and implementing K.S.A. 65-3005, 1984 Supp. 65-3008 and K.S.A. 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1986.)

28-19-16a Definitions. The following words and terms when used in K.A.R. 28-19-16 through K.A.R. 28-19-16m shall have the meanings as defined in subsections (a) through (s) of this regulation.

(a) "Actual emissions" means, in regard to determining creditable emissions decreases or increases of a pollutant, the average rate, in tons per year, at which a unit actually emitted the pollutant during a two-year period that precedes the particular date of interest and that is representative of normal source operation. This shall apply unless the department allows the use of a different time period upon a determination that it is more representative of normal source operation. These emissions shall be calculated using the unit's actual operating hours, production rates, and type of materials processed, stored, or combusted during the selected time period. Where specific emission limitations have been established for an individual source under the provisions of K.A.R. 28-19-13, K.A.R. 28-19-16b, the Kansas air quality regulations adopting and implementing 40 CFR §52.21, or any permits issued before May 1, 1983 by the U.S.

environmental protection agency under the provisions of federal regulation 40 CFR §52.21(i), as amended at 52 FR 24634, July 1, 1987, effective on July 31, 1987, then actual emissions may be presumed to be equal to these limitations. For any emissions unit that has not begun normal operations on a date of interest, actual emissions shall mean the potential of the unit to emit on that date.

(b) "Allowable emissions" means the emissions rate of a stationary source calculated by using the following:

(1) the maximum rated capacity of the source, unless the source is subject to federally enforceable limits that restrict the operating rate, hours of operation, or both; and

(2) limitations imposed by this or any other applicable state, federal, or local governmental air pollution control regulation, including those with a future compliance date.

(c) "Begin actual construction" shall have the meaning as defined in K.A.R. 28-19-200(i).

(d) "Building, structure, facility, or installation" shall have the meaning as defined in K.A.R. 28-19-200(j).

(e) "Commence," as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary state, local, and federal approvals or permits, and either has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(f) "Construction" means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, that would result in a change in actual emissions.

(g) "Contemporaneous emission increase or decrease" as used in K.A.R. 28-19-16a, paragraph (s)(2) means emission changes from the source that have occurred since December 21, 1976 or since the most recent permit was issued under the provisions of K.A.R. 28-19-16b, whichever date is the most recent.

(h) "Creditable emission decrease" means the amount by which the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions. No emission decrease shall be creditable if the secretary has previously given credit for it in a permit issued under the provisions of this regulation that is presently in effect or if the decrease has been previously credited by the secretary as a result of actions initiated under the provisions of other state, federal, or local governmental air pollution control regulations. Credit shall be allowed only for decreases in emissions that have approximately the same qualitative significance for public health and welfare as do those emissions that increase as a result of a particular change.

(i) "Creditable emission increase" means the amount by which a new level of actual emissions exceeds the old level of actual emissions.

(j) "Emissions unit" means any part of a stationary source that emits or would have the potential to emit any pollutant subject to the provisions of this regulation.

(k) "Federally enforceable" shall have the meaning as defined in K.A.R. 28-19-200(ee).

(l) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(m) "Fugitive emissions" shall have the meaning as defined in K.A.R. 28-19-200(ff).

(n) "Implementation plan" means any documents, including state or locally adopted regulations, submitted by a state to the U.S. environmental protection agency as required by the provisions of 42 U.S.C. §7410 and any regulations promulgated by the administrator of the U.S. environmental protection agency pursuant to the provisions of that section. For the purpose of this regulation, a state plan is approved when the administrator has published the approval or conditional approval of the applicable provisions of the plan in the federal register.

(o) "Lowest achievable emission rate" means, for any source, the more stringent emission standard established by the secretary based on either of the following:

(1) the most stringent emissions limitation that is contained in the approved implementation plan of any state for that class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that these limitations are not achievable, or

(2) the most stringent emissions limitation that is achieved in practice by that class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the secretary establish a lower emission rate for a proposed new or modified stationary source that is less stringent than the amount allowable under an applicable new source standard of performance promulgated by the U.S. environmental protection agency under the provisions of 42 U.S.C. §7411.

(p) "Major modification" means any modification of a major stationary source that would result in a significant net emissions increase of any pollutant subject to the provisions of this regulation.

(q) "Modification" means any physical change in, or change in the method of operation of, a stationary source that would result in an emissions increase of any pollutant subject to the provisions of this regulation. Each net emission increase that is considered significant for volatile organic compounds shall be considered significant for ozone. A physical change or change in the method of operation shall not include:

(1) routine maintenance, repair, and replacement;

(2) use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the federal energy supply and environmental coordination act of 1974, or any superseding legislation, or by reason of a natural gas curtailment plan pursuant to the federal power act;

(3) use of an alternative fuel by reason of an order or rule under section 125 of the federal clean air act;

(4) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(5) use of an alternative fuel or raw material by a stationary source that:

(A) the source was capable of accommodating before December 21, 1976, unless the secretary determines that this change would be prohibited under any federally enforceable permit condition that was established after December 21, 1976 according to 40 CFR §52.21, as amended at 52 FR 24634, July 1, 1987, effective on July 31, 1987; or

(B) the source is approved to use under any permit issued under the provisions of this regulation;

(6) an increase in the hours of operation or in the production rate, unless the secretary determines that this change is prohibited under any federally enforceable permit condition that was established after December 21, 1976 according to 40 CFR 52.21, as amended at 52 FR 24634, July 1, 1987, effective on July 31, 1987; or

(7) any change in ownership at a stationary source.

(r) "Major stationary source" means any stationary source of air pollutants which that emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to the provisions of this regulation, or any physical change that would occur at a stationary source not qualifying as a major stationary source under the previous definition, if the change would create a major stationary source by itself. A major stationary source that is considered major for volatile organic compounds shall also be considered major for ozone.

(s) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(1) any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(2) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change, and are otherwise creditable. (Authorized by K.S.A. 1996 Supp. 65-3005; implementing K.S.A. 1996 Supp. 65-3005, K.S.A. 1996 Supp. 65-3008 and K.S.A. 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982; amended Oct. 16, 1989; amended Oct. 10, 1997.)

28-19-16b. Permit required. (a) A major stationary source shall not begin actual construction, or major modification unless the owner or operator of the source has been issued a permit approving this activity. The permit shall be signed by the secretary or an authorized representative of the secretary and shall specify the emission rate limitations allowable for the source and any special conditions to be imposed on its operation to insure regulatory compliance. Special operating conditions may include, but need not be limited to, specified periods of operation, restrictions on the amount and types of material to be combusted, stored or processed, control equipment operating and maintenance requirements, emissions monitoring requirements, and restrictions on other source operations.

(b) Application for a permit shall be submitted on forms provided by the secretary or his or her designated representative. The application shall include, in addition to that information required by K.A.R. 28-19-8(a), the information that is required by the secretary to determine the net emissions increase that will occur at the time that the permitted activity is completed. All proposed actions reported under the provisions of K.A.R. 28-19-8 shall be reviewed by the secretary to determine the possible applicability of this regulation to the proposed action and advise the source owner or operator of any need to submit a permit application. The secretary or a designated representative shall advise the applicant of each deficiency in the application or accompanying information. If a deficiency exists, the receipt date of the completed application shall be the date on which the department of health and environment or its designated representative received all required information. (Authorized by and implementing K.S.A. 65-3005, 1984 Supp. 65-3008 and K.S.A. 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982; amended May 1,

1986.)

28-19-16c. Creditable emission reductions. For the purpose of allowing credit for emissions reductions claimed in relation to the determination of reasonable further progress toward attainment of the national ambient air quality standards required under the provisions of K.A.R. 28-19-16g, the following additional requirements shall apply:

(a) If an existing fuel combustion source commits to switch, at some future date, to a fuel that emits less pollutants, emissions offset credit based upon allowable (or actual) emissions for the fuels involved shall not be allowed unless the source that has committed to the fuel switch has also committed to the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back, at some later date, to a fuel that emits more pollutants. Before the offset credits are given for these proposed fuel switches, the secretary shall ensure that adequate long term supplies of the new fuel are available.

(b) Where emission reduction credits are proposed to result from a shutdown of an existing source or permanently curtailing production or operating hours below baseline levels, these reductions shall not be credited unless the work force to be affected by this action has been notified of the proposed shutdown or curtailment. Source shutdowns or curtailments in production occurring before the completed source application is received by the department of health and environment or its designated representative may not be used for the purpose of establishing offset credits unless the applicant has demonstrated that this curtailment or shutdown occurred after August 7, 1977, and the proposed new source construction, reconstruction or modification is a replacement for the shutdown or curtailment that is proposed to be used to offset the emissions from it.

(c) Emissions reduction credit shall not be allowed for replacing one volatile organic compound with another of less reactivity, except for those compounds listed in Table 1 of the ``Recommended Policy on Control of Volatile Organic Compounds" as published on page 35314 of the July 8, 1977 issue of the Federal Register. (Authorized by K.S.A. 65-3005, 65-3008, 65-3010; implementing K.S.A. 65-3005, 65-3008, 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982.)

28-19-16d. Fugitive emission exemption. The provisions of K.A.R. 28-19-16b shall not apply to a source or modification of a source that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the source or modification, except for the following source categories:

(a) Coal cleaning plants (with thermal dryers);
(b) kraft pulp mills;
(c) portland cement plants;
(d) primary zinc smelters;
(e) iron and steel mills;
(f) primary aluminum ore reduction plants;
(g) primary copper smelters;
(h) municipal incinerators capable of charging more than two hundred and fifty (250) tons of refuse per day;
(i) hydrofluoric, sulfuric, or nitric acid plants;
(j) petroleum refineries;
(k) lime plants;
(l) phosphate rock processing plants;
(m) coke oven batteries;
(n) sulfur recovery plants;
(o) carbon black plants (furnace process);
(p) primary lead smelters;
(q) fuel conversion plants;
(r) sintering plants;
(s) secondary metal production plants;
(t) chemical process plants;
(u) fossil-fuel boilers (or combinations thereof) totaling more than 250,000,000 British thermal units per hour heat input;
(v) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) taconite ore processing plants;
(x) glass fiber processing plants;
(y) charcoal production plants;
(z) fossil fuel-fired steam electric plants of more than 250,000,000 British thermal units per hour heat input; and
(aa) any other stationary source category which, as of August 7, 1980, was being regulated under Section 111 or 112 of the federal Clean Air Act (42 U.S.C. 7411 and 7412). (Authorized by and implementing K.S.A. 65-3005, 1984 Supp. 65-3008 and K.S.A. 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1986.)

28-19-16e. Relaxation of existing emission limitations. At such time as any individual source or modification becomes a major source subject to the provisions of K.A.R. 28-19-16b solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on the hours of operation, then the requirements of K.A.R. 28-19-16 through 28-19-16m shall become applicable to the source or modification as though construction had not yet commenced on the source or modification. (Authorized by K.S.A. 65-3005, 65-3008, 65-3010; implementing K.S.A. 65-3005, 65-3008, 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981.)

28-19-16f. New source emission limits. A permit for major stationary source construction, or major modification shall not be issued under the provisions of K.A.R. 28-19-16b unless the emissions resulting from this permitted activity are limited to the lowest achievable emission rate that has been established for the constructed or modified source. For phased construction projects, the determination of lowest achievable emission rate shall be reviewed by the secretary, and modified as appropriate, at the latest reasonable time prior to commencement of construction of each independent phase of the proposed construction or modification. Final determination of compliance with lowest achievable emission rate requirements shall be made by the secretary. (Authorized by K.S.A. 65-3005, 65-3008, 65-3010; implementing K.S.A. 65-3005, 65-3008, 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982.)

28-19-16g. Attainment and maintenance of national ambient air quality standards. (a) A permit for major stationary source construction, or modification, shall not be issued under the provisions of K.A.R. 28-19-16b if emissions from this source would prevent the attainment and maintenance of the national ambient air quality standards by the date specified in the approved Kansas implementation plan.

(b) Attainment and maintenance of the national ambient air quality standards shall be determined according to compliance with either of the two following requirements:

(1) Reasonable further progress toward attainment of the national ambient air quality standards shall be required. This progress shall be demonstrated when, by the time the newly permitted source is to commence operation, total allowable emissions from:

(A) other existing sources in the identified non-attainment area;

(B) other new or modified sources which are not major stationary sources; and

(C) this proposed source shall be less than the total emissions allowed from sources existing before application for the permit.

(2) Emissions resulting from the proposed new or modified major stationary source shall not cause or contribute to emissions levels which exceed the allowance permitted for the pollutant in the area for all new or modified major stationary sources in the approved plan. (Authorized by and implementing K.S.A. 65-3005, 1984 Supp. 65-3008 and K.S.A. 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982; amended May 1, 1986.)

28-19-16h. Compliance of other sources. A permit for major stationary source construction or major modification shall not be issued under the provisions of K.A.R. 28-19-16b unless the owner or operator of this source has demonstrated to the secretary that all major stationary sources owned and operated by this person (or by an entity controlling, controlled by, or under common control of this person) in the state of Kansas are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the federal clean air act and amendments thereto. (Authorized by K.S.A. 65-3005, 65-3008, 65-3010; implementing K.S.A. 65-3005, 65-3008, 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982.)

28-19-16i. Operating requirements. A constructed or modified major stationary source subject to the provisions of K.A.R. 28-19-16b shall not be operated, except in compliance with the requirements established by the permit issued for the source. Each permitted physical change in a source that is intended to serve as a replacement unit, and which requires a shakedown period before it can be expected to operate at maximum efficiency, shall be considered operational only after completion of this period, provided that this period shall not exceed 180 days. (Authorized by and implementing K.S.A. 65-3005, 1984 Supp. 65-3008 and K.S.A. 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982; amended May 1, 1986.)

28-19-16j. Revocation and suspension of permit. Any permit issued under the provisions of K.A.R. 28-19-16b may be suspended or revoked by the secretary upon his or her findings that the owner or operator of such source has failed to comply with any requirement specified in the permit. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981.)

28-19-16k. Notification requirements. A permit shall not be issued, suspended or revoked under the provisions of K.A.R. 28-19-16b or 28-19-16j unless provision has been made for a public hearing on the matter upon the written request of any person affected by such proposed action. Such request shall be made within thirty (30) days of:

(a) publication of notice in a newspaper, having general circulation in the nonattainment area in which the source is, or will be, located, indicating the nature of the proposal and advising the public of the opportunity to either request a hearing or submit written comments directly to the secretary concerning the proposal;

(b) sending a copy of the public notice to the applicant and to state and local officials and agencies having cognizance over the location where the proposed actions will occur or emissions from it could significantly contribute to levels of air pollution in excess of the national ambient air quality standards; and

(c) sending a copy of the public notice to the regional administrator of the U.S. Environmental Protection Agency. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981.)

28-19-16l. Failure to construct. Each permit issued for the construction or major modification of a major stationary source under the provisions of K.A.R. 28-19-16b shall become void if the construction has not commenced within 18 months after the applicant's receipt of such permit or if such construction is discontinued for 18 months or more. The secretary may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project, in which case the construction shall be commenced on each phase within eighteen (18) months of the projected and approved commencement date. (Authorized by and implementing K.S.A. 65-3005, 1984 Supp. 65-3008 and K.S.A. 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1986.)

28-19-16m. Compliance with provisions of law required. Any approval of a permit under the provisions of K.A.R. 28-19-16b shall not relieve any source owner or operator of the responsibility to comply fully with any other requirements of state, federal, or local law. (Authorized by K.S.A. 65-3005, 65-3008, 65-3010; implementing K.S.A. 65-3005, 65-3008, 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981.)

28-19-17. Prevention of significant deterioration of air quality. Each reference in this article to K.A.R. 28-19-17 through K.A.R. 28-19-17q, individually or collectively, shall be interpreted to refer to K.A.R. 28-19-350. (Authorized by and implementing K.S.A. 2001 Supp. 65-3005, 65-3008, and K.S.A. 65-3010; effective May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended June 8, 1992; amended November 22, 2002.)

28-19-17a. Incorporation of federal regulations by reference. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005, 65-3008 and 65-3010; effective May 1, 1983; amended May 1, 1986; amended Oct. 16, 1989; amended June 8, 1992; revoked November 22, 2002.)

28-19-17b. Definitions. (Authorized by K.S.A. 65-3005, as amended by L. 1993, Ch. 13, Sec. 3; implementing K.S.A. 65-3005, as amended by L. 1993, Ch. 13, Sec. 3; 65-3008, as amended by L. 1993, Ch. 13, Sec. 5; 65-3010; effective May 1, 1983; amended May 1, 1986; amended Oct. 16, 1989; amended June 8, 1992; amended March 21, 1994;

revoked November 22, 2002.)

28-19-17c. Ambient air increments. (Authorized by K.S.A. 65-3005, as amended by L. 1993, Ch. 13, Sec. 3; implementing K.S.A. 65-3005, as amended by L. 1993, Ch. 13, Sec. 3; 65-3008, as amended by L. 1993, Ch. 13, Sec. 5; 65-3010; effective May 1, 1983; amended Oct. 16, 1989; amended June 8, 1992; amended March 21, 1994; revoked November 22, 2002.)

28-19-17d. Ambient air ceilings. (Authorized by and implementing K.S.A. 65-3002, 65-3008, 65-3010; effective May 1, 1983; amended June 8, 1992; revoked November 22, 2002.)

28-19-17e. Stack height. (Authorized by and implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983; amended June 8, 1992; revoked November 22, 2002.)

28-19-17f . Review of major stationary sources and major modifications; source applicability and exemptions. (Authorized by and implementing K.S.A. 65-3005, as amended by L. 1993, Ch. 13, Sec. 3; 65-3008, as amended by L. 1993, Ch. 13, Sec. 5; 65-3010; effective May 1, 1983; amended May 1, 1988; amended June 8, 1992; amended March 21, 1994; revoked November 22, 2002.)

28-19-17g. Control technology review. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983; amended Oct. 16, 1989; amended June 8, 1992; revoked November 22, 2002.)

28-19-17h. Source impact analysis. (Authorized by and implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983; amended June 8, 1992; revoked November 22, 2002.)

28-19-17i. Air quality models. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983; amended Oct. 16, 1989; amended June 8, 1992; revoked November 22, 2002.)

28-19-17j. Air quality analysis. (Authorized by and implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983; amended June 8, 1992; revoked November 22, 2002.)

28-19-17k. Source information. (Authorized by and implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983; amended June 8, 1992; revoked November 22, 2002.)

28-19-17l. Additional impact analysis. (Authorized by and implementing K.S.A. 65-3005, 65-3008, 65-3010; effective May 1, 1983; amended June 8, 1992; revoked November 22, 2002.)

28-19-17m. Sources affecting federal class I areas. (Authorized by K.S.A. 65-3005, as amended by L. 1993, Ch. 13, Sec. 3; implementing K.S.A. 65-3008, as amended by L. 1993, Ch. 13, Sec. 5; 65-3010; effective June 8, 1992; amended March 21, 1994; revoked November 22, 2002.)

28-19-17n. Revocation and suspension of permit. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3008, 65-3010; effective June 8, 1992; revoked November 22, 2002.)

28-19-17o. Public participation. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3008, 65-3010; effective June 8, 1992; revoked November 22, 2002.)

28-19-17p. Source obligation. 40 CFR 52.21(r) as in effect on July 1, 1989, is adopted by reference. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3008, 65-3010; effective June 8, 1992.)

28-19-17q. Innovative control technology.
(Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3008, 65-3010; effective June 8, 1992; revoked November 22, 2002.)

28-19-18. Stack heights. (a) The degree of emission limitation required of any source for control of any air pollutant must not be affected by the portion of any source's stack height that exceeds good engineering practice or any other dispersion technique. The provision of these regulations shall not apply to stack heights in existence or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from those stacks or using those dispersion techniques by sources as defined in these regulations, which were constructed or reconstructed or for which major modifications, as defined in the Kansas state implementation plan, were carried out after December 31, 1970.

(b) Good engineering practice for a stack height shall be determined in accordance with the provisions of K.A.R. 28-19-18a through 28-19-18f. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; amended May 1, 1986; amended, T-88-2, Jan. 23, 1987; amended May 1, 1988.)

28-19-18a. Stack height credit. (a) The stack height credit to be used in ambient air quality modeling that calculates the air quality impact of a source, for the purpose of meeting an applicable national ambient air quality standard or determining compliance with the provisions of K.A.R. 28-19-17e pertaining to an applicable maximum allowable increase, shall be the actual stack height unless this height exceeds the good engineering practice stack height determined by procedures prescribed by K.A.R. 28-19-18c. In this case, the allowable good engineering practice stack height value shall be used for the modeling.

(b) The requirements of this regulation shall not apply to any stack height that was in existence, or dispersion techniques implemented on or before December 31, 1970. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; amended May 1, 1986.)

28-19-18b. Definitions. The following words and terms when used in K.A.R. 28-19-18 through 28-19-18f, shall have the following meanings:

(a) ``Stack'' means any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct but not including flares.

(b) ``Stack height'' is the distance from the ground level elevation at the base of the stack to the elevation of the stack outlet.

(c) ``Stack in existence'' means that, before the date specified in K.A.R. 28-19-18a(b) and 28-19-18c(b)(1)(A), the owner or operator had begun or caused to begin a continuous program of physical on-site construction of the stack, to be completed within a reasonable time, or had entered into binding agreements or contractual obligations, which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed within a reasonable time.

(d) ``Nearby'' is the distance up to five times the lesser of the height or the width dimension of a structure but not greater than 0.8 km for the purpose of applying the formula in K.A.R. 28-19-18c(b)(1)(A). For conducting demonstrations under K.A.R. 28-19-18d, nearby is a distance not greater than 0.8 km. However, a portion of a terrain feature may be considered to be nearby when it falls within a distance of up to 10 times the maximum height (HT) of the feature, not to exceed 3.2 km, if such feature achieves a height (Ht), within 0.8 km from the stack, that is at least 40 percent of the good engineering practice stack height determined by the formulas provided in K.A.R. 28-19-18c(b)(1)(B) or 26 meters, whichever is greater. The height of the structure or terrain feature shall be measured from the ground level elevation at the base of the stack.

(e) ``Dispersion technique'' means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

(1) using the portion of a stack which exceeds good engineering practice stack height;

(2) varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

(3) increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, combining exhaust gases from several existing stacks into one stack or other selective handling of exhaust gas streams. This shall not include:

(A) The reheating of a gas stream, following use of a pollution control system to return the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(B) the merging of exhaust gas streams where:

(i) The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams; or

(ii) after July 8, 1985, the merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. The exclusion from the definition of ``dispersion techniques" shall apply only to the emission limitation for the pollutant affected by this change in operation; or

(iii) before July 8, 1985, the merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, merging shall be presumed to be motivated by an intent to gain emissions credit for greater dispersion. The department shall deny credit for the effects of this merging in calculating the allowable emissions for the source in the absence of an appropriate demonstration by the source owner or operator;

(C) smoke management in agricultural or silvicultural prescribed burning programs;

(D) episodic restrictions on residential wood burning and open burning; or

(E) techniques under K.A.R. 28-19-18b(e)(3) which increase final exhaust gas plume rise and which result in an allowable emission of sulfur dioxide from the facility that does not exceed 5,000 tons per year.

(f) ``Excessive concentration," for the purpose of determining good engineering practice stack height under K.A.R. 28-19-18c(c), means:

(1) For sources seeking credit for a stack height exceeding the stack height established under K.A.R. 28-19-18c(b)(1), a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such effects and which contribute to a total concentration due to emissions from all sources that is greater than an ambient air quality standard or greater than a prevention of significant deterioration increment, for sources subject to K.A.R. 28-19-17. The allowable emission rate to use in making demonstrations under this part shall be prescribed by K.A.R. 28-19-83 et seq. unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the department, an alternative emission rate shall be established in consultation with the source owner or operator;

(2) for sources seeking credit after October 11, 1983 for increases in an existing stack height up to the height established under K.A.R. 28-19-18c(b)(1), a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects produced by nearby structures or nearby terrain features which is individually at least 40 percent in excess of the maximum concentration experienced in the absence of these effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard or greater than a prevention of significant deterioration increment, for sources subject to K.A.R. 28-19-17. The emission rate to use in making demonstration under this part shall be either:

(A) An emission rate specified by applicable SIP (or, in the absence of such a limit, the actual emission rate); or

(B) the actual presence of a local nuisance caused by the existing stack, as determined by the department; and

(3) for sources seeking credit after January 12, 1979 for a stack height determined under K.A.R. 28-19-18c(b)(1), use of a field study or fluid modeling to verify good engineering practice stack height shall be required by the department;

(A) for sources seeking stack height credit after November 9, 1984 based on the aerodynamic influence of cooling towers; and

(B) for sources seeking stack height credit after December 31, 1970 based on the aerodynamic influences of structures not represented adequately by K.A.R. 28-19-18c(b)(1), a maximum groundlevel concentration due in whole or part to downwash, wakes or eddy effects that is at 40 percent in excess of the maximum concentration experienced in the absence of these effects. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; amended May 1, 1986; amended, T-88-2, Jan. 23, 1987; amended May 1, 1988.)

29-19-18c. Methods for determining good engineering practice stack height. (a) The minimum good engineering practice stack height value allowable for any source, regardless of size or location of any structures or terrain features, shall be 65 meters.

(b)(1) Except as provided in subsection (c) of this regulation, the maximum good engineering practice stack height value allowable for any source shall be determined using one of the following mathematical formulas:

(A) for stacks that were in existence on January 12, 1979 and provided that the owner or operator presents evidence that this equation was relied upon when establishing an emission limit: $Hg = 2.5H$

(B) for stacks constructed after January 12, 1979 and provided that the owner or operator, at the department's request, presents evidence through a field study or fluid modeling to verify that the height arrived at by the following formula is valid: $Hg = H + 1.5L$

(2) When using formula (A) or (B), the terms and values used shall be as follows:

(A) Hg = good engineering practice stack height, measured from the ground level elevation at the base of the stack;

(B) H = height of any nearby structures measured from the ground level at the base of the stack; and

(C) L = lesser dimension of the height or projected width of any nearby structures.

(c) A source may obtain good engineering practice stack height credit in excess of that calculated by K.A.R. 29-19-18c(b)(1)(A) or K.A.R. 28-19-18c(b)(1)(B) provided that it demonstrates by fluid modeling or a field study approved by the department that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; amended, T-88-2, Jan. 23, 1987; amended May 1, 1988.)

28-19-18d. Fluid modeling. In conducting a fluid modeling study, required by K.A.R. 28-19-18c(c), the guidelines and procedures described in the following referenced publications shall be used. These publications are adopted by reference:

(a) EPA-450/4-81-003. Guideline for use of fluid modeling to determine good engineering practice stack height, as published in July 1981;

(b) EPA-450/4-80-023. Guideline for determination of good engineering practice stack height, as published in July 1981; and

(c) EPA-600/8-81-009. Guideline for fluid modeling of atmospheric diffusion, as published in April 1981. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983.)

28-19-18e. (Authorized by and implementing K.S.A. 65-3005, K.S.A. 65-3010; effective May 1, 1983; revoked May 1, 1986.)

28-19-18f . Notification requirements. A source shall not obtain credit for a good engineering practice stack height determined by a fluid modeling or field study or based on allowances for plume impaction, as provided for by K.A.R. 28-19-18c(c) unless:

(a) A public notice that indicates the nature of the proposal, the availability of the demonstration study, and that the public may either request a hearing or submit written comments directly to the secretary concerning the proposal is published in a newspaper having general circulation in the area in which the source is, or will be, located;

(b) a copy of the public notice that is provided for by subsection (a) is sent to the applicant, state and local officials, and the regional administrator of U.S. environmental protection agency; and

(c) a public hearing is held on the matter upon the written request of any person affected by the proposed action. This request shall be made within 30 days of the date of notice being provided in the manner prescribed by subsections (a) and (b) of this regulation. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1983; amended, T-88-2, Jan. 23, 1987; amended May 1, 1988.)

28-19-19. Continuous emission monitoring. (a) All sources subject to the provisions of this regulation shall install, test and continuously operate a continuous emission monitoring system or systems (CEMS) and comply with data reduction requirements of the department and reporting, record keeping and quality assurance requirements established by this regulation. For any emission unit subject to this regulation, CEMS data which shows emissions in excess of an applicable emission limitation or standard shall be evidence that the emission unit is in noncompliance with the emission limitation or standard.

(b) Emission units exempt from the provisions of this regulation include:

(1) Those which have been required to install CEMS under provisions of K.A.R. 28-19-83; and

(2) fossil-fuel fired steam generators whose annual capacity factor, as reported to the federal power commission, is limited by permit condition under K.A.R. 28-19-14 to be less than 30 percent. If, upon application by the source owner or operator, the department approves removal of the capacity factor restriction, the appropriate CEMS shall be installed and operational within six months of the date that the department approved the restriction removal.

(c) Emission units required by this regulation to operate CEMS and monitor and report emissions include:

(1) Coal-fired steam generators that have a heat input greater than 250 million British Thermal Units per hour (BTU/hr). These generators shall be monitored for opacity; and

(2) coal-fired steam generators that have a heat input greater than 250 million BTU/hr and that have installed sulfur dioxide (SO_2) emission control equipment. These generators shall be monitored for SO_2, and carbon dioxide (CO_2) or oxygen (O_2) or some combination of these emissions; and

(3) fluid-bed catalytic cracking units catalyst regenerators at petroleum refineries with greater than 20,000 barrels per day fresh feed capacity. Such regenerators shall be monitored for opacity.

(d) Each emission unit required to operate CEMS shall complete the installation and demonstrate compliance with the performance tests of such equipment by November 1, 1987.

(e) If the affected emission unit is unable to comply with the requirements of subsection (d), a compliance schedule shall be submitted by the source owner or operator to and received by the department not later than June 1, 1987. A justification for the extended compliance schedule shall be submitted. The request may be approved or denied by the department and the source owner or operator shall be informed of the department's determination and the reasons for that decision. An extension shall not be permitted beyond November 1, 1988.

(f) The owner or operator of an affected emission unit shall notify the department of the following:

(1) the anticipated date of installation of the CEMS postmarked at least 30 days prior to that date. Each CEMS shall be installed in a location approved by the department before installation begins; and

(2) the date upon which CEMS performance tests commence in accordance with this regulation. Notification shall be postmarked not less than 30 days prior to that date.

(g) The performance specifications and test procedures for opacity, SO_2, O_2, and CO_2 CEMS in 40 CFR Part 60 Appendix B, as in effect on July 1, 1986, are adopted by reference except that reference to ``Administrator" in 40 CFR Part 60 Appendix B shall mean the secretary of the department of health and environment. The specification test requirements for the CEMS are as follows:

(1) Performance Specification 1 for opacity;

(2) Performance Specification 2 for SO_2;

(3) Performance Specification 3 for CO_2; and

(4) Performance Specification 3 for O_2.

(h) Each source owner or operator subject to this regulation shall maintain a file of all measurements, including CEMS, monitoring device and performance testing measurements, all CEMS performance evaluations, all CEMS or monitoring device calibration checks, adjustments and maintenance performed on these systems or devices and all other information required by this regulation that shall be recorded in a permanent form suitable for inspection by a department or U.S. environmental protection agency representative. The file shall be retained at the affected source for at least two years following the date of the measurements, maintenance, reports, and records, or if longer, during the pending of any action to enforce the requirements of this regulation.

(i) All CEMS shall be operated continuously except for system breakdowns, repairs, calibration checks and zero and span adjustments required under the quality assurance plan of this regulation.

(j) Source emission shall be monitored during all phases of operation except during periods of scheduled emissions unit outages or turnaround. Emission units not in operation are not required to monitor emissions.

(k) Owners or operators of sources subject to this regulation shall submit a written report of emissions in excess of the applicable standards in a manner prescribed by the department for each calendar quarter to the department and it must be postmarked before the 30th day following the end of each calendar quarter. The report shall provide the following information:

(1) the total time the affected emissions unit was in operation for the quarter;

(2) the magnitude of excess emissions, computed in accordance with this regulation, any conversion factors used, and the date and time each period of excess emissions began and ended;

(3) specific identification of each period of excess emissions that occurred during startups, shutdowns, malfunctions and any other reason. The nature and cause of the excess emissions, the corrective action taken and the

preventive measures adopted shall be specified;

(4) the date and time identifying each period during which the CEMS was inoperative except for the zero and span checks. The nature and cause of the CEMS breakdown and the repairs or corrective action taken shall be identified. Proof of CEMS performance may be required by the secretary whenever system repairs or adjustments have been made;

(5) the result of each performance audit; and

(6) if no excess emissions have occurred or the CEMS have not required corrective actions, a statement verifying that fact.

(l) The information required by subsections (k)(1) through (k)(6) shall be summarized in the following manner for monitoring and reporting purposes:

(1) Measurements of opacity shall be reduced to one-minute periods. Each one-minute period shall be calculated from 10 or more data points equally spaced through each one-minute period;

(2) gaseous measurements shall be reduced to three-hour averages in units of the emission standards; and

(3) data recorded during periods of CEMS breakdowns, repairs, calibration checks and zero and span adjustments shall not be included in the data averages or the emission report. An arithmetic or integrated average may be used for those time periods. After conversion to units of the standard, the data may be rounded to the same number of significant digits used to specify the emission standard.

(4) Owners or operators of affected sources shall use Method 19 of 40 CFR Part 60, appendix A, as in effect July 1, 1989, for converting CEMS data to units of the standard.

(5) The secretary may allow data reporting or reduction procedures varying from those set forth in this regulation if the owner or operator of a source shows to the satisfaction of the secretary that the procedures are at least as accurate as those of the regulation.

(m) Not less than 30 days prior to commencement of CEMS performance tests, each source owner or operator required to operate CEMS shall develop and submit to the department a quality assurance plan that shall contain all provisions necessary to ensure that the CEMS produce continuous data with sufficient accuracy and precision to allow the department to determine whether the emissions unit is in compliance with the applicable opacity and SO_2 limitations. Plan requirements for CEMS shall include, at a minimum, the requirements and recommendations of the CEMS manufacturer. The provisions of the quality assurance plan shall be enforceable by the department as independent requirements in addition to this regulation. Additional procedures may be imposed by the department or the source owner or operator may be required to revise quality control procedures. The complete quality assurance plan shall be kept at the affected source, shall be accessible to maintenance personnel and shall include:

(1) For quality control of opacity CEMS:

(A) calibration of the CEMS including a daily zero and span check, zero compensation accumulations and window cleaning;

(B) calibration drift determination and adjustment, including daily zero and span checks, zero compensation accumulation and window cleaning;

(C) preventive maintenance procedures for all monitoring system components, including the purge air system and the data recording system; and

(D) data recording and reporting procedures that are consistent with the record-keeping and reporting requirements of this regulation, including examples of all record-keeping formats; and

(2) for quality assurance of opacity CEMS:

(A) a precision assessment which includes a daily check of zero and span compensation levels;

(B) an annual accuracy audit which includes a zero alignment with an equivalency of true zero and simulated zero check;

(C) a quarterly accuracy audit which includes procedures for conducting the audit, the selection of filter values and the certification of filter values;

(3) for corrective action of opacity CEMS:

(A) if the 24-hour zero or span drift exceeds ± four percent opacity, a description of necessary corrective action, including necessary calibration and cleaning followed by a verification that the drift is eliminated;

(B) if zero or span drift exceeds CEMS drift limits for five consecutive span checks, a requirement that the frequency of quality assurance checks must be increased;

(C) if the zero alignment exceeds two percent opacity, a requirement that corrective action be taken and that the action must be documented in records and quarterly reports;

(D) if the performance audit calibration error exceeds ± plus or minus three percent opacity, a requirement that

corrective action must include a recalibration of the monitor, followed by a repetition of the performance audit;

(4) for quality control of SO_2, O_2, and CO_2 CEMS: Procedures for calibration, calibration drift determination and adjustment, preventive maintenance, data recording and reporting, and malfunction abatement;

(5) for quality assurance of SO_2, O_2, and CO_2 CEMS: A description of the procedures and calculations for a precision assessment, accuracy assessment procedures including relative accuracy and a cylinder gas audit, and the calculations used in relative accuracy audits and cylinder gas audits;

(6) for corrective action of SO_2, O_2, and CO_2 CEMS, a requirement that corrective action must be taken when span drift response is greater than± five percent of CEMS span value, and when relative accuracy audit response and CEMS system cylinder gas audit response is greater than ± 20 percent.

(n) If the effluents from two or more affected emissions units of similar design and operating characteristics are combined before being released to the atmosphere, the secretary may allow CEMS to be installed on the combined effluent, subject to petition by the source owner or operator. If the affected emissions units are not of similar design and operating characteristics, or when the effluent from one affected emissions unit is released to atmosphere through more than one point, the source owner or operator shall install applicable CEMS on each separate effluent unless prior approval of fewer CEMS has been granted by the department.

(o) If the source owner or operator wishes to use different, but equivalent, procedures and requirements for CEMS than those specified in this regulation, the source owner or operator shall provide a demonstration of equivalency before the approval of such alternative systems will be granted by the secretary with concurrence from the region VII administrator of the U.S. environmental protection agency. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1987; amended May 1, 1988; amended June 8, 1992.)

28-19-20. Particulate matter emission limitations. (a) Subject to the provisions of K.A.R. 28-19-9 and 28-19-11, no person shall cause, suffer, allow or permit the emission of particulate matter from any processing machine, equipment, device or other articles, or combination thereof, excluding indirect heating equipment and incinerators, in excess of the amounts allowed in table P-1 during any one hour.

(b) For the purposes of this regulation, the following definitions shall apply:

(1) "process weight" shall mean the total weight of all materials introduced into a source operation which may constitute, or form, a source of particulate matter emissions. In the case of direct heating operations, any solid fuel used shall be included as part of the process weight, but liquid and gaseous fuels and combustion air shall not be included.

(2) "Process weight rate" shall mean the total process weight introduced into the source operation over a specific time period divided by that time period in hours. For a cyclical or batch operation, the time period shall be that time required to complete one operation or an integral number of cycles, and for continuous or long-run steady-state operations, time period shall be the total operating time or a typical portion.

(3) "Source operation" shall mean the last operation preceding the emission of particulate matter, which results in the separation of the particulate matter emissions from the processed materials or the conversion of the processed materials into the particulate matter emissions, excluding those operations which are an integral part of the functioning of a control device.

TABLE P-1 Process Weight Table
Maximum Allowable Emission Rate

Process weight Rate		Rate of Emission	Process weight Rate		Rate of Emission
lb/hr.	tons/hr.	lb/hr.	lb/hr	tons/hr.	lb/hr.
100	0.05	0.551	16,000	8.00	16.5
200	0.10	0.877	18,000	9.00	17.9
400	0.20	1.40	20,000	10.00	19.2
600	0.30	1.83	30,000	15.00	25.2
800	0.40	2.22	40,000	20.00	30.5
1,000	0.50	2.58	50,000	25.00	35.4
1,500	0.75	3.38	60,000	30.00	40.0
2,000	1.00	4.10	70,000	35.00	41.3
2,500	1.25	4.76	80,000	40.00	42.5
3,000	1.50	5.38	90,000	45.00	43.6
3,500	1.75	5.96	100,000	50.00	44.6
4,000	2.00	6.52	120,000	60.00	46.3
5,000	2.50	7.58	140,000	70.00	47.8
6,000	3.00	8.56	160,000	80.00	49.0
7,000	3.50	9.49	200,000	100.00	51.2
8,000	4.00	10.4	1,000,000	500.00	69.0
9,000	4.50	11.2	2,000,000	1,000.00	77.6
10,000	5.00	12.0	6,000,000	3,000.00	92.7
12,000	6.00	13.6			

Interpolation of the data in table P-1 for other process weights shall be accomplished by use of the following equations:

Process weight $\leq$ 30 ton/hr. $E = (4.1)(P^{0.67})$
Process weight > 30 ton/hr. $E = (55)(P^{0.11}) - 40$
Where: E = rate of emissions in lb/hr.
P = process weight in ton/hr.ft

Where the nature of any process or operation or design of any equipment permits more than one interpretation of these definitions, the interpretation that results in the minimum allowable emission rate shall apply. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005, 65-3010; effective Jan. 1, 1971, amended Oct. 16, 1989.)

28-19-21. Additional emission restrictions. If particulate matter emissions, because of their chemical and/or physical nature, require emission rates lower than those provided for in K.A.R. 28-19-20, the person responsible for the emission shall be notified by the department, in writing, of the reasons for lower emission rate restrictions for an existing or proposed contaminant emission and specify an alternate emission rate that shall not be exceeded. Such notification shall be an order as provided for in K.S.A. 65-3011 and subject to administrative and legal procedures. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005, 65-3011, as amended by L. 1988, Ch. 356, Sec. 201; effective Jan. 1, 1971; amended Oct. 16, 1989.)

28-19-22. Sulfur compound emissions. (Authorized by K.S.A. 65-3005, 65-3010; effective Jan. 1, 1972; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974; revoked Sept. 23, 2005.)

28-19-23. Hydrocarbon emissions stationary sources. (A) No person shall place, store, or hold in any stationary tank reservoir or other container of more than 40,000 gallons capacity any gasoline or any petroleum distillate having a vapor pressure of 3.0 pounds per square inch, absolute, or greater under actual storage conditions unless such tank, reservoir, or other container is a pressure tank capable of maintaining working pressures sufficient to prevent vapor or gas loss to the atmosphere or is designed, and equipped with one of the following vapor loss control devices:

(1) A floating roof, such as a pontoon type, double deck type roof or internal floating cover, which will rest on the surface of the liquid contents and be equipped with a closure seal or seals to close the space between the roof edge and tank wall. This control equipment shall not be permitted if the gasoline or petroleum distillate has a vapor pressure of 13.0 pounds per square inch absolute or greater under actual storage conditions. All tank gauging or sampling devices shall be gastight except when tank gauging or sampling is taking place.

(2) A vapor recovery system, consisting of a vapor gathering system capable of collecting the volatile organic compound vapors and gases discharged and a vapor disposal system capable of processing such volatile organic vapors and gases so as to prevent their emission to the atmosphere and with all tank gauging and sampling devices gas-tight except when gauging or sampling is taking place.

(3) Other equipment or means of equal efficiency for purposes of air pollution control as may be approved by the department.

(B) No person shall emit to the atmosphere any ethylene waste gas stream of more than 50 pounds per day from any ethylene producing plant or other ethylene emission source unless the waste gas is properly burned at 1300° F for 0.3 seconds or greater in a direct-flame afterburner or equally effective device as approved by the director.

(C) No person shall emit to the atmosphere any hydrocarbon gas stream, excluding methane, of more than 50 pounds per day from a vapor blow down system unless these gases are burned by smokeless flares or an equally effective control device as approved by the director.

(D) Installations and equipment existing on January 1, 1972, shall be exempt from the provisions of this regulation. (Authorized by K.S.A. 65-3005, 65-3006, 65-3010; effective Jan. 1, 1972; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974.)

28-19-24. Control of carbon monoxide emissions. (A) No person shall cause or permit the emission of carbon monoxide gases generated during the operation of a grey iron cupola unless they are burned at 1300° F for 0.3 seconds or greater in a direct-flame afterburner or equivalent device as approved by the director.

(B) No person shall emit carbon monoxide waste gas stream from any catalyst regeneration of a petroleum cracking system, petroleum fluid coker, or other petroleum process into the atmosphere, unless the waste gas stream is burned at 1300° F for 0.3 seconds or greater in a direct-flame afterburner or equivalent device as approved by the director.

(C) Installations and equipment existing on January 1, 1972, shall be exempt from the provisions of this regulation. (Authorized by K.S.A. 65-3005, 65-3006, 65-3010; effective Jan. 1, 1972; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974.)

28-19-25. (Authorized by K.S.A. 1971 Supp. 65-3005, 65-3010; effective Jan. 1, 1972; revoked, E-73-8, Dec. 27, 1972; revoked Jan. 1, 1974.)

28-19-26. Sulfuric acid mist emissions. (a) As used in this regulation, ``sulfuric acid production unit'' means a unit producing sulfuric acid through the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfides and mercaptans, or acid sludge. Sulfuric acid production units shall not include units in which the conversion to sulfuric acid is used primarily to prevent emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(b) No person shall cause or permit any gases which contain sulfuric acid mist (H_2SO_4) in excess of 0.5 pounds of acid mist per ton of acid produced to be released into the atmosphere from a sulfuric acid production unit. In calculating the amount of acid produced, the acid production shall be expressed as 100% H_2SO_4.

(c) Reference Method 8 of Appendix A to 40 CFR Part 60, as in effect on August 18, 1977, is adopted by reference and shall be used for determining compliance with subsection (b) of this regulation. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005 and 65-3010; effective May 1, 1985.)

28-19-27 through 28-19-29. Reserved.

28-19-30. General provisions. (A) These regulations apply to installations in which fuel is burned for the primary purpose of producing steam, hot water, or hot air or other indirect heating of liquids, gases, or solids and, in the course of doing so, the products of combustion do not come into direct contact with process materials. Fuels include those such as coal, coke, lignite, coke breeze, gas, fuel oil, and wood, but do not include refuse. When any products or by-products of a manufacturing process are burned for the same purpose or in conjunction with any fuel, the same maximum emission limitations shall apply.

(B) The heat content of coal shall be determined according to ASTM method D-271-64 ``laboratory sampling and analysis of coal and coke'' or ASTM method D-2015-66 ``gross calorific value of solid fuel by the adiabatic bomb calorimeter,'' their replacements or other recognized method as approved by the department. The heat content of oil shall be determined according to ASTM method D-240-64 ``heat of combustion of liquid hydrocarbons by bomb calorimeter,'' or by its replacement, or other recognized method as approved by the department.

(C) For purposes of this regulation the heat input shall be the aggregate heat content of all fuels whose products of

combustion pass through a stack or stacks. The heat input value used shall be the equipment manufacturer's or designer's guaranteed maximum input, whichever is greater. The total heat input of all fuel burning units at a plant or on a premise shall be used for determining the maximum allowable amount of particulate matter which may be emitted. (Authorized by K.S.A. 1971 Supp. 65-3005, 65-3006, 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972.)

28-19-31. Emission limitations. Subject to the provisions of regulations 28-19-9 and 28-19-11:

(a) A person shall not cause or permit the emission of particulate matter exceeding the specifications in table H-1 of this regulation.

Table H1 - Emission Limits for Indirect Heating Equipment:

Total input 10^6 BTU/hr	Allowable* lb../10^6 BTU	Total input 10^6 BTU/hr	Allowable* lb../10^6 BTU
10 or less	0.60	1,000	0.21
50	0.41	2,000	0.17
100	0.35	5,000	0.14
500	0.24	7,500	0.13
700	0.22	10,000	0.12

* The allowable emission rate for equipment having intermediate heat input between 10(10^6) BTU/hr and 10,000 (10^6) BTU/hr may be determined by the formula:

$$A = \frac{1.026}{I^{.233}}$$

Where: A = the allowable emission rate in lb/10^6 BTU
I = the total heat input in 10^6 BTU/hr.

(b) A person shall not cause or permit visible contaminant emissions from any indirect heating equipment which equals or exceeds the following opacities:

(1) Existing equipment: 40 percent opacity;

(2) New equipment: 20 percent opacity.

(c) A person responsible for operation of any indirect heating equipment having a heat input of 250 million BTU/hr or greater shall not cause or permit the emission of more than 3.0 pounds of sulfur dioxide per million BTU of heat input unless an alternative sulfur dioxide emission limit applicable to such indirect heating equipment is specified in a permit issued pursuant to K.A.R. 28-19-14. The operation of any indirect heating equipment for which an alternative sulfur dioxide emission limit has been specified by permit pursuant to this subsection shall be in compliance with such alternative sulfur dioxide emission limit on and after the effective date of the permit limitation in lieu of the 3.0 pounds of sulfur dioxide per million BTU of heat input limit specified in this subsection. Any alternative sulfur dioxide emission limit specified in a permit must be adequate to protect the ambient air quality standards for sulfur dioxide, and shall not be deemed an applicable implementation plan requirement under the federal clean air act until approved pursuant to section 110 of the act (42 U.S.C. §7410).

(d) A person responsible for operation of any gas or oil-fired indirect heating equipment having a heat input of 250 million BTU/hr or greater shall not cause or permit the emission of more than 0.30 pounds of nitrogen oxides per million BTU of heat input per hour.

(e) A person responsible for operation of any coal fired indirect heating equipment having a heat input of 250 million BTU/hr or greater shall not cause or permit the emission of more than 0.90 pounds of nitrogen oxides (calculated as NO_2) per million BTU of heat input per hour. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974; amended May 1, 1986; amended Nov. 8, 1993.)

28-19-32. Exemptions - indirect heating equipment. (a) Visible contaminant emissions of an opacity exceeding that allowed in K.A.R. 28-19-31(b) shall not be considered a violation of that section provided that the person responsible for operation of the indirect heating equipment demonstrates to the satisfaction of the department that this excessive opacity is solely the result of the presence of uncombined water in the plume.

(b) Indirect heating equipment which was existing on January 1, 1972, shall be exempt from the provisions of K.A.R. 28-19-31(d) and K.A.R. 28-19-31(e). (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3007, 65-3010;

effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974; amended May 1, 1981; amended May 1, 1982; amended Nov. 8, 1993.)

28-19-33 through 28-19-39. Reserved.

28-19-40. General provisions. (A) These regulations shall apply to all incinerators and modified open burning operations except those situated on residential premises containing five (5) or less dwelling units and used exclusively for the disposal of waste originating from normal habitation of said dwellings.

(B) The burning capacity of an incinerator shall be the manufacturer's or designer's guaranteed maximum rate or such other rate as may be determined by the department in accordance with good engineering practice. In case of conflict, the findings of the department shall govern.

(C) No incinerator shall be used for the burning of wastes or the conducting of salvage operations unless such incinerator is a multiple chamber incinerator. For the purpose of this regulation a multiple chamber incinerator is defined as an incinerator consisting of three or more refractory lined combustion furnaces in series, physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate design parameters necessary for maximum combustion of the material to be burned.

Existing incinerators which are not multiple chamber incinerators may be altered, modified or rebuilt as may be necessary to meet this requirement. The department may approve any other alteration or modification to an existing incinerator if such is found to be equally effective for the purpose of air pollution control as a modification or alteration which would result in a multiple chamber incinerator.

All new incinerators shall be multiple chamber incinerators, provided that the department shall approve any other kind of incinerator if it can be shown in advance of construction or installation that such other kind of incinerator is equally effective for purposes of air pollution control as an approved multiple chamber incinerator.

(D) Instructions for proper operation of each incinerator, including charging procedures, necessary air intake and damper adjustments, use of auxiliary burners, etc., shall be conspicuously posted, and maintained, at the incinerator location. In addition, all new incinerators, or incinerators remodeled to conform with these regulations shall have a plate designating the rated capacity of the incinerator and any auxiliary burners, permanently affixed to the incinerator. (Authorized by K.S.A. 1970 Supp. 65-3005, 65-3006, 65-3010; effective Jan. 1, 1971.)

28-19-41. Restriction of emission. Subject to the provisions of regulations 28-19-9 and 28-19-11: (A) No person may cause or permit the emission of particulate matter from any chimney stack or vent of any incinerator in excess of the following:

(1) Incinerators with a waste burning capacity of less than 200 pounds per hour: 0.3 grains of particulate matter per standard dry cubic foot of exhaust gas, corrected to twelve percent (12%) carbon dioxide.

(2) Incinerators with a waste burning capacity of 200 to 20,000 pounds of waste per hour: 0.2 grains of particulate matter per standard dry cubic foot of exhaust gas, corrected to twelve percent (12%) carbon dioxide.

(3) Incinerators with a waste burning capacity in excess of 20,000 pounds of waste per hour: 0.1 grains of particulate matter per standard dry cubic foot of exhaust gas, corrected to twelve percent (12%) carbon dioxide.

(B) No person may cause or permit the emission of visible contaminants from any incinerator of an opacity equal to or greater than 20 percent opacity. (Authorized by K.S.A. 65-3005, 65-3006, 65-3010; effective Jan. 1, 1971; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974.)

28-19-42. Performance testing. (A) Waste burned in conjunction with the performance tests specified in this regulation shall be a representative sample of the refuse normally generated by the operation which the incinerator is intended to serve.

(B) In calculating the amount of particulate matter in stack gas, the loading shall be adjusted to twelve percent (12%) carbon dioxide in the stack gas. The exhaust gases produced in the burning of the liquid or gaseous fuel in the incinerator shall be excluded from the calculation to twelve percent (12%) carbon dioxide. Emissions shall be measured when the incinerator is operating at the burning capacity as defined in regulation 28-19-40 (B) of this regulation.

(C) A performance test to determine compliance with the opacity requirements specified in regulation 28-19-41 (B) of these regulations shall be performed by the department on each new incinerator, and each existing incinerator modified or rebuilt to conform with this regulation.

(D) The performance test specified in section B of this regulation may be required on any incinerator. The initial performance test shall be performed at the expense of the vendor or operator by an independent testing organization or by any other qualified person subject to the approval of the department. The performance test may be observed by the department or its designated representative. (Authorized by K.S.A. 1974 Supp. 65-3005, 65-3006, 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-74-7, Jan. 1, 1974; amended May 1, 1975.)

28-19-43. Exceptions. (A) Visible contaminant emissions of an opacity exceeding that allowed in regulation 28-19-41 (B) of this regulation shall not be considered a violation of that section provided that the person responsible for operation of the incinerator demonstrates to the satisfaction of the department that such failure to comply is solely the result of the presence of uncombined water in the plume. (Authorized by K.S.A. 1970 Supp. 65-3002, 65-3005, 65-3006, 65-3010; effective Jan. 1, 1971.)

28-19-44. Reserved.

28-19-45. (Authorized by K.S.A. 65-3005, implementing K.S.A. 65-3005, 65-3010; effective Jan. 1, 1971; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974; amended, T-84-39, Dec. 30, 1983; amended May 1, 1984; revoked March 1, 1996.)

28-19-46. (Authorized by K.S.A. 1970 Supp. 65-3005, 65-3010; effective Jan. 1, 1971; revoked March 1, 1996.)

28-19-47. (Authorized by K.S.A. 65-3005, 65-3006, 65-3007, 65-3010; effective Jan. 1, 1971; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974; revoked March 1, 1996.)

28-19-48 and 28-19-49. Reserved.

28-19-50. (Authorized by K.S.A. 65-3005, 65-3010; effective Jan. 1, 1971; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974; revoked Jan. 29, 1999.)

28-19-51. (Authorized by K.S.A. 1970 Supp. 65-3005, 65-3006, 65-3010; effective Jan. 1, 1971; revoked May 1, 1982.)

28-19-52. (Authorized by K.S.A. 1970 Supp. 65-3002, 65-3005, 65-3006, 65-3010; effective Jan. 1, 1971; revoked Jan. 29, 1999.)

28-19-53 and 28-19-54. Reserved.

28-19-55. General provisions. (A) These episode regulations are designed to prevent the excessive buildup of air contaminants during air pollution episodes, thereby preventing the occurrence of an emergency due to the effects of these contaminants on the public health. Any other provisions of the air pollution control regulations notwithstanding, they shall apply to all emission sources and premises located in any geographic area for which an air pollution emergency status has been established by the director in accordance with regulation 28-19-56.

(B) For the purposes of this regulation the following definition will apply: Soiling index shall be presumed to mean the concentration of particulates as measured by the automatic paper-tape sampler method, “ASTM standard method of test for particulate matter in the atmosphere, optical density of filtered deposit, D-1704-61" expressed as coefficient of haze (COH) per 1000 lineal feet. (Authorized by K.S.A. 1971 Supp. 65-3005, 65-3006, 65-3010, 65-3012, 65-3013, 65-3014; effective Jan. 1, 1972.)

28-19-56. Episode criteria. (a) Conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency shall exist whenever the director determines that the accumulation of air contaminants at any sampling location has attained levels which could, if such levels are sustained or exceeded, threaten the public health. In making this determination, the following criteria shall guide the director:

(1) An air pollution forecast, which is the issuance of a weather bureau high pollution potential advisory, or

equivalent indication by any local weather bureau meteorologist that a stagnant atmospheric condition will exist for 36 consecutive hours.

(2) An air pollution alert, where the average sulphur dioxide level for the previous 24 consecutive hours equals 0.3 ppm (800 ug/m;s3 or the PM10 level for the previous 24 consecutive hours equals 350 ug/m;s3, or the average carbon monoxide level for the previous eight consecutive hours equals 15 ppm, or the average ozone level for the preceding one hour equals 0.1 ppm, or the average nitrogen dioxide concentration for the preceding one hour equals 0.6 ppm, or the average nitrogen dioxide concentration for the preceding 24 consecutive hours equals 0.15 ppm, and the local meteorologist predicts no major changes in existing adverse meteorological conditions for at least an additional 12 hours.

(3) Air pollution warnings, where the average sulphur dioxide level for the previous 24 consecutive hours equals 0.60 ppm, (1600 ug/m;s3), or the PM10 level for the previous 24 consecutive hours equals 420 ug/m;s3, or the average carbon monoxide level for the previous eight consecutive hours equals 30 ppm, or the average ozone level for the previous one hour equals 0.4 ppm, or the average nitrogen dioxide concentration for the previous one hour equals 1.2 ppm, or the average nitrogen dioxide concentration for the previous 24 consecutive hours equals 0.3 ppm, and the local meteorologist predicts no major changes in existing adverse meteorological conditions for the next 12 hours.

(4) An air pollution emergency, where the average sulphur dioxide level for the previous 24 consecutive hours equals 0.8 ppm (2100 ug/m;s3), or the PM10 level for the previous 24 consecutive hours equals 500 ug/m;s3, or the average ozone level for the previous one hour equals 0.5 ppm, or the average carbon monoxide level for the previous eight consecutive hours equals 40 ppm, or the average nitrogen dioxide concentration for the previous one hour equals 1.6 ppm or the average nitrogen dioxide concentration for the previous 24 consecutive hours equals 0.4 ppm, and the local meteorologist predicts no major changes in existing adverse meteorological conditions for at least an additional 12 hours.

(b) Any status prescribed in subsection (a) may be declared by the director on the basis of deterioration of air quality to the criteria levels alone without the issuance of a high air pollution potential advisory or equivalent advisory from a local weather bureau meteorologist if deemed necessary to protect the public health.

(c) Once declared, any status established on the basis of this regulation shall remain in effect until the criteria for that level are no longer met. At such time the next lower status will be assumed. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005, 65-3006, 65-3010, 65-3012; effective Jan. 1, 1972; amended, E-73-8, Dec. 27, 1972; amended Jan. 1, 1974; amended Oct. 16, 1989.)

28-19-57. Emission reduction requirements. (A) Upon the declaration of any air pollution episode status by the director the provisions of sections B, C and D of this regulation shall be considered as an emergency order of the board issued in accordance with K.S.A. 65-3012 and subject to the provisions therein.

(B) During any time designated as an air pollution alert period no person shall operate any contaminant emission sources except in compliance with the requirements of table E-1.

(C) During any time designated as an air pollution warning period no person shall operate any contaminant emission sources except in compliance with the requirements of tables E-1 and E-2.

(D) During any time designated as an air pollution emergency period no person shall operate any contaminant emission source except in compliance with the requirements of table E-1, E-2, and E-3. (Authorized by K.S.A. 1971 Supp. 65-3005, 65-3006, 65-3010, 65-3012, 65-3013, 65-3014; effective Jan. 1, 1972.)

TABLE E-1 - Source Restrictions
Air Pollution Alert Status

1. All private, public and commercial premises.

(a) There shall be no open burning except as required for immediate disposal of inflammable or otherwise hazardous gases or liquids.

(b) The use of incinerators for the disposal of any waste materials shall be limited to the hours between 12:00 noon and 4:00 p.m.

(c) Boiler lancing or soot blowing of fuel burning equipment requiring such operations shall be limited to the hours between 12:00 noon and 4:00 p.m.

2. Coal or oil-fired electric-power generating facilities.

(a) Units shall be operated on natural gas when possible.
(b) Units shall be operated on the lowest sulfur and ash fuels available.
(c) Substantial utilization shall be made of power generated outside of the area included in episode status declaration.

3. Other coal and oil-fired process steam generating facilities.
(a) Units shall be operated on natural gas when possible.
(b) Units shall be operated on lowest sulfur and ash fuels available.
(c) Steam loads shall be reduced to extent possible consistent with continuing plant operations.

4. Manufacturing industries required to submit episode plans in accordance with regulation 28-19-58.
(a) Air contaminant emissions from processing operations shall be substantially reduced by curtailing or postponing production and allied operations to the extent possible without causing economic hardships.

TABLE E-2 - Source Restrictions
Air Pollution Warning Status

1. All private, public and commercial premises.
(a) The use of incinerators for the disposal of any waste materials shall be prohibited.

2. Coal or oil-fired power generating facilities.
(a) Maximum utilization shall be made of power generated by facilities outside of the area included in the episode status declarations.

3. Other coal and oil-fired process steam generating facilities.
(a) Preparation shall be made to immediately take action required under emergency status.

4. Manufacturing, industries required to submit episode plans in accordance with regulation 28-19-58.
(a) Air contaminant emissions from processing operations shall be reduced to the maximum degree possible by curtailing and postponing production and altered operations to the extent feasible with, if necessary, the assumption of reasonable economic hardships.

5. Transportation.
(a) The use of private and commercial motor vehicles should be limited by deferring unnecessary travel and utilizing car pools or mass transportation facilities where possible.

TABLE E-3 - Source Restrictions
Air Pollution Emergency Status

1. All private, public, and commercial premises.
(a) The following places of employment shall immediately cease operations:
(1) Mining and quarrying operations.
(2) Construction projects except as required to avoid emergent physical harm.
(3) All manufacturing operations except those operating under an approved episode plan.
(4) Wholesale trade establishments.
(5) Governmental units, except as required to implement the provisions of these regulations and other operations essential to immediate protection of the public welfare and safety.
(6) Educational institutions.
(7) Retail trade and service establishments except pharmacies, food stores and other similar operations providing for emergency needs.
(8) Other commercial service operations such as those engaged in banking, insurance, real estate, advertising, etc.

(9) Amusement and recreational facilities.

2. Electric power generating facilities. Same as table E-2.

3. Process steam generating facilities.
(a) Facilities shall be shut down to the maximum extent possible consistent with preventing extensive equipment damage.

4. Manufacturing industries required to submit episode plan in accordance with regulation 28-19-58.
(a) Air contaminant emissions from processing operations shall be reduced to the maximum degree possible by ceasing or drastically curtailing all production and allied operations to the extent feasible with due regard to any immediate likelihood of resultant personal injury or substantial equipment damage.

5. Transportation.
(a) The use of motor vehicles shall be restricted to meeting private and public emergency needs.

28-19-58. Emergency episode plans. (A) Any person responsible for the operation of a source of air contamination adjudged to be of major concern with respect to possible implementation of air pollution emergency episode control procedures either because of the nature or the quantity of its emissions shall, at the request of the department, prepare an emergency episode plan to be implemented in the event that any episode status is declared by the director. Such plans shall provide for the reduction of emissions of those contaminants for which episode criteria have been established and, consistent with good industrial practice and safe operating procedures, reflect adherence to the requirements established in tables E-1, E-2, and E-3 of regulation 28-19-57.

(B) All plans requested under the provisions of 28-19-58 (A) shall be submitted to the department in written form, within 60 days of receipt of such a request; and shall be subject to review and approval by the department. Such plans shall indicate the sources of contamination to be controlled or eliminated; the manner in which such action will be accomplished; and the approximate amount of specific contaminant emissions that will be eliminated.

(C) The department after reviewing any plan submitted in accordance with this regulation shall approve or disapprove it on the basis of its consistency with the intent of regulation 28-19-57. If such a plan is disapproved the department shall state its reasons for disapproval and specify those changes needed to provide an approvable plan. Such action shall be in writing and considered to be issued under the provisions of K.S.A. 65-3011 and subject to the provisions therein.

(D) Those plans which are approved under section C of this regulation shall be maintained on the premises to which they apply and shall be implemented during those periods for which an episode status has been established. Implementation of such a plan shall be considered as an emergency order of the engineer of the board to immediately reduce or discontinue the emission of contaminants in accordance with K.S.A. 65-3012, and subject to the provisions contained therein. (Authorized by K.S.A. 1971 Supp. 65-3005, 65-3006, 65-3010, 65-3011, 65-3012, 65-3013, 65-3014; effective Jan. 1, 1972.)

28-19-59. Reserved.

28-19-60. Reserved.

28-19-61. Definitions. The following words, terms and abbreviations are in addition to those defined in K.A.R. 28-19-7 and shall have the following meanings, unless the context clearly indicates otherwise:

(a) ``Accumulator'' means the reservoir of a condensing unit receiving the condensate from the condenser.

(b) ``Affected facility'' means facility or emission unit subject to an applicable regulation.

(c) ``Air-dried coating'' means coatings which are dried by the use of air or forced warm air at temperatures up to 194° F.

(d) ``Asphalt prime coat'' means an application of low viscosity liquid asphalt to an absorbent surface to prepare it for the application of an asphalt concrete surface.

(e) ``ASTM'' means the American society for testing and materials.

(f) ``Automobile'' means all passenger cars or passenger car derivatives capable of seating no more than 12 passengers.

(g) ``Automobile and light duty truck body'' means the body section rearward of the windshield and front-end sheet metal forward of the windshield of an automobile or light duty truck.

(h) ``Automobile and light duty truck part'' means a metal part intended to be attached to an automobile or light duty truck body for inclusion into a finished product for sale to vehicle dealers and to which surface coatings have been applied in the vehicle assembly plant.

(i) ``Baseline transfer efficiency'' means the transfer efficiency of coating applicators in use during the baseline period.

(1) Baseline transfer efficiencies have been established for use with volatile organic compounds (VOC) emission limits recommended in certain U.S. environmental protection agency (EPA) published control technique guidelines (CTG) documents.

(2) Baseline transfer efficiencies are:

(A) 30 percent for primer-surfacer coat and top coat operations in the automobile and light truck manufacturing industry; and

(B) 60 percent for surface coating operations in metal furniture manufacturing industries.

(3) Baseline transfer efficiency for surface coating in the metal parts and products manufacturing industry has not been established, however, the default value is 60 percent except where higher baseline transfer efficiencies are probable, as in dip or flow coating and spraying of interior surfaces. This default value will be used if the facility chooses not to test to determine a baseline transfer efficiency and insufficient information exists to determine an applicable baseline transfer efficiency.

(j) ``Baseline period'' means the 12-month period immediately preceding the date a facility becomes subject to applicable regulations.

(k) ``Bottom filling'' means the filling of a gasoline delivery vessel through an opening that is flush with the tank bottom, or filling of a stationary storage vessel through an opening near the bottom of the tank.

(l) ``Bulk gasoline plant'' means a gasoline storage and distribution facility with an average throughput of less than 20,000 gallons which receives gasoline from bulk terminals by trailer transport, stores it in tanks and subsequently dispenses it via account trucks to local farms, businesses and service stations.

(m) ``Bulk gasoline terminal'' means a gasoline storage facility which receives gasoline from refineries primarily by pipeline, ship, or barge, and delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by delivery vessels, and has an average daily throughput of more than 20,000 gallons of gasoline.

(n) ``Carbon adsorption system'' means a volatile organic compounds (VOC) emissions control device containing adsorbent material, including but not limited to activated carbon, alumina and silica gel, an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent. The carbon adsorption system shall provide for the proper disposal or reuse of all VOC adsorbed.

(o) ``Clear coat'' means a transparent coating which uses the undercoat as a reflectant base or undertone color.

(p) ``Coating applicator'' means any device or equipment designed for the purpose of applying a coating material to a surface. The devices or equipment may include, but not be limited to, sprayers, flow coaters, dip tanks, rollers, knife coaters, extrusion coaters and gravure devices.

(q) ``Coating application system'' means all operations and equipment within each line which apply, convey and dry a surface coating, including spray booths, flow coaters, flash-off areas, air dryers and ovens.

(r) ``Cold cleaning'' means the batch process of cleaning and removing soils from metal surfaces with solvents by spraying, brushing, flushing or immersion while maintaining the solvent below its boiling point. Wipe cleaning is not included in this definition.

(s) ``Condenser'' means any heat transfer device used to liquefy vapors by removing their latent heat of vaporization. Such devices include shell and tube, coil, surface, or contact condensers.

(t) ``Condensate'' means hydrocarbon liquids which condensed due to changes in the temperature or pressure, or both, and which remain as a liquid.

(u) ``Conveyorized degreasing'' means the continuous process of cleaning and removing soils from metal surfaces by operating with either cold or vaporized solvents.

(v) ``Crude oil'' means a naturally occurring mixture which consists of hydrocarbons or any sulfur, nitrogen or oxygen derivatives of hydrocarbons, or any combination of these compounds, and which is liquid at standard conditions.

(w) ``Custody transfer'' means the transfer of produced crude oil or condensate, or both, after processing or

treating, or both, in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

(x) ``Cutback asphalt'' means any asphalt cement which has been liquefied by blending with volatile organic compounds (VOC) liquid diluents.

(y) ``Delivery vessel'' means a tank truck or trailer that is equipped with a storage tank having a capacity greater than 1,000 gallons and that is used for the transport of gasoline.

(z) ``Emissions unit'' means any part of a stationary facility which emits or would have the potential to emit any pollutant subject to regulation under the federal clean air act, 42 U.S.C. 7407 et seq., as amended August 7, 1977.

(aa) ``Emulsified asphalt'' means asphalt cement which has been liquefied by blending with water and an emulsifier containing seven percent or less by volume volatile organic compounds (VOC) as a diluent as determined by ASTM standard D-244, ``Standard methods of testing emulsified asphalts,'' as in effect October 28, 1977.

(bb) ``Exempt solvents'' means those designated negligibly photochemically reactive compounds listed under definition of volatile organic compounds (VOC).

(cc) ``External floating roof'' means a storage vessel cover in an open-top tank consisting of a double deck or pontoon single deck which rests upon and is supported by the volatile organic compounds (VOC) liquid being contained and which is equipped with a closure seal or seals to close the space between the roof edge and tank wall.

(dd) ``Extreme environmental conditions'' means exposure to the weather all the time or to temperatures consistently above 203° F, or to detergents, abrasives, scouring agents, solvents, corrosive atmospheres or similar environmental conditions.

(ee) ``Extreme performance coatings'' means coatings designed for extreme environmental conditions.

(ff) ``Facility'' means any building, structure, installation, activity or all combinations thereof which contains a stationary source of air contaminants on the premises.

(gg) ``Federally enforceable'' means:

(1) All limitations and conditions that are enforceable by the administrator of the U.S. environmental protection agency;

(2) requirements of regulations included in the federally-approved Kansas implementation plan; and

(3) any permit requirements established pursuant to these requirements.

(hh) ``Final repair'' means the surface coatings applied to correct topcoat imperfections on a completely assembled vehicle.

(ii) ``Firebox'' means the chamber or compartment of a boiler or furnace in which fuels are burned, but does not mean the combustion chamber of an incinerator.

(jj) ``Flash-off area'' means the structure of an assembly line between an application area and oven where solvents applied with the coating material are evaporated.

(kk) ``Flexographic printing'' means a method of printing in which the image areas are raised above the non-image areas, and the image carrier is made of an elastomeric material.

(ll) ``Forebay'' means the primary sections of a waste water separator. Wastewater is a mixture of oil and water.

(mm) ``Freeboard height'' means the distance from the top of the vapor zone to the top of the degreaser tank.

(nn) ``Freeboard ratio'' means the freeboard height divided by the width of the degreaser.

(oo) ``Gasoline'' means any fuel sold in any state for use in motor vehicles and motor vehicle engines and commonly or commercially known or sold as gasoline.

(pp) ``Gasoline dispensing facility'' means any site where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks.

(qq) ``Glass pull rate'' means the mass of molten glass utilized in the manufacture of wood fiberglass insulation at a single manufacturing line in a specified time period.

(rr) ``Heat sensitive materials'' means materials which cannot consistently be exposed to temperatures greater than 203° F.

(ss) ``Hot well'' means the reservoir of a condensing unit receiving the warm condensate from the condenser.

(tt) ``Internal floating roof'' means a cover in a fixed roof tank which rests upon or is floated upon the volatile organic compounds (VOC) liquid being contained, and which is equipped with a sliding seal or seals to close the space between the edge of the covers and the tank shell.

(uu) ``Light duty truck'' means any motor vehicle rated at 8,500 pounds gross weight or less which is designed primarily for purpose of transportation of property, or a derivative of such a vehicle.

(vv) ``Liquid-mounted seal'' means a primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof around the circumference of the tank.

(ww) ``Loading rack'' means the loading arms, pumps, meters, shut-off valves, relief valves and other piping and valves necessary to fill delivery vessels.

(xx) ``Lower explosive limit (LEL)'' means the concentration of a compound in air below which a flame will not propogate if the mixture is ignited.

(yy) ``Low solvent coating'' means a coating which contains less volatile organic compounds (VOC) solvent than the conventional solvent borne coatings used by the industry. Low solvent coatings could include water-borne, higher solids and powder coatings.

(zz) ``Miscellaneous metal parts and products'' means those metal parts and products not otherwise specified and includes, but is not limited to: large farm machinery, small farm machinery, small appliances, commercial machinery, industrial machinery, fabricated metal products and any other industrial category which includes the coating of metal parts and products under standard industrial classification code of major groups 33 through 41 as listed in the standard industrial classification manual, 1972, U.S. office of management and budget.

(aaa) ``Motor vehicle'' means any self-propelled vehicle designed for transporting persons or property on a street or highway.

(bbb) ``Offset lithography'' means the printing process in which the image and non-image areas are on the same plate and the image is transferred from a plate to a rubber blanket cylinder before being transferred to the substrate surface to be printed.

(ccc) ``Open top vapor degreasing'' means the batch process of cleaning and removing soils from metal surfaces by condensing hot solvent vapor on the colder metal parts.

(ddd) ``Operator or owner'' means any person who owns, leases, operates, controls or supervises an affected facility or a stationary source of which an affected facility is a part.

(eee) ``Organic material'' means a chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates and ammonium carbonate.

(fff) ``Packaging rotogravure printing'' means rotogravure printing upon paper, paper board, metal foil, plastic film and other substrates, which are, in subsequent operations, formed into packaging products and labels.

(ggg) ``Petroleum liquids'' means crude oil condensate, and any finished or intermediate products manufactured or extracted in a petroleum refinery.

(hhh) ``Petroleum refinery'' means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants or other products through distillation of crude oils, or through distillation, cracking, extraction, or reforming of unfinished petroleum derivatives.

(iii) ``Primer coat'' means the initial coating applied to a surface.

(jjj) ``Primer-surfacer coat'' means the surface coating applied over the primer coat and beneath the top coat.

(kkk) ``Publication rotogravure printing'' means rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements and other types of printed materials.

(lll) ``Purging'' means the volatile organic compounds (VOC) cleaning material expelled from the coating applicator to maintain operating conditions or prior to using the same equipment for coating with different color or composition coatings.

(mmm) ``Reasonably available control technology (RACT)'' means the lowest emission limit of control technology that is reasonably available considering technological and economic feasibility.

(nnn) ``Refinery fuel gas'' means any gas which is generated by a petroleum refinery process unit and which is combusted, including any gaseous mixture of natural gas and fuel gas.

(ooo) ``Reid vapor pressure'' means the absolute vapor pressure of volatile crude oil and volatile non-viscous petroleum liquids, except liquified petroleum gases, as determined by ASTM, D-323-82, as approved August 27, 1982, unless an alternative method is specifically required by regulation.

(ppp) ``Roll printing'' means the application of words, designs and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.

(qqq) ``Rotary spinning'' means a process used to produce wool fiberglass insulation by forcing molten glass through numerous small orifices in the side wall of a spinner to form continuous glass fibers that are then broken into discrete lengths by high velocity air flow.

(rrr) ``Rotogravure printing'' means the application of words, designs and pictures to a substrate by means of a roll printing technique which involves an intaglio or recessed image areas in the form of cells.

(sss) ``Solvent'' means organic materials which are liquid at standard conditions and which are used as dissolvers, viscosity reducers or cleaning agents.

(ttt) ``Solvent-borne'' means a coating which contains five percent or less water by weight in its volatile fraction.

(uuu) ``Solvent metal cleaning'' means the process of cleaning soils from metal surfaces by cold cleaning, open-top vapor degreasing or conveyorized degreasing.

(vvv) ``Standard conditions'' means a temperature of 68° 4F and pressure of 760 millimeters of mercury or 29.92 inches of mercury.

(www) ``Submerged filling'' means the filling of a storage tank or a delivery vessel tank through a pipe or hose discharging within six inches of the tank bottom.

(xxx) ``Surface coat'' means a protective, decorative or functional thin film applied to the surface of an object.

(yyy) ``Surface coating of metal furniture'' means the coating of any metal part which will be assembled with other metal, wood, fabric, plastic or glass parts to form business, institutional or household furniture.

(zzz) ``Top coat'' means the coating applied to a surface for the purpose of establishing color and surface appearance which includes both base coat and clear coat in base coat/clear coat operations.

(aaaa) ``Transfer efficiency'' means the amount of coating solids transferred onto the surface of a part or product divided by the total amount of coating solids used.

(bbbb) ``True vapor pressure'' means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American petroleum institute bulletin 2517, ``evaporation loss from floating roof tanks,'' 1962. This information is available from the department upon written request.

(cccc) ``Turnaround'' means the procedure of shutting a refinery unit down after a run, to do necessary maintenance and repair work, and putting the unit back on stream.

(dddd) ``Vacuum producing system'' means any reciprocating, rotary, or centrifugal blower or compressor, or any jet ejector or device that takes suction from below atmospheric pressure and discharges against atmospheric pressure.

(eeee) ``Vapor balance system'' means a combination of pipes or hoses which create a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.

(ffff) ``Vapor collection system'' means any equipment, including but not limited to, hoods and ventilation systems, that captures or contains displaced organic compounds vapors that they may be directed to a vapor processing system.

(gggg) ``Vapor processing system'' means all equipment used for recovery of oxidizing organic compound vapors displaced from an affected facility and generally includes a vapor collection system.

(hhhh) ``Volatile organic compounds (VOC)'' means any organic compound which participates in atmospheric photochemical reactions including any organic compound other than those which the department designates as having negligible photochemical reactivity. The department has designated the following organic compounds as negligibly reactive:

(1) methane;
(2) ethane;
(3) 1,1,1-trichloroethane (methyl chloroform);
(4) methylene chloride;
(5) trichlorofluoromethane (CFC-11);
(6) dichloro-difluoromethane (CFC-12);
(7) chlorodifluoromethane (CFC-22);
(8) trifluoromethane (CFC-23);
(9) trichlorotrifluoroethane (CFC-113);
(10) dichlorotetrafluoroethane (CFC-114);
(11) chloropentafluoroethane (CFC-115);
(12) dichlorotrifluoroethane (HCFC-123);
(13) tetrafluoroethane (HCFC-134a);
(14) dichlorofluoroethane (HCFC-141b); and
(15) chlorodifluoroethane (HCFC-142b).

(iiii) ``Volume fraction solids'' means the arithmetic value determined by dividing the volume of surface coating solids contained in specific volume of surface coating material by the volume of the surface coating material. Calculation

of volume fraction solids shall be determined by method 24, 40 CFR Part 60, appendix A, as in effect July 1, 1985.

(jjjj) ``Waste water separator'' means any device or piece of equipment which utilizes the difference in density between oil and water to remove oil and associated chemicals from water, or any device, including but not limited to a flocculation tank, clarifier, or other similar device, which removes petroleum derived compounds from waste water.

(kkkk) ``Waxy, heavy-pour crudes'' means any crude oil with a pour point of 30° F or higher as determined by ASTM standard D-97-66, ``test for pour point of petroleum oils,'' as in effect 1966, or with a Reid vapor pressure less than two pounds per square inch absolute as determined by ASTM standard D-323-82, ``standard test method for vapor pressure of petroleum products (Reid method),'' as in effect August 27, 1982.

(llll) ``Wool fiberglass insulation'' means a thermal insulation material composed of glass fibers and made from glass produced or melted at the same facility where the manufacturing line is located.

(mmmm) ``Wool fiberglass manufacturing line'' means the manufacturing equipment comprising the forming section, where molten glass is fiberized and a fiberglass mat is formed; the curing section, where the binder resin in the mat is thermally ``set''; and the cooling section, where the mat is cooled. (Authorized by K.S.A. 65-3005, 65-3010; effective, E-81-28, Sept. 10, 1980; effective May 1, 1981; amended May 1, 1987; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988; amended Oct. 7, 1991.)

28-19-62. Testing Procedures. (a) Sampling and testing procedures required to demonstrate compliance with the volatile organic compound (VOC) emission limits shall be as described in the following referenced publications:

(1) Appropriate reference methods in 40 CFR Part 60, appendix A as in effect July 1, 1986 or alternate methods demonstrated to the satisfaction of the department to be equivalent;

(2) ASTM D 1186-06.01--Thickness of paints/ related coatings dry film thickness of non-magnetic coatings applied to a ferrous base, as in effect 1981.

(3) ASTM D 1200-06.01--Standard test method for determining the viscosity of paints and related coating by the Ford viscosity cup test, as in effect 1982.

(4) ASTM D 3794-06.01--Standard test method for determining the viscosity of coil coatings by the Zahn cup method test, as in effect 1979.

(5) ASTM D 1475-60--Standard test method for determining the density of paint, varnish, lacquer and related products, as in effect 1980.

(6) ASTM D 2369-81--Standard test method for determining the volatile content of coatings using a one hour bake, as in effect 1981.

(7) ASTM D 3792-79--Standard test method for determining the water content of water reducible paint by direct injection into a gas chromotograph, as in effect 1979.

(8) ASTM D 4017-81--Standard test method for determining the water content in paints by the Karl Fischer titration method, as in effect 1981.

(9) ASTM D-244-83--Standard methods of testing emulsified asphalts, as in effect 1983.

(10) ASTM D-323-82--Vapor pressure of petroleum products (Reid method), as in effect 1982.

(11) ASTM--D-97-66--Test for pour point of petroleum oils, as in effect 1978.

(12) Reid vapor pressure of gasoline to be used as a fuel for motor vehicles shall be sampled according to the procedures in 40 CFR, Part 80, Appendix D, as in effect July 1, 1989 and amended at 55 FR 25835, June 25, 1990.

(13) Reid vapor pressure of gasoline to be used as a fuel for motor vehicles shall be tested according to the procedures in 40 CFR, Part 80, Appendix E, as in effect July 1, 1989 and amended at 55 FR 25835, June 25, 1990.

(b) The department may approve an alternate sampling or testing procedure developed or approved by the U.S. environmental protection agency as equivalent or improved procedures. (Authorized by K.S.A. 65-3005 and 65-3010; effective, E-81-28, Sept. 10, 1980; effective May 1, 1981; amended May 1, 1982; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988; amended Oct. 7, 1991.)

28-19-63. Automobile and light duty truck surface coating. (a) The provisions of this regulation shall be applicable to each automobile or light duty truck top coat and primer surfacer surface coating operation and all other automobile or light duty truck surface coating application systems at those facilities which have a VOC potential contaminant emission rate equal to or greater than three tons per year. For the purposes of this rule, surface coating operation means the combination of all coating application systems which apply the specific class of surface coatings identified at table A of subsection (b). The VOC potential contaminant emission rate of a facility shall be determined by:

(1) the maximum hourly production rate of each coating application system; and

(2) the assumption that the facility operates 24 hours per day, 365 days per year provided that the facility's operating hours are not otherwise limited by federally enforceable permit conditions.

(b) An owner or operator of any facility subject to this regulation shall not:

(1) conduct any surface coating operation that emits VOC to the atmosphere in excess of the amount specified in table A below:

Table A -
VOC Emission Limits Based on Solids Applied

Surface Coating Operation	Emission Limit (Pounds of VOC/Gal. of Solids Applied)
Top Coat	15.1
Primer surfacer	15.1

(2) operate any surface coating application system that emits VOC to the atmosphere in excess of the amount specified in table B below.

Table B

Surface Coating Application System	Coating Characteristics Lbs/Gal coating (minus exempt VOC and water)	Compliance Date
Body primer coat	1.2	12-31-82
Body primer-surfacer coat	3.0	12-31-82
	2.8	12-31-87
Body top coat	5.8	07-01-80
	5.0	12-31-81
	2.8	12-31-87
Body final repair coat	6.5	07-01-80
	4.8	12-31-87
Miscellaneous metal parts	3.5	07-01-82

(c) Use of additional VOC shall be considered as follows:

(1) for determining the potential contaminant emission rate of the facility in accordance with subsection (a), include that added for thinning coatings and that used for purging or washing coating applicators which cannot be otherwise accounted for in a reclamation system; and

(2) for compliance with subsection (b), include that added for thinning coatings.

(d) The emission limits which will result from the use of coatings in subsection (b) shall be achieved by:

(1) application of coatings which meet or exceed the characteristics of the coatings in table B of subsection (b) per coating application system on a daily weighted average basis. For the purpose of this subsection (d)(1), "daily weighted average" is the total weight of VOC emitted from a coating application system per day, divided by the volume of coating used per day; or

(2) application of coatings to achieve equivalent emissions based on the weight of VOC emitted per gallon of solids applied as specified in table A of subsection (b). For purposes of subsection (d)(2), "daily weighted average" is the total weight of VOC emitted for a surface coating operation per day, divided by the volume of solids applied per day as determined by procedures described in the publication referenced in (f); or

(3) application, for the capture and reduction of VOC emissions through either destruction or collection, of emission control equipment demonstrated through testing as capable of maintaining an overall VOC emission reduction necessary to meet the emission requirements of subsection (b). Use of emission control equipment shall require that continuous monitors be installed, calibrated, operated and maintained. Maintenance records of the monitors shall be kept and made available for department inspection. The monitors shall continuously measure and record the following parameters:

(A) with an accuracy of the greater of +/- 0.75 percent of the temperature being measured expressed in degrees Celsius, or 2.5 degrees Celsius, the exhaust gas temperature of all VOC destruction devices and the gas temperature

immediately upstream and downstream of any catalyst bed;

(B) with an accuracy of +/- 2.00 percent of the amount being monitored, the cumulative amount of VOC recovered during a calendar month for all VOC recovery equipment; and

(C) any other parameters considered necessary by the department to verify proper operation of emission control equipment; or

(4) any combination of methods approved by the department which results in emissions, when calculated as pounds of VOC per gallon of solids applied per coating application system, that are no greater on a daily weighted basis than those achieved with the appropriate coatings specified in table B of subsection (b).

(e) Prior to 180 days after a facility becomes subject to the provisions of this regulation, the owner or operator of the facility shall demonstrate, at the expense of the owner or operator, initial compliance with this regulation by testing. An owner or operator proposing to conduct testing shall notify the department, in writing, of the intent to test not later than 30 days prior to the proposed date of testing. The owner or operator shall submit to the department any information about the proposed test requested by the department. The department may require, at any time necessary to determine compliance with this regulation, the owner or operator of any facility subject to this regulation to demonstrate compliance by testing, and at the expense of the owner or operator. Testing, for purposes of this regulation, shall be approved by the department and consistent with:

(1) 40 CFR Part 60, appendix A, as in effect July 1, 1989; and

(2) procedures as established by the department in approving proposed test plans consistent with subsection (e)(1).

(f) Demonstration of continual compliance per top coat and primer surfacer surface coating operations achieved by subsection (d)(2) shall be based on the procedures in the publication "protocol for determining the daily volatile organic compound emission rate of automobile and light-duty truck topcoat operations," published in EPA document no. EPA-450/3-88-018 (December 1988).

(g) Demonstration of continual compliance per coating application system not covered by subsection (f), achieved by subsection (d)(3) or (d)(4) shall be based on the finding that the results obtained by the formula in (2) are equal to or less than the results obtained by the formula in (1), both results on a daily weighted average basis.

(1) complying coating equivalent emissions expressed as:

$$\frac{\text{VOC, lbs}}{\text{gal. of solids applied}} = \frac{\text{EL}}{\text{(VS)(TE)}}$$

EL = the coating characteristics established by this regulation, expressed as pounds of VOC per gallon of coating, less exempt VOC and water.

VS = volume fraction of solids in EL, expressed as a decimal, where the density of coating solvents is assumed to be 7.36 pounds per gallon, less exempt VOC and water.

TE = baseline transfer efficiency as defined at K.A.R. 28-19-61, expressed as a decimal.

(2) actual coating equivalent emissions expressed as:

$$\frac{\text{VOC,lbs}}{\text{gal. of solids applied}} = \frac{\text{AC(1-E)}}{\text{(vs)(te)}}$$

AC = pounds of VOC per gallon of the coating as delivered to the coating application system, less exempt VOC and water.

E = the demonstrated efficiency of installed vapor processing system determined by the actual vapor collection system efficiency multiplied by the actual VOC emission control device efficiency, expressed as a decimal.

vs = volume fraction of solids of the coating as delivered to the coating application system, expressed as a decimal. For water-borne coatings, the volume fraction of solids is determined without water.

te = the demonstrated transfer efficiency of the coating application system, expressed as a decimal.

The owner or operator shall determine AC and vs by using 40 CFR Part 60, appendix A, reference method 24, as in effect July 1, 1989, and data supplied by the coating manufacturer adjusted by the VOC used for thinning purposes; or from analysis of coating as applied. The analysis shall be conducted by the owner or operator in accordance with reference method 24, as in effect July 1, 1989. If manufacturers formulation data is used, verification of the data may be required by reference method 24, or a department approved equivalent method, and at the expense of the owner or

operator.

(h) The owner or operator of each emission unit within a facility subject to this regulation shall keep and maintain records at the facility and make available for inspection by a department representative to determine continuous compliance of the facility with this regulation.

(1) In order to demonstrate compliance for surface coating operations under table A of subsection (b), the records used to complete the calculations found in EPA document no. EPA-450/3-88-018 referenced at subsection (f) shall be kept at the facility for two years following the date of record.

(2) In order to demonstrate compliance for coating application systems under table B of subsection (b), the records shall include the following information and shall be kept at the facility for two years following the date of record:

(A) the type and amount of coatings and thinning solvents delivered daily to each coating application system. The daily record-keeping requirements of this subsection may be waived if the owner or operator:

(i) demonstrates that it uses only coatings that have been determined to be in compliance with table B of subsection (b) of this regulation; and

(ii) has received written approval from the department for a waiver from this requirement;

(B) the manufacturer's coating formulation data, and other test data, including density, weight percent volatiles (as determined using a one hour bake), weight percent water, and weight percent exempt VOC, determined by reference method 24 for each coating;

(C) the coating's solids content, as delivered to the coating application system in volume percent;

(D) the results of any testing conducted at the facility pertaining to transfer efficiencies, capture efficiencies or control equipment reduction efficiencies;

(E) the type, density and amount of solvents used each month for purge and equipment cleaning;

(F) amount and density of waste solvents reclaimed; and

(G) those records as required in subsections (d)(3)(A) through (d)(3)(C).

(i) The owner or operator of a facility shall comply with all emission limits within 180 days after the facility becomes subject to the provisions of this regulation.

(j) The provisions of this regulation shall be applicable only to affected facilities located in areas which have been identified as not meeting the national primary ambient air quality standard for ozone in the manner prescribed by the provisions of section 107(d) of the federal clean air act, 42 U.S.C. 7407 as promulgated at 40 CFR Part 81 as in effect July 1, 1986 and amended at 51 Fed. Reg. 25,200 July 11, 1986. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective, E-81-28, Sept. 10, 1980; effective May 1, 1981; amended May 1, 1986; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988; amended Nov. 8, 1993.)

28-19-64. Bulk gasoline terminals. (a) No owner or operator of any bulk gasoline terminal (BGT) with a gasoline throughput of 20,000 gallons or greater daily shall cause or permit loading of gasoline into any gasoline delivery vessel (GDV) from any loading rack unless:

(1) the loading rack includes a vapor collection system and a vapor processing system or an equivalent vapor control system approved by the director; and

(2) the GDV driver provides documentation showing the GDV owner or operator has complied with K.A.R. 28-19-70(c)(3).

(b) The following requirements shall apply to the loading rack and vapor collection and processing system at affected BGT's:

(1) VOC emissions to atmosphere shall be limited to 0.67 pound per 1,000 gallons of gasoline loaded. Initial compliance with this emission limitation shall be demonstrated by the owner or operator within 180 days after an affected BGT becomes subject to the provisions of this regulation. Compliance demonstration shall be in accordance with 40 CFR Part 60, as in effect July 1, 1986, subsections 60.503(c), (d), (e) and (f). The department may require compliance demonstration be repeated at any time necessary to determine compliance with this regulation, and at the expense of the owner or operator.

(2) all vapors and gases from the loading rack shall be vented only to the vapor processing system; and

(3) the vapor collection and processing system shall be designed and operated to prevent gauge pressure in the GDV from exceeding 18 inches of water and prevent vacuum gauge pressure from exceeding six inches of water during the gasoline loading operation.

(c) The owner or operator of an affected BGT required to install a vapor collection and processing system to

comply with this regulation shall:

(1) Within 16 weeks of the effective date of this regulation submit a control plan to the department providing for final compliance with this regulation as expeditiously as practicable but not later than the date prescribed by subsection (c)(5) of this regulation;

(2) award contracts or purchase orders for the vapor collection and processing system within 24 weeks on the effective date of this regulation;

(3) initiate on site construction or installation of the vapor collection and processing system within 48 weeks of the effective date of this regulation;

(4) complete construction or installation of the vapor collection and processing system within 100 weeks of the effective date of this regulation; and

(5) demonstrate final compliance with this regulation within two years of the effective date of this regulation.

(d) The owner or operator of an affected BGT shall submit to the director by March 31 of each year, a report of the monthly gasoline throughput for the previous calendar year.

(e) The owner or operator of an affected BGT shall inspect, at least once each calendar quarter, each loading rack and vapor collection and processing system during loading of GDV's for liquid or vapor leaks. Inspect for liquid leaks visually, vapor leaks shall be detected in accordance with 40 CFR Part 60, appendix A, reference method 21 or an alternate method as demonstrated to the satisfaction of the department to be equivalent. Combustible organic vapors shall be less than 100 percent of the lower explosive limit, measured as propane, at one inch around the perimeter of any leak source on the loading rack and vapor collection and processing system up to the point of connection with GDV. Leaks detected shall be repaired within 15 days. The owner or operator of the affected BGT shall record the following information and keep the information available for at least two years for department inspection at the BGT or submittal to the department upon department request:

(1) date of each inspection, including corresponding number of leaks detected; and

(2) date and location of leaks detected and date and type of corrective actions taken.

(f) In addition to inspecting for leaks required in subsection (e), the owner or operator of an affected BGT shall:

(1) take precautions necessary to prevent liquid drainage from the loading rack when not in use and when disconnecting from any GDV; and

(2) notify the department, on forms supplied by the department, and before each March 2nd, that all GDV's servicing the BGT during the past calendar year complied with the requirements of K.A.R. 28-19-70(c).

(g) The provisions of this regulation shall be applicable to all affected BGT's which are located in areas which were identified as not meeting the national ambient air quality standard for ozone in the manner prescribed by the provisions of Section 107(d) of the federal clean air act, 42 U.S.C. 7407 as promulgated at 40 CFR Part 81 as in effect July 1, 1986 and amended at 51 Fed. Reg. 25,200 July 11, 1986. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective, E-81-28, Sept. 10, 1980; effective May 1, 1981, amended May 1, 1986; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988.)

28-19-65. Volatile organic compounds (VOC) liquid storage in permanent fixed roof type tanks. (a) No person shall place, store, or hold in any stationary tank, reservoir, or other container capable of holding more than 40,000 gallons of any VOC liquid having a true vapor pressure of one and five tenths pounds per square inch, absolute (psia) or greater under actual storage conditions unless the tank, reservoir, or other container is a pressure tank capable of maintaining working pressures sufficient to prevent vapor loss to the atmosphere or is designed and equipped with one of the following vapor loss control devices:

(1) for storage of VOC liquid having a true vapor pressure of less than 11.1 psia at storage conditions, an internal floating roof meeting the following requirements:

(A) it shall have a primary seal and continuous secondary seal extending from the floating roof to the tank wall. The primary seal shall be a liquid mounted type or when the floating roof already has a primary seal, a metallic shoe seal will be installed to function as a primary seal. Replacement primary seals shall be liquid mounted or metallic shoe type; and

(B) automatic vent openings shall be closed except when the floating roof is being floated off or landing on the leg supports; or

(2) for storage of VOC liquid having a true vapor pressure of equal to or greater than 11.1 psia at storage conditions, a pressure tank sealed or vented to a vapor processing system; or

(3) a properly installed, operated and maintained vapor processing system. The vapor processing system shall consist of a vapor collection system capable of collecting the VOC vapors to prevent their emission to the atmosphere. The vapor processing system shall achieve an overall VOC emissions reduction efficiency of at least 90% by weight on a continuous basis; or

(4) equipment or means other than in (1) through (3) demonstrated to the satisfaction of the department to be equal in efficiency for purposes of air pollution control.

(b) The owner or operator shall maintain each affected storage tank so that the following conditions prevail:

(1) no visible holes, tears or other openings in the secondary seal or seal fabric;

(2) no visible gaps between the secondary seal and tank wall are apparent;

(3) VOC liquid does not accumulate on the internal floating roof; and

(4) all tank openings shall be gas tight except when tank gauging or sampling is taking place.

(c) This regulation shall not apply to tanks having a storage capacity of 420,000 gallons or less and used to store produced crude oil and condensate prior to lease custody transfer.

(d) The owner or operator of an affected facility shall:

(1) within 16 weeks after the facility becomes subject to the provisions of this regulation submit a control plan to the department providing for final compliance with this regulation as expeditiously as practicable but not later than the date prescribed by subsection (d)(5) of this regulation;

(2) award contracts or purchase orders for emission control equipment necessary to comply with the provisions of the regulation within 24 weeks after the facility becomes subject to the provisions of this regulation;

(3) initiate construction or installation of the required emission control equipment within 48 weeks after the facility becomes subject to the provisions of this regulation.

(4) complete the construction or installation of the required emission control equipment within 100 weeks after the facility becomes subject to the provisions of this regulation;

(5) demonstrate compliance with this regulation within two years after the facility becomes subject to the provisions of this regulation.

(e) The owner or operator of each affected storage tank shall visually inspect the internal floating roof, the primary seal and secondary seal each time the storage tank is emptied and degassed. The owner or operator shall then conduct any repairs necessary to comply with (b)(1) through (b)(3) before refilling the storage tank.

(f) The owner or operator of each affected storage tank shall maintain records on a monthly basis for two years from the date of record at the facility available for department inspection for:

(1) amount and type of VOC liquids stored/ turned over;

(2) inspection dates with the corresponding findings;

(3) date and description of repairs of each storage tank and floating roof or vapor processing system; and

(4) the average temperature on a monthly basis of the stored VOC liquids.

(g) The provisions of this regulation shall be applicable only to VOC liquid storage tanks operated at facilities subject to the provisions of either K.A.R. 28-19-64, 28-19-67 or 28-19-68. (Authorized by K.S.A. 65-3005, 65-3010; effective, E-81-28, Sept. 10, 1980; effective May 1, 1981; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988.)

28-19-66. Volatile organic compounds (VOC) liquid storage in external floating roof tanks. (a) No person shall place, store, or hold in any stationary tank, reservoir, or other container not having a permanent fixed roof and capable of holding more than 40,000 gallons of any VOC liquid with a true vapor pressure of 1.5 pounds per square inch absolute (psia) or greater at storage conditions unless the container is equipped with an external floating roof having a primary seal system. The container shall also be equipped with a continuous secondary seal extending from the floating roof to the container wall if:

(1) the container is of welded construction with a metallic type shoe seal, a liquid mounted foam seal, a liquid mounted liquid filled seal or any other closure device which has been demonstrated to the satisfaction of the department to be an equivalent primary seal system, and the true vapor pressure of the stored VOC liquid is four psia or greater at storage conditions;

(2) the container floating roof has a vapor mounted primary seal, unless the seal can be demonstrated to the satisfaction of the department to be equivalent to a metallic or liquid mounted seal, in which case the requirements of subsection (a)(1) apply; or

(3) the container is of riveted construction.

(b) All seal closure devices shall meet the following requirements:

(1) There shall be no visible holes, tears, or other openings in the seal or the seal fabric;

(2) they shall be intact and there shall be no visible gaps between the secondary seal and the wall of the storage tank; and

(3) when a vapor-mounted seal is demonstrated to the satisfaction of the department to be an equivalent primary closure device, the accumulated area of openings exceeding one-eighth inch in width between the secondary seal and the tank wall shall not exceed one square inch per foot of tank diameter.

(c) All openings in the external floating roof, except for automatic bleeder vents, rim space vents and leg sleeves, shall provide a projection below the liquid surface. The openings shall be equipped with a cover, seal or lid. The cover, seal or lid shall be in a closed position at all times except when the device is in actual use. Automatic bleeder vents shall be closed at all times except when the roof is floated off or landed on the roof leg supports and rim vents shall be set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting. No VOC liquid shall accumulate on the floating roof. Any emergency roof drain shall be provided with a slotted membrane fabric cover or equivalent cover that covers at least 90 percent of the area of the opening.

(d) The following are specifically exempted from the requirements of this regulation:

(1) external floating roof tanks having capacities less than 10,000 barrels used to store produced crude oil and condensate prior to lease custody transfer;

(2) A metallic-type shoe seal in a welded tank which has a secondary seal from the top of the shoe seal to the tank wall;

(3) External floating roof tanks storing waxy, heavy pour crudes; and

(4) External floating roof tanks with other closures or devices demonstrated to the satisfaction of the department to be equal in efficiency for purposes of air pollution control.

(e) The owner or operator of a facility subject to the provisions of this regulation shall:

(1) within 16 weeks after the facility becomes subject to the provisions of this regulation, submit a control plan to the department providing for final compliance as expeditiously as practicable but not later than the date prescribed by subsection (e)(5) of this regulation;

(2) award contracts or purchase orders for seal systems or other equipment necessary for compliance within 24 weeks after the facility becomes subject to the provisions of this regulation;

(3) initiate on-site construction or installation activities required for compliance within 48 weeks after the facility becomes subject to the provisions of this regulation;

(4) complete on site construction or installation of equipment for compliance within 100 weeks after the facility becomes subject to the provisions of this regulation; and

(5) demonstrate compliance with applicable provisions of this regulation within two years after the facility becomes subject to the provisions of this regulation except that final compliance shall be demonstrated within one year after the facility becomes subject to the provisions of this regulation where such compliance does not require the purchase, relocation or construction of equipment items other than piping.

(f) The owner or operator of each affected storage tank shall visually inspect the floating roof primary seal each time the storage tank is emptied and degassed, but no less than once every five years. A visual inspection of the secondary seal shall be conducted semi-annually and the secondary seal gap measurements shall be conducted annually to ensure compliance with (b)(2) and (b)(3). The owner or operator shall repair any damage to the secondary seal or seal fabric within 72 hours of finding secondary seal damage and repair primary seal damage prior to refilling the storage tank.

(g) The owner or operator of each affected storage tank shall maintain records on a monthly basis for two years from the date of record at the facility available for department inspection for:

(1) amount and type of VOC liquids stored/ turned over;

(2) inspection dates with the corresponding findings;

(3) date and description of repairs of each storage tank and floating roof; and

(4) the average temperature on a monthly basis of the stored VOC liquids.

(h) The provisions of this regulation shall be applicable only to VOC liquid storage tanks operated at facilities subject to the provisions of either K.A.R. 28-19-64, 28-19-67 or 28-19-68. (Authorized by K.S.A. 65-3005, 65-3010; effective, E-81-28, Sept. 10, 1980; effective May 1, 1981; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988.)

28-19-67. Petroleum refineries. (a) A person shall not permit the use of any vacuum producing system at a petroleum refinery unless the vapor emissions from the condensers, hot wells or accumulators of the system are reduced by:

(1) Piping the noncondensible vapors to a firebox or incinerator;

(2) compressing the vapors and adding them to the refinery fuel gas; or

(3) other equipment or means of equal efficiency for purposes of air pollution control as may be approved by the department.

(b) A person shall not permit the use of any waste water (oil and water) separator at a petroleum refinery unless covers and seals approved by the department have been provided on all separators and forebays, and all openings in covers, separators and forebays have been equipped with lids or seals so that the lids or seals are in the closed position at all times except when in actual use.

(c) A person shall not perform a process unit turnaround at a petroleum refinery unless a detailed procedure for minimization of volatile organic compound emissions during process unit turnarounds has been developed, submitted to, and approved by the department. As a minimum, the procedure shall provide for:

(1) Depressurization venting of the process unit or vessel to a fuel gas system, vapor recovery system, flare or firebox, or other equipment or means of equal efficiency for purposes of air pollution control, as approved by the department;

(2) no emission of volatile organic compounds from a process unit or vessel until its internal pressure is 19.7 pounds per square inch, absolute, or less; and

(3) submission to the department, within 30 days of placing the process unit on stream after a turnaround, the following information:

(A) The dates of the process unit shutdown and startup; and

(B) the approximate total quantity of volatile organic compounds emitted to the atmosphere.

(d) The owner or operator of any source subject to the provisions of subsections (a) and (b) of this regulation shall:

(1) Within 16 weeks of the effective date of this regulation submit a control plan providing for compliance with the provisions as expeditiously as practicable but not later than the date prescribed by subsection (e)(5) of this regulation.

(2) award contracts or purchase orders necessary to comply with the provisions within 24 weeks of the effective date of this regulation.

(3) initiate on site construction or installation activities required to comply with the provisions within 48 weeks of the effective date of this regulation.

(4) complete the construction or installation of equipment necessary to comply with the provisions within 100 weeks of the effective date of this regulation.

(5) demonstrate final compliance with the provisions within two years of the effective date of this regulation, except that final compliance shall be demonstrated within one year of the effective date of this regulation where such compliance does not require the purchase, relocation or construction of equipment items other than piping.

(e) The owner or operator of a source subject to the provisions of subsection (c) of this regulation shall develop and submit the required procedures to the department within six months of the effective date of this regulation and shall implement such procedures within three months of the date of their approval by the department.

(f) This regulation shall be applicable only to the use of vacuum producing systems and wastewater separators and turn-around operations at petroleum refineries which are located in areas which were identified as not meeting the national ambient air quality standard for ozone in the manner prescribed by the provisions of Section 107(d) of the federal clean air act (42 U.S.C. 7407), as promulgated at 48 FR 46783 (October 14, 1983), and have a cumulative potential contaminant emission rate equal to or greater than one hundred (100) tons of volatile organic compounds per year for all emission sources subject to the provisions of this part. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective, E-81-28, Sept. 10, 1980; effective May 1, 1981; amended May 1, 1986.)

28-19-68. Leaks from petroleum refinery equipment. (a) If the volatile organic compound concentration leaking from pump seals, compressor seals, seal oil degassing vents, pipeline valves, flanges, and other connections, pressure relief devices, process drains, and open ended pipes exceeds 10,000 parts per million, the leak shall be repaired within 15 days.

(b) Any leaks which cannot be repaired during the 15 day period shall be reported to the department, in writing,

within the 15 day period. The report shall state the source of the leak, the reasons why repairs cannot be made during the period, and the earliest date by which the repairs can be accomplished.

(c) The monitoring of volatile organic compound leaks shall be performed by the refinery according to the following schedule: (1) Weekly: visual inspection shall be made of pump seals to detect leaks. Whenever liquid leaks are observed, the volatile organic compound concentration shall be monitored immediately.

(2) quarterly: compressor seals, pipeline valves in gas service, and atmospheric vented pressure relief valves in gas service.

(3) annually: pump seals, pipeline valves in liquid service, and process drains.

(d) The monitoring for the detection of volatile organic compound leaks other than visual inspection required by subsection (c) shall be conducted in accordance with the provisions of K.A.R. 28-19-62(a)(3).

(e) A written monitoring plan providing for compliance with the provisions of subsection (c) shall be submitted to the department by the owner or operator of any source subject to its provisions within one year of the effective date of this regulation. The plan shall contain, at a minimum, a list of the refinery units to be monitored, the calendar quarter during which they will be monitored, a copy of the leak survey log format that will be used, and the make and model of the monitoring equipment that will be used.

(f) The ends of all pipes and lines which normally contain volatile organic compounds and which terminate with a valve fitting other than a pressure relief valve shall be sealed with a second valve, a blind flange, a plug, or a cap. The seals shall be removed only when the line must be opened for the collection of samples or other purposes.

(g) This regulation shall be applicable only to pump seals, compressor seals, seal oil degassing vents, pipeline valves, flanges and other connections, pressure relief devices, process drains and open ended pipes in use at petroleum refineries which are located in areas which were identified as not meeting the national ambient air quality standard for ozone in the manner prescribed by the provisions of Section 107(d) of the federal clean air act (42 U.S.C. 7407), as promulgated at 48 FR 46783 (October 14, 1983), and have a cumulative potential contaminant emission rate equal to or greater than 100 tons of volatile organic compounds per year for all emissions sources subject to the provisions of this part. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective, E-81-28, Sept. 10, 1980; effective May 1, 1981; amended May 1, 1986.)

28-19-69. Cutback asphalt. (a) A person shall not cause, allow or permit the use or application of cutback asphalt for the purposes of paving after December 31, 1982, without the approval of the department. A person seeking approval from the department shall submit a request in writing which provides as much information as the department may require. Any approval may be subject to conditions imposed by the department which may include, but are not limited to, maintenance of records necessary to demonstrate compliance with this regulation. Emulsified asphalt shall be an acceptable substitute for cutback asphalt.

(b) The use or application of cutback asphalts may be approved where:

(1) the liquified cutback asphalt is used to produce a plant-mix for sale and use outside the areas as described in subsection (c);

(2) the liquified cutback asphalt is used in a plant-mix or road-mix which is used only for filling potholes on emergency road repair; or

(3) the cutback asphalt is to be used only as an asphalt prime coat or an asphalt seal coat or absorbent surfaces.

(c) This regulation shall be applicable only to the use or application of cutback asphalt within areas which were identified as not meeting the national ambient air quality standard for ozone in the manner prescribed by the provisions of Section 107(d) of the federal clean air act, 42 U.S.C. 7407, as promulgated at 40 CFR Part 81 as in effect July 1, 1986. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective, E-81-28, Sept. 10, 1980; effective May 1, 1981; amended May 1, 1986; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988.)

28-19-70. Leaks from gasoline delivery vessels and vapor collection systems. (a) No person shall load or permit the loading of gasoline from any bulk gasoline terminal (BGT) loading rack into any gasoline delivery vessel (GDV) unless the BGT loading rack is equipped with a vapor collection system that is connected to a vapor processing system and unless this person complies with the requirements of this regulation.

(b) The loading of gasoline from a BGT into a GDV shall be carried out in compliance with the following requirements.

(1) The level of combustible organic vapors shall be less than 100 percent of the lower explosive limit,

measured as propane, at one inch around the perimeter of any leak source on the GDV or the connected BGT vapor collection system during the gasoline loading operation. Compliance shall be determined in accordance with 40 CFR Part 60, appendix A, reference method 21, revised as of July 1, 1986 or an alternate method demonstrated to the satisfaction of the department to be equivalent to that reference method.

(2) There shall not be any visible liquid leaks from the GDV or the BGT vapor collection and processing system during the gasoline loading operation.

(3) The vapor collection and vapor processing system provided at the BGT shall be designed and operated to prevent gauge pressure in the GDV from exceeding 18 inches of water and prevent vacuum gauge pressure in the GDV from exceeding six inches of water during the gasoline loading operation.

(4) The GDV being loaded shall be in compliance with the requirements of subsection (c) of this regulation.

(c) (1) The owner or operator of each GDV that is operated within the area of applicability, as defined in subsection (f) of this regulation, shall demonstrate that a pressure change in the GDV of not more than three inches of water in five minutes will occur when the GDV is subjected to these conditions:

(A) pressurized to a gauge pressure of 18 inches of water; and

(B) evacuated to a gauge pressure of six inches of water. This demonstration shall be made using the testing procedures prescribed in 40 CFR Part 60, appendix A, method 27, revised as of July 1, 1986.

(2) The owner or operator of each GDV operated within the area of applicability, as defined in subsection (f) of this regulation, shall certify that the GDV satisfies the requirements of paragraph (c)(1) of this regulation in the following manner.

(A) The owner or operator shall demonstrate compliance with the parameters in paragraph (c)(1) by the successful completion of an annual test of each GDV.

(B) The period for annual testing shall be from January 1 to May 31, inclusive, of each year.

(C) The owner or operator shall submit the result or results of GDV testing to the department, forms approved by the department, before July 31 of the same year in which the test is completed and in which compliance is to be demonstrated.

(D) Failure to test a GDV operated within the area of applicability, as defined in subsection (f) of this regulation, before June 1 of each year, shall be a violation of this regulation.

(E) Failure to submit the results of testing for a GDV operated within the are of applicability on the department-approved forms shall be a violation of this regulation.

(3) Each owner or operator of a GDV subject to this regulation shall place a copy or copies of the annual successful test results in the respective GDV, which test results name the company or person performing the testing.

(4) Within 15 days after a GDV fails the required testing, the owner or operator shall either repair and then certify that the GDV passed the required testing, or discontinue use as a GDV in areas identified as not meeting the national ambient air quality standard for ozone in the manner prescribed by the provisions of Section 107(d) of the federal clean air act, 42 U.S.C. §7407(d), as promulgated at 40 CFR Part 81, revised as of July 1, 1986, and amended at 51 Fed. Reg. 25,200, July 11, 1986, until it has been tested successfully.

(5) Each owner or operator of a GDV shall notify the director within 15 days of the date any liquid or vapor leaks occur at the GDV during gasoline loading and transfer operations, and shall identify the corrective measures taken to repair the GDV.

(6) Each owner or operator of a GDV shall notify the department of the first time and place after certification that the GDV transfers gasoline at a gasoline dispensing facility subject to K.A.R. 28-19-72, to provide the department with the opportunity to inspect the GDV after certification in accordance with paragraphs (1) through (4) of this subsection.

(d) Gasoline shall not be loaded into or from any GDV that has not been certified as complying with subsection (c).

(e) The provisions of this regulation shall apply only to gasoline loading operations conducted at BGTs subject to the provisions of K.A.R. 28-19-64, and to gasoline transfer operations at gasoline dispensing facilities subject to the provisions of K.A.R. 28-19-72.

(f) Each owner or operator of a GDVs operating in areas that have been identified as not meeting the national ambient air quality standard for ozone in the manner as prescribed by the provisions of section 107(d) of the federal clean air act, 42 U.S.C. §7407(d) , as promulgated at 40 CFR Part 81, revised as of July 1, 1986, and amended at 51 Fed. Reg. 25,200, July 11, 1986 shall meet these requirements:

(1) comply with applicable requirements of this regulation within 60 days after the GDV becomes subject to the

provisions of this regulation for GDVs in service before the effective date of this regulation; and

(2) comply with applicable requirements of this regulation as of the date of entering service for GDVs entering service after the effective date of this regulation. (Authorized by K.S.A. 1996 Supp. 65-3005, K.S.A. 65-3010; implementing K.S.A. 1996 Supp. 65-3005, K.S.A 65-3010; effective May 1, 1982; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988; amended May 15, 1998.)

28-19-71. Printing operations. (a) The provisions of this regulation shall apply to all packaging rotogravure, publication rotogravure and flexographic printing facilities with potential contaminant emission rate of volatile organic compounds (VOC) equal to or more than 100 tons per year. The potential contaminant emission rate calculations may include federally enforceable permit restrictions.

(b) An owner or operator of an affected facility may not operate, cause, allow or permit the operation of the facility unless:

(1) the ink, as it is applied to the substrate, contains:

(A) for a water borne ink, a volatile content of 25.0 percent or less by volumeVOC and 75 percent or more by volume water; and

(B) for a high solids, solvent borne ink, less water, 60.0 percent or more by volume solid fraction; or

(2) the owner or operator installs and operates a vapor processing system which uses a carbon adsorber or an incinerator as a VOC emissions control device or other types of VOC emissions control devices may be used upon department approval. A vapor collection system, the design and operation of which shall be consistent with good engineering practice, shall be used with any vapor processing system. The vapor processing system shall provide, as demonstrated to the satisfaction of the department, an overall emissions reduction of at least:

(A) 75.0 percent where a publication rotogravure process is employed;

(B) 65.0 percent where a packaging rotogravure process is employed; or

(C) 60.0 percent where a flexographic printing process is employed.

(c) The owner or operator of an affected facility not in compliance with subsection (b) after the facility becomes subject to the provisions of this regulation shall meet the increments of progress to achieve compliance in the following schedules.

(1) For process equipment alterations and add-on vapor processing systems requiring purchase orders:

(A) Submit final plans for the vapor processing system or process alterations, or both, within 75 days after the facility becomes subject to the provisions of this regulation;

(B) award contracts or purchase orders for the vapor processing system or process alterations, or both, within 135 days after the facility becomes subject to the provisions of this regulation;

(C) initiate onsite construction or installation of the vapor processing system or process alterations, or both, within 200 days after the facility becomes subject to the provisions of this regulation;

(D) complete onsite construction or installation of the vapor processing system or process alterations, within 300 days after the facility becomes subject to the provisions of the regulation; and

(E) achieve final compliance within 365 days after the facility becomes subject to the provisions of this regulation.

(2) for process equipment alterations and vapor processing systems not requiring purchase orders:

(A) submit final plans for the vapor processing system or process alterations, or both, within 45 days after the facility becomes subject to the provisions of this regulation;

(B) award contracts for process alterations or for the vapor processing system, or both, within 90 days after the facility becomes subject to the provisions of this regulation;

(C) initiate onsite construction or installation of process alterations or vapor processing system, or both, within 120 days after the facility becomes subject to the provisions of this regulation;

(D) complete onsite construction or installation of process alterations or vapor processing system, or both, within 180 days after the facility becomes subject to the provisions of this regulation; and

(E) achieve final compliance within 200 days after the facility becomes subject to the provisions of this regulation.

(d) The owner or operator of an affected facility not in compliance with subsection (b) after the facility becomes subject to the provisions of this regulation may submit to the department, and the department may approve, a proposed alternate compliance schedule to those outlined in subsection (c), provided the following requirements are met:

(1) the proposed alternate compliance schedule shall be submitted within 45 days after the facility becomes subject to the provisions of this regulation;

(2) the owner or operator shall demonstrate to the satisfaction of the department the need for an alternate schedule;

(3) the alternate compliance schedule shall contain increments of progress.

(4) Sufficient documentation and certification from appropriate suppliers, contractors, manufacturers, or fabricators shall be submitted to the department by the owner or operator of the affected facility to justify the dates proposed for the increments of progress;

(5) the owner or operator shall certify in writing to the department, within five days after the deadline for each increment of progress, that the required increment of progress has been met; and

(6) final compliance shall be achieved within 365 days after the facility becomes subject to the provisions of this regulation.

(e)(1) The owner or operator of an affected facility shall, within 365 days after the facility becomes subject to the provisions of this regulation and at other times considered necessary by the department to determine compliance with this regulation and at the owner or operator's expense, demonstrate compliance to the satisfaction of the department with subsection (b) by the test methods outlined in the following documents or alternate methods demonstrated to the satisfaction of the department to be equivalent:

(A) appropriate reference methods in 40 CFR Part 60, appendix A, as in effect July 1, 1986; and

(B) U.S. environmental protection agency guideline series document ``Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink and Other Coatings", EPA-450/3-84-011, as in effect December, 1984.

(2) The owner or operator shall notify the department of the intent to test not less than 30 days before the proposed initiation of any tests, and the notification shall contain the information required by, and be in a format approved by, the department.

(f) Subsequent to the initial performance test required in subsection (e), the owner or operator shall monitor compliance with subsection (b) by maintaining and analyzing the daily records required by subsection (h) using composition of the ink as applied to the substrate determined by:

(1) ink analysis conducted by the owner or operator in accordance with 40 CFR Part 60, appendix A, reference method 24A, as in effect July, 1986; or

(2) formulation data supplied by the ink manufacturer plus VOC added to alter ink viscosity before application to the substrate. The department may require the manufacturer's data be verified, at the expense of the owner or operator, by method 24A referenced in subsection (f)(1), if the department has reason to believe compliance with subsection (b) is not being achieved.

(g) Use of vapor processing systems shall require that continuous monitors be installed, calibrated, operated and maintained. The continuous monitors shall continuously measure and record the following parameters:

(1) with an accuracy of the greater of ± 0.75 percent of the temperature being measured, expressed in degrees celsius, of 2.5 degrees celsius, the exhaust gas temperature of all VOC destruction devices and the gas temperature immediately upstream and downstream of any catalyst bed; and

(2) with an accuracy of ± 2.00 percent of the amount being monitored, the cumulative amount of VOC recovered during a calendar month for all VOC recovery equipment; and

(3) any other parameters considered necessary by the department.

(h) The owner or operator of an affected facility shall keep and maintain at the facility, and make available for inspection by a department representative, records for each emission unit demonstrating continuous compliance with this regulation. The records shall include daily records of the following information and shall be kept at the facility for two years following the date of record:

(1) properties of inks as supplied: density in pounds per gallon, total volatile content in weight percent, total VOC content in pounds per gallon minus water, water content in weight percent, and nonvolatiles content in weight percent;

(2) properties of dilution solvents: chemical name and density in pounds per gallon;

(3) properties of inks as applied to substrate: weighted average density in pounds per gallon and ink dilution ratio in gallons of solvent to gallons of ink as supplied;

(4) quantity of individual inks as applied to substrate;

(5) results of any testing conducted on an emissions unit at an affected facility; and

(6) maintenance records of the vapor processing systems.

(i) The provisions of this regulation shall be applicable only to the printing operations located within areas which were identified as not meeting the national primary ambient air quality standard for ozone in the manner prescribed by the provisions of the federal clean air act, 42 U.S.C. 7407, as promulgated at 40 CFR Part 81 as in effect July 1, 1986 and

amended at 51 Fed. Reg. 25,200 July 11, 1986. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1986; amended May 1, 1987; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988.)

28-19-72. Gasoline dispensing facilities. (a) No owner or operator of a gasoline dispensing facility (GDF) or a gasoline delivery vessel (GDV) shall cause or permit the transfer of gasoline from any GDV into any stationary storage container with a capacity greater than 2000 gallons unless such container is equipped with a submerged fill pipe and a vapor balance system properly installed and in good working order.

(b) No owner or operator of a GDF or a GDV shall cause or permit the transfer of gasoline from any GDV into any stationary storage container with a capacity greater than 250 gallons, but equal to or less than 2000 gallons, unless such container is equipped with a submerged fill pipe.

(c) The transfer of gasoline from any GDV into any stationary storage container at an affected GDF shall be conducted in compliance with the following requirements:

(1) combustible organic vapors shall be less than 100 percent of the lower explosive limit, measured as propane, at one inch around the perimeter of any leak source on the GDV or the connected vapor balance system during the gasoline transfer operation. Compliance shall be determined in accordance with 40 CFR Part 60, appendix A, reference method 21, as in effect July 1, 1986, or by a method demonstrated to the satisfaction of the department to be equivalent to reference method 21;

(2) there shall not be any visible liquid leaks from the GDV or connections to the stationary storage container during the gasoline transfer operation:

(3) the GDV shall remain closed and contain all vapors collected during the gasoline transfer operation until such time as it is refilled in accordance with K.A.R. 28-19-70 if:

(A) refilled in areas which were identified as not meeting the national ambient air quality standard for ozone as described in subsection (h) of this regulation; or

(B) refilled at bulk gasoline terminals or bulk gasoline plants located in areas meeting the national ambient air quality standard for ozone as described also in subsection (h); and

(4) an owner or operator of an affected GDF or an affected GDV shall, during all transfer operations to an affected stationary storage container, inspect the vapor balance system and GDV connections for liquid gasoline or vapor leaks. Leak detection may be by sight, sound or odor. Each detection of a leak shall be recorded and described in records maintained by the GDF owner or operator at the GDF. Transfer operations shall cease until repair of the leak is accomplished.

(d) The vapor balance system shall be constructed so as to ensure that the gas tight vapor return line is connected to the GDV before gasoline can be transferred into the stationary storage container.

(e) GDV's, including the vessel's vapor collection system, that deliver gasoline to an affected GDF shall comply with K.AR. 28-19-70(c).

(f) The owner or operator of an affected GDF shall:

(1) maintain written records for a period of at least two consecutive years at the GDF. The records shall be available upon request or for inspection by a department representative and shall specify:

(A) the name and address of the owner or operator of the GDV for each delivery of gasoline transferred into the stationary storage container or containers;

(B) the date of delivery and quantity of gasoline transferred;

(C) identification of and the date when each GDV servicing the GDF was last tested, and determined to comply with the pressure test in K.A.R. 28-19-70(c);

(D) the date when the GDF was last tested and determined to comply with subsection (c)(1) and the name of the person performing the test;

(E) the date and extent of any repairs to the submerged fill pipe connection and vapor balance system at the GDF;

(F) the date of inspection, the description of findings and the corrective actions taken for the inspections conducted in subsection (c)(4); and

(2) notify the department, on forms supplied by the department, and before each March 2nd, that all GDV's servicing the GDF during the past calendar year complied with the requirements of K.A.R. 28-19-70(c).

(g) Each owner or operator of:

(1) an affected GDF shall comply with all requirements within 180 days after the GDF becomes subject to the provisions of this regulation;

(2) GDV's in service prior to the effective date of this regulation shall comply with applicable requirements of this regulation within 60 days after the GDV becomes subject to the provisions of this regulation; and

(3) GDV's entering service after the effective date of this regulation shall comply with applicable requirements of this regulation as of the date of entering service.

(h) This regulation shall be applicable only to affected GDF's which are located in and GDV's which operate in areas which were identified as not meeting the national ambient air quality standard for ozone in the manner prescribed by the provisions of Section 107(d) of the federal clean air act, 42 U.S.C. 7407 as promulgated at 40 CFR Part 81 as in effect July 1, 1986 and amended at Fed. Reg. 25,200 July 11, 1986. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1987; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988.)

28-19-73. Surface coating of miscellaneous metal parts and products and metal furniture. (a) The provisions of this regulation shall be applicable to each miscellaneous metal parts and products and metal furniture coating application system at those facilities which have a VOC potential contaminant emmission rate equal to or greater than three tons per year on a facility-wide basis. The VOC potential contaminant emission rate of a facility shall be determined by:

(1) the maximum hourly production rate of each coating application system; and

(2) the assumption that the facility operates 24 hours per day, 365 days per year provided that the facility's operating hours are not otherwise limited by federally enforceable permit conditions.

(b) This regulation shall not be applicable to the following manufacturing categories which have miscellaneous metal parts and products coating operations:

(1) automobiles and light duty trucks;

(2) metal cans;

(3) customized top coating of automobiles and trucks, if less than 35 vehicles per day are processed; and

(4) automobile refinishing.

(5) Each facility subject to this regulation shall remain subject so long as this regulation remains in effect or until the facility's VOC potential contaminant emission rate is demonstrated, to the satisfaction of the department, to be always less than three tons per year.

(c) An owner or operator of any facility subject to this regulation shall not conduct any surface coating operation that emits VOC to the atmosphere in excess of that which would be emitted by using the following coatings with the VOC content specified; (1) through (5) applicable to miscellaneous metal parts and products, and (6) applicable to metal furniture:

(1) 4.3 pounds per gallon of coating, less water and exempt VOC, delivered to a coating application system that applies clear coatings;

(2) 3.5 pounds per gallon of coating, less water and exempt VOC, delivered to a coating application system that is air-dried or forced warm air-dried at temperatures up to 194° F;

(3) 3.5 pounds per gallon of coating, less water and exempt VOC, delivered to a coating application system that applies extreme performance coatings except that coatings applied to the interior of metal pails and metal drums may contain 4.3 pounds per gallon of coating, less water and exempt VOC. As used in this regulation pails shall mean any nominal cylindrical metal container of 1-12 gallon capacity, and drums shall mean any cylindrical metal container of 13 to 110 gallons capacity;

(4) 0.4 pounds per gallon of coating, less water and exempt VOC, delivered to a coating application system that applies powder coatings;

(5) 3.0 pounds per gallon of coating, less water and exempt VOC, delivered to a coating application system for any other coating; and

(6) 3.0 pounds per gallon of coating, less water and exempt VOC, delivered to a coating application system for prime, top-coat or single coat operations.

(d) If more than one emission limitation in subsection (c) applies to a specific coating, then the least stringent emission limitation shall apply.

(e) Use of additional VOC shall be considered as follows:

(1) for determining the potential contaminant emission rate of the facility in accordance with subsection (a), include that added for thinning coatings and that used for purging or washing coating applicators which cannot be otherwise accounted for in a reclamation system; and

(2) for compliance with subsection (c), include that added for thinning coatings.

(f) The emission limits which will result from the use of coatings in subsection (c) shall be achieved by:

(1) application of coatings which meet or exceed the requirements of subsection (c) per coating application system on a daily weighted average basis; or

(2) application of coatings with improved transfer efficiency demonstrated, through testing, by methods approved by the department, to achieve equivalent emissions based on the weight of VOC emitted per gallon of solids applied as would be emitted with the coatings specified in subsection (c) per coating application system on a daily weighted average basis; or

(3) application, for the capture and reduction of VOC emissions through either destruction or collection, of a VOC vapor processing system demonstrated through testing as capable of maintaining an overall VOC emission reduction of at least 90 percent. Use of a VOC vapor processing system shall require that continuous monitors be installed, calibrated, operated, and maintained. The continuous monitors shall continuously measure and record the following parameters:

(A) with an accuracy of the greater of ± 0.75 percent of the temperature being measured expressed in degrees Celsius, or 2.5 degrees Celsius, the exhaust gas temperature of all VOC destruction devices and the gas temperature immediately upstream and downstream of any catalyst bed;

(B) with an accuracy of ± 2.00 percent of the amount being monitored, the cumulative amount of VOC recovered during a calendar month for all VOC recovery equipment;

(C) any other parameters considered by the department necessary to achieve compliance with this regulation; or

(4) any combination of methods approved by the department which results in emissions, when calculated as pounds of VOC per gallon of solids applied per coating operation, that are no greater on a daily weighted average basis than those achieved with the appropriate coatings specified in subsection (c).

(5) For the purpose of this subsection the term "daily weighted average" is the total weight of VOC emitted from a coating application system per day divided by the volume of coating used or volume solids applied per day, depending on the units of the emission limitation.

(g) Prior to 180 days after a facility becomes subject to the provisions of this regulation, the owner or operator of the facility shall demonstrate, at the expense of the owner or operator, initial compliance with this regulation by testing. An owner or operator shall notify the department, in writing, of the intent to test not later than 30 days prior to the scheduled date of testing. The owner or operator shall submit to the department any information about the test requested by the department. If necessary to determine compliance with this regulation, the owner or operator of any facility subject to this regulation may be required to demonstrate compliance with this regulation by testing at the expense of the owner or operator. Testing, for purposes of this regulation, shall be approved by the department and consistent with:

(1) the test procedures found at 40 CFR Part 60, appendix A, as in effect July 1, 1989; and

(2) procedures as established by the department in approving proposed test plans consistent with subsection (g)(1).

(h) Demonstration of continual compliance per coating application system achieved by sections (f)(2) through (f)(4) shall be based on the finding that the results obtained by the formula in (2) are equal to or less than the results obtained by the formula in (1), both results on a daily weighted average basis.

(1) complying coating equivalent emissions expressed as:

$$\frac{\text{VOC,lbs}}{\text{gal. of solids applied}} = \frac{(EL)}{(TE)\,(VS)}$$

EL = the coating characteristics established by this regulation, expressed as pounds of VOC per gallon of coating, less water and exempt VOC.

TE = baseline transfer efficiency as defined at K.A.R. 28-19-61, expressed as a decimal.

VS = volume fraction of solids in EL, expressed as a decimal, where the density of coating solvents is assumed to be 7.36 pounds per gallon.

(2) actual coating equivalent emissions expressed as:

$$\frac{\text{VOC,lbs}}{\text{gal. of solids applied}} = \frac{(AC)\ (1-E)}{(vs)(te)}$$

AC = pounds of VOC per gallon of the coating as delivered to the coating application system, less exempt VOC and water;

E = the demonstrated efficiency of installed vapor processing system determined by the actual vapor collection system efficiency multiplied by the actual VOC emissions control device efficiency, expressed as a decimal;

vs = volume fraction of solids of the coating as delivered to the coating application system, expressed as a decimal. For water-borne coatings the volume fraction of solids is determined without water;

te = the actual demonstrated transfer efficiency of thecoating application system, expressed as a decimal.

(A) The owner or operator shall determine AC and vs by

(1) using Reference Method 24 data supplied by the coating manufacturer, adjusted by the VOC used for thinning purposes, or

(2) from an applied coating analysis conducted by the owner or operator in accordance with Reference Method 24. If manufacturers formulation data is used, verification of the data may be required by Reference Method 24, or a department approved equivalent method, and at the expense of the owner or operator.

(i) The owner or operator of each emission unit within a facility subject to this regulation shall keep and maintain records at the facility and make available for inspection by a department representative to determine continuous compliance of the facility with this regulation. The records shall include the following information and shall be kept at the facility for two years following the date of record:

(1) the type and amount of coatings delivered daily to each coating application system. The daily record-keeping requirements of this subsection may be waived if the owner or operator:

(A) demonstrates that it uses only coatings that have been determined to be in compliance with subsection (c) of this regulation, and

(B) has received written approval from the department for a waiver from this requirement;

(2) the manufacturer's coating formulation data, and other test data, including density, weight percent volatiles (as determined using a one hour bake), weight percent water, and weight percent exempt VOC, determined by Reference Method 24 for each coating;

(3) the coating's solids content, as delivered to the coating application system, in volume percent;

(4) the results of any testing conducted at the facility pertaining to transfer efficiencies, capture efficiencies or control equipment reduction efficiencies;

(5) the type, density and amount of solvents used daily for coating thinning, purge and equipment cleaning;

(6) amount, components and density of waste solvents reclaimed daily;

(7) those records as required in subsections (f)(3)(A) through (f)(3)(C); and

(8) maintenance records of the temperature monitoring equipment.

(j) The owner or operator of a facility shall comply with all emission limits within 180 days after the facility becomes subject to the provisions of this regulation.

(k) The provisions of this regulation shall be applicable only to affected facilities located in areas which have been identified as not meeting the national primary ambient air quality standard for ozone in the manner prescribed by the provisions of Section 107(d) of the federal clean air act, 42 U.S.C. 7407 as promulgated at 40 CFR Part 81 as in effect July 1, 1989. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1987; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988; amended June 8, 1992.)

28-19-74. Wool fiberglass manufacturing. (a) The provisions of this regulation shall be applicable to each wool fiberglass manufacturing facility which has a VOC potential contaminant emission rate equal to or greater than 100 tons per year on a facility-wide basis. A facility's VOC potential contaminant emissions rate shall be determined by:

(1) the facility owner or operator estimate of the maximum hourly production rate of each wool fiberglass manufacturing line; and

(2) assuming that the facility operates 24 hours per day, 365 days per year.

(b) No owner or operator of a wool fiberglass manufacturing line shall cause or allow VOC to be discharged into the atmosphere in excess of five pounds of VOC per ton of glass pulled.

(c) The owner or operator of the affected facility shall demonstrate that each wool fiberglass manufacturing line is in compliance with the VOC emissions rate of subsection (b) through testing as specified in subsection (d) and calculations as specified in subsection (f).

(d) Testing of each wool fiberglass manufacturing line shall be conducted:

(1) initially within 180 days after a facility becomes subject to the provisions of this regulation, if recent department approved testing has not been conducted prior to the time the facility becomes subject to the provisions of this regulation, and thereafter at other times considered by the department necessary to determine compliance with this regulation;

(2) at the expense of the owner;

(3) in accordance with a test plan approved by the department before the testing is scheduled. The plan shall include:

(A) name of testing agency;

(B) testing dates;

(C) sampling location;

(D) sampling equipment;

(E) sampling procedures;

(F) sample recovery methods; and

(G) any other information considered necessary by the department;

(4) not less than 30 days after the owner or operator submits, in writing, the proposed date of testing to the department; and

(5) in a manner consistent with:

(A) procedures established by the department in approving test plans;

(B) 40 CFR Part 60, appendix A, reference method 5E, as in effect July, 1986, with the following stipulations:

(i) the sampling time for each test run being at least two hours and the volume of gas sampled being at least 90 dry standard cubic feet;

(ii) samples collected in the impingers shall be recovered as specified in "Container No. 5" in paragraph 4.2;

(iii) samples shall be analyzed as specified for "Container No. 5" in paragraph 4.3; and

(iv) the concentration of VOC shall be calculated as specified for "Cc" in paragraphs 6.1 and 6.2; and

(C) the reference methods of 40 CFR Part 60, appendix A, as in effect July 1, 1986, for the collection of data required during the testing procedure, as follows:

(i) reference method 1 for stack or duct gas sample and velocity traverses;

(ii) reference method 2 for stack or duct gas velocity and gas volumetric flow rate;

(iii) reference method 3 for stack or duct gas dry molecular weight; and

(iv) reference method 4 for stack or duct gas moisture content.

(e) In addition to the parameters required to be recorded in subsection (d), the owner or operator shall concurrently record the following parameters relating to baseline operating conditions at each wool fiberglass manufacturing line:

(1) the product being produced;

(2) glass pull rate, weight per unit time;

(3) binder type;

(4) binder application rate, weight per unit time;

(5) line speed where applicable, length per unit time;

(6) trimmed mat width where applicable, length;

(7) mat weight where applicable, weight per unit area;

(8) loss on ignition as determined by ASTM Standard Test Method D-2584-68, "Ignition Loss of Cured Reinforced Resin," percent; and

(9) the operating parameters of any VOC emissions control devices at least once during each eight hour work shift, such as:

(A) electrostatic precitator electrical data and inlet temperature;

(B) wet scrubbing device water flow rate, volume per unit time;

(C) wet scrubbing device pressure drop, pressure units; and

(10) other parameters determined by the department to be necessary to establish baseline conditions of the control system.

(f) The actual VOC emissions rate, to be used in determining compliance with the VOC emissions rate of subsection (b), shall be calculated as follows:

(1) The VOC emissions rate, R, from each wool fiberglass manufacturing line being determined using the VOC concentration, Cc, determined in subsection (d)(5)(B)(iv) and the volumetric flow rate, Q, as determined in subsection (d)(5)(C)(ii), using the following equation:

$$R = CcQ,$$

Where:

R= weight of VOC per unit time
Cc= weight of VOC per unit volume
Q= volumetric flow rate of gas stream at testing location, actual volume per unit time;

(2) for each two hour test run, the average glass pull rate, P, for each wool fiberglass manufacturing line shall be computed from at least three glass pull rates determined at intervals of at least 30 minutes during the test run. The individual glass pull rates shall be:

(A) computed according to the following equation:

$$P = LWM((100-LOI) / 100)$$

Where:

P= glass pull rate, weight per unit time
L= line speed, length per unit time
W= trimmed mat width, length
M= mat weight, weight per unit area
LOI= loss on ignition, percent, as determined by ASTM Standard Test Method D-2584-68, "Ignition Loss of Cured Reinforced Resins," as in effect 1979; or

(B) determined by measurements of the glass flowing from the rotary spinning process; and

(3) the emissions level, E, for purposes of determining compliance with subsection (b), being computed using the following equation:

$$E = R / P$$

Where:

E= emission level, weight of VOC emissions per unit weight of product, converted to units of the emissions standard in subsection (b)
R= emission rate, from subsection (f)(1)
P= average glass pull rate, from subsection (f)(2)

(g) The owner or operator of each wool fiberglass manufacturing line subject to this regulation shall keep and maintain at the facility, and make available for inspection by a department representative, records needed to determine continuous compliance of the plant with this regulation. The owner or operator shall keep the records in a form suitable for inspection and shall maintain them at the facility for two years following the date of record. The owner or operator shall maintain a record of the production parameters listed in subsection (e) and any other parameter the department may consider to be necessary to determine compliance with this regulation.

(h) The provisions of this regulation shall be applicable only to affected facilities in areas which have been identified as not meeting the national primary ambient air quality standard for ozone in the manner prescribed by the provisions of Section 107(d) of the federal clean air act, 42 U.S.C. 7407 as promulgated at 40 CFR Part 81 as in effect July 1, 1986 and amended at 51 Fed. Reg. 25,200 July 11, 1986. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1987; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988.)

28-19-75. Solvent metal cleaning. This revocation shall be effective on and after September 1, 2002. (Authorized by and implementing K.S.A. 65-3005, 65-3010; effective May 1, 1987; amended, T-88-55, Dec. 16, 1987; amended May 1, 1988; revoked Sept. 1, 2002.)

28-19-76. Lithography printing operations. (a) The provisions of this regulation shall apply to all offset lithography printing facilities with a potential contaminant emission rate of volatile organic compounds (VOC) equal to or more than 100 tons per year. The potential contaminant emission rate calculations may include federally enforceable permit conditions.

(b) The provisions of this regulation do not apply to:

(1) printing on fabric, metal or plastic;

(2) sheet fed lithographic presses with cylinder widths of 26 inches or less; or

(3) web lithographic presses with cylinder widths of 18 inches or less.

(c) Any owner or operator of an offset lithographic printing press subject to this regulation and employing fountain solution (the solution applied to the image plate to maintain the hydrophilic properties of the non-image areas) containing VOC shall not operate, or cause or allow the operation of, such process unless:

(1) the fountain solution shall continuously contain 10 percent by weight or less of alcohol. For purposes of this regulation, alcohol is defined as isopropanol or isopropyl alcohol;

(2) the fountain solution is refrigerated to a temperature of 55 degrees Fahrenheit or less for alcohol based solutions;

(3) the fountain temperature at the mixing tank is capable of being determined continuously and of being recorded once per shift;

(4) the fountain solution mixing tanks are covered.

(d) Any owner or operator of an offset lithographic printing facility subject to this regulation and employing cleanup solvents containing VOC shall not operate, or cause or allow the operation of, such process unless:

(1) the cleanup solvents are kept in tightly covered tanks or containers during transport and storage; and

(2) cleaning rags used in conjunction with the cleanup solvents are placed, when not in use, in tightly closed containers and collected for proper disposal or recycling.

(e) Any owner or operator of a heatset web-offset lithographic printing press subject to this regulation with an actual emission rate of greater than or equal to 10 tons per year of VOC and employing a dryer shall not operate or cause or allow the operation of such press unless 100 percent of the dryer exhaust is ducted to a control device which achieves 85 percent by weight or greater control efficiency for VOC's as determined by 40 CFR Part 60, Appendix A, reference method 25 or reference method 25A, as in effect July 1, 1989.

(1) The owner or operator shall keep and maintain at the facility, and make available to inspection by a department representative, records for each heatset web-offset lithographic printing press sufficient to demonstrate that control efficiency is maintained.

(2) Use of emission control equipment shall require that continuous monitors be installed, calibrated, operated and maintained. The monitors shall continuously measure the following parameters:

(A) with an accuracy of the greater of ± 0.75 percent of the temperature being measured expressed in degrees Celsius, or 2.5 degrees Celsius, the exhaust gas temperature of all VOC destruction devices and the gas temperature immediately upstream and downstream of any catalyst bed; or

(B) with an accuracy of ± 2.00 percent of the amount being monitored, the cumulative amount of VOC recovered during a calendar month for all VOC recovery equipment; and

(C) any other parameters considered necessary by the department to verify proper operation of emission control equipment.

(f) For purposes of compliance:

(1) The owner or operator of a facility which is subject to the provisions of this regulation shall provide to the department for approval a demonstration of compliance with subsections (c), (d) and (e) of this regulation:

(A) upon alteration of an existing source or upon commencement of operation of an emission source which is not in existence and operating on the effective date of this regulation and at any time thereafter if requested by the department; or

(B) within 18 months after the effective date of this regulation for all other facilities and at any time thereafter if

requested by the department, except that sheet-fed lithographic presses with cylinder widths of 60 inches or more which are in existence and operating on the effective date of this regulation shall have 36 months after the effective date of this regulation to provide, for the approval of the department, a demonstration of compliance with subsection (c)(1) of this regulation.

(2) If the demonstration of compliance will not be conducted within 12 months after an existing facility becomes subject to this regulation, a final control plan shall be submitted to the secretary by December 31, 1991 for approval. This plan shall include the following:

(A) a detailed plan for process modification; and

(B) a time schedule for compliance containing increments of progress and a final compliance date.

(g) The owner or operator of a facility subject to this regulation shall keep and maintain at the facility, and make available to inspection by a department representative, records sufficient to determine continuous compliance with this regulation. The records shall include the following information and shall be kept at the facility for two years following the date of record:

(1) properties of inks (determined by the manufacturer's formulation data) as applied, density in pounds per gallon, and total volatile content in weight percent;

(2) quantity of inks as applied to substrate in pounds on a monthly basis;

(3) quantity of alcohol added to the fountain solution of each regulated press in pounds each month;

(4) percent by weight of alcohol in fountain solution as monitored on a once per shift basis using a calibrated hydrometer, refractometer or other approved testing device;

(5) quantity of cleanup solvents used on a monthly basis;

(6) quantity of coatings used on a monthly basis and percent VOC in coating by weight on a formulation basis;

(7) results of any testing conducted on an emission unit at a regulated facility;

(8) maintenance records of any air pollution control equipment;

(9) maintenance records of any continuous air pollution monitoring equipment;

(10) the temperature of the fountain solution as recorded on a once per shift basis; and

(11) records as required by the department.

(h) For the purpose of calculating facility-wide VOC emissions the following factors may be taken into consideration unless an alternative method is approved by the department. The facility may assume that:

(1) when properly disposing of used solvent laden rags, 50 percent of the solvent used for cleanup is retained in the rag, if the facility demonstrates, to the satisfaction of the department, that the solvents are not evaporated into the air during the waste-rag disposal process;

(2) 40 percent of the heatset ink oils stay in the paper web (substrate printed in a continuous rollfed printing process);

(3) no VOC's are emitted from the inks used in sheet fed presses and nonheatset web presses;
and

(4) 50 percent of the solvent from the fountain solution of a heatset web-offset lithographic printing press is emitted from the dryer.

(i) The provisions of this regulation shall be applicable only to offset lithography printing facilities located in areas which have been identified as not meeting the national primary ambient air quality standard for ozone in the manner prescribed by the provisions of the federal clean air act, 42 U.S.C. 7407, as promulgated at 40 CFR Part 81, as in effect July 1, 1989. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3010; effective Oct. 7, 1991.)

28-19-77. Chemical processing facilities that operate alcohol plants or liquid detergent plants. (a) The provisions of this regulation shall apply to any facility that:

(1) Uses, produces, or stores ethanol or methanol;

(2) has a volatile organic compound (VOC) potential contaminant emission rate of 100 tons per year or greater;

(3) is located in an area which has been identified as not meeting the national primary ambient air quality standard for ozone in the manner prescribed by the provisions of the federal clean air act, 42 U.S.C. 7407 as promulgated at 40 CFR Part 81, as in effect July 1, 1989.

(b) For purposes of this regulation, the potential contaminant emission rate shall be determined as the sum of all potential VOC emissions from point and fugitive sources, including any VOC's present in the wastewater stream, 100 percent of which are presumed to be emitted to the atmosphere.

(c) VOC emission sources are:

(1) Point sources, which include process tanks, alcohol storage tanks, wastewater vents, and wastewater VOC removal devices; and

(2) fugitive sources, which include all sources of VOC emissions other than point sources, including leaking valves, compressors, pumps, gauges, open-ended lines, sample flanges, and other sources of fugitive emissions including alcohol loading and unloading operations.

(d) The owner or operator of an affected facility shall control VOC emissions from process tanks and alcohol storage tanks by installing and operating the following, singly or in combination:

(1) Retrofitting the tanks with an internal or external floating roof. Internal and external floating roof tanks shall be designed and constructed to meet or exceed the design specifications found at 40 CFR Part 60, Subpart Kb, as in effect July 1, 1989; or

(2) retrofitting the tanks with a vapor collection system and control device to reduce VOC emissions by 95 per cent, by weight or greater. Vapor collection systems and control devices installed pursuant to this regulation shall be operated at all times when emissions may be vented to them.

(e) The owner or operator of an affected facility shall reduce the VOC concentration in process wastewater by 90 percent by weight or greater, less any credit for VOC reductions achieved through pollution prevention, by:

(1) installing a wastewater VOC recovery device or devices to remove and capture VOC's contained in process wastewater streams for recovery or destruction using a control device pursuant to subsection (f); or

(2) taking credit for preventing VOC's from entering the wastewater stream through pollution prevention actions such as equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

(f) The owner or operator of an affected facility shall control VOC emissions from wastewater point sources by installing and operating a device or devices to collect and recover or destroy VOC's from wastewater point sources to reduce VOC emissions by 95 percent, by weight, or greater. For treatment purposes, emissions from wastewater point sources may be combined, in a common vapor collection system or systems, with emissions collected from process tanks and alcohol storage tanks to achieve 95 percent reduction of VOC's by weight, or greater.

(g) The owner or operator of an affected facility shall minimize VOC emissions from fugitive sources by developing a fugitive source emission control plan which shall be submitted to the department within 12 months after the effective date of this regulation or upon commencing operation of the affected facility, whichever is later.

(1) The plan shall include a description of the control strategy and a testing program to evaluate the percent reduction of VOC emissions.

(2) The approved control strategy and testing program shall be implemented and the results of testing submitted to the department within six months of the department's approval of the plan.

(3) The fugitive source emission control plan shall be designed to achieve at least 50 percent control efficiency.

(h) During compliance demonstrations under subsections (d), (e), or (f):

(1) The averaging time for percent reduction requirements for gaseous VOC streams shall be the duration of the 40 CFR Part 60, Appendix A, reference method 25, performance test, as in effect July 1, 1989. Control equipment parameters, measured by continuous monitoring devices, shall indicate whether control equipment is properly operated and maintained; and

(2) the averaging time for percent reduction requirements for process wastewater streams shall be daily, confirmed by at least one daily sample of the process wastewater stream at both the inlet and outlet of the control device.

(i) No later than eighteen months after the effective date of this regulation or within 180 days of completion of control equipment installation, whichever date occurs first, the owner or operator of an affected facility shall conduct performance tests to demonstrate compliance with the applicable VOC control requirements found in subsections (d), (e), (f) and (g). If the performance test will not be conducted within 12 months after an existing facility becomes subject to this regulation, a final control plan shall be submitted to the secretary by December 31, 1991 for approval. This plan shall include the following:

(1) a detailed plan for process modifications; and

(2) a time schedule for compliance containing increments of progress and a final compliance date.

(j) The owner or operator of an affected facility shall conduct performance tests to demonstrate compliance with the applicable percent reduction requirements found in subsections (d) and (f) in accordance with 40 CFR Part 60, Appendix A, reference method 25 or reference method 25A, as in effect July 1, 1989, and other applicable approved EPA reference methods for gaseous streams and demonstrate compliance with the applicable percent reduction requirement found in subsection (e) by methods approved by the department for process wastewater streams. All monitoring

equipment shall be installed and calibrated prior to commencement of performance tests.

(k) The owner or operator of an affected facility shall conduct an initial performance evaluation for all tanks retrofitted with an internal or external floating roof in accordance with the testing requirements found at 40 CFR 60.113b, as in effect on July 1, 1989.

(l) The owner or operator of an affected facility which addresses VOC reduction:

(1) By means of a thermal incinerator shall install, operate, maintain and calibrate a monitoring device to continuously measure and record the temperature in the firebox, accurate to within ± 1.0 percent of the temperature being measured or ± 2.5 degrees Celsius, whichever is greater;

(2) by means of a catalytic incinerator shall install, operate, maintain and calibrate a monitoring device to continuously measure and record the exhaust gas temperature immediately before and after the catalyst bed, accurate to within ± 1.0 percent of the temperature being measured or ± 2.5 degrees Celsius, whichever is greater;

(3) by means of an absorber shall install, operate, maintain and calibrate a monitoring device to continuously measure and record the scrubbing liquid temperature and specific gravity (or other parameter approved by the department to measure absorbing liquid saturation);

(4) by means of a condenser shall install, operate, maintain and calibrate a monitoring device to continuously measure and record the product side temperature, accurate to within ± 1.0 percent of the temperature being measured or ± 0.5 degrees Celsius, whichever is greater;

(5) by means of a carbon adsorption unit shall install, operate, maintain and calibrate a monitoring device to continuously measure and record the carbon bed temperature and integrated stream flow;

(6) by means of retrofitting any tank with an internal or external floating roof shall implement a visual inspection and repair program consistent with 40 CFR 60.113b;

(7) of process wastewater shall, at least once daily, collect water samples simultaneously, at the inlet and outlet of the control device, and determine the VOC concentration in the samples. Percent reduction shall be determined as the difference between the inlet and outlet concentration divided by the inlet concentration; and

(8) by any means, including those specified in this subsection, shall measure any parameters and implement any programs which the department has notified the affected facility are necessary to verify proper operation of the emission control equipment.

(m) For the purposes of subsection (l), any monitoring required to be conducted continuously shall, at the minimum, require the monitoring system to measure the required parameter at 15 minute intervals and record the average of the measurements at least once per hour, with at least one hourly average recorded for each hour the process is operated.

(1) Monitoring equipment shall be operated during all periods, except when the VOC-generating process is completely shut down and the VOC concentration to the control device is zero.

(2) All monitoring equipment shall be installed and operated in accordance with the manufacturer's written specifications.

(n) The owner or operator of an affected facility shall maintain the following records, in a form suitable for inspection, for a minimum of two years from the date of generation:

(1) all measurements, including continuous monitoring system, monitoring device, and performance testing measurements;

(2) all continuous emission monitoring system performance evaluations;

(3) all continuous emission monitoring or monitoring device calibration checks, and adjustments and maintenance performed on these systems or devices; and

(4) any other information considered necessary by the department to verify proper operation and maintenance of emission control equipment.

(o) The owner or operator of an affected facility shall comply with the following reporting requirements:

(1) The owner or operator of any existing facility shall notify the department of the date installation of control equipment is completed. The notification shall be postmarked no later than 15 days after completion of installation.

(2) The owner or operator shall notify the department of the anticipated test dates at least 30 days, but not more than 60 days, prior to commencement of the compliance demonstration tests.

(3) The owner or operator shall submit a copy of all performance test results within 30 days of completion of any tests. Test results shall include a summary of all monitored control equipment parameters measured during the performance evaluation. (Authorized by K.S.A. 65-3006; implementing K.S.A. 65-3010; effective Oct. 7, 1991.)

28-19-78. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3010; effective Oct. 7, 1991; revoked March 21, 1994.)

28-19-79. (Authorized by K.S.A. 1995 Supp. 65-3005; implementing K.S.A. 65-3010; effective May 2, 1997; revoked April 27, 2001.).

28-19-80. Power generation facility monitoring programs. (a) On or before December 31 of each year, the owner or operator of a power generation facility who, for the purpose of consideration under the provisions of K.A.R. 28-19-81, proposes to conduct any air quality or radiological environmental impact monitoring of the facility shall submit to the department of health and environment a report describing the activities proposed for the 12 month period commencing on July 1 of the following year. The report shall include, at a minimum, the following information:

(1) The types of samples to be collected;

(2) the method of collecting the samples;

(3) the types of analyses to be conducted on the samples;

(4) the number and location of the sampling sites; and

(5) the sampling schedule.

(b) Upon receipt of the report required under subsection (a) of this regulation, the Department shall require that all data obtained as the result of the monitoring activities be submitted, in writing, to the Department, in accordance with a schedule prescribed by the Department and provided to the plant owner or operator.

(c) All data required to be reported in accordance with subsection (b) of this regulation shall be subject to quality review and evaluation by the Department. Pursuant to the conduct of this quality review and evaluation, the Department may require the owner or operator of the facility to provide additional information and conduct any additional instrumentation and analytical checks that are necessary to verify the data. (Authorized by and implementing K.S.A. 65-3022; effective, T-83-11, June 9, 1982; effective May 1, 1983.)

28-19-81. Environmental impact monitoring.

(a) On or before April 1 of each year, the department of health and environment shall notify the owner or operator of each power generation facility of any environmental impact monitoring activities that the Department proposes to conduct at the facility during the 12 month period commencing on July 1 of that year. This proposal shall include the information required to be reported under the provisions of K.A.R. 28-19-80(a) and shall reflect consideration of any proposals received by the Department under the provisions of that regulation.

(b) At the time of giving notice, as required by subsection (a) of this regulation, the Department also shall notify the owner or operator of the facility of the fee to be collected for determining and monitoring the environmental impact of the power generation facility, including any quality review and evaluation of monitoring proposed to be conducted by the owner or operator of the facility. The fee shall be computed in accordance with K.A.R. 28-19-82 on the basis of reasonable estimates of costs of the department of health and environment for the conduct of these activities during the proposed 12 month monitoring period.

(c) If, upon receipt of the notices provided for in subsections (a) and (b) of this regulation, the owner or operator of a facility who has submitted a monitoring program proposal in accordance with the provisions of subsection (a) of K.A.R. 28-19-80 believes the monitoring activities to be conducted represent an avoidable duplication of effort and expense, the owner or operator may request that the Department modify the monitoring activities to be conducted. The request shall be submitted, in writing, within 30 days of the receipt of the notices and shall identify the basis upon which duplication is alleged.

(d) Upon receipt of the notices provided for in subsections (a) and (b) of this regulation the owner or operator of a facility who has not submitted a monitoring proposal in accordance with the provisions of subsection (a) of K.A.R. 28-19-80 may submit a monitoring proposal providing the information required by that regulation and additional information indicating the proposed date by which this plan is to be fully placed into effect. This plan shall be submitted to the Department in writing not later than 30 days after receipt of the notices. Any facility owner or operator submitting a plan in accordance with this subsection may request that the Department consider this plan and modify the proposals provided under the provisions of subsection (a) of this regulation in order to avoid any specifically identified duplication

of effort and expense between monitoring activities proposed to be carried out by the Department and those proposed to be carried out under the plan. This request shall be in writing and shall be submitted with the plan.

(e) Within 30 days of receipt of a request as provided for by subsections (c) or (d), the Department shall review the request and make a final determination of the monitoring activities that it will conduct at the facility. When possible these activities shall avoid duplication of effort and expense between activities approved to be carried out by the owner or operator of the facility and those to be carried out by the Department. The Department shall notify the owner or operator of the facility, in writing, of that determination and the basis upon which it was made. If the monitoring activities to be conducted at the facility by the Department are modified due to the request, the Department shall recompute the monitoring fee and notify the owner or operator of the new fee.

(f) All fee remittances shall be made payable to the state of Kansas, power generating facility fee fund, and shall be paid annually on or before July 1.

(g) The department of health and environment shall prepare a report that describes the nature and findings of each environmental impact monitoring activity that has been conducted at any power generation facility under the provisions of this regulation. This report shall be provided for each 12 month monitoring period proposed under the provisions of subsection (a) of this regulation. A copy of this report shall be sent to the owner or operator of these facilities not more than 120 days after the end of the monitoring period.

(h) The department of health and environment shall prepare a final fiscal report that computes its actual costs for each power generating facility environmental impact monitoring activity conducted under the provisions of this regulation. This report shall cover the 12 month period reported under subsection (g) of this regulation. A copy of this report shall be sent to the owner or operator of each monitored facility at the same time that the report required by subsection (g) is sent.

(i) The department of health and environment shall determine an adjusted fee to be applicable to each facility for which environmental impact monitoring activities have been conducted. This fee shall be calculated in accordance with the provisions of K.A.R. 28-19-82 using the cost figures included in the reports required by subsection (h) of this regulation. This adjusted fee shall be compared with the fee originally paid by the owner or operator for the same period under the provisions of subsection (f). If the Department finds that the adjusted fee is more than the fee originally paid by the source owner or operator, it shall:

(1) add the difference between the adjusted fee and the original fee that is established under subsections (b) or (e) to the next annual fee for the facility, or any other facility owned or operated by the same person; or

(2) if no new monitoring fees are proposed for those facilities by the following April 1, the Department shall subsequently provide the owner or operator with written notice that an additional fee equal to this difference is to be paid by the following July 1. If the Department finds that the adjusted fee is less than the original fee paid, it shall deduct the difference between the adjusted fee and the original fee from the next annual fee that is established under subsections (b) and (e) for the facility, or any other facility owned or operated by the same person. The source owner or operator shall pay any fee determined in accordance with this subsection in the manner prescribed by subsection (f). (Authorized by and implementing K.S.A. 65-3022; effective, T-83-11, June 9, 1982; effective May 1, 1983.)

28-19-82. Fee determination basis. (a) The fee to be collected for determining and monitoring the environmental impact of a power generation facility during any 12 month period included under the provisions of K.A.R. 28-19-81(a) shall be determined upon the basis of the type of fuel used to power the facility and the generating design capacity of the facility. The maximum fee for any facility powered by coal or nuclear energy shall be based on the following formula:

$$\text{Impact Monitoring Fee} = \frac{\text{G.M. x C.M.}_y}{\text{T.G.M.}_y} + \frac{\text{G.Q.R. x C.Q.R.}_y}{\text{T.G.Q.R.}_y}$$

When using the formula, the following values shall be used:

1. G.M. = the generating design capacity for that particular facility which is monitored with sampling equipment operated by the department of health and environment;

2. T.G.M._y = the sum of the generating design capacities for all facilities in the state powered by the same type of fuel that are monitored with identical sampling equipment operated by the department of health and environment during the same 12 month period;

3. C.M._y = the sum of all the costs of the department of health and environment during the same 12 month period for operating identical sampling equipment at each power generation facility powered by the same type of fuel;

4. G.Q.R. = the generating design capacity for that particular facility where monitoring activities conducted by the owner or operator are subject to quality review and evaluation by the department of health and environment;

5. T.G.Q.R._y = the sum of the generating design capacities for all facilities in the state powered by the same type of fuel where monitoring activities conducted by the owner or operator are subject to identical quality review and evaluation by the department of health and environment during the same 12 month period; and

6. C.Q.R._y = the sum of the costs of the department of health and environment during the same 12 month period for providing identical quality review and evaluation of monitoring activities conducted by the owner or operator at each power generation facility powered by the same type of fuel. (Authorized by and implementing K.S.A. 65-3022; effective, T-83-11, June 9, 1982; effective May 1, 1983.)

28-19-200. General provisions; definitions. All terms and abbreviations used in the Kansas air quality regulations shall have the following meanings, unless otherwise defined in an individual regulation or unless the context clearly requires otherwise.

(a) "Affected facility" or "facility" means any building, structure, machine, equipment, device, or installation, or combination thereof, to which an emissions limitation or standard applies.

(b) "Affected source" means a stationary source that includes one or more affected units subject to emission reduction requirements or limitations under title IV of the federal clean air act, 42 U.S.C. §7401 et seq., “acid deposition control.”

(c) "Affected state" means any state:

(1) that is contiguous with Kansas and whose air quality may be affected by emissions from a stationary source or proposed stationary source in Kansas; or

(2) that is within 50 miles of a permitted stationary source located in Kansas.

(d) "Agricultural-related activity."

(1) "Agricultural-related activity" means processes used in the production of any of the following:

(A) popcorn that is packaged but not popped;

(B) ornamental floriculture and nursery products;

(C) shortening, table oils, and margarine;

(D) prepared feeds and feed ingredients for animals and fowl;

(E) molasses that is mixed or blended;

(F) cotton ginnings; and

(G) flour and other grain mill products.

(2) "Agricultural-related activity" also means sunflower oil reclaiming, seed cleaning, and operations related to alfalfa dehydrators, sun-cured alfalfa plants, soybean oil mills, and grain elevators.

(e) "Applicable requirement," for purposes of class I operating permits, means any of the following:

(1) the standards or other requirements that are part of the approved state implementation plan or part of any applicable federally promulgated implementation plan;

(2) any term or condition of a construction permit issued pursuant to:

(A) K.A.R. 28-19-16 through 16m, and amendments thereto, nonattainment area requirements;

(B) K.A.R. 28-19-17 through 17q, and amendments thereto, prevention of significant deterioration requirements;

(C) part C of title I of the federal clean air act by the USEPA; or

(D) K.A.R. 28-19-300, or its predecessor, K.A.R. 28-19-14;

(3) any standard or other requirement promulgated under 42 U.S.C. §7411 of the federal clean air act, “standards of performance for new stationary sources,” including 42 U.S.C. §7411(d);

(4) any standard or other requirement promulgated under 42 U.S.C. §7412 of the federal clean air act, “hazardous air pollutants,” including any requirement concerning accident prevention under 42 U.S.C. §7412(r)(7);

(5) any standard or other requirement of the acid rain program under title IV of the federal clean air act, “acid deposition control,” or regulations promulgated thereunder;

(6) any requirement established pursuant to 42 U.S.C. §7661c(b) of the federal clean air act, “permit requirements and conditions, monitoring and analysis,” or 7414(a)(3) of the federal clean air act, regarding inspections, monitoring and entry, enhanced monitoring, and compliance certification;

(7) any standard or other requirement governing solid waste incineration under 42 U.S.C. §7429 of the federal clean air act, “solid waste combustion”;

(8) any standard or other requirement for consumer and commercial products under 42 U.S.C. §7511b of the federal clean air act, “federal ozone measures,” subsection (e) “control of emissions from certain sources”;

(9) any standard or other requirement for tank vessels under 42 U.S.C. §7511b(f) of the federal clean air act, “federal ozone measures,” subsection (f) “tank vessel standards”;

(10) any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the federal clean air act, “stratospheric ozone protection,” unless the USEPA has determined that such requirements need not be contained in a class I operating permit; and

(11) any national ambient air quality standard or increment or visibility requirement under part C, “prevention of significant deterioration of air quality,” of title I of the federal clean air act, but only as it would apply to temporary sources permitted pursuant to requirements adopted to enable the department to administer a program developed to implement the provisions of 42 U.S.C. §7661c, “permit requirements and conditions,” subsection (e), “temporary sources,” of the federal clean air act.

(f) "Application" or "application form" means the application form and all supporting documentation, unless the context clearly indicates otherwise.

(g) "Area source" means a stationary source of hazardous air pollutants that is not a major source.

(h) "ASTM" means the American society for testing and materials.

(i) "Begin actual construction" means the initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. These activities include, but shall not be limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

(j) "Building, structure, facility, or installation" means all of the air pollutant emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control. Air pollutant emitting activities shall be considered as part of the same industrial grouping if they have the same two-digit code as described in the "standard industrial classification manual 1987," as published by the U.S. governing printing office, as adopted at K.A.R. 28-19-301(f)(2).

(k) "Calendar quarter" means January through March, April through June, July through September, or October through December of any calendar year.

(l) "Capture efficiency" (CE) means the amount of an air contaminant emitted from an emissions unit and directed to an air emissions control device (ce), divided by the total emissions of the air contaminant from the emissions unit (te), and expressed as a two-decimal number between 0.00 and 1.00. (CE = ce/te)

(m) "Class I or class II substance" means a substance subject to a standard promulgated under or established by title VI of the federal clean air act, “stratospheric ozone protection,” 42 U.S.C. §7401 et seq.

(n) "Class I, II or III area" means a classification assigned to any area of the state under the provisions of 42 U.S.C. §7472 and §7474 of the federal clean air act.

(o) "Commercial or medical waste incinerator" means any incinerator used to dispose of waste from any commercial operation or used to dispose of any medical services waste as defined at K.A.R. 28-29-27.

(p) "Construction" means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit.

(q) "Control device" means any equipment, device, or other article that is designed, installed, or both, for the purpose of reducing or preventing the discharge of contaminant emissions to the air.

(r) "Control device efficiency (CDE)" means the amount of an air contaminant directed to an air emissions control device or devices (ce) minus the emissions of the air contaminant emitted from the air emissions control device or devices, or otherwise released into the atmosphere (re), divided by the amount of the air contaminant directed to the air emissions control device or devices (ce), expressed as a two-decimal number between 0.00 and 1.00. (CDE = (ce - re)/ce)

(s) "De minimis emissions" means air emissions of hazardous air pollutants for which no applicable requirements exist.

(t) "Department" means the Kansas department of health and environment or an authorized representative of the department.

(u) "Direct heating equipment" means any device in which fuel is burned in direct contact with, and for the purpose of heating, air that comes in direct contact with the material being processed.

(v) "Director" means the secretary of health and environment or a designated representative of the secretary.

(w) "Emission limitation and standard" means a requirement established pursuant to the Kansas air quality regulations.

(x) "Emission source" means any machine, equipment, device, or other article or operation that directly or indirectly releases contaminants into the outdoor atmosphere.

(y) "Emission unit" means any part or activity of a stationary source that emits or would have the potential-to-emit any regulated pollutant or any pollutant listed under 42 U.S.C. §7412(b) of the federal clean air act.

(z) "Existing" means that a processing machine, equipment, device, or other article, or any combination of the above, or any indirect heating equipment or incinerator is completed, under construction, or under purchase contract on the effective date of any applicable regulation.

(aa) "Existing facility" means a facility that is completed, under construction, or under purchase contract at the time an emission limitation or standard becomes applicable to such facilities.

(bb) "Facility" or "affected facility" means any building, structure, machine, equipment, device, or installation, or combination thereof, to which an emissions limitation or standard applies.

(cc) "Federal clean air act" means 42 U.S.C. §7401 et seq., as in effect on January 15, 1996.

(dd) "Federally designated fugitive emissions source" means any of the following:

(1) coal cleaning plants, with thermal dryers;
(2) kraft pulp mills;
(3) portland cement plants;
(4) primary zinc smelters;
(5) iron and steel mills;
(6) primary aluminum ore reduction plants;
(7) primary copper smelters;
(8) municipal incinerators capable of charging more than 250 tons of refuse per day;
(9) hydrofluoric, sulfuric, or nitric acid plants;
(10) petroleum refineries;
(11) lime plants;
(12) phosphate rock processing plants;
(13) coke oven batteries;
(14) sulfur recovery plants;
(15) carbon black plants that use a furnace process;
(16) primary lead smelters;
(17) fuel conversion plants;
(18) sintering plants;
(19) secondary metal production plants;
(20) chemical process plants;
(21) fossil-fuel boilers, or a combination thereof, totaling more than 250 million British thermal units per hour

heat input;

(22) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(23) taconite ore processing plants;

(24) glass fiber processing plants;

(25) charcoal production plants;

(26) fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(27) any other stationary source categories regulated by a standard promulgated as of August 7, 1980,under 42 U.S.C. §7411, “new source performance standards,” or 42 U.S.C. §7412, “hazardous air pollutants,” of the federal clean air act, but only with respect to those air pollutants that have been regulated for that category.

(ee) "Federally enforceable" means:

(1) all limitations and conditions that are enforceable by the administrator of the U.S. environmental protection agency;

(2) requirements of regulations included in the federally approved state implementation plan; and

(3) any permit requirements established pursuant to these requirements.

(ff) "Fugitive emissions" means those emissions that directly result from operation of an emissions unit or stationary source but that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(gg) “Hazardous air pollutant” shall have the meaning as defined in K.A.R. 28-19-201(a).

(hh) "Incinerator" means any device or structure used for the destruction or volume reduction of garbage, rubbish, or other liquid or solid waste materials, by combustion, for the purpose of disposal or salvage.

(ii) "Indirect heating equipment" means any device in which fuel is burned to produce heat, which heat is transferred through a heat-conducting materials barrier or by a heat storage medium to a material that is to be heated so that the material being heated is not contacted by, and adds no substance to, the products of combustion.

(jj) "Kansas air quality regulations" means those regulations at article 28-19 of the Kansas administrative regulations, as adopted by the secretary pursuant to K.S.A. 65-3001 et seq., and amendments thereto.

(kk) "Major source" means any stationary source, or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person, or persons who are under common control, belonging to a single major industrial grouping and that are described in paragraphs (1), (2), (3) or (4) of this subsection. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant-emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group with the same two-digit code as described in the “standard industrial classification manual, 1987.”

(1) For pollutants other than radionuclides, major source shall include any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential-to-emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the secretary may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor station or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

(2) For radionuclides, major source shall have the meaning specified by the secretary by regulation.

(3) Major source shall include a major stationary source of air pollutants, as defined in 42 U.S.C. §7602 of the federal clean air act, that directly emits or has the potential-to-emit 100 tons per year or more of any air pollutant, including any major source of fugitive emissions of any such pollutant from a federally designated fugitive emissions source. The fugitive emissions of a stationary source shall not be considered in determining whether or not it is a major stationary source, unless the source is a federally designated fugitive emissions source.

(4) Major source shall include a major stationary source as defined in part D of title I of the federal clean air act.

(ll) "Modified open burning operation" means an open burning operation in which the contaminants emitted to the ambient air as a result of combustion are reduced, controlled, or both, through positive regulation of fuel-to-air ratios, air screens, or other control techniques. Combustion devices used solely for the purpose of disposing of flammable gases shall not be considered to be modified open burning operations.

(mm) “Municipal solid waste landfill” or “MSW landfill” means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of

wastes regulated pursuant to subtitle D of the resource conservation and recovery act (RCRA), 42 U.S.C. §6901, et seq., such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

(nn) "National ambient air quality standard," "national primary ambient air quality standard," and "national secondary ambient air quality standard" mean those standards promulgated at 40 CFR Part 50, revised as of July 1, 1995, which are adopted by reference.

(oo) "Official observer."

(1) "Official observer" means a designated representative of the department who has been certified by the department as being trained, and qualified on the basis of actual testing, to determine the degree of opacity of visible plumes by direct visual observation. The testing procedure shall be established and published by the department. Each certified individual shall be required to be re-tested at least once every six months to maintain certification.

(2) The term "official observer" shall also include a representative of the USEPA that has been properly certified pursuant to 40 CFR Part 60, appendix A, method 9.

(pp) "Opacity" means the degree to which a contaminant emission obscures an official observer's view of transmitted light passing through that contaminant. Zero percent opacity is perfect transparency, and 100 percent opacity is impenetrable to light.

(qq) "Open burning operation" means the burning of any materials in which contaminants resulting from combustion are emitted directly into the ambient air without passing through a stack or chimney from an enclosed chamber. A chamber shall be considered enclosed when only those apertures, ducts, stacks, flues or chimneys that are required to supply combustion air and to permit the escape of exhaust gases are open during the combustion process.

(rr) "Organic material" means a chemical compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

(ss) "Owner or operator" means any person who owns, leases, operates, controls, or supervises an affected facility, emissions unit, or stationary source subject to any standard or requirement of the Kansas air quality act, K.S.A. 65-3001 et seq., or any rule and regulation promulgated thereunder.

(tt) "Particulate matter" means any airborne finely divided solid or liquid material, except uncombined water, including PM10.

(uu) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, or any legal successor, representative, agent, or agency of the foregoing.

(vv) "PM10" or "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers, as measured by a reference method based on appendix J of 40 CFR, Part 50 and designated in accordance with 40 CFR §53.8, or by an equivalent method designated by the administrator of the U.S. environmental protection agency on or before the effective date of this regulation in accordance with 40 CFR §53.8, revised as of July 1, 1995. Appendix J of 40 CFR, Part 50 and 40 CFR §53.8, revised as of July 1, 1995 are adopted by reference.

(ww) "Portable source" means an emissions unit or stationary source that, due to the design of the emissions unit or stationary source, is capable of being moved from one location to another and that, except for storage purposes, remains at one location no longer than 180 days during any 365-day period, unless otherwise approved in writing by the department. A mobile source shall not be considered a portable source.

(xx) "Potential contaminant emission rate" means the total weight of a contaminant that is or, in the absence of control equipment, would be emitted from an air contaminant source when that source is operating at its maximum capacity. The potential contaminant emissions rate shall be determined by:

(1) sampling in a flue or duct prior to the inlet of any control device serving the flue or duct;

(2) estimating such emissions by performing a "material balance" calculation that indicates the difference between processing input weight and output weight of materials;

(3) using potential contaminant emission factors as recognized by the department; or

(4) using any other estimating technique mutually agreeable to the department and the person responsible for operation of the source.

(yy) "Potential-to-emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted,

stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall not be considered in determining the potential-to-emit of a stationary source.

(zz) "Premises" means one or more contiguous or adjacent parcels of land and any structures or equipment located on the parcels under one ownership. For the purpose of this definition, a parcel of land that is bordering another parcel divided solely by a public roadway or a railroad right of way shall be considered to be adjacent.

(aaa) "Processing" means any operation related to the handling, storage, treatment, or conversion of input materials to produce a saleable or usable end product.

(bbb) "Regulated pollutant" means:

(1) nitrogen oxides or any volatile organic compounds;

(2) any pollutant for which a national ambient air quality standard has been promulgated;

(3) any pollutant that is subject to any standard promulgated under 42 U.S.C. §7411, “standards of performance for new stationary sources,” of the federal clean air act;

(4) any class I or II substance subject to a standard promulgated under or established by title VI of the federal clean air act, “stratospheric ozone protection”; or

(5) any pollutant subject to a standard or other requirements promulgated or established under 42 U.S.C. §7412 of the federal clean air act, “hazardous air pollutants,” including 42 U.S.C. §7412(g), (j), and (r), including the following:

(A) any pollutant subject to requirements under 42 U.S.C. §7412(j) of the federal clean air act. If the administrator of the USEPA fails to promulgate a standard by the date established pursuant to 42 U.S.C. §7412(e) of the federal clean air act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to 42 U.S.C. §7412(e) of the federal clean air act; and

(B) any pollutant for which the requirements of 42 U.S.C. §7412(g)(2) of the federal clean air act have been met, but only with respect to the individual source subject to 42 U.S.C. §7412(g)(2) requirement.

(ccc) "Responsible official" means one of the following:

(1) For a corporation, a president, secretary, treasurer or vice-president in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to permit or other relevant regulatory requirement and if either:

(A) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million, in second quarter, 1980 dollars; or

(B) the delegation of authority to such representative is approved in advance by the department;

(2) for a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(3) for a municipality, or a state, federal, or other public agency, a principal executive officer or ranking elected official. For purposes of this definition, a principal executive officer of a federal agency shall include the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency; or

(4) for affected sources, the designated representative under title IV of the federal clean air act, “acid deposition control.”

(ddd) "Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall include emissions from any off-site support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions shall not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(eee) "Significant" means in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

(1) 100 tons per year of carbon monoxide;

(2) 40 tons per year of nitrogen oxides;

(3) 40 tons per year of sulfur dioxide;

(4) 25 tons per year of particulate matter emissions;

(5) 15 tons per year of PM10 emissions;

(6) 40 tons per year of volatile organic compounds for ozone; or

(7) 0.6 tons per year of lead.

(fff) "Smoke" means particulate matter emissions, resulting from incomplete combustion, that consist primarily of carbon, ash, and other material and that form a visible plume in the ambient atmosphere.

(ggg) "Start-up" or “startup” means the setting in operation of a stationary source for any purpose.

(hhh) "State implementation plan" means any documents, including state or locally adopted regulations, submitted by a state to, and approved by, the U.S. environmental protection agency as required by the provisions of 42 U.S.C. §7410 of the federal clean air act, and any regulations promulgated by the administrator of the U.S. environmental protection agency pursuant to the provisions of that section.

(iii) "Stationary source" or "source" means any building, structure, facility, or installation that emits or may emit any air pollutant subject to any emission limitation or standard or that is required to obtain a permit pursuant to the Kansas air quality regulations.

(jjj) "Temporary" means, in relation to the emissions from a source, that the emissions will not occur at a particular location for a period of more than two years, unless a longer time is approved by the secretary or an authorized representative of the secretary.

(kkk) "Total suspended particulate" means particulate matter as measured by the method described in appendix B of 40 CFR Part 50, revised as of July 1, 1995, which is adopted by reference.

(lll) "USEPA" means the United States environmental protection agency, or its successor.

(mmm) “Volatile organic compounds (VOC)” shall have the meaning as defined in K.A.R. 28-19-201(b).

(nnn) "Waste" means garbage, refuse and other discarded materials including, but not limited to solids, semisolids, sludges, liquids and contained gaseous waste materials resulting from industrial, commercial, agricultural and domestic activities. The term "waste" shall not include hazardous wastes as defined in K.A.R. 28-31-3. (Authorized by K.S.A. 1996 Supp. 65-3005; implementing K.S.A. 1996 Supp. 65-3005; effective Oct. 10, 1997.)

28-19-201. General provisions; definitions; regulated compounds list. As used in this regulation, “CAS Number” means chemical abstract service number. (a) "Hazardous air pollutant" means one or more of the following chemical pollutants:

CAS Number	Chemical name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Amino biphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate (DEHP)
542881	Bis(chloromethyl) ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
133062	Captan
63252	Carbaryl

75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1 ,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethylether (Bis(2-chlorethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N, N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3-Dimethyl benzidine
79447	Dimethyl carbamoylchloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinotrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethylene oxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane
140885	Ethyl acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl chloride (Chloroethane)
106934	Ethylene dibromide (Dibromoethane)

107062	Ethylene dichloride (1,2-Dichloroethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane)
50000	Formaldehyde
76448	Heptachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
78933	Methyl ethyl ketone (2-Butanone)
60344	Methyl hydrazine
74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis(2-chloroaniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N -Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine

7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Aroclors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1 ,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4, 6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
580841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic, including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide Compounds [1]
0	Glycol ethers [2]
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers [3]
0	Nickel Compounds

0 Polycylic Organic Matter [4]
0 Radionuclides (including radon) [5]
0 Selenium Compounds

NOTE: For all listings above that contain the word "compounds" and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical as part of that chemical's infrastructure.

[1] X'CN where X = H' or any other group where a formal dissociation may occur, for example, KCN or $Ca(CN)_2$.

[2] Includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol $R\text{-}(OCH_2CH_2)_n\text{-}OR'$ where

n = 1, 2, or 3

R = alkyl or aryl groups

R' = R, H, or groups that, when removed, yield glycol ethers with the structure: $R\text{-}(OCH_2CH)_n\text{-}OH$. Polymers are excluded from the glycol category.

[3] Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral-derived fibers) of average diameter 1 micrometer or less.

[4] Includes organic compounds with more than one benzene ring, and that have a boiling point greater than or equal to 100°C.

[5] A type of atom that spontaneously undergoes radioactive decay.

(b) "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions including any organic compound other than those that have been designated by the department as having negligible photochemical reactivity. For purposes of programs and plans implementing the national ambient air quality standards for ozone only, the following organic compounds have been designated by the department as having negligible photochemical reactivity:

(1) methane;
(2) ethane;
(3) 1,1,1-trichloroethane (methyl chloroform);
(4) methylene chloride;
(5) trichlorofluoromethane (CFC-11);
(6) dichloro-difluoromethane (CFC-12);
(7) chlorodifluoromethane (CFC-22);
(8) trifluoromethane (CFC-23);
(9) trichlorotrifluoroethane (CFC-113);
(10) dichlorotetrafluoroethane (CFC-114);
(11) chloropentafluoroethane (CFC-115);
(12) dichlorotrifluoroethane (HCFC-123);
(13) tetrafluoroethane (HCFC-134a);
(14) dichlorofluoroethane (HCFC-141b);
(15) chlorodifluoroethane (HCFC-142b);
(16) chlorotetrafluoroethane (HCFC-124);
(17) pentafluoroethene (HCFC-125);
(18) tetrafluroroethane (HCFC-134);
(19) trifluoroethane (HCFC-143a);
(20) difluoroethane (HCFC-152a);
(21) parachlorobenzotrifluoride (PCBTF);
(22) cyclic, branched, or linear, completely methylated siloxanes;
(23) acetone;
(24) The following classes of perfluorcarbon compounds:
(A) cyclic, branched, or linear, completely fluorinated alkanes;
(B) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(C) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturation;

(D) sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine;

(25) perchloroethylene.;

(26) difluoromethane (HFC-32);

(27) ethylfluoride (HFC-161);

(28) 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);

(29) 1,1,2,2,3-pentafluoropropane (HFC-245ca);

(30) 1,1,2,3,3-pentafluoropropane (HFC-245ea);

(31) 1,1,1,2,3-pentafluoropropane (HFC-245eb);

(32) 1,1,1,3,3-pentafluoropropane (HFC-245fa);

(33) 1,1,1,2,3,3-hexafluoropropane (HFC-236ea);

(34) 1,1,1,3,3-pentafluorobutane (HFC-365mfc);

(35) chlorofluoromethane (HCFC-31);

(36) 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);

(37) 1-chloro-1-fluoroethane (HCFC-151a);

(38) 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane ($C_4F_9OCH_3$);

(39) 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$);

(40) 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$);

(41) 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$)

(42) decafluoropentane (HFC-43-10mee)

(43) 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HFC-225ca);

(44) 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HFC-225cb); and

(45) methyl acetate (HFC 43-10mee). (Authorized by and implementing K.S.A. 1997 Supp. 65-3005; effective Oct. 10, 1997; amended Feb. 12, 1999.)

28-19-202. Annual emissions fee. (a) The owner or operator of each stationary source of air emissions that has actual emissions of the type and quantity specified in subsection (b) of this regulation shall pay an annual emissions fee to the department. Actual emissions shall be calculated for a calendar year according to K.A.R. 28-19-210.

(b) The types of air emissions and the quantity of actual emissions for which annual emissions fees shall be assessed shall be the following:

(1) Air emissions of 100 or more tons per year of any of the following:

(A) Sulfur oxides measured as sulfur dioxide;

(B) particulate matter calculated as PM10, except if no emission factor or approvable method for calculating PM10 is available, annual emissions fees shall be assessed for total particulate emissions;

(C) nitrogen oxides expressed as nitrogen dioxide; and

(D) total volatile organic compounds;

(2) air emissions of hazardous air pollutants in either of the following quantities, whichever is greater:

(A) 10 or more tons per year of any single hazardous air pollutant; or

(B) 25 or more tons per year of any combination of hazardous air pollutants.

For purposes of this subsection, actual emissions shall include fugitive emissions from federally designated fugitive emission sources and fugitive hazardous air pollutant emissions.

(c) The annual emissions fee for calendar year 2003 and for each subsequent year shall equal the sum of the actual emissions of the pollutant or pollutants specified in subsection (b) of this regulation, rounded to the nearest ton, multiplied by $25.00, subject to the following:

(1) The owner or operator shall not be required to include any pollutant emitted from the stationary source more than one time in the fee calculation; and

(2) the owner or operator shall not be required to include the following in the emission fee calculation:

(A) Emissions of any pollutant of 500 pounds per year or less from any emissions source, unless the total emissions from similar sources at the stationary source equal or exceed 2,000 pounds per year;

(B) emissions in excess of 4,000 tons per year of any single pollutant from any stationary source; and

(C) for a portable emissions unit or stationary source that operates both in Kansas and out-of- state, emissions from

the unit or source while operating out-of-state.

(d) Each owner or operator shall complete the calculations of actual emissions and calculations of the emissions fee on forms provided by the department.

(1) A responsible official or the person most directly responsible for the compilation of the submitted information shall sign the completed forms.

(2) The owner or operator shall submit the annual emissions fee payment to the department on or before June 1 of the year following the calendar year for which the actual emissions were determined. Timeliness of submissions shall be determined by the postmark if submitted by mail. If June 1 falls on a Saturday, Sunday, or holiday, then the submission shall be due on or before the next business day following June 1.

(3) The owner or operator shall make annual emissions fee payments by check, draft, credit card, or money order payable to the Kansas department of health and environment.

(4) Payment of emission fees to the department shall be the responsibility of the person or persons who are the owners or operators of the emissions unit or stationary source on the date the emissions fee is due. For purposes of calculating actual emissions for a period in which someone other than the current owner or operator was the owner or operator of the stationary source, the owner or operator responsible for paying the fee may assume that the operation of the facility was identical to the operation of the facility by the current owner or operator if the current owner or operator has been unable, after reasonable and diligent inquiry, to obtain the actual operating information from the previous owner or operator.

(e) Each owner or operator who fails to pay the annual emissions fee on or before the deadline specified in paragraph (d)(2) shall pay a late fee of either $100.00 or 1% of the annual emissions fee, whichever is greater.

(f) Each owner or operator who fails to pay the annual emissions fee within 10 calendar days after the date of the department's written notification that the emissions fee has not been received shall pay a continuing late fee, in addition to the fee specified in subsection (e). The continuing late fee shall be $10 per day or 0.05% of the annual emissions fee per day, whichever is greater. The timeliness of the submission from the owner or operator shall be determined by the postmark if the fee is submitted by mail.

(g) The amount of any overpayment greater than or equal to $5.00 made by the owner or operator of a stationary source shall be credited to the next year's annual emissions fee. Any owner or operator may apply overpayments of emissions fees paid for one source to the fees applicable to any other source for which the owner or operator is responsible for payment. A refund may be issued by the department if a credit has not been used or if the department determines that, based on the source's past emissions, a credit will not be used. Overpayments in the amount of $5.00 or less shall not be credited or refunded. (Authorized by K.S.A. 65-3005 and 65-3024; implementing K.S.A. 65-3024; effective Nov. 22, 1993; amended Jan. 23, 1995; amended March 15, 1996; amended Feb. 21, 1997; amended Feb. 13, 1998; amended March 23, 2001; amended Jan. 30, 2004.)

28-19-203. Reserved.

28-19-204. General provisions; permit issuance and modification; public participation. (a) The public shall be provided the opportunity to participate in the permit development or modification process prior to issuance of a construction permit for an affected facility, a class I or class II operating permit, or a significant modification of a class I or class II operating permit.

(b) Prior to the issuance of a permit or permit modification which requires public participation or prior to any public hearing held pursuant to K.S.A. 1993 Supp. 65-3008a, a notice shall be placed in the Kansas Register and a newspaper of general circulation in the area where the facility is, or will be located.

(c) The notice shall:

(1) identify the facility which is the subject matter of the permit action, except in the case of a general permit;

(2) state the name and address of the owner or operator of the facility, except in the case of a general permit;

(3) state the address of the facility, except in the case of a general permit;

(4) describe the activity or activities involved in the permit action;

(5) describe the air emissions from any proposed new facility or involved in any permit modification;

(6) state the name, address and telephone number of a person from whom interested persons may obtain additional information which is not confidential, including:

(A) copies of the proposed permit or permit modification;

(B) the application;

(C) all relevant supporting materials including any monitoring and compliance certification and compliance plan; and

(D) all other materials available to the department that are relevant to the permitting decision;

(7) state the department's name and address;

(8) include a brief description of the procedures for submitting written comments including a date which is 30 or more days after the notice is first published by which comments shall be submitted to the department; and

(9) include a statement of the procedures to request a public hearing or specify the time and place of the public hearing if a public hearing has been scheduled. If a public hearing has been scheduled, notice of the hearing shall be published at least 30 or more days in advance of the hearing.

(d) The notice shall state that a copy of the proposed permit and all supporting documentation is available for public review at the department's central office and at the appropriate district office or local agency, and shall provide the name, address and telephone number of a contact person at the central office and at the appropriate district office or local agency.

(e) The notice may describe more than one permit action or public hearing.

(f) Written comments timely received by the department during the public comment period and written comments and oral testimony received during a public hearing shall become part of the permit record. All such written and oral comments which are relevant to the permit decision and which are within the jurisdiction established by the permit action shall be considered in making a final decision on the proposed permit action.

(g) A response to the comments shall be issued at the time any final permit decision is issued. The response to the comments shall be available to the public and shall:

(1) specify any changes made to the proposed permit as a result of any public comments; and

(2) briefly respond to any significant comments received during the public comment period or during the public hearing.

(h) Copies of the proposed permit, the application, all relevant supporting materials including any compliance plan and compliance certification, and all other materials available to the permitting authority that are relevant to the permitting decision shall, upon request, be furnished without charge to the USEPA and to any affected state. Any other person requesting copies of such documentation shall pay a fee equal to that regularly charged by the department for copying documents unless some other provision of law provides otherwise. (Authorized by K.S.A. 1993 Supp. 65-3005 and implementing K.S.A. 1993 Supp. 65-3008a; effective Jan. 23, 1995.)

28-19-205 through 28-19-209. Reserved.

28-19-210. Calculation of actual emissions.

(a) Whenever required to be determined by the Kansas air quality regulations, the quantity of actual emissions from any emissions unit or stationary source shall be calculated by the owner or operator of an emissions unit or stationary source using:

(1) Data generated from continuous monitoring systems as specified in subsection (c) of this regulation;

(2) approved emission factors as specified in subsection (d) of this regulation;

(3) material balances as specified in subsection (e) of this regulation;

(4) any other method specifically approved by the department in writing, specified in a permit issued to the owner or operator by the department for the particular emission unit or stationary source using such method, or specified in the Kansas air quality regulations for the particular emissions unit or stationary source;

(5) the potential to emit if the emission unit or stationary source fails to qualify for any other method; or

(6) any combination of the above which most accurately demonstrates actual emissions from each emissions unit.

(b) Actual emissions shall be calculated in a manner which most accurately reflects the actual emissions of each emissions unit using the best available data for that emissions unit under current operating conditions. Where a specific actual emissions calculation procedure is required for any other purpose by the Kansas air quality regulations or 40 CFR part 75, as promulgated at 58 FR 3590 on January 11, 1993, that calculation procedure shall also be used to calculate actual emissions for purposes of this regulation.

(c) Data generated by continuous monitoring systems may be used to calculate actual emissions for any emissions unit if the requirements of this subsection are met.

(1) For sources subject to 40 CFR part 75, actual emissions shall be calculated as required by 40 CFR part 75.

(2) For sources not subject to 40 CFR part 75, the owner or operator shall:

(A) Obtain approval from the department prior to using data generated by a continuous monitoring system for the purpose of calculating actual emissions;

(B) develop and follow a written quality assurance procedure for the continuous monitoring system which is appropriate for purposes of this regulation as determined by the department; and

(C) submit the data to the department in a format approved by the department.

(3) For sources not subject to 40 CFR part 75, actual emissions during periods of missing data shall be calculated as follows.

(A) For periods of missing data of one hour or less, data for the hour immediately preceding the missing data and data for the hour immediately following the missing data shall be averaged and submitted to the department as actual emissions for the missing data. For purposes of this subsection, periods of operation of less than one hour between periods of missing data shall be included as part of the period of missing data.

(B) For periods of missing data of more than one hour but equal to or less than 24 consecutive hours, actual emissions reported to the department shall be the greater of:

(i) the data determined by the method specified in subsection (c)(3)(A) of this regulation; or

(ii) the average of the actual emission data for the applicable reporting time period during which the continuous monitoring system was properly operating.

(C) For periods of missing data of more than 24 consecutive hours, actual emissions shall be determined using other appropriate calculation methods specified by this regulation.

(D) For periods during upsets, start-up, shut-down, control equipment malfunctions, and other abnormal operating conditions, actual emissions shall be determined using other appropriate calculation methods specified in this regulation.

(d) Actual emissions determined using emission factors shall be calculated using the following formula:

Actual emissions = OR x EF x (1 - (CE x CDE))*

Where:

OR = the operating rate as documented through records kept at the emissions unit or stationary source. If insufficient records are kept to determine the actual operating rate of the emissions unit or stationary source during the reporting period, the operating rate shall be determined using the maximum operating capacity during the known hours of operation. If the known hours of operation cannot be determined, the hours of operation shall be the maximum number of hours the facility is permitted to operate during the reporting period.

EF = an appropriate emission factor obtained from an approved publication listed in subsection (g) unless the permittee demonstrates to the satisfaction of the department that an alternative emission factor is applicable to the relevant emissions unit or stationary source.

CE = capture efficiency of the control device emissions collection system determined according to subsection (f) of this regulation or through performance testing.

CDE =control device efficiency determined according to subsection (f) of this regulation or through performance testing.

* This formula assumes a single overall control efficiency has been developed for situations where emissions are controlled by a series of air emissions control devices. If a single overall control efficiency has not been developed, actual emissions shall be calculated as follows:

Actual emissions = $OR \times EF \times (1-(CE \times CDE))_{D1} \times (1-(CE \times CDE))_{D2} \times \ldots (1-(CE \times CDE))_{Dn}$

where D is an emissions control device (or devices) for which an overall control efficiency is available.

Prior approval by the department shall be obtained before the development of an alternative emission factor or control device efficiency based upon performance testing of an emissions unit or stationary source.

(e) Actual emissions determined using material balances shall be calculated using one of the following formulas:

(1) For volatile organic compound emissions;

Actual emissions = $(Q_{added} - Q_{recovered}) \times (1 - (CE \times CDE))$*

(2) for sulfur dioxide emissions;

Actual emissions = $(F_{burned} \times (\%S/100) \times CF) \times (1 - (CE \times CDE))$*

(3) for all other emissions for which a material balance procedure is appropriate;

Actual emissions = $(Q_{added} - Q_{consumed} - Q_{recovered}) \times (1 - (CE \times CDE))$*

Where:

Q_{added} = the total quantity of the regulated substance which enters the process or operation;

$Q_{recovered}$= the total quantity of the regulated substance recovered for reuse which is not accounted for by the emission control device calculations;

$Q_{consumed}$= the total quantity of the regulated substance which becomes an integral part of the product;

F_{burned} = the quantity of sulfur containing fuel by weight;

%S = percent sulfur, by weight, in the sulfur containing fuel;

CE = capture efficiency of the control device emissions collection system determined according to subsection (f) of this regulation or through performance testing;

CDE= control device efficiency determined according to subsection (f) of this regulation or through performance testing; and

CF = a conversion factor of 1.95 for coal and 2.00 for natural gas, oil and other fuels.

* See footnote * at subsection (d) of this regulation.

(f) Calculation of credits for actual emissions reductions due to air emission control equipment capture efficiencies and control device efficiencies may be taken in accordance with this subsection.

(1) All emissions during startup, shut down, control equipment malfunctions or by-passes, or other periods of greater than normal emissions, shall be calculated as if the emissions unit or stationary source was being operated without air emission control equipment unless a more accurate manner of calculating actual emissions is demonstrated by the owner or operator and approved by the department.

(2) Unless otherwise specifically approved in writing by the department or stated in an air quality permit issued by the department for the emissions unit or stationary source, the following air emission control equipment control device efficiencies shall be used when calculating actual emissions:

(A) Particulate matter, in the absence of information to the contrary, all particulate matter emissions from any control equipment shall be assumed to be PM_{10}:

(i)	electrostatic precipitator or baghouse	0.90
(ii)	high energy wet scrubber	0.80
(iii)	low energy wet scrubber	0.70
(iv)	cyclonic separator	0.50
(B)	Acid gases:	
(i)	wet scrubber	0.90
(ii)	dry scrubber	0.70
(C)	Volatile organic compounds:	
(i)	incinerator (operating at a temperature 1400° Fahrenheit or greater)	0.98
(ii)	carbon adsorber	0.95

(3) Unless otherwise specifically approved in writing by the department or stated in an air quality permit issued by the department for the emissions unit or stationary source, the following air emission control equipment control device capture efficiencies shall be used when calculating actual emissions:

(A) The capture efficiency for a totally enclosed emissions source operating under negative pressure shall be 1.00.

(B) The capture efficiency for an emissions source which is not totally enclosed or which is not operated under negative pressure shall be 0.50.

(4) Capture efficiencies and control device efficiencies for other types of air emission control equipment not listed in paragraphs (f)(2) and (f)(3) shall be determined by the department on a case by case basis based upon an appropriate demonstration by the owner or operator of the capture efficiency and control device efficiency of the air emission control equipment.

(5) Capture efficiencies and control device efficiencies alternative to those specified in paragraphs (f)(2) and (f)(3) may be approved by the department upon an appropriate demonstration by the owner or operator of capture efficiency and control device efficiency of the air emission control equipment.

(6) Each owner or operator which uses an air emission control equipment capture efficiency or control device efficiency, or both, when calculating actual emissions shall maintain the air emission control equipment in accordance with any applicable Kansas air quality regulation, permit requirement or manufacturer's recommendation. Beginning January 1, 1994, the owner or operator shall also keep a written log recording the date and type of action taken when performing preventive or other maintenance on the air emission control equipment. Failure of the owner or operator to maintain the air emission control equipment or to keep a written record as required by this subsection shall be considered a control equipment malfunction for purposes of subsection (f)(1).

(g) Appropriate emission factors obtained from the following publications or data bases are approved for determining emissions from emission units or stationary sources:

(1) AP-42 compilation of air pollution emission factors - 4th edition - September, 1985. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(2) AIRS facility subsystem source classification codes (SCCs) and emission factor listing for criteria pollutants (EPA-450/4-90-003). United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(3) Locating and estimating air emissions from sources of acrylonitrile. EPA #450/4-84-007A, March, 1984. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(4) Locating and estimating air emissions from sources of carbon tetrachloride. EPA #450/4-84-007B, March, 1984. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(5) Locating and estimating air emissions from sources of chloroform. EPA #450/4-84-007C, March, 1984. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(6) Locating and estimating air emissions from sources of ethylene dichloride. EPA #450/4-84-007D, March, 1984. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(7) Locating and estimating air emissions from sources of nickel. EPA #450/4-84-007F, March, 1984. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(8) Locating and estimating air emissions from sources of chromium. EPA #450/4-84-007G, March, 1984. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(9) Locating and estimating air emissions from sources of epichlorohydrin. EPA #450/4-84-007J, September, 1985. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(10) Locating and estimating air emissions from sources of vinylidene chloride. EPA #450/4-84-007K, September, 1985. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(11) Locating and estimating air emissions from sources of manganese. EPA #450/4-84-007H, September, 1985. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(12) Locating and estimating air emissions from sources of phosgene. EPA #450/4-84-007I, September, 1985. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(13) Locating and estimating air emissions from sources of ethylene oxide. EPA #450/4-84-007L, September, 1986. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(14) Locating and estimating air emissions from sources of chlorobenzenes. EPA #450/4-84-007M, September, 1986. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(15) Locating and estimating air emissions from sources of polychlorinated biphenyls (PCB's). EPA #450/4-84-007N, May, 1987. United states environmental protection agency, office of air quality planning and standards,

research triangle park, North Carolina 27711.

(16) Locating and estimating air emissions from sources of polycyclic organic matter (POM). EPA #450/4-84-007P, September, 1987. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(17) Locating and estimating air emissions from sources of benzene. EPA #450/4-84-007Q, March, 1988. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(18) Estimating air toxics emissions from organic liquid storage tanks. EPA #450/4-88-004, October, 1988. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(19) Locating and estimating air toxics emissions from municipal waste combustors. EPA #450/2-89-006, April, 1989. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(20) Locating and estimating air emissions from sources of chromium (supplement). EPA #450/2-89-002, August, 1989. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(21) Locating and estimating air emissions from sources of perchloroethylene and trichloroethylene. EPA #450/2-89-013, August, 1989. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(22) Locating and estimating air emissions from sources of 1, 3-butadiene. EPA #450/2-89-021, December, 1989. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(23) Locating and estimating air toxics emissions from sewage sludge incinerators. EPA #450/2-90-009, May, 1990. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(24) Locating and estimating air emissions from sources of formaldehyde (revised). EPA #450/4-91-012, March, 1991. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711.

(25) Locating and estimating air emissions from sources of styrene, interim report. EPA #450/4-91-029, October, 1991. United states environmental protection agency, office of air quality planning and standards, research triangle park, North Carolina 27711. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3007 and L. 1993, Ch. 13; effective Nov. 22, 1993.)

28-19-211. Reserved.

28-19-212. General provisions; approved test methods and emission compliance determination procedures. (a) The following test methods shall be approved for demonstrating compliance or non-compliance with an appropriate emission standard or limitation:

(1) those test methods specified at 40 CFR part 60, appendix A, as in effect on July 1, 1993;

(2) those test methods specified at 40 CFR part 60, appendix B, as in effect on July 1, 1993;

(3) those test methods specified at 40 CFR part 60, appendix F, as in effect on July 1, 1993;

(4) those test methods specified at 40 CFR part 60, appendix J, as in effect on July 1, 1993;

(5) those test methods specified at 40 CFR part 61, appendix B, as in effect on July 1, 1993;

(6) those test methods specified at 40 CFR part 51, as in effect on July 1, 1993;

(7) those test methods specified at 40 CFR part 63, appendix A, as in effect on July 1, 1993;

(8) any alternative or miscellaneous test procedures currently approved by the USEPA and published in the federal register prior to the effective date of this regulation;

(9) ASTM D 1186-06.01-thickness of paints/related coatings dry film thickness of non-magnetic coatings applied to a ferrous base, as in effect on July 1, 1994;

(10) ASTM D 1200-06.01-standard test method for determining the viscosity of paints and related coatings by the Ford viscosity cup test, as in effect on July 1, 1994;

(11) ASTM D 3794-06.01-standard test method for determining the viscosity of coil coatings by the Zahn cup

method test, as in effect on July 1, 1994;

(12) ASTM D 1475-60-standard test method for determining the density of paint, varnish, lacquer and related products, as in effect on July 1, 1994;

(13) ASTM D 2369-81-standard test method for determining the volatile content of coatings using a one hour bake, as in effect on July 1, 1994;

(14) ASTM D 3792-79-standard test method for determining the water content of water reducible paint by direct injection into a gas chromatograph, as in effect on July 1, 1994;

(15) ASTM D 4017-81-standard test method for determining the water content in paints by the Karl Fischer titration method, as in effect on July 1, 1994;

(16) ASTM D-244-83-standard methods of testing emulsified asphalts, as in effect on July 1, 1994;

(17) ASTM D-323-82-vapor pressure of petroleum products (Reid method), as in effect on July 1, 1994;

(18) ASTM D-97-66-test for pour point of petroleum oils, as in effect on July 1, 1994;

(19) the procedures in 40 CFR, Part 80, Appendix D, as in effect on July 1, 1993, for the sampling of reid vapor pressure of gasoline to be used as a fuel for motor vehicles;

(20) the procedures in 40 CFR, Part 80, Appendix E, as in effect on July 1, 1993, for the testing of reid vapor pressure of gasoline to be used as a fuel for motor vehicles; and

(21) an alternate sampling or testing procedure approved by the department and developed or approved by the U.S. environmental protection agency as an equivalent or improved procedure.

(b) Notwithstanding any other provision of these regulations, data from continuous emission monitoring systems may be used for purposes of determining compliance with any emission limitation or standard only if:

(1) the emissions are from an affected source and the continuous emission monitoring system is subject to, and in compliance with, the requirements 40 CFR part 75; or

(2) the continuous emission monitoring system is not subject to 40 CFR part 75 and:

(A) a written quality assurance and quality control plan is maintained by the owner or operator of the emission source;

(B) the plan includes the more stringent of either all recommendations of the manufacturer or manufacturers of the continuous emission monitoring system components or all applicable quality assurance and quality control requirements required by any state or federal regulation or air quality permit;

(C) the owner or operator maintains records demonstrating adherence to the quality assurance and quality control plan; and

(D) the quality assurance and quality control plan is reviewed and updated annually.

Data from a continuous emission monitoring system which satisfies the requirements of this subsection and which demonstrates compliance with the relevant emission limitation or standard, shall create a rebuttable presumption of compliance with the relevant emission limitation or standard.

(c) Notwithstanding any other provisions of these regulations, data which demonstrates non-compliance with an emission limitation or standard shall create a rebuttable presumption of non-compliance if the data is from continuous emission monitoring systems or any other sampling or monitoring protocols, and the systems or protocols are required by:

(1) any applicable requirement;

(2) any air quality regulation;

(3) any compliance plan;

(4) any order or consent agreement issued pursuant to the authorities specified in the Kansas air quality act;

(5) the provisions of any air quality construction or operating permit; or

(6) any other provision or authority of the Kansas air quality act or air quality regulation.

(d) Notwithstanding any other provision of this regulation, any credible evidence may be used for the purpose of establishing non-compliance with an emission limitation or standard.

(e) Notwithstanding any other provision of these regulations, the owner or operator is not prohibited from using the following in addition to any specified compliance methods for the purpose of submission of compliance certifications:

(1) an enhanced monitoring protocol approved by the department; or

(2) any other monitoring method approved for the source incorporated into any federally enforceable operating permit. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3007; effective Jan. 23, 1995.)

28-19-213 through 28-19-274. Reserved.

28-19-275. Special provisions; acid rain deposition. (a) The provisions of this regulation are in addition to any construction or operating permit requirements specified elsewhere in the Kansas air quality regulations. For stationary sources or emissions units subject to this regulation, the requirements of this regulation take precedence in cases of conflicts with other Kansas air quality regulations applicable to the stationary source or emissions unit.

(b) Where applicable, the terms used in the federal regulations adopted by reference herein shall have the definition specified at 40 CFR 72.2 as in effect on July 1, 1994, with the following exception. "Permitting authority" shall mean the secretary of health and environment.

(c) 40 CFR part 72 as applicable to phase II of the federal acid rain program and as in effect on July 1, 1994, is adopted by reference. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-300. Construction permits and approvals; applicability. (a) Any person who proposes to construct or modify a stationary source or emissions unit shall obtain a construction permit before commencing such construction or modification if:

(1) the potential-to-emit of the proposed stationary source or emissions unit, or the increase in the potential-to-emit resulting from the modification, equals or exceeds the following:

(A) either 25 tons per year of particulate matter or 15 tons per year of PM10, except for any agricultural-related activity, in which case the emission level is 100 tons per year of particulate matter, including but not limited to PM10;

(B) 40 tons per year of sulfur dioxide or sulfur trioxide or a combination thereof;

(C) 100 tons per year of carbon monoxide;

(D) 40 tons per year of volatile organic compounds;

(E) 40 tons per year of oxides of nitrogen; or

(F) 0.6 tons per year of lead or lead compound;

(2) the emissions unit or stationary source is an affected source;

(3) the emissions unit or stationary source is a major source of hazardous air pollutants;

(4) the emissions unit or stationary source is an incinerator used to dispose of refuse by burning or pyrolysis or used for the processing of salvageable materials, except incinerators installed on residential premises that contain less than six dwelling units and that are used to burn waste materials associated with normal habitation of those dwelling units; or

(5) the emissions unit or stationary source is required to apply for a construction approval pursuant to K.A.R. 28-19-300(b)(2) and the secretary or an authorized representative of the secretary determines air emissions from the emissions unit or stationary source require that the permit issuance procedures be implemented.

(b) Any person who proposes to construct or modify a stationary source or emissions unit who is not required to obtain a construction permit pursuant to K.A.R. 28-19-300(a), shall, before commencing construction or modification of the stationary source or emissions unit, obtain an approval from the department to commence such construction or modification if:

(1) the potential-to-emit of the proposed stationary source or emissions unit, or the increase in the potential-to-emit resulting from the modification, equals or exceeds one or more of the following:

(A) either 5 pounds per hour of particulate matter or 2 pounds per hour of PM10, except for any agricultural-related activity in which case the emission level is 5 pounds per hour of particulate matter, including but not limited to PM10;

(B) 2 pounds per hour of sulfur dioxide or sulfur trioxide or a combination thereof;

(C) 50 pounds per 24 hour period of carbon monoxide;

(D) 50 pounds per 24 hour period of volatile organic compounds, except when the stationary source or emissions unit is located in an area designated as a nonattainment area at 40 CFR 81.317 as in effect on July 1, 1989 in which case approval is required if the emission level exceeds either 15 pounds per 24 hour period or 3 pounds per hour;

(E) 50 pounds per 24 hour period of oxides of nitrogen calculated as nitrogen dioxide; or

(F) 0.1 pounds per hour of lead or lead compound;

(2) the secretary or an authorized representative of the secretary determines any other air contaminant emissions from the emissions unit or stationary source may cause or contribute to air pollution within the state because of its specific chemical or physical nature or because of the quantity discharged and if the department notifies the owner or operator of the emissions unit or stationary source of such determination prior to the commencement of the construction or modification of the emissions unit or stationary source;

(3) the source is not otherwise required to obtain a construction permit pursuant to K.A.R. 28-19-30(a) but is subject to:

(A) an emissions limitation or standard pursuant to K.A.R. 28-19-720, new source performance standards, except the standards of performance for new residential wood heaters, 40 CFR part 60, subpart AAA;

(B) K.A.R. 28-19-735, national emission standards for hazardous air pollutants, except the national emissions standard for asbestos, standard for demolition and renovation, 40 CFR 61.145; or

(C) K.A.R. 28-19-750 et seq., hazardous air pollutants; or

(4) the source is seeking an approval with operational restrictions pursuant to K.A.R. 28-19-302(b).

(c) For the purpose of this regulation, the following shall not be considered a modification:

(1) routine maintenance or parts replacement; or

(2) an increase or decrease in operating hours or production rates if:

(A) production rate increases do not exceed the originally approved design capacity of the stationary source or emissions unit; and

(B) the increased potential-to-emit resulting from the change in operating hours or production rates do not exceed any emission or operating limitations imposed as a condition to any permit issued under these regulations. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-301. Construction permits and approvals; application and issuance. (a) Application for a permit or approval to construct or modify a stationary source or emissions unit shall be made by the owner or operator on forms provided or approved by the department. The owner or operator may be required to furnish additional information to determine compliance with the Kansas air quality regulations.

(b) A construction permit shall not be issued to a source whose potential-to-emit equals or exceeds that specified at K.A.R. 28-19-500(a) or K.A.R. 28-19-500(b) without first satisfying the public participation requirements of K.A.R. 28-19-204.

(c) Each permit or approval issued for the construction or modification of a source shall become void if the construction or modification has not commenced within 18 months after permit issuance or if the activity required to complete the modification or construction has been discontinued for 18 months or more.

(d) No construction permit or approval shall be issued if the department determines that the air contaminant emissions from the source will interfere with the attainment or maintenance of any ambient air quality standard that has been established under the provisions of the federal clean air act, as amended, or under the provisions of state law.

(e) Each construction permit or approval that is issued may be conditioned upon compliance by the owner or operator with any special restrictions that are deemed necessary to insure compliance with these regulations or otherwise prevent air pollution.

(1) The restrictions may include, but need not be limited to, special requirements concerning methods of operation, emissions limitations or control procedures to be implemented.

(2) Each restriction shall be in writing as part of or as an attachment to, the permit or approval.

(f) Each construction permit or approval that is issued may identify one or more air contaminant emission sources that are approved to be constructed, modified, used, or operated.

(1) The sources shall be located on the same premises, shall be under one ownership, and shall be considered as part of the same industrial grouping as determined by the department.

(2) The major industrial grouping shall be identified by using the industrial titles and descriptions provided in the "standard industrial classification manual 1987," as published by the U.S. government printing office, stock number 041-001-00314-2, which is adopted by reference. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-302. Construction permits and approvals; additional provisions; construction permits. (a) The owner

or operator of any source which is required to obtain a construction permit pursuant to K.A.R. 28-19-16 through 28-19-16m, nonattainment area requirements, or K.A.R. 28-19-17 through 28-19-17q, prevention of significant deterioration requirements, shall comply with any applicable construction permit requirements of the regulations in addition to the requirements set forth herein.

(b) The owner or operator submitting an application for the construction of a new source or modification of an existing source may request a federally enforceable operational restriction be included in the construction permit which, either alone or in conjunction with a federally enforceable permit condition regarding properly maintained and operated air pollution control equipment, reduces the potential-to-emit of the emissions unit or stationary source or otherwise results in avoidance of any requirement of the federal clean air act. Such permit restriction shall meet the requirements of K.A.R. 28-19-501(b) to be considered federally enforceable.

(c) Any owner or operator which would otherwise be required to submit an application for the construction of a new source may, in lieu of applying for a construction permit, request an operational restriction be included in a construction approval which, either alone or in conjunction with properly maintained and operated air pollution control equipment, reduces the potential emissions of the source below the threshold requiring a construction permit if:

(1) the potential-to-emit is less than the threshold requiring a permit pursuant to any applicable requirements of:

(A) K.A.R. 28-19-16 through 28-19-16m, nonattainment area requirements;

(B) K.A.R. 28-19-17 through 28-19-17c, prevention of significant deterioration requirements;

(C) K.A.R. 28-19-510 et seq., class I operating permits; and

(D) K.A.R. 28-19-540 et seq., class II operating permits;

(2) the owner or operator specifies and quantifies the operational restrictions which will reduce the potential emissions of the source and agrees to operate the source in compliance with such operational restrictions;

(3) the owner or operator specifies a procedure for maintaining records that demonstrate compliance with the operational restrictions; and

(4) the owner or operator complies with the requirements of K.A.R. 28-19-501(d) in regards to any air pollution control equipment relied upon to reduce potential emissions of the source.

(d) Any failure to comply with an operational restriction, record-keeping requirement or control equipment requirement which provided the basis for issuance of an approval pursuant to subsection (c) of this regulation shall be deemed a violation of this regulation.

(e) For purposes of the Kansas air quality act, a construction permit shall be an approval to construct or modify an air contaminant emission stationary source. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-303. Construction permits and approvals; additional provisions; construction approvals. (a) A construction approval shall not contain conditions that allow a source to avoid any requirement of the federal clean air act. Any person requesting an operational restriction that would result in avoidance of a federal requirement shall apply for and obtain a construction permit prior to the construction or modification of the relevant stationary source or emissions unit.

(b) If the potential-to-emit of the proposed construction or modification may cause or contribute to a violation of a national ambient air quality standard, a construction approval shall not be issued for the construction or modification of an emissions unit or stationary source. An application for a construction permit shall be required for the construction or modification.

(c) A construction approval issued pursuant to this regulation, regarding an emissions unit or stationary source which is subject to any requirement of the Kansas air quality act or the federal clean air act, shall contain provisions requiring operation of the emissions unit or stationary source in compliance with all requirements of the Kansas air quality act and the federal clean air act which are applicable to the emissions unit or stationary source.

(d) For purposes of the Kansas air quality act, an approval issued pursuant to this regulation shall be considered to be an approval to construct or modify an air contaminant emission stationary source. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-304. Construction permits and approvals; fees. (a) An application for an approval or a permit to construct or modify an emissions unit or stationary source shall not be reviewed until the department has received an application fee that has been determined pursuant to the requirements of this regulation.

(b) Construction permit application fees shall be determined as follows.

(1) The base fee shall be in the amount of 0.05% of the estimated capital cost of the activity for which application is made.

(A) The applicant shall provide a certified estimate of the capital cost of the activity with the application unless the fee is determined under the provisions of subsection (3) of this regulation.

(B) A minimum fee of $100.00 shall be charged when the estimated capital cost is less than $200,000.00 and a maximum fee of $4,000.00 shall be charged when the estimated capital cost is more than $8,000,000.00.

(2) If the proposed construction or modification is subject to review and approval under the provisions of K.A.R. 28-19-16 through 28-19-16m, pertaining to nonattainment area requirements, or K.A.R. 28-19-17 through 28-19-17q, pertaining to prevention of significant deterioration, there shall be an additional fee of $1,500.00 added to the fee established by paragraph (c)(1) of this regulation.

(3) If no estimate of the capital cost of the activity is included with the application, a base fee of $4,000.00 shall be paid.

(4) The estimated capital cost of the activity means the estimated total cost of equipment and services that would normally be capitalized according to generally accepted accounting procedures. Certification of the estimated capital cost of the activity may be evaluated during the review period. If the department determines that the certified capital cost is not correct, the department shall either recover an adjusted fee based upon the correct cost or deny the permit.

(C) The non-refundable fee shall be remitted in the form of a check or money order made payable to the Kansas department of health and environment. Receipt of any check for the fee that is not covered by sufficient funds shall be cause for the denial of the construction permit or approval. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-305 through 28-19-349. Reserved.

28-19-350. Prevention of significant deterioration of air quality. (a) PSD requirements. The requirements of this regulation shall apply to the construction of major stationary sources and major modifications of stationary sources as defined in 40 C.F.R. 52.21 in areas of the state designated as attainment areas or unclassified areas for any pollutant under the procedures prescribed by section 107(d) of the federal clean air act, 42 U.S.C. 7407(d).

(b) Adoption by reference; exceptions.

(1) 40 C.F.R 52.21, as in effect on July 1, 2004, is adopted by reference, except as specified in paragraphs (b)(2) and (3).

(2) The following subsections of the federal regulation adopted in paragraph (b)(1) are excluded from adoption:

(A) Plan disapproval, 52.21(a)(1);

(B) stack heights, 52.21(h);

(C) air quality analysis, 52.21(m)(1)(v);

(D) visibility monitoring, 52.21(o)(3);

(E) public participation, 52.21(q);

(F) environmental impact statements, 52.21(s);

(G) disputed permits or redesignations, 52.21(t);

(H) delegation of authority, 52.21(u); and

(I) permit rescission, 52.21(w).

(3) The following subsections of the federal regulation adopted in paragraph (b)(1), which are subject to a federal court order of stay or remand or have been vacated, are excluded from adoption:

(A) Routine maintenance, repair, and replacement:

(i) The second sentence of 52.21(b)(2)(iii)(a);

(ii) 52.21(b)(55-58); and

(iii) 52.21(cc);

(B) clean unit:

(i) 52.21(a)(2)(iv)(e) and (f);

(ii) 52.21(b)(3)(iii)(b) and (vi)(d);

(iii) 52.21(b)(42);

(iv) the phrase “at a clean unit or” in 52.21(r)(6);

(v) 52.21(x); and
(vi) 52.21(y);
(C) pollution control projects:
(i) 52.21(a)(2)(vi);
(ii) 52.21(b)(2)(iii)(h);
(iii) 52.21(b)(3)(vi)(d);
(iv) 52.21(b)(32); and
(v) 52.21(z); and
(D) recordkeeping requirements for projected actual emissions: the clause "in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase" in 52.21(r)(6).

(c) Provisions adopted by reference; term usage. When used in any provision adopted from 40 C.F.R. 52.21, each reference to "administrator " shall mean the "secretary of health and environment or an authorized representative of the secretary," except for the following:

(1) In subsections 52.21(b)(3)(iii)(a) and 52.21 (b)(48)(ii), "administrator" shall mean both the "secretary of health and environment" and the "administrator of the U.S. environmental protection agency."

(2) In subsections 52.21(b)(17), 52.21(b)(37)(i), 52.21(b)(43), 52.21(b)(48)(ii)(c), 52.21(b)(50)(i), 52.21(b)(51), 52.21(g), 52.21(i)(6–8), 52.21(l)(2), and 52.21(m)(1)(vii – viii), "administrator" shall mean only the "administrator of the U.S. environmental protection agency."

(d) Internal references. The following federal regulations as in effect on July 1, 2004, which are referred to in the federal regulation adopted in paragraph (b)(1), are hereby adopted by reference:

(1) 40 C.F.R. part 51, subpart I;
(2) 40 C.F.R. part 51, appendices S and W; and
(3) 40 C.F.R. part 58, appendix B.

(e) Definitions. For the purposes of this regulation, the following definitions shall apply:

(1) "Act" shall mean the federal clean air act, 42 U.S.C. 7401 et seq.

(2) "Class I, II or III area" shall mean a classification assigned to any area of the stateunder the provisions of sections 162 and 164 of the act, 42 U.S.C. 7472 and 7474, and amendments thereto.

(3) "State" shall mean the state of Kansas, unless the context clearly indicates otherwise.

(f) Ambient air ceiling protection. In relation to ambient air ceilings, the following requirements shall apply:

(1) Except as stated in paragraph (f)(2) of this regulation, a permit shall not be issued for any new major stationary source or major modification as defined in 40 C.F.R. 52.21(b) if the source or modification will be located in an attainment area or an unclassifiable area for any national ambient air quality standard and if the source or modification would cause or contribute to a violation of any national ambient air quality standard. A major source or major modification shall be considered to cause or contribute to a violation of a national ambient air quality standard if the air quality impact of the source or modification would exceed the following levels at any locality that does not or would not meet the applicable national standard:

	Averaging Time					
Pollutant	**Annual**	**24 hrs.**	**8 hrs.**	**3 hrs.**		**1 hr.**
Sulphur dioxide	1.0 µg/m	35 µg/m^3	--------	25 µg/m^3		------
PM10	1.0 µg/m^3	5 µg/m^3	--------	--------	-	------
Nitrogen dioxide	1.0 µg/m^3	--------	--------	--------	-	------
Carbon monoxide	----------	--------	0.5 mg/m^3	--------		2 mg/m^3

(2) A permit may be granted for a major stationary source or major modification as identified in paragraph (f)(1) of this regulation if the impact of the major stationary source's or major modification's emissions upon air quality is reduced by a sufficient amount to compensate for any adverse impact at the location where the major source or modification would otherwise cause or contribute to a violation of any national ambient air quality standard. Subsection (f) of this regulation shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that the source is located in an area that has been identified as not meeting either the national primary or secondary ambient air quality standard for that particular pollutant.

(g) Stack height requirements. K.A.R. 28-19-18 through K.A.R. 28-19-18f, regarding stack height requirements, shall apply to the sources subject to this regulation.

(h) Application required. Each application for a PSD permit shall be submitted by the owner or operator on the forms provided or approved by the department. K.A.R. 28-19-300 through K.A.R. 28-19-304, regarding construction

permit and approval requirements, shall apply to the sources subject to this regulation.

(i) Impact on federal class I areas; notification required. If the emissions from any proposed major stationary source or major modification subject to this regulation will affect any air quality-related values in any federal class I area, a copy of the permit application for the source or modification shall be transmitted by the secretary or an authorized representative of the secretary to the administrator of the U.S. environmental protection agency through the appropriate regional office. The administrator, through the appropriate regional office, shall also be notified of every action taken concerning the application.

(j) Permit suspension or revocation. Any permit issued under this regulation may be

suspended or revoked by the secretary upon a finding that the owner or operator has failed to comply with any requirement specified in the permit or with any other statutory or regulatory requirement. This subsection shall not be interpreted to preclude any other remedy provided by law to the secretary.

(k) Public participation requirements. In addition to the requirements of K.A.R. 28-19-204, the following public participation requirements shall be met before issuance of the permit:

(1) The public notice shall include the following:

(A) A statement specifying the portion of the applicable maximum allowable increment that is expected to be consumed by the source or modification; and

(B) a statement that the federal land manager of any adversely impacted federal class I

area has the opportunity to provide the secretary with a demonstration that the emissions from the proposed source or modification will have an adverse impact on air quality-related values in the federal class I area.

(2) A copy of the public notice shall be mailed to the following:

(A) The applicant;

(B) the administrator of the U.S. environmental protection agency through the appropriate regional office;

(C) any state or local air pollution control agency having jurisdiction in the air quality control region in which the new or modified installation will be located;

(D) the chief executives of the city and county where the source will be located;

(E) any comprehensive regional land use planning agency having jurisdiction where the source will be located; and

(F) any state, federal land manager, or Indian governing body whose lands will be affected by emissions from the new construction or modification.

(3) In addition to those materials required to be available for public review at the appropriate district office or local agency, a summary analysis and discussion of those materials as they relate to establishing compliance with the requirements of this regulation shall be made available for public review.

(4) Copies of all comments received and the written determination of the secretary shall be made available for public inspection at the appropriate district office or local agency. (Authorized by K.S.A. 65 3005; implementing K.S.A. 65 3008; effective Nov. 22, 2002; amended June 30, 2006.)

28-19-351 through 28-19-399. Reserved.

28-19-400. General permits; general requirements. (a) A general permit applicable to a similar category of emissions units or stationary sources required to obtain a permit by the Kansas air quality regulations may be adopted by the department subject to the following conditions:

(1) the department determines there are a sufficient number of potentially eligible sources to justify adoption of a general permit;

(2) the general permit requires compliance with all requirements of the Kansas air quality statutes, Kansas air quality regulations, and federal clean air act which are applicable to the category of sources covered by the general permit; and

(3) the general permit adoption process complies with all procedures and requirements applicable to the issuance of the corresponding class of construction or operating permit.

(b) A general permit shall have the same term as the corresponding class of construction or operating permit.

(c) Affected sources under title IV, acid deposition control, of the federal clean air act, shall not be eligible to operate under the terms of a general permit. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993

Supp. 65-3008; effective Jan. 23, 1995.)

28-19-401. General permits; adoption by the secretary. (a) Any source that is within the category of sources to which a general permit would apply may petition the secretary to adopt a general permit applicable to that category of sources.

(b) The petition for the adoption of a general permit shall be made on forms provided or approved by the department.

(c) Contents of the petition shall include, but not be limited to:

(1) all information required in the application for issuance of the class of construction or operating permit applicable to the category of sources covered by the proposed general permit;

(2) a description of the category of emissions units or stationary sources which would qualify for the general permit; and

(3) an estimate, and the basis for the estimate, of the number of stationary sources which would qualify for the general permit.

(d) The applicant shall provide such other information as is requested by the department.

(e) A general permit may be adopted by the secretary on the secretary's own motion.

(f) Filing a petition for the adoption of a general permit shall not be considered the filing of an application for the corresponding construction or operating permit in regards to any emissions unit or stationary source of the applicant.

(g) Before any person may apply to construct an emissions unit or stationary source pursuant to the terms of a general construction permit, the general construction permit shall be submitted to, and approved by, the USEPA as a modification to the state implementation plan pursuant to the requirements of section 110 of the federal clean air act. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-402. General permits; availability of copies; lists of sources to which permits issued. (a)Any person may obtain a copy of a general permit by making a request for a copy of the permit from the department.

(b) Any owner or operator who is constructing or operating an emissions unit or stationary source pursuant to the terms of a general permit shall be specified on a list maintained by the department stating:

(1) the name of the owner or operator;

(2) the category of emissions unit or stationary source operating pursuant to the general permit; and

(3) the permit number assigned by the department to the stationary source. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-403. General permits; application to construct or operate pursuant to terms of general permit.

(a) Any person may apply to the department requesting authorization to construct or operate an emissions unit or stationary source pursuant to the terms of a general permit adopted by the secretary.

(b) The application shall be on forms provided or approved by the department.

(c) The application shall include, but not be limited to:

(1) information necessary to determine whether the emissions unit or stationary source qualifies for the general permit;

(2) a statement that the emissions unit or stationary source shall remain in compliance with all conditions, limitations and requirements of the general permit, and all other applicable requirements; and

(3) submission of the applicable application fee.

(d) The owner or operator of the emissions unit or stationary source shall provide such additional information as is requested by the department.

(e) The application shall be certified by a responsible official.

(f) The timely and complete submission of an application to construct or operate under the terms of a general permit adopted by the secretary shall be considered equivalent to the timely and complete filing of an application for the issuance of the appropriate construction or operating permit.

(g) The owner or operator of an emissions unit or stationary source which has been granted approval to construct or operate pursuant to a general permit shall not be shielded from enforcement action if it is subsequently determined that the emissions unit or stationary source did not qualify for the general permit.

(h) The grant or denial of an application to construct or operate under the terms of a general permit shall

not be considered final agency action with regard to the terms of the general permit within the meaning of K.S.A. 77-601 through 77-627, the act for judicial review and civil enforcement of agency actions. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-404. General permits; modification; revocation. If a general permit is modified or revoked, the owner or operator of an emissions unit or stationary source which is authorized to operate pursuant to a general permit shall reapply for the general permit or submit a complete application for the appropriate permit within 12 months of the date of modification or revocation of the general permit unless a different time frame is specified by the department. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-405 through 28-19-499. Reserved.

28-19-500. Operating permit; applicability.

(a) A stationary source shall obtain a class I operating permit in accordance with the provisions of K.A.R. 28-19-510 if the stationary source is:

(1) a major source, except that a source is not required to obtain a permit if it would be classified as a major source solely because it has the potential-to-emit major amounts of a pollutant listed pursuant to section 112(r)(3) of the federal clean air act and is not otherwise required to obtain a permit under this regulation;

(2) an affected source;

(3) a solid waste incinerator unit required to obtain a permit pursuant to section 129(e) of the federal clean air act;

(4) subject to an emission limitation or standard under section 111 of the federal clean air act, new source performance standards, except for a stationary source which is exempt as provided in paragraph (h) of this regulation;

(5) subject to an emission limitation or standard under section 112 of the federal clean air act, hazardous air pollutants, except for a stationary source which is exempt as provided in paragraph (h) of this regulation. This provision shall not require a source to get a class I operating permit solely because it is subject to regulations or requirements under section 112(r) of the federal clean air act, prevention of accidental releases; or

(6) not a major source but is within a source category designated by the secretary as requiring a class I operating permit.

(b) A stationary source may avoid obtaining a class I operating permit by electing to reduce its potential-to-emit through any physical or operational limitation or use of pollution control equipment required by a class II operating permit. The potential-to-emit shall not be considered to be reduced until a class II permit has been issued to the source. A class II operating permit may be obtained in accordance with K.A.R. 28-19-540 by:

(1) submitting an application for a class II operating permit that contains operational restrictions or requirements for air pollution control equipment, or both;

(2) submitting an application to operate in accordance with the terms of a class II general operating permit issued pursuant to K.A.R. 28-19-400; or

(3) for those source categories identified in K.A.R. 28-19-561 through K.A.R. 28-19-563, submitting an application for a permit-by-rule in accordance with K.A.R. 28-19-542.

(c) Each commercial or medical waste incinerator which is not otherwise required to obtain an operating permit shall obtain a class III operating permit in accordance with the provisions of K.A.R. 28-19-575.

(d) Each stationary source which is not otherwise required to obtain an operating permit but which is subject to any air quality regulatory emission limitation or standard shall obtain a class III operating permit in accordance with the provisions of K.A.R. 28-19-575. However, a stationary source shall not be required to obtain a class III operating permit pursuant to the terms of this subsection if the only emission limitations or standards applicable to the source are one or more of the following:

(1) K.A.R. 28-19-20 through K.A.R. 28-19-26, processing operation emissions;

(2) K.A.R. 28-19-30 through K.A.R. 28-19-32, indirect heating equipment emissions;

(3) K.A.R. 28-19-50, opacity requirements;

(4) K.A.R. 28-19-69, cutback asphalt;

(5) K.A.R. 28-19-70, leaks from gasoline delivery vessels and vapor collection systems;

(6) K.A.R. 28-19-72, gasoline dispensing facilities;

(7) 40 CFR part 60, subpart AAA, standards of performance for new residential wood heaters;

(8) 40 CFR 61.145, national emissions standard for asbestos, standard for demolition and renovation; or

(9) K.A.R. 28-19-750, hazardous air pollutants, if the source is an area source.

(e) Class I, II, and III permits.

(1) For purposes of the Kansas air quality act, a class I operating permit is a permit to operate an air contaminant emission stationary source.

(2) For purposes of the Kansas air quality act, a class II operating permit or a class III operating permit is an approval, rather than a permit, to operate an air contaminant emission stationary source.

(f) After the date an application for a class I, class II or class III operating permit is due, a person shall not operate an emissions unit or stationary source for which the operating permit is required unless:

(1) an appropriate, valid operating permit has been issued for the air emissions unit or stationary source; or

(2) a complete application, including any required fee, for the appropriate operating permit is pending with the agency.

(g) An application for an operating permit for an emissions unit or stationary source may be submitted and processed simultaneously with the application for a construction permit or construction approval filed pursuant to K.A.R. 28-19-300 et seq. for that emissions unit or stationary source.

(h) Unless otherwise required by an applicable requirement, a stationary source which is not a major source, but which would be required to obtain a class I operating permit solely because of the provisions of paragraph (a)(4) or (a)(5) of this regulation, or both, is exempt from the requirement to obtain a class I operating permit until otherwise required by the department. Nothing in these regulations shall be interpreted to preclude any such air emission source from applying for and operating under the terms of a class I operating permit.

(i) Until such time as a stationary source is required to apply for a class I, class II, or class III operating permit, the stationary source shall be considered in compliance with this regulation if the source has a valid construction permit or approval or valid operating permit issued pursuant to the requirements of K.A.R. 28-19-300 et seq., or its predecessor K.A.R. 28-19-14. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-501. Operating permits; emissions limitations and pollution control equipment for class I and class II operating permits; conditions. (a) The owner or operator of an emissions unit or stationary source may request an operational permit restriction or a permit condition requiring the use of air pollution control equipment, or both, which reduce the potential-to-emit of an emissions unit or stationary source.

(b) Operational restrictions specified in an operating permit shall reduce the potential-to-emit of an emissions unit or stationary source if:

(1) all restrictions imposed in the operating permit are at least as stringent as any other applicable limitations or restrictions contained in the state implementation plan;

(2) the restrictions do not waive, or make less stringent, any limitations, restrictions or requirements contained in or issued pursuant to the state implementation plan or that are otherwise federally enforceable; and

(3) the restrictions are permanent, quantifiable and otherwise enforceable as a practical matter.

(c) The owner or operator of an emissions unit or stationary source which is subject to operational restrictions set forth in a class I or class II operating permit, except as otherwise specifically required, shall maintain at the stationary source records demonstrating that the operational restrictions imposed have not been exceeded. Records shall be updated monthly, no later than the last day of the following calendar month.

(1) If, at the end of any calendar quarter, the monitored operational parameters demonstrate that actual operations have exceeded 85% of the operational restrictions for the past four calendar quarters, including the most recently completed calendar quarter, the owner or operator shall report the actual operations to the department for that period of time. The actual operations shall be reported in the same units as the operational restrictions specified in the operating permit. The report shall be submitted to the department within 45 days of the last day of the month following the conclusion of the calendar quarter.

(2) Exceeding operational restrictions.

(A) If, at any time, the actual operations of the emissions unit or stationary source exceed the operational restrictions specified in the operating permit, the owner or operator shall notify the department in writing, the notice to be mailed or delivered the first working day following discovery of exceeding any operating permit operational restriction.

(B) Within 60 days of discovery of exceeding the operational restrictions, the owner or operator of the stationary source shall submit to the department a compliance plan, signed by a responsible official, stating those actions being taken by the owner or operator to assure future compliance with the operational restrictions or to otherwise bring the stationary source into compliance with the permit or the Kansas air quality statutes and regulations.

(C) If appropriate, the owner or operator shall also file the appropriate application for a permit modification or a class I operating permit within 180 days of discovery of exceeding any operating permit operational restriction.

(D) Compliance with the requirements of subsection (c)(2) of this regulation does not shield the owner or operator from enforcement action for exceeding any operating permit operational restriction or for other violations of the Kansas air quality act or regulations.

(d) Except as otherwise authorized by the Kansas air quality regulations or the operating permit issued to the source, air pollution control equipment identified in an operating permit shall reduce the potential-to-emit of an emissions unit or stationary source, either alone or in conjunction with an operational restriction, if the owner or operator of the emission unit or stationary source:

(1) continuously operates the air pollution control equipment while operating the associated emissions unit or units;

(2) develops, implements and maintains on-site a written maintenance plan to assure proper operation of the air pollution control equipment; and

(3) maintains a log showing the date of all routine or other maintenance, malfunction or repair of the air pollution control equipment, the nature of the action taken on such date, and any corrective action or preventative measures taken.

(e) Except in the case of a permit-by-rule issued pursuant to K.A.R. 28-19-542, when calculating the potential-to-emit, reductions in emissions due to operational restrictions or to air pollution control equipment shall reduce the potential-to-emit only if:

(1) the provisions of K.A.R. 28-19-204 have been satisfied;

(2) notice soliciting comments on the proposed restrictions is:

(A) given to the USEPA;

(B) placed in the Kansas Register; and

(C) except in the case of a general permit, placed in a newspaper of general circulation in the area in which the emissions unit or stationary source is, or will be, located, at least 30 days prior to issuance of the operating permit; and

(3) the USEPA is provided, in a timely manner, with a copy of the proposed and final class II operating permit. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23 1995.)

28-19-502. Operating permits; identical procedural requirements. (a) Upon the written request of the applicant and as approved by the department, procedural requiremnts for the issuance of an initial operating permit or modification of an operating permit which are identical to procedural requirements for the issuance of the construction permit for the new stationary source or the relevant modification, may be considered satisfied if accomplished during the construction permit issuance process.

(b) This regulation shall not be interpreted to relieve an applicant from the requirement to timely file a complete application, appropriate application fee or any other information required by the department, when applying for an operating permit or modification to an operating permit. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-503 through 28-19-509. Reserved.

28-19-510. Class I operating permits; application timetable. A complete application, including any applicable application fee, shall be submitted to the department by the owner or operator of any stationary source specified in subsection (a) of K.A.R. 28-19-500, within the following time schedules:

(a) on or before the date specified by the department as published in the Kansas Register for any source which is existing on such date except as specified at subsection (b) of this regulation;

(b) for initial phase II acid rain permits as addressed in title IV, acid deposition control, of the federal clean air act, by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides;

(c) on or before the date specified at K.A.R. 28-19-541(a) when applicable to any stationary source operating under a class II operating permit;

(d) within one year of the initial startup of any modification to an existing source that is not required to operate under a class I or class II operating permit if the modification increases the potential-to-emit of the stationary source above any major source threshold or if the modification would otherwise require the source to obtain a class I operating permit;

(e) within one year of the initial startup of any other stationary source which is required to obtain class I operating permit;

(f) within one year after commencing operation for any stationary source required to meet the requirements of section 112(g) of the federal clean air act or for any stationary source required to have a construction permit pursuant to a requirement of the state implementation plan submitted to fulfill the requirements of part C or part D of title I of the federal clean air act. If an existing class I operating permit prohibits such construction or change in operation, a permit revision to the class I operating permit shall be issued before commencing such operation. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-511. Class I operating permits; application contents. (a) Applications for class I operating permits and renewals of class I operating permits shall be submitted in writing on forms provided or approved by the department.

(1) The original and two copies of the application, including all supporting documentation, shall be submitted to the department.

(2) An additional copy shall be submitted for each affected state.

(b) Except as provided in paragraph (h) of this regulation, an application for a class I operating permit shall include, but is not limited to, the following information:

(1) identifying information, including:

(A) company name and address or plant name and address if different from the company name;

(B) the owner's name and agent;

(C) the name and address of the responsible official; and

(D) the telephone number and names of plant site manager or contact person;

(2) a description of the stationary source's processes and products, by standard industrial classification code, including any associated with each alternate scenario identified by the applicant;

(3) all emissions, including fugitive emissions, of pollutants for which the source is major and all emissions, including fugitive emissions, of regulated pollutants.

(A) A permit application shall describe all emissions of regulated pollutants emitted from any emissions unit, except for insignificant activities. A list of which shall be maintained by the department, or insignificant emission levels.

(B) For insignificant activities which are exempt because of size or production rate, a list of such insignificant activities shall be included in the application.

(C) Information regarding an insignificant activity or emission shall not be omitted if the information is necessary to determine whether an applicable requirement applies or should be imposed.

(D) Additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source may be required by the department.

(E) For purposes of this subsection, insignificant emission levels include those from emissions units which do not have a potential-to-emit in excess of the following and for which no applicable requirement exits:

(i) the de minimis level for any hazardous air pollutant;

(ii) one hundred tons per year of carbon monoxide;

(iii) forty tons per year of nitrogen oxides;

(iv) forty tons per year of sulfur dioxide;

(v) twenty-five tons per year of particulate matter emissions;

(vi) fifteen tons per year of PM10 emissions;

(vii) forty tons per year of volatile organic compounds; or

(viii) 0.6 tons per year of lead;

(4) identification and description of all points of emissions described in paragraph (b)(3) of this regulation in sufficient detail to establish the applicability of requirements of the Kansas air quality act;

(5) emissions rates stated in tons per year and in such terms as are necessary to establish compliance consistent with any applicable standard reference test methods;

(6) the following information to the extent it is needed to determine or regulate emissions:

(A) fuels;

(B) fuel use;

(C) raw materials;

(D) production rates; and

(E) operating schedules;

(7) identification and description of air pollution control equipment and compliance monitoring devices or activities;

(8) limitations on source operations affecting emissions or any work practice standards where applicable, for all regulated pollutants at the emissions unit or stationary source;

(9) any other information required by any applicable requirement, including information related to stack height limitations developed pursuant to K.A.R. 28-19-18 through 28-19-18f;

(10) calculations on which the information in paragraphs (b)(3) through (b)(9) of this regulation is based;

(11) the citation and a description of all applicable requirements and a description of or reference to any applicable test method for determining compliance with each applicable requirement;

(12) other specific information that may be necessary to implement and enforce other applicable requirements or to determine the applicability of such requirements;

(13) an explanation of any proposed exemptions from otherwise applicable requirements;

(14) additional information as determined to be necessary by the department to define alternative operating scenarios identified by the applicant or to define other permit terms and conditions;

(15) a statement of whether the stationary source is obligated to register and submit a risk management plan pursuant to section 112(r) of the federal clean air act and, if so, whether the required subtotal has been prepared and submitted to the appropriate authorities;

(16) a compliance plan for all emissions units or stationary sources. These compliance plan content requirements shall also be applicable to affected sources under title IV, acid deposition control, of the federal clean air act unless specifically superseded by statute or regulation. A compliance plan shall contain all of the following:

(A) a description of the compliance status of the emissions unit or stationary source with respect to all applicable requirements;

(B) a description as follows:

(i) for applicable requirements with which the emissions unit or stationary source is in compliance, a statement that the emissions unit or stationary source will continue to comply with such requirements;

(ii) for applicable requirements that will become effective during the permit term, a statement that the emissions unit or stationary source will meet such requirements on a timely basis;

(iii) for requirements for which the emissions unit or stationary source is not in compliance at the time of permit issuance, a narrative description of how the emissions unit or stationary source will achieve compliance with such requirements;

(iv) for any source that fails to verify in its application pursuant to K.A.R. 28-19-511(b)(15) that it has submitted a risk management plan in accordance with section 112(r) of the federal clean air act, a statement that the source will submit the required plan by a date specified in the permit;

(C) a compliance schedule as follows:

(i) for applicable requirements with which the emissions unit or stationary source is in compliance, a statement that the emissions unit or stationary source will continue to comply with such requirements;

(ii) for applicable requirements that will become effective during the permit term, a statement that the emissions unit or stationary source will meet such requirements on a timely basis. A statement that the emissions unit or stationary source will comply in a timely manner with any applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement;

(iii) a schedule of compliance or emissions units or stationary sources that are not in compliance with all applicable requirements at the time of permit issuance. The schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements or which the emissions unit or stationary source will be in noncompliance at the time of permit issuance. This compliance

schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the emissions unit or stationary source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based;

(D) a schedule for submission of certified progress reports no less frequently than every 6 months for emissions units or stationary sources required to have a schedule of compliance to remedy a violation; and

(E) a statement that failure to comply with any term of a compliance plan or compliance schedule shall be considered a violation of this regulation; and

(17) requirements for compliance certification, including the following:

(A) a certification of compliance with all applicable requirements by a responsible official consistent with paragraph (e) of this regulation and K.S.A. 65-3008(b) and amendments thereto:

(B) a statement of methods used for determining compliance, including a description of monitoring, record keeping, and reporting requirements and test methods;

(C) a schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently is specified by the underlying applicable requirement or the department;

(D) a statement indicating the compliance status of the emission unit or stationary source with any applicable enhanced monitoring requirements and applicable compliance certification requirements; and

(E) a statement indicating that the stationary source is properly implementing any required risk management plan in accordance with section 112(r) of the federal clean air act.

(c) The owner or operator of the stationary source shall provide additional information requested by the department.

(d) The owner or operator of the stationary source may apply for restrictions of operating hours or restrictions on the type or amount of material combusted, stored or processed. The restrictions may be incorporated into the class I operating permit. The calculation of the potential-to-emit of the stationary source shall take into consideration such operational restrictions if the procedures set out at K.A.R. 28-19-501 were followed during the issuance of the construction or class I operating permit.

(e) Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under the Kansas air quality act, and regulations promulgated thereunder, shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

(f) Any person who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the stationary source after the date a complete application was filed but prior to the solicitation of public comments regarding the proposed permit.

(g) Failure to comply with any term of a compliance plan or compliance schedule shall be considered a violation of this regulation.

(h) For any non-major or area source required to obtain a class I operating permit, an application shall address only the applicable requirements applicable to emission units that cause the source to require a class I operating permit. These non-major or area sources shall be subject to an application fee of $50.00 in lieu of the requirements of K.A.R. 28-19-516. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3008; effective Jan. 23, 1995; amended Dec. 8, 1995.)

28-19-512. Class I operating permits; permit content. (a) The owner or operator of a stationary source which is authorized to operate pursuant to a class I operating permit shall assure that the stationary source operates in compliance with the terms and conditions of the class I operating permit, which shall include, but are not limited to:

(1) emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance;

(2) all applicable requirements for all relevant emissions units for a major source;

(3) all applicable requirements applicable to emissions units that cause a non-major source to require a class I operating permit;

(4) a description of fugitive emissions in the same manner as stack emissions, regardless of whether the

source is a federally designated fugitive emissions source;

(5) specification and reference to the origin of and authority for each term or condition, identifying any difference in form as compared to the applicable requirement upon which the term or condition is based;

(6) where an applicable requirement of any other title of the federal clean air act is more stringent than an applicable requirement of regulations promulgated under title IV, acid deposition control, of the federal air act, both provisions;

(7) where a permit contains an emission limitation which is authorized by the state implementation plan and is an alternative to an emission limitation contained in the state implementation plan, provisions to ensure that any resulting emissions limitation has been demonstrated to be quantifiable, enforceable, and based on replicable procedures;

(8) specification of a fixed term of the class I operating permit determined pursuant to K.A.R. 28-19-514;

(9) emissions monitoring and related record keeping and reporting requirements, including;

(A) all emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods adopted to comply with the requirements of section 504(b), permit requirements and conditions, or section 114(a)(3), enhanced monitoring and compliance certifications, of the federal clean air act;

(B) periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to paragraph (a)(8) of this regulation where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring, which may consist of record keeping designed to serve as monitoring. The monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement; and

(C) as necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods;

(10) applicable record keeping requirements and required monitoring information, including:

(A) the date, place as defined in the permit, and time of sampling or measurements of required monitoring information;

(B) the date or dates analyses were performed;

(C) the company or entity that performed the analyses;

(D) the analytical techniques or methods used;

(E) the results of such analyses;

(F) the operating conditions as existing at the time of sampling or measurement; and

(G) the retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information shall include all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit;

(11) applicable reporting requirements, including:

(A) submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements shall be clearly identified in such reports. All required reports shall be certified by a responsible official consistent with K.A.R. 28-19-511(e); and

(B) as specified in the permit, prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken;

(12) conditions prohibiting emissions exceeding any allowances that the emissions unit or stationary source lawfully holds under title IV, acid deposition control, of the federal clean air act or the regulations promulgated thereunder.

(A) A permit revision shall not be required for increases in emissions that are authorized by allowances acquired pursuant to title IV, acid deposition control, of the federal clean air act, provided that such increases do not require a permit revision under any other applicable requirement.

(B) A limit shall not be placed on the number of allowances held by the emissions unit or stationary source. The emissions unit or stationary source shall not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(C) Any allowance shall be accounted for according to the procedures established in regulations promulgated under title IV, acid deposition control, of the federal clean air act;

(13) a severability clause to ensure the continued validity of the various permit requirements in the event of

a challenge to any portion of the permit;

(14) provisions stating that:

(A) the permittee must comply with all conditions of the permit. Any permit noncompliance shall constitute a violation of the Kansas air quality act and shall be grounds for enforcement action, for permit revocation or amendment, or for denial of a permit renewal application;

(B) it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;

(C) the permit may be modified, revoked, reopened and reissued, or terminated for cause. An action for a permit modification or amendment, or of a notification of planned changes or anticipated noncompliance shall not stay any permit condition;

(D) the permit shall not convey any property rights of any sort, or any exclusive privilege; and

(E) the permittee shall furnish to the department, within a reasonable time, any information that the department may request in writing to determine whether cause exists for amending or revoking the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the department copies of records required to be kept by the permit;

(15) a provision to ensure that the owner or operator of a permitted emissions unit or stationary source pays fees to the permitting authority consistent with the fee schedule set out in these regulations;

(16) a provision stating that no permit revision shall be required under any approved economic incentives, pollution prevention incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit;

(17) terms and conditions for reasonably anticipated operating scenarios identified by the owner or operator of the emissions unit or stationary source in its application as approved by the department. The terms and conditions:

(A) shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(B) may extend the permit shield described in paragraph (b) of this regulation to all terms and conditions under each such operating scenario; and

(C) shall ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this part;

(18) terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for such trading without a case-by-case approval of each emissions trade. The source shall provide the department and the USEPA with written notice at least seven days in advance of any proposed change within the source stating when the change will occur, the changes in emissions that will result, and how the emissions decreases or increases will comply with the terms and conditions of the permit. The terms and conditions:

(A) shall include all terms required under subsection (a) of this regulation to determine compliance;

(B) may extend the permit shield described in paragraph (b) of this regulation to all terms and conditions that allow such increases and decreases in emissions; and

(C) shall meet all applicable requirements and requirements of the Kansas air regulations;

(19) provisions that designate as not being federally enforceable under the federal clean air act any terms and conditions included in the permit that are not required under the federal clean air act or under any of its applicable requirements;

(20) a statement of all federally enforceable permit restrictions;

(21) consistent with other relevant subsections of this regulation, certification, testing, monitoring, reporting, and record keeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including reports, required by the permit shall contain a certification by a responsible official that meets the requirements of K.A.R. 28-19-511(e);

(22) inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the department or an authorized representative to:

(A) enter upon the permittee's premises where the emissions unit or stationary source is located or emissions-related activity is conducted, or where records shall be kept under the conditions of the permit;

(B) have access to and copy, at reasonable times, any records that shall be kept under the conditions of the permit;

(C) inspect at reasonable times any facilities, equipment including monitoring and air pollution control

equipment, practices, or operations regulated or required under the permit; and

(D) as authorized by the Kansas air quality act, sample or monitor at reasonable times substances of parameters for the purpose of assuring compliance with the permit or applicable requirements;

(23) a schedule of compliance consistent with the requirements of K.A.R. 28-19-511(b)(16)(C);

(24) progress reports consistent with any applicable schedule of compliance established pursuant to K.A.R. 28-19-511(b)(16)(D) to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the permitting authority. The progress reports shall contain the following:

(A) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(B) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

(25) requirements for compliance certification with the terms and conditions contained in the permit, including:

(A) emission limitations, standards or work practices, and risk management plan implementation; and

(B) a means of monitoring the compliance of the emissions unit or stationary source with its emissions limitations, standards, and work practices in accordance with the relevant provisions of this regulation;

(26) requirements to submit compliance certifications annually or more frequently as specified in the applicable requirement or by the department, which shall include the following:

(A) the identification of each term or condition of the permit that is the basis of the certification;

(B) the compliance status;

(C) whether compliance was continuous or intermittent;

(D) the method or methods used for determining the compliance status of the emissions unit or stationary source, currently and over the reporting period, consistent with relevant provisions of this regulation; and

(E) other facts as the department may require to determine the compliance status of the source;

(27) a requirement that all compliance certifications be submitted to the USEPA as well as to the department;

(28) a requirement for additional monitoring as may be required by the federal clean air act; and

(29) other provisions as the department deems necessary to accomplish the purposes of the Kansas air quality act.

(b) Permit shield.

(1) Except as otherwise provided in the air quality regulations, the department may expressly include in a class I operating permit a permit shield stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(A) the applicable requirements are included and are specifically identified in the permit; or

(B) the department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the emissions unit or stationary source, and the permit includes the determination or a concise summary thereof.

(2) A permit that does not expressly state that a permit shield exists shall be presumed not to provide a shield.

(3) Nothing in this regulation or in any permit shall alter or affect the following:

(A) the provisions of section 303, emergency orders, of the federal clean air act, including the authority of the administrator of the USEPA under that section or the air pollution emergency provisions of the Kansas air quality regulations, K.A.R. 28-19-55 through 28-19-58;

(B) the liability of an owner or operator of an emissions unit or stationary source for any violation of applicable requirements prior to or at the time of permit issuance;

(C) the applicable requirements of title IV, acid deposition control, of the federal clean air act, consistent with section 408(a) of the federal clean air act; or

(D) the ability of the USEPA to obtain information from a source pursuant to section 114, inspections, monitoring and entry, of the federal clean air act.

(c) Portable sources. A permit for a portable emissions unit or stationary source may authorize similar operations by the same source owner or operator at multiple temporary locations. The operation shall be temporary and involve at least one change of location during the term of the permit. An affected source shall not be permitted as a

portable source. Permits for portable sources shall include the following:

(1) conditions that will assure compliance with all applicable requirements at all authorized locations:

(2) requirements that the owner or operator notify the permitting authority at least 10 days in advance of each change in location; and

(3) conditions that assure compliance with all other provisions of the Kansas air quality regulations.

(d) Emergencies.

(1) An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) An emergency shall constitute an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph (d)(3) of this regulation are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(A) an emergency occurred and that the permittee can identify the cause or causes of the emergency;

(B) the permitted facility was at the time being properly operated;

(C) during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit; and

(D) the permittee submitted notice of the emergency to the department within two working days of the time when emission limitations were exceeded due to the emergency. This notice shall fulfill the requirement of paragraph (a)(11)(B) of this regulation. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency shall have the burden of proof.

(5) This provision shall be in addition to any emergency or upset provision contained in any applicable requirement. Whenever the provisions of this regulation regarding emergencies conflict with the provisions of K.A.R. 28-19-11, the provisions of this regulation shall control. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3008; effective Jan. 23, 1995; amended Dec. 8, 1995.)

28-19-513. Class I operating permits; permit amendment, modification or reopening and changes not requiring a permit action. (a) The provisions of this subsection shall apply to administrative permit amendments.

(1) An "administrative permit amendment" is a permit revision that:

(A) corrects typographical errors;

(B) identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(C) requires more frequent monitoring or reporting by the permittee;

(D) allows for a change in ownership or operational control of a source where the department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the department; or

(E) incorporates into the class I operating permit the requirements from a preconstruction review permit authorized under K.A.R. 28-19-300 et seq., construction permits and approvals, provided that the preconstruction review procedural requirements are substantially equivalent to the requirements applicable to a permit modification, and compliance requirements substantially equivalent to those contained in K.A.R. 28-19-512.

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV, acid deposition control, of the federal clean air act.

(3) Any other revision to a permit shall be considered a permit modification or reopening.

(4) An administrative permit amendment may be made by the department without providing notice to the public or affected states provided that it designates any such permit amendment as having been made pursuant to this subsection (a).

(5) The emissions unit or stationary source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(6) The department may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in K.A.R. 28-19-513(b) for administrative permit amendments made pursuant to paragraph (a)(1)(E) of this regulation which meet the relevant requirements pertaining to permit requirements, permit amendment, modification, reopening or change, or review by the USEPA and affected states for significant permit modifications.

(b)(1) Any revision to a permit that is not accomplished as an administrative permit amendment or reopening shall be considered a permit modification.

(A) A permit modification may be either minor or significant.

(B) A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV, acid deposition control, of the federal clean air act.

(2) A permit modification may be issued only if all of the following conditions have been met:

(A) Except for modifications qualifying for minor permit modification procedures, compliance with the requirements for public participation pursuant to K.A.R. 28-19-515(a);

(B) compliance with the requirements for affected state participation pursuant to K.A.R. 28-19-515(b);

(C) the permit, as modified, provides for compliance with all applicable requirements and the requirements of the Kansas air quality regulations; and

(D) compliance with the requirements for USEPA participation pursuant to K.A.R. 28-19-515(c) and K.S.A. 1993 Supp. 65-3008(7)(g).

(c) The provisions of this subsection shall apply to minor permit modifications.

(1) Minor permit modification procedures shall only be used for those permit modifications that:

(A) do not violate any applicable requirement;

(B) do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(C) do not require or change a case-by-case determination of an emission limitation or other standard, a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(D) do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. The terms and conditions shall include:

(i) a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of title I, air pollution prevention and control, of the federal clean air act; and

(ii) an alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5), early reductions, of the federal clean air act;

(E) are not modifications under any provision of title I, air pollution prevention and control, of the federal clean air act; and

(F) are not required to be processed as a significant modification.

(2) Minor permit modification procedures may also be used for permit modifications involving the use of economic incentives, marketable permits, pollution prevention incentives, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the state implementation plan.

(3) An application requesting the use of minor permit modification procedures shall meet the requirements of K.A.R. 28-19-511 and shall include the following:

(A) a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(B) the suggested draft permit for the emissions unit or stationary source;

(C) certification by a responsible official, consistent with K.A.R. 28-19-511(d), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

(D) completed forms for the department to use to notify the administrator of the USEPA and any affected states.

(4) The emissions unit or stationary source may make the change proposed in its minor permit modification application immediately after it files such application with the department. After the emissions unit or stationary source makes that change, and until the department takes any action in regard to the minor permit modification application, the emissions unit or stationary source shall comply with both the applicable requirements governing the change and the

proposed permit terms and conditions. During this time period, the emissions unit or stationary source shall not be required to comply with the existing permit terms and conditions it seeks to modify. However, if the emissions unit or stationary source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it. This subsection shall also apply to modifications eligible for group processing.

(5) The permit shield provisions of K.A.R. 28-19-512(b) shall not extend to minor permit modifications.

(6) The procedure outlined in paragraph (c)(3) of this regulation may be modified by the department to process groups of an emission unit's or stationary source's applications for certain modifications eligible for minor permit modification processing. Group processing of modifications shall only be used for those permit modifications that meet the criteria for minor permit modification procedures and that are collectively below whichever of the following amounts is the least:

(A) 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested;

(B) 20 percent of the applicable definition of major source in 40 CFR §70.2, as in effect July 1, 1993; or

(C) 5 tons per year.

(7) Each application requesting the use of group processing procedures shall meet the requirements of K.A.R. 28-19-511(b) and shall include the following:

(A) a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(B) the suggested draft permit of the emission unit or stationary source;

(C) certification by a responsible official, consistent with K.A.R. 28-19-511(e), that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used;

(D) a list of any other pending applications of that emission unit or stationary source that are awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold;

(E) certification, consistent with the requirement of K.A.R. 28-19-511(e), that the source has notified the USEPA of the proposed modification. The notification shall only be required to contain a brief description of the requested modification; and

(F) completed forms for the department to use to notify the administrator of the USEPA and affected states.

(8) The permit shield shall not apply to modifications eligible for group processing.

(9) An application for a minor permit modification shall be acted upon within 90 days of receipt by the department. An application for group processing of minor permit modifications shall be acted upon within 180 days of receipt by the department.

(d) The provisions of this subsection shall apply to significant permit modifications.

(1) Significant permit modification procedures shall be used for each application requesting any permit modification that does not qualify as a minor permit modification, an administrative amendment or a reopening.

(2) Significant permit modifications shall include, but shall not be limited to, every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or record keeping permit terms or conditions. Nothing herein shall be construed to preclude the permittee from making changes consistent with this article that would render existing permit compliance terms and conditions irrelevant.

(3) Each significant permit modification application shall be subject to the provisions of K.A.R. 28-19-511.

(4) Each significant permit modification shall meet all requirements of the Kansas air quality regulations, including those for applications, public participation, review by affected states, and review by EPA, as they apply to class I operating permit issuance and permit renewal.

(e) The provisions of this subsection shall apply to reopening of a permit.

(1) Each issued permit shall be subject to provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(A) additional applicable requirements under the federal clean air act become applicable to an emissions unit or stationary source with a remaining permit term of 3 or more years. A reopening shall not be required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended;

(B) additional requirements, including excess emissions requirements, become applicable to an affected source under title IV, acid deposition control, of the federal clean air act. Upon approval by the administrator of the USEPA,

excess emissions offset plans shall be deemed to be incorporated into the permit;

(C) it is determined by the department that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit;

(D) it is determined by the department that it is necessary to revise or revoke a permit in order to assure compliance with the applicable requirements.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists.

(3) Reopenings under this subsection (e) shall not be initiated before a notice of intent to reopen is provided to the owner or operator of the emissions unit or stationary source by the department at least 30 days in advance of the date that the permit is to be reopened, except that the department may provide a shorter time period in the case of an emergency.

(f)(1) A source which is operating pursuant to a class I operating permit may, without making application for a permit amendment or modification, make changes within the facility that:

(A) are not modifications under any provision of title I, air pollution prevention and control, of the federal clean air act;

(B) do not cause emissions in excess of any emissions limit stated in the class I operating permit; and

(C) do not alter conditions of the permit that address requirement for:

(i) monitoring (including test methods);

(ii) record-keeping;

(iii) reporting; or

(iv) compliance certification requirements.

(2) Prior to making a change pursuant to the preceding paragraph, the facility shall provide the department and the USEPA written notification at least seven days in advance of implementing the proposed change.

(A) The stationary source, the department and the USEPA shall attach the notice to their copy of the relevant permit.

(B) For each such change, the written notification required above shall include:

(i) a brief description of the change within the permitted facility;

(ii) the date on which the change will occur;

(iii) any change in emissions;

(iv) and any permit term or condition that is no longer applicable as a result of the change.

(3) The permit shield provisions of K.A.R. 28-19-512(b) shall not apply to any change made under the provisions of subsection (f) of this regulation.

(g)(1) A stationary source which is operating pursuant to a class I operating permit may, without a permit modification, make changes to the stationary source if the changes are either:

(A) not subject to any requirement under any provision of title IV of the federal clean air act, acid deposition control; or

(B) not modifications under any provision of title I of the federal clean air act, air pollution prevention and control.

(2) Each change made at the stationary source without a permit modification pursuant to this subsection shall be subject to the following provisions.

(A) The change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(B) The owner or operator shall provide contemporaneous written notice to the department and the USEPA of the change, except for changes that qualify as insignificant under the provisions or K.A.R. 28-19-511(b)(3). The written notice shall describe the change, including the date of the change, all regulated pollutants emitted, any change in emissions, and any applicable requirement that would apply as a result of the change.

(3) The change shall not qualify for the permit shield under K.A.R. 28-19-512(b).

(4) The owner or operator shall keep a record describing changes made at the stationary source that result in emissions of a regulated pollutant subject to an applicable requirement that are not otherwise regulated under the permit, and the emissions resulting from those changes. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-514. Class I operating permits; permit term; renewal. (a) Permit term. Each class I operating permit shall specify the expiration date of the permit.

(1) Class I operating permits issued to solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the federal clean air act, shall have a maximum term of 12 years from the date of issuance and shall be reviewed by the department every five years.

(2) Class I operating permits issued to affected sources shall have a term of five years.

(3) All other class I operating permits shall have maximum term of five years from the date of issuance.

(b) The class I operating permit shall not expire on the expiration date if a complete application, as defined at K.A.R. 28-9-518, for renewal of the current permit, including any appliable application fee, has been submitted to the department not less than six months and not more than eighteen months before the expiration date of the permit. In such case, the class I operating permit shall expire on the earliest of the following dates:

(1) any date the application is determined incomplete subsequent to the expiration date;

(2) the date the permit is renewed;

(3) the effective date of any new operating permit if a different class of operating permit is issued for the stationary source;

(4) the date the department determines the stationary source does not require an operating permit; or

(5) if the department's action on the application is unfavorable, the last day for seeking judicial review of the department's action.

(c) The application for renewal of a class I operating permit shall be in writing and made on forms provided or approved by the department.

(d) An application for renewal of a class I operating permit shall be consistent with the requirements of K.A.R. 28-19-511. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-515. Class I operating permits; public participation, affected state participation, and USEPA participation. (a) Except for administrative permit amendment or modifications qualifying for minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall provide adequate procedures for public notice including offering an opportunity for public comment and an opportunity for a public hearing on the proposed permit. In addition to procedures specified at K.A.R. 28-19-204, the procedures shall include the following requirements.

(1) Notice shall be given to persons on a mailing list developed by the department, including those who request in writing to be on the list and by other means if necessary to assure adequate notice to the affected public.

(2) The notice shall identify the emissions change involved in any permit modification.

(3) The notice shall state that prior to the issuance of the permit, permit modification, or permit renewal, the USEPA has the right to object to issuance of the permit. The notice shall further state that if the USEPA fails to object to issuance of the permit within 45 days of receipt of the permit which the department proposes to issue, a person may petition the administrator of the USEPA to review the permit by filing a petition with the administrator of the USEPA within 60 days of the expiration of the USEPA's 45 day review period.

(4) Notice and opportunity for participation by affected states shall be provided pursuant to subsection (b) of this regulation.

(5) A record of the commenters and of the issues raised during the public participation process shall be made so that the USEPA may fulfill its obligation under section 505(b)(2) of the federal clean air act to determine whether a citizen petition may be granted, and such records shall be available to the public.

(b)(1) Notice of each proposed permit, permit renewal, or permit modification shall be provided to any affected state on or before the time that notice is provided to the public under subsection (a) of this regulation, except to the extent minor permit modification procedures or group processing of minor permit modification procedures require the timing of the notice to be different.

(2) As part of the submittal of the proposed permit to the USEPA, or as soon as possible after the submittal for minor permit modification procedures allowed under K.A.R. 28-19-513(c), the USEPA and any affected state shall be notified by the department in writing of any refusal to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period.

(A) The notice shall include the reasons for not accepting any such recommendation.

(B) The department shall not be required to accept recommendations that are not based on applicable requirements, the requirements of 40 CFR part 70, or the requirements of the Kansas air quality regulations.

(c) Unless waived by the USEPA, the USEPA shall be provided a copy of each permit application including any application for permit modification, each proposed permit, and each final class I operating permit. The applicant may be required by the department to submit a copy of the permit application, including the compliance plan, directly to the USEPA.

(d) Any person may request a copy of the statement developed by the department and submitted to the USEPA that sets forth the legal and factual basis for the proposed permit conditions, including references to the applicable statutory or regulatory provisions.

(e) Copies of the proposed permit, the application, all relevant supporting materials, including any compliance plan and compliance certification, and all other materials available to the department that are relevant to the permit decision shall, upon request, be furnished without charge to the USEPA and any affected state. Any other person requesting copies of such documentation shall pay a fee equal to that regularly charged by the department for copying of documents. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-516. Class I operating permits; application fee. (a) Except as provided in paragraph (b) of this regulation, an application pertaining to a class I operating permit shall not be deemed complete unless accompanied by the appropriate fee.

(b) Fees.

(1) The fee for an initial application for a class I operating permit other than a general permit shall be $1,000.00.

(2) The fee for a class I operating permit renewal application other than a general permit renewal application shall be $1,000.00.

(3) The fee for a class I operating permit application for a significant modification shall be $500.00.

(4) The fee for a class I general operating permit petition submitted under the provisions of K.A.R. 28-19-401 shall be $750.00.

(5) The fee for a class I general operating permit application submitted under the provisions of K.A.R. 28-19-403 shall be $250.00.

(c) The application fee required by this regulation, including any application fee involving a class I general operating permit, may be reduced by the amount of any annual emission fee paid pursuant to K.A.R. 28-19-202 if:

(1) the annual emission fee was due and paid within the 12 month period immediately preceding payment of the application fee;

(2) the application fee involves the same stationary source for which the annual emission fee was paid;

(3) the entity responsible for paying the application fee is the same entity responsible for paying the annual emission fee; and

(4) the total of the application fees reduced during any relevant 12 month period does not exceed the corresponding annual emissions fee paid. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-517. Class I operating permits; annual emission inventory. (a) Each owner or operator of a stationary source that is required by these regulations to apply for a class I operating permit shall, on or before June 1 of each year, submit to the department all operating and any other relevant information deemed necessary by the secretary to estimate the actual air emissions from the stationary source for the preceding year. If June 1 falls on a Saturday, Sunday, or holiday, then the submissions shall be due on or before the next business day following June 1. The timeliness of the submissions shall be determined by the postmark if submitted by mail.

(b) The information required by subsection (a) of this regulation shall be submitted on forms provided by the department or approved by the secretary. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3007; effective Jan. 23, 1995; amended Feb. 20, 1998; amended September 23, 2005.)

28-19-518. Class I operating permits; complete applications. (a) An application for the issuance, renewal or significant modification of a class I operating permit that is timely filed and deemed complete shall have the effect of

allowing the emissions unit or stationary source to continue to operate in the same legal capacity as on the date the application is deemed complete until such time as final agency action is taken on the application or until such time as the application is subsequently deemed incomplete.

(b) An application for a class I or class II operating permit shall be deemed complete as of the date the application was submitted to the department if:

(1) the department determines that the information submitted by the applicant substantially complies with the requirements of K.A.R. 28-19-511 and notifies the applicant, in writing within 60 days after the application was submitted, that the application has been deemed complete;

(2) after an application has been deemed complete, the applicant submits additional information requested in writing by the department within the time-frame specified by the department or within 60 days of the date of the request if no time-frame is specified by the department; or

(3) the department fails to notify the applicant that the application is not complete within the time-frames specified in paragraphs (b)(1) and (b)(2) of this regulation.

(c) The department may request additional information from the applicant even though the department has previously deemed the application to be complete. Failure of the applicant to submit any additional information the department has requested in writing within the time-frame specified in the request, or within 60 days of the date of the request if no time-frame is specified, shall result in the application being deemed incomplete as of the date the requested information was to be submitted, even though the application may have been deemed complete prior to the date the additional information was to be submitted to the department.

(d) For purposes of this regulation, a document shall be considered submitted to the department on the day it is physically delivered to the department or the date of the post mark if the document is mailed to the department.

(e) Any person who fails to submit any relevant facts or who has submitted incorrect information in an application for the issuance, renewal or significant modification of a class I operating permit shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, the owner or operator shall submit to the department such additional information as is necessary to address any requirements that become applicable to the emissions unit or stationary source after the date a complete application was filed but prior to the date the permit is placed on public notice. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3008; effective Jan. 23, 1995; amended Dec. 8, 1995.)

28-19-519 through 28-15-539. Reserved.

28-19-540. Class II operating permits; applicability. The owner or operator of a stationary source which would otherwise require a class I operating permit may submit an application for a class II operating permit for the stationary source requesting the potential-to-emit of the stationary source be limited below the major source threshold. The potential-to-emit of the stationary source may be limited:

(a) through:

(1) the reduction of emissions by restricting operating hours or the type or amount of material combusted, stored or processed in accordance with K.A.R. 28-19-501;

(2) a permit restriction pursuant to K.A.R. 28-9-300, or its predecessor K.A.R. 28-19-14;

(3) the reduction of emissions by air pollution control equipment maintained in accordance with the requirements of K.A.R. 28-19-501; or

(4) any combination of operational restrictions and air pollution control equipment;

(b) for those source categories identified at K.A.R. 28-19-561 through K.A.R. 28-19-563, by operating the stationary source in accordance with the applicable restrictions contained in those regulations and in K.A.R. 28-19-542, and in accordance with all other requirements for class II operating permits, unless any requirements for class II operating permits are identified in these rules as inapplicable to class II operating permits by rule; or

(c) by operating the source in compliance with a general class II operating permit issued pursuant to K.A.R. 28-19-400. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 65-3008; effective Jan. 23, 1995.)

28-19-541. Class II operating permits; application timetable and contents. (a) Any stationary source that has been issued a construction permit with federally enforceable permit restrictions pursuant to K.A.R. 28-19-302(b), shall file a complete initial application for a class II operating permit in accordance with K.A.R. 28-19-518 subsections (b)

through (e), within one year of commencing operations or within one year of the effective date of this regulation, whichever is later. Any other stationary source that seeks a class II operating permit or a class II operating permit-by-rule shall file a complete initial application in accordance with K.A.R. 28-19-518 no later than 180 days before the date by which the applicant seeks issuance of the permit.

(b) The initial application for any class II operating permit, including a permit-by-rule pursuant to K.A.R. 28-19-542, shall be in writing and on forms provided or approved by the department. Until the department issues a class II operating permit to the source, the potential-to-emit of that source shall not be considered to be reduced.

(c) An application for a class II operating permit, other than an application for a permit-by-rule pursuant to K.A.R. 28-19-542, shall be accompanied by:

(1) sufficient information for the department to determine the potential-to-emit of the stationary source;

(2) any air pollution control equipment maintenance plan required by the provisions of K.A.R. 28-19-501;

(3) any proposed operational restrictions which would reduce the potential-to-emit of the stationary source, including:

(A) specification of any proposed operating restrictions;

(B) proposed methods for quantifying such restrictions;

(C) proposed methods for monitoring such restrictions; and

(4) the appropriate application fee.

(d) The owner or operator of the source shall provide any additional information requested by the department.

(e) The application shall be certified by a responsible official.

(f) Any person who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the stationary source after the date a complete application was filed but prior to the solicitation of public comments regarding the proposed permit.

(g) A stationary source to which a class I operating permit has been issued shall not be eligible for a class II operating permit until the class I operating permit has expired. A stationary source that holds a class I operating permit and seeks a class II operating permit shall submit an application for a class II operating permit no later than 180 days prior to expiration of the class I permit. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-542. Class II operating permits; permit-by-rule. (a) The owner or operator of any stationary source that is within a source category specified in K.A.R. 28-19-561 through K.A.R. 28-19-564, may submit an application to the department for an operating permit-by-rule.

(b) An application for a permit-by-rule shall be on forms provided by the department or approved by the secretary and shall contain information sufficient for the department to determine the applicability of the requirements of K.A.R. 28-19-561 through K.A.R. 28-19-564 to the stationary source and the eligibility of the source to obtain a permit-by-rule.

(c) The owner or operator of a source which elects to operate pursuant to a class II operating permit-by-rule shall comply with the applicable requirements of K.A.R. 28-19-540 through 28-19-546 in addition to the requirements of the permit-by-rule, except for any requirement specifically stated to be inapplicable to permits-by-rule. (Authorized by K.S.A. Supp. 65-3005; implementing K.S.A. Supp. 65-3008; effective Jan. 23, 1995; amended September 23, 2005.)

28-19-543. Class II operating permits; permit term and content; operational compliance. A class II operating permit shall remain valid until modified, revoked or otherwise determined invalid. A stationary source for which a class II operating permit has been issued shall comply with all applicable air quality regulations, whether or not addressed in the class II operating permit, unless specific provision is made within the class II operating permit specifying the stationary source is not required to comply with an otherwise applicable regulation. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-544. Class II operating permits; modification of source or operations. (a) Any stationary source operating pursuant to a class II operating permit shall not modify the stationary source in any manner which increases the potential-to-emit of any pollutant included in the categories listed at K.A.R. 28-19-500 without first obtaining a written

approval from the department authorizing such modification pursuant to K.A.R. 28-19-300 et seq., construction permits and approvals.

(b) The owner or operator of a stationary source shall submit to the department a complete application for modification of a class II operating permit, including any applicable application fee, within 180 days of the initial startup of any modification if the modification increases the potential-to-emit of the stationary source.

(c) The application for modification shall be in writing and made on forms provided or approved by the department.

(d) An application for modification of a class II operating permit shall be accompanied by:

(1) sufficient information for the department to determine the potential-to-emit of the stationary source;

(2) any air pollution control equipment maintenance plan required by the provisions of K.A.R. 28-19-501;

(3) any proposed operational restrictions which would reduce the potential-to-emit of the stationary source, including:

(A) specification of any proposed operating restrictions;

(B) proposed methods for quantifying such restrictions; and

(C) proposed methods for monitoring such restrictions; and

(4) the appropriate application fee.

(e) The owner or operator of the source shall provide any additional information requested by the department.

(f) The application shall be certified by a responsible official. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-545. Class II operating permits; application fee. (a) An application pertaining to a class II operating permit shall not be deemed complete unless accompanied by the appropriate fee.

(b) Fees.

(1) The fee for an initial application for a class II operating permit other than a general permit or a permit-by-rule shall be $200.00.

(2) The fee for a class II operating permit modification application shall be $100.00.

(3) The fee for a class II general operating permit petition shall be $750.00.

(4) The fee for a class II general operating permit application shall be $50.00.

(5) The fee for a class II operating permit-by-rule application shall be $50.00. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-546. Class II operating permits; annual emission inventory. (a) Except as may be otherwise specifically required, each owner or operator of a stationary source that is required by these regulations to apply for a class II operating permit shall, on or before April 1 of each year, submit to the department all operating information and any other relevant information deemed necessary by the secretary to estimate the actual air emissions from the stationary source for the preceding year. If April 1 falls on a Saturday, Sunday, or holiday, then the submissions shall be due on or before the next business day following April 1. The timeliness of the submissions shall be determined by the postmark if submitted by mail. This information shall be submitted on forms provided by the department or approved by the secretary.

(b) The owner or operator of a source that is operating and who submits annual reports pursuant to K.A.R. 28-19-561 through 28-19-564 by the date specified in paragraph (a) of this regulation shall be deemed to have met the requirement to submit the information specified in paragraph (a) of this regulation. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3007; effective Jan. 23, 1995; amended Feb. 20, 1998; amended September 23, 2005.)

28-19-547 through 28-19-559. Reserved.

28-19-560. Reserved.

28-19-561. Class II operating permits: permit-by-rule; reciprocating engines. (a) Definition. For purposes of this regulation, "reciprocating engine stationary source" shall mean a source with one or more stationary reciprocating engines of any design or fuel type source that does not contain other emission units that, alone or in combination with the reciprocating engines, would require that the owner or operator of the source to obtain a class I operating permit solely

because of its potential-to-emit. For purposes of this regulation, a each reciprocating engine stationary source shall be presumed to operate without emission controls.

(b) Applicability; presumption. The requirements of this regulation shall apply to each reciprocating engine stationary source with a capacity equal to or greater than 730 horsepower, 550 kilowatts, or 5.1 million Btu per hour fuel input. Each reciprocating engine stationary source with a capacity of less than 730 horsepower, 550 kilowatts, or 5.1 million Btu per hour fuel input shall be presumed to have a potential-to-emit of less than 100 tons of each regulated pollutant per year.

(c) Operating conditions. In lieu of obtaining a class I permit under K.A.R. 28-19-500 or a class II permit under K.A.R. 28-19-540, each owner or operator of a reciprocating engine stationary source who elects to operate the source pursuant to this regulation and K.A.R. 28-19-542 shall meet the following requirements:

(1) Limit the operations of the source during each consecutive 12-month period to 5,800,000 horsepower hours, 4,300,000 kilowatt hours, or 40,000 million Btu fuel input;

(2) maintain records demonstrating that the operating restrictions specified in this regulation have not been exceeded;

(3) update the required records monthly, not later than the last day of the month following the month to which the records relate;

(4) retain the required records on-site for at least two years following the date of record, unless an alternative record storage location is authorized by the secretary in writing; and

(5) submit an annual emission report to the department as required in K.A.R. 28-19-546.

(d) Reporting required.

(1) If at the end of any calendar quarter, a source has operated during the previous four consecutive calendar quarters at a level exceeding 85% of the restrictions specified in paragraph (c)(1) of this regulation, the owner or operator of this source shall report in writing to the department the actual operations for the past four quarters.

(2) The actual operations shall be reported in the same units as those in the operating restrictions specified in this regulation.

(3) The report shall be submitted to the department within 45 days of the last day of the last calendar quarter that is the subject of the reporting requirements of this subsection.

(e) Notice of exceedance required.

(1) If at any time a reciprocating engine stationary source that the owner or operator has elected to operate pursuant to this regulation exceeds the operational limitations of paragraph (c)(1) of this regulation, the owner or operator shall notify the department in writing by mailing or delivering the notice on or before the first working day following discovery of the exceedance.

(2) Within 60 days of the discovery of the exceedance of any limitations of paragraph (c)(1) of this regulation, the owner or operator shall submit to the department a written compliance plan identifying those actions being taken and to be taken by the owner or operator to ensure future compliance with the applicable requirements or to otherwise bring the source into compliance with this regulation, any other applicable Kansas air quality regulations, and the Kansas air quality statutes.

(3) The owner or operator shall file an application for any required operating permit within 180 days of discovery of an exceedance of the provisions of paragraph (c)(1) of this regulation.

(4) Compliance with the requirements of this subsection shall not shield the owner or operator from any enforcement action for exceeding any applicable requirement or for other violations of the Kansas air quality act or regulations.

(5) The timeliness of the required notifications, compliance plan submittals, and applications shall be determined by the postmark, if submitted by mail.

(f) Other applicable requirements. Each source that the owner or operator elects to operate in accordance with this regulation shall continue to be subject to all other applicable requirements of the Kansas air quality statutes and regulations. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3007, and 65-3008; effective Jan. 23, 1995; amended Feb. 20, 1998; amended September 23, 2005.)

28-19-562. Class II operating permits; permit-by-rule; organic solvent evaporative sources. (a) Definition. For the purposes of this regulation, “organic solvent evaporative source” shall mean each stationary source that meets both of the following conditions:

(1) The owner or operator of the stationary source purchases or uses materials that contain volatile organic compounds, hazardous air pollutants, or both, that are used in cleaning solvents, printing operations, adhesives, or surface coatings.

(2) The stationary source does not contain emission units, other than organic solvent evaporative sources, that, alone or in combination with all organic solvent evaporative sources, would require the owner or operator of the source to obtain a class I operating permit solely because of the source's potential-to-emit.

(b) Applicability. The requirements of this regulation shall apply to each organic solvent evaporative source for which the owner or operator elects to limit the source's purchase or use of materials during any consecutive 12-month period to meet all of the following criteria:

(1) The materials contain less than a total of 90 tons of volatile organic compounds.

(2) The materials contain less than a total of 22.5 tons of any combination of hazardous air pollutants.

(3) The materials contain less than a total of nine tons of each single hazardous air pollutant.

(c) Presumption. Each organic solvent evaporative source that uses, or for which the owner or operator purchases, in any consecutive 12-month period materials that contain less than a total of nine tons of volatile organic compounds or hazardous air pollutants, or both, shall be presumed to have a potential-to-emit of less than 100 tons of volatile organic compounds per year, less than 25 tons of any combination of hazardous air pollutants per year, and less than 10 tons of a single hazardous air pollutant per year.

(d) Operating conditions. In lieu of obtaining a class I permit under K.A.R. 28-19-500 or a class II permit under K.A.R. 28-19-540, each owner or operator of any organic solvent evaporative source who elects to operate pursuant to this regulation and K.A.R. 28-19-542 shall meet all of the following requirements:

(1) Limit the purchase or use of materials that contain volatile organic compounds, hazardous air pollutants, or both, to the amounts specified in subsection (b) of this regulation;

(2) maintain records of the materials containing volatile organic compounds or hazardous air pollutants, or both, that were either purchased or used by the source, to demonstrate that the restrictions specified in subsection (b) of this regulation have not been exceeded;

(3) update the required records monthly, not later than the last day of the month following the month to which the records relate;

(4) retain the required records on-site for at least two years from the date of record, unless an alternative record storage location is authorized by the secretary in writing; and

(5) submit an annual emission report to the department as required in K.A.R. 28-19-546.

(e) Reporting required.

(1) Each owner or operator of an organic solvent evaporative source who has purchased or used materials containing volatile organic compounds or hazardous air pollutants, or both, shall report in writing to the department the amount of materials purchased or used during the previous four consecutive calendar quarters if, at the end of any calendar quarter, the actual amount of materials purchased or used by the source contain volatile organic compounds and hazardous air pollutants exceeding any of the following levels:

(A) A total of 76.5 or more tons of volatile organic compounds;

(B) a total of 19.1 or more tons of any combination of hazardous air pollutants; or

(C) a total of 7.7 or more tons of each single hazardous air pollutant.

(2) The actual amount purchased or used shall be reported in the units specified in subsection (b) of this regulation.

(3) The report shall be submitted to the department within 45 days of the last day of the last calendar quarter that is the subject of the reporting requirements of this subsection.

(f) Notice of exceedance required.

(1) If at any time an organic solvent evaporative source that the owner or operator has elected to operate pursuant to this regulation exceeds the operational limitations specified in subsection (b) of this regulation, the owner or operator shall notify the department in writing by mailing or delivering the notice on or before the first working day following discovery of the exceedance.

(2) Within 60 days of the discovery of the exceedance of any limitations of subsection (b) of this regulation, the owner or operator shall submit to the department a written compliance plan identifying those actions being taken and to be taken by the owner or operator to ensure future compliance with the applicable requirements or to otherwise bring the source into compliance with this regulation, any other applicable Kansas air quality regulations, and the Kansas air quality statutes.

(3) The owner or operator shall file an application for any required operating permit within 180 days of discovery of an exceedance of the provisions of subsection (b) of this regulation.

(4) Compliance with the requirements of this subsection shall not shield the owner or operator from any enforcement action for exceeding any applicable requirement or for other violations of the Kansas air quality act or regulations.

(5) The timeliness of the required notifications, compliance plan submittals, and applications shall be determined by the postmark, if submitted by mail.

(g) Other applicable requirements. Each source that the owner or operator elects to operate in accordance with this regulation shall continue to be subject to all other applicable requirements of the Kansas air quality statutes and regulations. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3007 and 65-3008; effective Jan. 23, 1995; amended Feb. 20, 1998; amended September 23, 2005.)

28-19-563. Class II operating permits; permit by rule; hot mix asphalt facilities. (a) Definition. For purposes of this regulation, "hot mix asphalt facility" shall mean a facility that meets both of the following conditions:

(1) The facility is used to manufacture hot mix asphalt by heating and drying aggregate and mixing the aggregate with asphalt cement.

(2) The facility does not contain other emission sources that, alone or in combination with the hot mix asphalt facility, would require the owner or operator of the source to obtain a class I operating permit solely because of the facility's potential-to-emit.

(b) Applicability. The requirements of this regulation shall apply to each hot mix asphalt facility that uses venturi scrubbers, a baghouse, or equivalent particulate emission controls to limit particulate emissions to no more than 0.04 grains per dry standard cubic foot of exhaust gas.

(c) Operating conditions. In lieu of obtaining a class I permit under K.A.R. 28-19-500 or a class II permit under K.A.R. 28-19-540, each owner or operator of a hot mix asphalt facility who elects to operate pursuant to this regulation and K.A.R. 28-19-542 shall meet all of the following requirements:

(1) Limit production at the facility to not more than 250,000 tons of hot mix asphalt during any consecutive 12-month period;

(2) maintain records demonstrating that the production restrictions and particulate emission limits specified in this regulation have not been exceeded;

(3) update the records monthly, not later than the last day of the month following the month to which the records relate;

(4) retain the records on-site for at least two years following the date of record, unless an alternative record storage location is authorized by the secretary in writing; and

(5) submit an annual emission report to the department as required by K.A.R. 28-19-546.

(d) Reporting required.

(1) If at the end of any calendar quarter, a facility has produced hot mix asphalt during the previous four consecutive calendar quarters in an amount that exceeds 85% of any production restriction specified in paragraph (c)(1) of this regulation, the owner or operator of the facility shall report in writing to the department the actual production during the previous four consecutive calendar quarters.

(2) The actual production shall be reported in the units specified in paragraph (c)(1) of this regulation.

(3) The report shall be submitted to the department within 45 days of the last day of the last calendar quarter that is the subject of the reporting requirements of this subsection.

(e) Notice of exceedance required.

(1) If at any time a hot mix asphalt facility that the owner or operator has elected to operate pursuant to this regulation exceeds the operational limitations of paragraph (c)(1) of this regulation, the owner or operator shall notify the department in writing by mailing or delivering the notice on or before the first working day following discovery of the exceedance.

(2) Within 60 days of the discovery of the exceedance of any limitations of paragraph (c)(1) of this regulation, the owner or operator shall submit to the department a written compliance plan identifying those actions being taken and to be taken by the owner or operator to ensure future compliance with applicable requirements or to otherwise bring the source into compliance with this regulation, any other applicable Kansas air quality regulations, and the Kansas air quality statutes.

(3) The owner or operator shall also file an application for any required operating permit within 180 days of discovery of an exceedance of the provisions of paragraph (c)(1) of this regulation.

(4) Compliance with the requirements of this subsection shall not shield the owner or operator from enforcement action for exceeding any applicable requirement or for other violations of the Kansas air quality act or regulations.

(5) The timeliness of the required notifications, compliance plan submittals, and applications shall be determined by the postmark, if submitted by mail.

(f) Other applicable requirements. Each source that the owner or operator elects to operate in accordance with this regulation shall continue to be subject to all other applicable requirements of the Kansas air quality statutes and regulations. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3007, and 65-3008; effective Jan. 23, 1995; amended Feb. 20, 1998; amended September 23, 2005.)

28-19-564. Class II operating permits; permits-by-rule; sources with actual emissions less than 50 percent of major source thresholds. (a) Any stationary source, or group of stationary sources, that would be classified as a major source based on its potential-to-emit may operate according to this regulation in lieu of obtaining an individual class I or class II operating permit, if the source is operated in compliance with subsections (d), (e), (f), and (g) of this regulation, and with either subsection (b) or (c) of this regulation. Sources that are required to obtain a class I or class II permit based on criteria other than potential-to-emit shall not be eligible to operate under this regulation.

(b) Any stationary source or group of stationary sources that has actual emissions not exceeding 25 percent of the major source threshold, as defined in K.A.R. 28-19-200, may operate according to this subsection, if the source meets all of the following conditions:

(1) The stationary source is not otherwise required to obtain a class I operating permit.

(2) The owner or operator of the stationary source notifies the department, in writing, that it elects to operate the source under this regulation.

(3) The actual emissions of each regulated pollutant, for every consecutive 12-month period during which the stationary source is operated under this regulation, do not exceed 25 percent of the major source threshold.

(4) The owner or operator of the stationary source maintains records, as specified in subsection (h) of this regulation, that demonstrate compliance with the 25 percent actual emissions limitation.

(5) The owner or operator updates the records required by paragraph (b)(4) of this regulation at least monthly and maintains the records on-site for at least two years from the date of record.

(c) Any stationary source or group of stationary sources with actual emissions not exceeding 50 percent of the major source threshold, as defined in K.A.R. 28-19-200, may operate according to this subsection if the source meets all of the following conditions:

(1) The stationary source is not otherwise required to obtain a class I operating permit.

(2) The owner or operator of the stationary source has submitted to the department an application to operate under the terms of this regulation, with the appropriate fee, as defined in K.A.R. 28-19-545.

(3) The owner or operator of the stationary source has received notice from the secretary that the application submitted for the source has been approved.

(4) The actual emissions from the stationary source, for every consecutive 12-month period during which the stationary source is operated under this regulation, do not exceed 50 percent of the major source threshold.

(5) The owner or operator of the stationary source maintains records, as specified in subsection (h) of this regulation, demonstrate compliance with the 50 percent actual emissions limitation.

(6) Each owner or operator updates the records required by paragraph (c)(5) of this regulation at least monthly and maintains the records on-site for at least two years.

(d) (1) If at any time a stationary source operating according to this regulation exceeds the emissions level of either paragraph (b)(3) or (c)(4) of this regulation, whichever is applicable to the source based on its election to operate according to this regulation, the owner or operator shall notify the secretary in writing.

(2) The owner or operator shall mail or deliver the notice to the secretary on the first working day after the discovery of the failure to comply.

(3) Within 60 days of the discovery of a failure to comply with an applicable requirement of this regulation, the owner or operator shall submit to the secretary an interim compliance plan and schedule identifying those actions being

taken by the owner or operator to ensure compliance with applicable requirements until the appropriate class I or class II operating permit is issued according to paragraph (d)(5) of this regulation.

(4) Submittal of and compliance with the compliance plan and schedule shall not shield the owner or operator from enforcement action by the department.

(5) The owner or operator shall also file an application for the appropriate class I or class II operating permit within 180 days of discovery of the exceedance of the limits of either paragraph (b)(3) or (c)(4) of this regulation, whichever is applicable to the source based on its election to operate according to this regulation, unless otherwise exempt.

(e) Each owner or operator of a stationary source shall submit to the department, by February 15 of each year, a summary of the monthly records required by paragraph (b)(4) or (c)(5) of this regulation, whichever is applicable, for the previous calendar year in lieu of submitting an annual emissions inventory for the stationary source as otherwise required by K.A.R. 28-19-546(a).

(f) Compliance with this regulation shall not shield the owner or operator from enforcement action for exceeding any applicable restrictions, or for any other violations of the Kansas air quality act or the Kansas air quality regulations.

(g) Each owner or operator of a stationary source operated according to this regulation shall continue to be subject to all other applicable requirements of the Kansas air quality act and the Kansas air quality regulations.

(h)(1) The following records specified in this subsection shall be presumed to be sufficient to determine compliance with the recordkeeping requirements of this regulation:

(A) For coating and solvent emission units, the following:

(i) A current list of all coatings, solvents, inks, and adhesives in use, including VOC and hazardous air pollutant content;

(ii) a description of any equipment used for coating or solvent application, including type, make, and model, and maximum design process rate or throughput;

(iii) a monthly log of the consumption of each coating, ink, adhesive, and solvent, including solvents used in cleanup and surface preparation and

(iv) purchase orders, invoices, and other documents to support information in the monthly log;

(B) for organic liquid storage units, the following:

(i) A monthly log identifying the liquid stored and monthly throughput; and

(ii) information on the tank design and specifications, including emissions control equipment;

(C) for combustion emission units, the following:

(i) Information on equipment type, make, and model; maximum design process rate or maximum power input and output; minimum operating tem-perature for thermal oxidizers; capacity; and all source test information; and

(ii) a monthly log of fuel type, fuel usage, fuel heating value, and percent sulfur for fuel oil and coal;

(D) for any emission control device for which emission reductions are being claimed, the following:

(i) Information on the control device type, including description, make, and model, and emission units served by the control device;

(ii) information on the control device design including, if applicable, the pollutant or pollutants being controlled, control device efficiency and capture efficiency, maximum design or rated capacity, and other design data as appropriate, including any available source test information; and

(iii) a monthly log of hours of operation, including notation of any control equipment breakdowns, upsets, repairs, maintenance, and any other deviations from design parameters; and

(E) for other emission units, the following:

(i) Information on the process and equipment, including equipment type, description, make, and model;

(ii) maximum design process rate or throughput;

(iii) a monthly log of operating hours and each raw material used and its amount; and

(iv) purchase orders, invoices, or other documents to support the information in the monthly log.

(2) Each owner or operator relying on other documentation to demonstrate compliance with this regulation shall establish that the documentation relied upon demonstrates compliance with the recordkeeping requirements of this regulation.

(i) During the first 12 months of operation under this permit-by-rule, each owner or operator of the processes affected by this permit-by-rule shall operate in a manner that will not exceed any of the permit limitation requirements contained within this regulation at any time during the initial 12-month period.

(j) Within six months of EPA's approval of this regulation into the Kansas state implementation plan, any entity operating under the "general class II air emission source air operating permit for facilities that have actual emissions below 50 percent of major source thresholds" shall apply to operate under this regulation or other applicable operating permit. (Authorized by K.S.A. 2001 Supp. 65-3005; implementing K.S.A. 2001 Supp. 65-3008; effective May 15, 1998; amended Oct. 4, 2002.)

28-19-565 through 28-19-569. Reserved.

28-19-570 through 28-19-574. Reserved.

28-19-575. Class III operating permits; initial application. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995; revoked Sept. 23, 2005.)

28-19-576. Class III operating permits; permit content; operational compliance. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995; revoked Sept. 23, 2005.)

28-19-577. Class III operating permits; modification of source or operations. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995; revoked Sept. 23, 2005.)

28-19-578. Class III operating permits; application fee. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995; revoked Sept. 23, 2005

28-19-579 through 28-19-599. Reserved.

28-19-600 through 28-19-644. Reserved.

28-19-645. Open burning prohibited. A person shall not cause or permit the open burning of any wastes, structures, vegetation, or any other materials on any premises except as authorized by K.A.R. 28-19-647 and K.A.R. 28-19-648. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3005, K.S.A. 65-3010; effective March 1, 1996.)

28-19-646. Responsibility for open burning. It shall be prima facie evidence that the person who owns or controls property on which open burning occurs has caused or permitted the open burning. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3005, K.S.A. 65-3010; effective March 1, 1996.)

28-19-647. Exceptions to prohibition on open burning. (a) The following open burning operations shall be exempt from the prohibition on the open burning of any materials imposed by K.A.R. 28-19-645:

(1) open burning carried out on a residential premise containing five or less dwelling units and incidental to the normal habitation of the dwelling units, unless prohibited by any local authority with jurisdiction over the premises;

(2) open burning for cooking or ceremonial purposes, on public or private lands regularly used for recreational purposes;

(3) open burning for the purpose of crop, range, pasture, wildlife or watershed management in accordance with K.A.R. 28-19-648; or

(4) open burning approved by the department pursuant to paragraph (b).

(b) A person may obtain an approval from the department to conduct an open burning operation that is not otherwise exempt from the prohibition imposed by K.A.R. 28-19-645 if it is demonstrated that the open burning is:

(1) necessary, which in the case of burning for the purpose of disposal of any materials, shall mean that there is no other practical means of disposal;

(2) in the public interest; and

(3) is not prohibited by any local government or local fire authority.

(c) Open burning operations for which an approval is required but which are deemed to be necessary and in the public interest include the following:

(1) the use of safety flares for disposal of flammable gases;

(2) fires related to the training of government or industrial personnel in fire fighting procedures;

(3) fires set for the removal of dangerous or hazardous liquid materials;

(4) open burning of trees and brush from non-agricultural land clearing operations; and

(5) open burning of clean wood waste from construction projects carried out at the construction site.

(d) Each person seeking an approval to conduct an open burning operation pursuant to this regulation shall submit a written request to the department containing the following information:

(1) the location of the proposed open burning and the name, address and telephone number of the person responsible for the open burning;

(2) a description of the open burning including:

(A) the estimated amount and nature of material to be burned;

(B) the proposed frequency, duration and schedule of the burning;

(C) the size of the area to which the burning will be confined;

(D) the method of igniting the material;

(E) the location of any public roadways within 1,000 feet of the proposed burn;

(F) the number of occupied dwellings within 1,000 feet of the proposed burn; and

(G) evidence that the open burning has been approved by appropriate fire control authority having jurisdiction over the area; and

(3) the reason why the proposed open burning is necessary and in the public interest if the activity is not listed in subsection (c) of this regulation.

(e) Each open burning operation for which the department issues an approval pursuant to paragraph (b) shall be subject to the following conditions, except as provided in paragraph (f):

(1) The person conducting the burning shall stockpile the material to be burned, dry it to the extent possible before it is burned, and assure that it is free of matter that will inhibit good combustion.

(2) A person shall not burn heavy smoke-producing materials including heavy oils, tires, and tarpaper.

(3) A person shall not initiate burning during the nighttime, which for the purposes of this regulation is defined as the period from two hours before sunset until one hour after sunrise. A person shall not add material to a fire after two hours before sunset.

(4) A person shall not burn during inclement or foggy conditions or on very cloudy days, which are defined as days with more than 0.7 cloud cover and with a ceiling of less than 2,000 feet.

(5) A person shall not burn during periods when surface wind speed is less than 5 mph or more than 15 mph.

(6) A person shall not burn within 1,000 feet of any occupied dwelling, unless the occupant of that dwelling has been notified before the burn.

(7) A person shall not conduct a burn that creates a traffic or other safety hazard. If burning is to take place within 1,000 feet of a roadway, the person conducting the burn shall notify the highway patrol, sheriff's office, or other appropriate state or local traffic authority before the burning begins. If burning is to take place within one mile of an airport, the person conducting the burn shall notify the airport authority before the burning begins.

(8) The person conducting the burn shall insure that the burning is supervised until the fire is extinguished.

(9) The department may revoke any approval upon 30 days notice.

(10) A person shall conduct an open burning operation under such additional conditions as the department may deem necessary to prevent emissions which:

(A) may be injurious to human health, animal or plant life, or property; or

(B) may unreasonably interfere with the enjoyment of life or property.

(f) The department may issue an approval for an open burning operation that does not meet the conditions set forth in subsection (e) upon a clear demonstration that the proposed burning:

(1) is necessary and in the public interest;

(2) can be conducted in a manner that will not result in emissions which:

(A) may be injurious to human health, animal or plant life, or property; or

(B) may unreasonably interfere with the enjoyment of life or property; and

(3) will be conducted in accordance with such conditions as the department deems necessary. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3005, K.S.A. 65-3010; effective March 1, 1996.)

28-19-648. Agricultural open burning. (a) Open burning of vegetation such as grass, woody species, crop residue, and other dry plant growth for the purpose of crop, range, pasture, wildlife or watershed management shall be exempt from the prohibition on the open burning of any materials imposed by K.A.R. 28-19-645, provided that the following conditions are met:

(1) the person conducting the burn shall notify the local fire control authority with jurisdiction over the area before the burning begins, unless the appropriate local governing body has established a policy that notification is not required;

(2) a person shall not conduct a burn that creates a traffic safety hazard. If conditions exist that may result in smoke blowing toward a public roadway, the person conducting the burn shall give adequate notification to the highway patrol, sheriff's office or other appropriate state or local traffic control authorities before burning;

(3) a person shall not conduct a burn that creates an airport safety hazard. If smoke may affect visibility at an airport, the person conducting the burn shall give adequate notification to the appropriate airport authorities before burning; and

(4) the person conducting the burn shall insure that the burning is supervised until the fire is extinguished.

(b) Nothing in this regulation shall restrict the authority of local jurisdictions to adopt more restrictive ordinances or resolutions governing agricultural open burning operations. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3005, K.S.A. 65-3010; effective March 1, 1996.)

28-19-649. Reserved.

28-19-650. Emissions opacity limits. (a) Except as otherwise provided in K.A.R. 28-19-9, K.A.R. 28-19-11, or K.A.R. 28-19-31, in subsections (b) and (c) of this regulation, or in other applicable air quality regulations, opacity of visible air emissions from any emission unit shall not exceed the following limits:

(1) 40 percent opacity for any portable source existing on or before January 1, 1971;

(2) 40 percent opacity for any emission unit, other than a portable source, that existed on or before January 1, 1971 and that has not been relocated after January 1, 1971; and

(3) 20 percent opacity for any other emission unit.

(b) Special opacity limits, Wyandotte county. Air emissions within Wyandotte county from any processing of materials or other uses of the premises within the county shall not exceed 20 percent opacity.

(c) Exceptions. Air emissions opacity levels that exceed the specified limits in subsections (a) and (b) of this regulation shall not be considered a violation of this regulation if the owner or operator of the emission unit demonstrates to the satisfaction of the department that the opacity exceedence is due solely to the presence of uncombined water in the plume.

(d) Method. The determination of opacity of air emissions shall be made either by 40 C.F.R. Part 60, appendix A, method 9, as adopted in K.A.R. 28-19-720, or by another method approved in advance by the department. (Authorized by K.S.A. 1997 Supp. 65-3005 and K.S.A. 1997 Supp. 65-3007; implementing K.S.A. 1997 Supp. 65-3005, K.S.A. 65-3006, and 65-3010; effective Jan. 29, 1999.)

28-19-651 through 28-19-699. Reserved.

28-19-700 through 28-19-713. Reserved.

28-19-714. Solvent metal cleaning. (a) The provisions of this regulation shall apply to cold cleaning, open-top vapor degreasing, and conveyorized degreasing operations located in Johnson and Wyandotte counties, and to the sale of cold cleaner solvents for use within either Johnson or Wyandotte county, or both.

(b) Definitions. The following terms, when used in this regulation, shall have the following meanings:

(1) “Airless cleaning system” means a degreasing system that operates automatically and that seals at a

differential pressure not greater than 0.475 pounds per square inch gauge (psig) before the introduction of solvent vapor into the cleaning chamber and maintains a differential pressure under vacuum during all cleaning and drying cycles.

(2) "Airtight cleaning system" means a degreasing system that is operated automatically and that seals at a differential pressure not greater than 0.5 psig during all cleaning and drying cycles.

(3) "Aqueous solvent" means a solvent that consists of 60 percent or more by volume of water with a flashpoint greater than 199° Fahrenheit (F) and that is miscible with water.

(4) "Electronic component" means any portion of an electronic assembly, including circuit board assemblies, printed wire assemblies, printed circuit boards, soldered joints, grounded wires, bus bars, and associated electronic component manufacturing equipment, including screens and filters.

(5) "Medical device" means any instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar article, including any component or accessory that meets one of the following conditions:

(A) It is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease.

(B) It is intended to affect the structure or any function of the body.

(C) It is defined in the "national formulary" or the "United States pharmacopoeia," or any supplement to them.

(c) Except as specified in paragraph (c)(13) of this regulation, the owner or operator of each affected cold cleaning operation shall assure that the following requirements are met.

(1) After August 31, 2002 and through April 30, 2003, one of the following requirements shall be met:

(A) Except as otherwise required in paragraph (c)(1)(B), only cold cleaning solvents with a vapor pressure less than 2.0 millimeters of mercury (mm Hg) at 68°F shall be used.

(B) Only cold cleaning solvents with a vapor pressure less than 7.0 mm Hg at 68°F shall be used for each cold cleaning operation that is used for cleaning carburetors.

(2) Beginning on May 1, 2003, one of the following requirements shall be met:

(A) Except as otherwise required in paragraph (c)(2)(B), only cold cleaning solvents with a vapor pressure less than 1.0 mm Hg at 68°F shall be used.

(B) Only cold cleaning solvents with a vapor pressure less than 5.0 mm Hg at 68°F shall be used for each cold cleaning operation that is used for cleaning carburetors.

(3) An alternate method for reducing cold cleaning emissions may be used if the owner or operator demonstrates to the satisfaction of the department that the level of emission control is equivalent to or greater than the applicable requirements in paragraphs (c)(1) and (c)(2).

(4) Each cold solvent cleaner shall be equipped with a cover to minimize evaporation of the solvent while in the closed position, or with an enclosed reservoir to limit the escape of solvent vapors from the solvent bath if parts are not being processed in the cleaner.

(5) If one or more of the following conditions exist, the solvent cleaner cover required in paragraph (c)(4) shall be designed to be operated with one hand so that minimal displacement of the solvent vapors occurs:

(A) The solvent vapor pressure is greater than 15.5 mm Hg when measured at 100°F.

(B) The solvent is agitated.

(C) The solvent is heated.

For solvent cleaner covers larger than 10 square feet, either mechanical or power-assisted systems shall be used to aid in the operation of the cover.

(6) The cover of the cold solvent cleaner shall be closed whenever parts are not being handled in the cleaner.

(7) Each cold solvent cleaner shall be equipped with either of the following:

(A) An internal drainage facility that enables the cleaned parts to be enclosed under the cover while the cleaned parts are draining; or

(B) if the internal drainage facility cannot fit into the cleaning system and the solvent volatility is less than 31.0 mm Hg at 100°F, an external drainage system that allows the solvent to drain from the cleaned parts to an enclosed solvent reservoir.

(8) Cleaned parts shall be drained for at least 15 seconds or until dripping ceases.

(9) One of the following control methods shall be applied if the solvent vapor pressure is greater than 31.0

mm Hg measured at 100°F or if the solvent is heated above 120°F:

(A) Maintaining a freeboard height that gives a freeboard ratio greater than or equal to 0.75;

(B) using a water cover for solvents that are insoluble in, and heavier than, water; or

(C) using other systems of control, including a refrigerated chiller or carbon adsorption with a VOC emissions reduction efficiency demonstrated to the satisfaction of the department to be 65 percent or greater.

(10) A permanent, conspicuous label shall be attached to the cleaner near the operator's position summarizing the operating requirements of the equipment.

(11) Waste solvent shall be stored in covered containers and shall not be disposed of or transferred to another party in a manner that allows waste solvent to evaporate into the atmosphere.

(12) If a solvent spray is used, the spray shall be a solid fluid stream with an operating pressure of 10 psig or less and shall not be an atomized or shower-type spray.

(13) The following activities and uses shall be exempt from the provisions of paragraphs (c)(1), (c)(2), and (c)(3):

(A) Janitorial and institutional cleaning;

(B) the cleaning of electronic components;

(C) cold solvent cleaning operations that meet the emission control requirements of K.A.R. 28-19-63, 28-19-71, 28-19-73, or 28-19-76;

(D) cold solvent cleaners using aqueous solvents;

(E) cold solvent cleaners using solvents regulated under any federal national emission standard for hazardous air pollutants according to K.A.R. 28-19-735 and K.A.R. 28-19-750;

(F) any cold solvent cleaner with a liquid surface area of one square foot or less or with a maximum capacity of one gallon or less;

(G) the cleaning of medical devices;

(H) airtight or airless cleaning systems, if all of the following requirements are met:

(i) The equipment shall be operated in accordance with the manufacturer’s specifications and operated with a door or other pressure-sealing apparatus that is in place during all cleaning and drying cycles;

(ii) all waste solvents shall be stored in properly identified and sealed containers and, if applicable, shall be managed in compliance with article 31 of these regulations, the Kansas hazardous waste management standards and regulations. The associated pressure relief devices shall not allow liquid solvents to drain out;

(iii) spills that occur during solvent transfer shall be cleaned up immediately and, if applicable, shall be managed in compliance with article 31 of these regulations, the Kansas hazardous waste management standards and regulations. The used absorbent material shall be stored in closed containers; and

(iv) a differential pressure gauge shall be installed to indicate the sealed chamber pressure; and

(I) paint spray gun and nozzle cleaning if the cold solvent cleaner container or container system does not exceed 16 gallons in size and is kept tightly covered at all times except when access to the container is required.

(d) Except as specified in paragraph (d)(5) of this regulation, the suppliers of cold cleaning solvents for use in affected cold cleaners located in Johnson and Wyandotte counties shall meet the following requirements.

(1) Except as required in paragraph (d)(2), after August 31, 2002 and through April 30, 2003, each supplier of cold cleaning solvents shall sell or offer for sale only cold cleaning solvents with a vapor pressure less than 2.0 mm Hg at 68°F.

(2) After August 31, 2002 and through April 30, 2003, each supplier of cold cleaning solvents shall sell or offer for sale for the purpose of carburetor cleaning only cold cleaning solvents with a vapor pressure less than 7.0 mm Hg at 68°F.

(3) Except as required in paragraph (d)(4), beginning on May 1, 2003, each supplier of cold cleaning solvents shall sell or offer for sale only cold cleaning solvents with a vapor pressure less than 1.0 mm Hg at 68°F.

(4) Beginning on May 1, 2003, each supplier of cold cleaning solvents shall sell or offer for sale for the purpose of carburetor cleaning only cold cleaning solvents with a vapor pressure less than 5.0 mm Hg at 68°F.

(5) Sales of cold cleaning solvents in quantities of five gallons or less shall be exempt from the requirements of paragraphs (d)(1), (d)(2), (d)(3), and (d)(4).

(e) The owner or operator of an open-top vapor degreaser shall assure that all of the following requirements are met:

(1) The vapor degreaser shall be equipped with a cover that can be opened and closed easily without

disturbing the vapor zone.

(2) The following safety switches and devices shall be provided:

(A) A condenser coolant flow and high level thermostat switch that shuts off the pump heat if the condenser coolant either is not circulating or is too warm;

(B) a spray safety switch that shuts off the spray pump if the vapor level drops more than four inches;

(C) a solvent level control;

(D) a sump thermostat; and

(E) a vapor level control thermostat that shuts off the pump heat when the vapor level rises above the recommended level.

(3) One of the following devices or systems shall be provided to control VOC emissions:

(A) A powered cover, if the freeboard ratio is greater than or equal to 0.75 and the degreaser opening is greater than 10.75 square feet;

(B) a refrigerated chiller;

(C) an enclosed design in which the cover or door opens only when the dry part is actually entering or exiting the degreaser;

(D) a carbon adsorption system, providing ventilation greater than or equal to 50 cubic feet per minute per square foot of degreaser opening during degreaser operation and exhausting less than 25 parts per million by volume of solvent when averaged over one complete adsorption cycle; or

(E) a vapor processing system, demonstrated to the satisfaction of the department to have an overall emissions control reduction efficiency of 65 percent or greater.

(4) The cover shall be kept closed at all times except when processing workloads through the degreaser.

(5) Solvent carryout shall be minimized by all of the following practices:

(A) Racking parts to allow complete drainage;

(B) moving parts in and out of the degreaser at less than 11 feet per minute;

(C) holding the parts in the vapor zone at least 30 seconds or until condensation ceases;

(D) draining any pools of solvent on the cleaned parts before removal from the vapor zone; and

(E) allowing parts to dry within the degreaser for at least 15 seconds or until visually dry.

(6) Porous or absorbent materials, including cloth, leather, wood, and rope, shall not be degreased.

(7) More than half of the degreaser's open-top area shall not be occupied with workload.

(8) The degreaser shall not be loaded to the point at which the solvent level would drop more than four inches when the workload is removed from the vapor zone.

(9) Spray shall always be below the vapor level.

(10) Solvent leaks shall be repaired immediately, or the degreaser shall be shut down until repairs are made.

(11) Waste solvent shall be stored in covered containers, and waste solvent shall not be disposed of or transferred to another party in a manner allowing the waste solvent to evaporate into the atmosphere.

(12) The cleaner shall not be operated so as to allow water to be visually detectable in solvent exiting the water separator.

(13) Ventilation fans shall not be used near the degreaser opening, nor shall exhaust ventilation exceed 65 cubic feet per minute per square foot of degreaser open area, unless necessary to meet OSHA regulations.

(14) A permanent, conspicuous label summarizing the operating procedures described in paragraphs (e)(4) through (e)(12) of this regulation shall be attached to the cleaner near the operator's position.

(f) Except as specified in paragraph (f)(12) of this regulation, the owner or operator of each conveyorized degreaser shall assure that all of the following requirements are met:

(1) Workplace fans shall not be used near the degreaser opening, nor shall exhaust ventilation exceed 65 cubic feet per minute per square foot of degreaser opening, unless the owner or operator documents that this ventilation is necessary to meet OSHA regulations.

(2) One of the following control devices or systems shall be installed:

(A) A refrigerated chiller;

(B) a carbon adsorption system, providing ventilation greater than or equal to 50 cubic feet per minute per square foot of air-vapor area during operation of degreaser and exhausting less than 25 parts per million of solvent by volume when averaged over a complete adsorption cycle; or

(C) a vapor processing system demonstrated to have an overall VOC emissions control reduction efficiency demonstrated to the satisfaction of the department to be 65 percent or greater.

(3) The cleaner shall be equipped with equipment, including a drying tunnel or a rotating or tumbling basket, that prevents cleaned parts from carrying out solvent liquid or vapor.

(4) The following safety switches and devices shall be provided:

(A) A condenser coolant flow and high-level thermostat switch that shuts off the pump heat if the condenser coolant either is not circulating or is above the recommended posted temperature;

(B) a spray safety switch that shuts off the spray pump or the conveyor if the vapor level drops more than four inches;

(C) a vapor level control thermostat that shuts off the pump heat when the vapor level rises above the recommended level;

(D) solvent level control; and

(E) sump thermostat.

(5) Openings during operation shall be minimized so that entrances and exits silhouette workloads with an average clearance between the parts and the edge of the degreaser opening of less than four inches or less than 10 percent of the width of the opening.

(6) Covers for closing off the entrance and exit during non-degreasing operations shall be installed and operated.

(7) Carryout emissions shall be minimized by the following:

(A) Racking parts for best drainage; and

(B) maintaining the conveyor speed at less than 11 feet per minute.

(8) Waste solvent shall be stored in covered containers, and waste solvent shall not be disposed of or transferred to another party in a manner allowing the waste solvent to evaporate into the atmosphere.

(9) Solvent leaks shall be repaired immediately, or the degreaser shall be shut down until these repairs are made.

(10) The cleaner shall not be operated so as to allow water to be visually detectable in solvent leaving the water separator.

(11) Covers shall be installed over entrances and exits of conveyorized degreasers, and the covers shall be closed when degreasing is not being conducted.

(12) The requirements of paragraph (f)(2) shall not apply to each affected degreaser that has less than 21.75 square feet of air vapor interface.

(g) Records of the following information shall be maintained. These records shall be kept on-site for a minimum of two years from the date of record:

(1) Each owner or operator of each solvent metal cleaning operation subject to this regulation shall keep the following records for affected degreasers:

(A) The amount and type of solvents used per month in affected degreasers; and

(B) all records pertaining to the maintenance of the affected degreasers and any associated emission control equipment.

(2) After August 31, 2002, each owner or operator of a facility subject to the requirements of paragraphs (c)(1) and (c)(2) of this regulation shall keep the following additional records for affected degreasers:

(A) The name and address of the solvent supplier;

(B) the date of each solvent purchase for affected degreasers; and

(C) the quantity and vapor pressure of each affected solvent purchased in units of mm Hg at 68°F.

(3) After August 31, 2002, each solvent supplier subject to the provisions of subsection (d) of this regulation shall keep the following records regarding the sale of each cold cleaning solvent subject to this regulation:

(A) The name and address of the solvent purchaser;

(B) the date of the solvent sale;

(C) the total volume of solvent sold; and

(D) the vapor pressure of each solvent sold in units of mm Hg at 68°F.

(4) Further recordkeeping may be required by the director, if necessary to adequately demonstrate compliance with this regulation.

(h) A stationary source subject to this regulation shall not be required to obtain a class III operating permit according to the terms of K.A.R. 28-19-500(d) if the only emission limitations or standards applicable to the source are the requirements of this regulation.

(i) This regulation shall be effective on and after September 1, 2002. (Authorized by K.S.A. 2001 Supp. 65-3005; implementing K.S.A. 65-3010; effective Sept. 1, 2002.)

28-19-715 through 28-19-716. Reserved.

28-19-717. Control of volatile organic compound (VOC) emissions from commercial bakery ovens in Johnson and Wyandotte counties. (a) Definitions. The following terms shall have the meanings provided below for the purposes of this regulation.

(1) "Baker's percent" means, for a given ingredient, the weight of that ingredient per 100 pounds of flour, expressed as a percentage.

(2) "Commercial bakery oven facility" means an establishment that is primarily engaged in the manufacture, for sale at wholesale or retail, of fresh or frozen bread, bread-type rolls, or dry bakery products, including biscuits, crackers, or cookies, in which the products are made using yeast leavening.

(3) "Spike yeast" means any yeast added to the dough beyond the initial yeast added to the dough.

(4) "Spiking time" means the elapsed time between the addition of the spike yeast to the dough and the placement of the dough into the oven.

(5) "Yeast action time" means the elapsed time between the initial addition of the yeast and the placement of the dough into the oven.

(b) Applicability. This regulation shall apply to each new, modified, or existing commercial bakery oven facility that meets these conditions:

(1) Is operating in either Johnson or Wyandotte county, or both; and

(2) has bakery ovens with a total potential-to-emit for volatile organic compounds (VOCs) equal to or greater than 100 tons per year.

(c) (1) Determination of commercial bakery oven facility potential-to-emit. The owner or operator of each commercial bakery oven facility operating in, or proposed for construction or modification in, the area defined in paragraph (1) of subsection (b) shall calculate the facility's total potential-to-emit (PTE) for VOCs in tons per year, using either the following equation and the presumptions in paragraph (2) of this subsection, or an EPA administrator-approved alternative method if the use of that alternative method is approved in writing by the department for this purpose:

$PTE_{Facility}$ (in tons/year) = Sum of PTE_{VOC} for all ovens (in tons/year)

Where: PTE_{VOC} = P_A x EF_{VOC} (in pounds of VOC/ton of baked bread x 1 ton/2000 pounds)

P_A = maximum annual production rate for the yeast-leavened finished bakery product (in tons/year)

EF_{VOC} = VOC emission factor for the yeast-leavened finished bakery product having the highest emission potential (in pounds of VOC/ton of baked bread)

$$EF_{VOC} = 0.95Y_i + 0.195t_i - 0.51S - 0.86t_s + 1.90$$

Where: Y_i = initial baker's percent of yeast to the nearest tenth of a percent;

t_i = total yeast action time in hours to the nearest tenth of an hour;

S = final (spike) baker's percent of yeast to the nearest tenth of a percent; and

t_s = spiking time in hours to the nearest tenth of an hour.

(2) The owner or operator shall presume for purposes of calculating the potential-to-emit that both of the following conditions apply:

(A) Each facility production line is operating 8,760 hours per year at maximum capacity.

(B) Each facility production line is producing the product with the highest level of VOC emissions of those products that it may produce.

(d) Control requirements. Each commercial bakery oven facility subject to this regulation shall install and operate VOC emissions control devices for each bakery oven to achieve at least an 80% total removal efficiency on the combined VOC emissions of all baking ovens, calculated as the capture efficiency times the control device efficiency.

(e) Time for compliance testing.

(1) The owner or operator of each existing bakery oven facility subject to this regulation shall demonstrate compliance with this regulation within one year from the effective date of this regulation by testing in accordance with the methods and procedures specified in subsection (f) of this regulation.

(2) Each new or modified bakery oven facility subject to this regulation shall demonstrate compliance with

this regulation within 180 days of start-up by the testing of control equipment in accordance with the methods and procedures specified in subsection (f) of this regulation.

(3) Additional testing of the control equipment may be required by the department to demonstrate continued compliance in accordance with the methods and procedures specified in subsection (f) of this regulation.

(f) Testing requirements. The testing required under subsection (e) of this regulation shall be conducted in accordance with the following requirements:

(1) The testing shall be conducted at the owner's or operator's expense.

(2) The testing shall be conducted in accordance with a test plan submitted by the owner or operator to the department and approved by the department before the scheduled test date.

(3) The test plan shall specify the following elements of the test:

(A) The name of the entity performing the testing;

(B) the testing dates;

(C) the sampling location or locations;

(D) the sampling equipment to be used;

(E) the sampling procedures to be followed;

(F) the sample recovery methods; and

(G) any other information requested by the department pertaining to the facility and the test procedure.

(4) Testing procedures shall be conducted in accordance with the following requirements:

(A) For the purpose of determining control device efficiency, the owner or operator shall use USEPA test methods 18, 25, or 25A at 40 C.F.R. Part 60, as adopted by reference in K.A.R. 28-19-720.

(B) For the purpose of determining the capture efficiency of the air pollution control device, the owner or operator shall use the methods specified by the USEPA's February 7, 1995 memorandum titled "revised capture efficiency guidance for control of volatile organic compound emissions," and USEPA's technical document titled "guidelines for determining capture efficiency," dated January 9, 1994, both of which documents are hereby adopted by reference.

(C) Each owner or operator who demonstrates that the bakery oven or ovens are totally enclosed and operate under negative pressure with all venting through the air pollution control device may preclude, upon approval by the department, the need for the capture efficiency determination for those ovens so operated. The owner or operator seeking to demonstrate that the ovens operate under negative pressure shall do so by using the protocol titled "negative pressure enclosure qualitative test method for bakery ovens," as approved by EPA by letter of March 20, 1997, which protocol is hereby adopted by reference.

(D) Methods 204, 204A, 204B, 204C, 204D, 204E, and 204F of Appendix M of 40 C.F.R. Part 51, as in effect on July 1, 1999, are hereby adopted by reference.

(g) Compliance plan.

(1) Each owner or operator of an existing commercial bakery oven facility subject to this regulation shall submit a compliance plan to the department within three months of the effective date of this regulation.

(2) The compliance plan shall include the following information:

(A) The control device description;

(B) the testing methods and procedures; and

(C) the operating and maintenance plan for the control devices.

(3) The compliance plan shall identify the steps and processes to be taken to assure that the facility is in compliance by the date required for compliance.

(4) Each owner or operator of a new or modified commercial bakery oven facility subject to this regulation shall submit to the department an operation and maintenance plan for control devices before start-up.

(h) Monitoring and inspection.

(1) The owner or operator of each commercial bakery oven facility subject to this regulation shall continuously monitor and record data, as provided in paragraph (2) of this subsection, for emissions control devices and for operational parameters while the bakery oven is in operation.

(2) Each owner or operator required to monitor under paragraph (1) of this subsection shall continuously monitor and record the following parameters:

(A) The exhaust temperatures of all combustion devices, if used;

(B) the temperature rise across a catalytic oxidation bed, if used;

(C) the exit stream temperature on all condensors, if used;

(D) the volumetric flow rate; and

(E) any other monitoring parameter that the department may require the owner or operator to monitor.

(3) While operating the facility, the owner or operator of the facility shall maintain the parameters listed in paragraphs (2)(A) through (E) of this subsection within the baseline operational data established during the initial compliance test.

(4) (A) The owner or operator shall inspect control devices and monitoring equipment to assure that the control equipment is operating properly in accordance with the operating and maintenance plan prepared under either paragraph (g)(2)(C) or (g)(4) of this regulation, and that no leaks or malfunctions have occurred or are occurring.

(B) Inspections shall be made at the frequency defined by the equipment manufacturer, or as otherwise appropriate for each unit, component, or operation, but not less than monthly.

(C) The owner or operator shall record the results of each inspection in a permanent log to be retained on-site, and shall make the log available for inspection by a department representative upon request.

(i) Recordkeeping.

(1) The owner or operator of each commercial bakery oven facility subject to this regulation shall keep the records required by this regulation on-site for at least five years following the date of record.

(2) The owner or operator of each commercial bakery facility shall make the records required by this regulation available for inspection by a department representative upon request.

(3) Daily records of the following operational data shall be kept:

(A) The amount of raw product processed;

(B) the baker's percent of yeast used;

(C) the fermentation time;

(D) the type of product baked;

(E) the amount of product baked;

(F) the monitoring and inspection records specified in subsection (h) of this regulation; and

(G) any other information that the department may determine to be necessary for determining that the facility is operated in continuous compliance with this regulation.

(4) The owner or operator shall calculate monthly emissions and shall record the emission factor used for each product, including citation of the source of the emission factor and the results of the calculations for the facility's ovens. (Authorized by K.S.A. 1999 Supp. 65-3005; implementing K.S.A. 1999 Supp. 65-3005, K.S.A. 1999 Supp. 65-3007, and K.S.A. 65-3010; effective December 22, 2000.)

28-19-718. Reserved.

28-19-719. Fuel volatility. (a) Area of applicability. The provisions of this regulation shall be applicable within either Johnson or Wyandotte county, or both.

(b) This regulation shall apply to each person that dispenses, supplies, exchanges in trade, offers for sale or supply, sells or stores gasoline within the area of applicability, or that sells, supplies, distributes, or provides gasoline to be sold within the area of applicability.

(c) For the period beginning June 1 through September 15 of each year, no person shall dispense, supply, exchange in trade, offer for sale or supply, sell, or store gasoline that is to be used as a fuel for motor vehicles in either Johnson or Wyandotte county, or both, and that has a Reid vapor pressure (RVP) greater than these levels:

(1) 7.0 pounds per square inch (psi); or

(2) 8.0 psi for gasoline containing ethanol in an amount equal to at least 9.0 percent by volume but not more than 10.0 percent by volume.

(d)(1) The volatility testing procedures used to determine the RVP shall comply with K.A.R. 28-19-212(a)(19) and K.A.R. 28-19-212(a)(20). Alternate methods may be authorized under K.A.R. 28-19-212(a)(8) or K.A.R. 28-19-212(a)(21).

(2) The fuel alcohol-content testing procedures conducted under paragraph (c)(2) of this regulation shall comply with 40 C.F.R. Part 80, Appendix F, "test for determining the quantity of alcohol in gasoline," as in effect on July 1, 1995, which is adopted by reference.

(e)(1) The owner or operator of each affected facility other than a gasoline-dispensing facility shall keep and maintain at the facility records of the information regarding the RVP of gasoline that is to be used as a fuel for motor

vehicles, as determined in accordance with subsection (d).

(2) The records required by paragraph (e)(1) shall contain the following information for each load or shipment:

(A) The RVP values;

(B) the type of sampling procedure used;

(C) the type of testing procedure used;

(D) the dates of sampling and testing; and

(E) the quantity of gasoline in stock at the time of testing.

(3) The owner or operator of each gasoline-dispensing facility shall maintain records of the bills of lading, invoices, loading tickets, delivery tickets, or other documentation accompanying a shipment of gasoline that demonstrates that the motor vehicle fuel delivered to the gasoline-dispensing facility during the defined RVP-limit compliance period complies with the limits under this regulation.

(4) The records shall be maintained at the facility for two years following the date of the RVP test and shall be made available for inspection by the department.

(f) Exemptions. Gasoline that meets any of the following conditions shall be exempt from this regulation:

(1) Gasoline used exclusively for fueling implements of agriculture;

(2) gasoline in any tank, reservoir, storage vessel, or other stationary container with a nominal capacity of 500 gallons or less;

(3) gasoline in Johnson or Wyandotte county that is separately stored, sealed, and clearly labeled as a motor vehicle fuel that is not to be dispensed, sold, supplied, offered for supply or transport, or exchanged in trade within the area of applicability until a designated date when those activities will be in compliance with this regulation; or

(4) gasoline in Johnson or Wyandotte county that is separately stored, sealed, and clearly labeled as a motor vehicle fuel that is to be dispensed, sold, supplied, offered for supply or transport, or exchanged in trade outside of the area of applicability. (Authorized by K.S.A. 1999 Supp. 65-3005; implementing K.S.A. 65-3010; effective April 27, 2001.)

28-19-720. New source performance standards. (a) 40 C.F.R. part 60, and its appendices, as in effect on July 1, 2003, are adopted by reference except for the following:

(1) 40 C.F.R. 60.4;

(2) 40 C.F.R. 60.9;

(3) 40 C.F.R. 60.10; and

(4) 40 C.F.R. 60.16.

(b) Unless the context clearly indicates otherwise, the following meanings shall be given to these terms as they appear in 40 C.F.R. part 60:

(1) The term "administrator" shall mean the secretary or the secretary's authorized representative.

(2) The term "United States environmental protection agency" or any term referring to the United States environmental protection agency shall mean the department.

(3) The term "state" shall mean the state of Kansas. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3008 and 65-3010; effective Jan. 23, 1995; amended June 6, 1997; amended June 11, 1999; amended December 3, 2004.)

28-19-721. Existing municipal solid waste landfills; definitions. (a) The definitions at 40 CFR §60.751, as in effect on July 1, 1996, are adopted by reference for the purposes of K.A.R. 28-19-721 through 28-19-727.

(b) The definition of “municipal solid waste landfill” or “MSW landfill” is as defined in K.A.R. 28-19-200.

(c) Unless the context clearly indicates otherwise, the following meanings shall be given to these terms as they appear in 40 CFR part 60.

(1) The term “administrator” shall mean the secretary or the secretary’s authorized representative.

(2) The term “United States environmental protection agency” or any term referring to the United States environmental protection agency shall mean the department.

(3) The term “state” shall mean the state of Kansas. (Authorized by K.S.A. 1996 Supp. 65-3005; implementing K.S.A. 1996 Supp. 65-3008; effective Nov. 14, 1997.)

28-19-722. Existing municipal solid waste landfills; applicability, permits. (a) Except as otherwise provided

in subsection (b) of this regulation, the provisions of K.A.R. 28-19-721 through 28-19-727 apply to each existing municipal solid waste landfill that meets all of the following criteria.

(1) Construction, reconstruction, or modification of the MSW landfill commenced before May 30, 1991.

(2) The MSW landfill has accepted waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition.

(3) The MSW landfill has a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters as determined using the methods provided in 40 CFR §60.754(a)(1), as in effect on July 1, 1996, which is adopted by reference for the purposes of K.A.R. 28-19-721 through 28-19-727.

(b) The provisions of K.A.R. 28-19-721 through 28-19-727 shall not apply to any existing MSW landfill that has accepted fewer than 20 tons of municipal solid waste per day and that has received certification of closure from the department before the effective date of this regulation.

(c) In applying the criteria of subsection (a) of this regulation, physical changes or operational changes made to an existing MSW landfill solely to comply with an emission guideline shall not be considered a modification or reconstruction and shall not subject an existing MSW landfill to the requirements of the new source performance standards for MSW landfills, 40 CFR part 60, subpart WWW, as adopted by K.A.R. 28-19-720.

(d) The owner or operator of each existing MSW landfill that meets the criteria of K.A.R. 28-19-722(a) shall be subject to the operating permit requirements at K.A.R. 28-19-510 et seq. (Authorized by K.S.A.1996 Supp. 65-3005; implementing K.S.A. 1996 Supp. 65-3008; effective Nov. 14, 1997.)

28-19-723. Existing municipal solid waste landfills; initial and periodic reporting. (a) The owner or operator of an existing MSW landfill that meets the criteria of K.A.R. 28-19-722 (a) shall prepare and submit to the department an initial design capacity report within 90 days of the effective date of this regulation. The report shall be prepared in accordance with the requirements of 40 CFR §60.757(a)(2), as in effect on July 1, 1996, which is hereby adopted by reference.

(b) The owner or operator of an existing MSW landfill that meets the criteria of K.A.R. 28-19-722(a) shall prepare and submit to the department amended design capacity reports in accordance with the requirements of 40 CFR §60.757(a)(3), as in effect on July 1, 1996, which is hereby adopted by reference.

(c) In meeting the requirements of this regulation, the owner or operator may calculate design capacity as required in subsections (a) and (b) of this regulation in either megagrams or cubic meters for comparison with the corresponding exemption values. Any density conversions and any assumptions made shall be documented and submitted with the initial design capacity report.

(d) If the landfill is permanently closed, a closure notification shall be submitted to the department as provided for in 40 CFR §60.757(d), as adopted by K.A.R. 28-19-726. (Authorized by K.S.A. 1996 Supp. 65-3005; implementing K.S.A. 1996 Supp. 65-3008; effective Nov. 14, 1997.)

28-19-724. Existing municipal solid waste landfills; NMOC test methods and procedures. (a) The owner or operator of an existing MSW landfill that meets the criteria of K.A.R. 28-19-722(a) shall calculate the nonmethane organic compound (NMOC) emissions from the landfill using the test methods and procedures contained in 40 CFR §60.754(a)(1), as adopted by K.A.R. 28-19-722.

(b) If the initial calculated NMOC emission rate is less than 50 megagrams per year, the owner or operator shall meet these requirements:

(1) recalculate the emission rate annually using the procedures specified in 40 CFR §60.754 (a)(1) as adopted by K.A.R. 28-19-722, until such time as the calculated NMOC emission rate is equal to or greater than 50 megagrams per year, or the landfill is closed; and

(2) submit an annual emission report to the department, except as provided for in 40 CFR §60.757 (b)(1)(ii), as adopted by K.A.R. 28-19-726.

(c) If the recalculated emission rate conducted pursuant to paragraph (b)(1) of this regulation is greater than or equal to 50 megagrams per year, the owner or operator shall comply with the provisions of 40 CFR §60.754 (a)(2) through (d), as in effect on July 1, 1996, which is hereby adopted by reference.

(d) The owner or operator of an existing MSW landfill that meets the criteria of K.A.R. 28-19-722(a) and has NMOC emissions greater than or equal to 50 megagrams per year calculated in accordance with the provisions of subsection (a) of this regulation shall comply with the requirements of 40 CFR §60.754 (a)(2) through (d), as adopted by

K.A.R. 28-19-724. (Authorized by K.S.A. 1996 Supp. 65-3005; implementing K.S.A. 1996 Supp. 65-3008; effective Nov. 14, 1997.)

28-19-725. Existing municipal solid waste landfills; collection and control systems. (a) Gas collection and control. The owner or operator of an existing MSW landfill required to install gas collection and control equipment based on the determination made pursuant to K.A.R. 28-19-724 shall be required to meet these provisions:

(1) submit to the department a collection and control system design plan that meets the requirements of 40 CFR §60.752(b)(2)(i), as in effect on July 1, 1996, which is hereby adopted by reference;

(2) install a collection and control system that meets the requirements of 40 CFR §60.752(b)(2)(ii), as in effect on July 1, 1996, which is hereby adopted by reference;

(3) route all collected gas to a control system that complies with the requirements of 40 CFR §60.752(b)(2)(iii), as in effect on July 1, 1996, which is hereby adopted by reference; and

(4) comply with the collection and control system capping and removal requirements of 40 CFR §60.752(b)(2)(v), as in effect on July 1, 1996, which is hereby adopted by reference.

(b) Operational standards. Each existing MSW landfill shall operate the MSW landfill collection and control system in accordance with the provisions of 40 CFR §60.753, as in effect on July 1, 1996, which is hereby adopted by reference.

(c) Compliance. The owner or operator of each existing MSW landfill with a collection and control system shall determine whether or not the gas collection system complies with the requirements of these regulations according to the provisions of 40 CFR §60.755, as in effect on July 1, 1996, which is hereby adopted by reference.

(d) Monitoring. The owner or operator of each existing MSW landfill with a collection and control system shall monitor operations in accordance with the requirements of 40 CFR §60.756, as in effect on July 1, 1996, which is hereby adopted by reference.

(e) Active gas collection. Any active gas collection system installed to meet the requirements of these regulations shall meet the active collection systems standards for the systems contained in 40 CFR 60.759, as in effect on July 1, 1996, which is hereby adopted by reference. (Authorized by K.S.A. 1996 Supp. 65-3005; implementing K.S.A. 1996 Supp. 65-3008; effective Nov. 14, 1997.)

28-19-726. Existing MSW landfills; record-keeping and reporting. (a) The owner or operator of an existing municipal solid waste landfill subject to the requirements of K.A.R. 28-19-721 through 28-19-727 shall comply with the record-keeping requirements contained in 40 CFR §60.758, as in effect on July 1, 1996, which is hereby adopted by reference.

(b) Each owner or operator of an existing municipal solid waste landfill subject to the requirements of K.A.R. 28-19-722(a) shall comply with the reporting requirements of 40 CFR §60.757 (b) through (g), as in effect on July 1, 1996, which is hereby adopted by reference. (Authorized by K.S.A. 1996 Supp. 65-3005; implementing K.S.A. 1996 Supp. 65-3008; effective Nov. 14, 1997.)

28-19-727. Existing MSW landfills; time for compliance. (a) Except as provided in subsection (b) of this regulation, the planning, awarding of contracts, and installation of MSW landfill air emissions collection and control systems shall be accomplished within 30 months of the effective date of these regulations.

(b) Each existing landfill that meets the criteria of K.A.R. 28-19-722(a), but that has an NMOC emission rate of fewer than 50 megagrams per year on the effective date of these municipal solid waste landfill air emissions regulations shall accomplish the planning, awarding of contracts, and installation of collection and control equipment within 30 months of the date when the criterion of an NMOC emissions rate greater than or equal to 50 megagrams per year is first met. This determination shall be made pursuant to the requirements of K.A.R. 28-19-724. (Authorized by K.S.A. 1996 Supp. 65-3005; implementing K.S.A. 1996 Supp. 65-3008; effective Nov. 14, 1997.)

28-19-728. Reserved.

28-19-729. Standards for "hospital/medical/infectious waste incinerators." (a) Applicability. Except as otherwise provided in subsection (b) of this regulation, the requirements of the "hospital/medical/infectious waste incinerators" regulations, K.A.R. 28-19-729 through K.A.R. 28-19-729h, shall apply to each individual

"hospital/medical/infectious waste incinerator," or "HMIWI," as defined in K.A.R. 28-19-729a, for which construction commenced on or before June 20, 1996.

(b) Exceptions.

(1) The requirements of K.A.R. 28-19-729 through 28-19-729h shall not apply to HMIWI during periods when the HMIWI is burning only pathological waste, low-level radioactive waste, or chemotherapeutic wastes, as defined in K.A.R. 28-19-729a, or any combination of only these waste types, under all of the following conditions:

(A) The owner or operator of the HMIWI notifies the department in writing of an exemption claim under this subsection.

(B) The owner or operator of the HMIWI keeps records, on a calendar quarter basis, of the times, including start and ending times, when only pathological, low-level radioactive, or chemotherapeutic wastes, or a combination of only these wastes, are burned.

(C) The owner or operator of the HMIWI maintains the records for agency inspections in accordance with the provisions of K.A.R. 28-19-729h.

(2) A co-fired combustor, as defined in K.A.R. 28-19-729a, shall not be subject to these regulations if the owner or operator of the combustor does the following:

(A) Notifies the department of the exemption claim;

(B) provides to the department an estimate of the relative weights of "hospital or medical/infectious wastes," fuels, and other wastes to be burned; and

(C) keeps records on a calendar quarter basis of the weight of the "hospital or medical/infectious wastes" and the weight of all other fuels and wastes burned in the device.

(3) Pyrolysis units, as defined in K.A.R. 28-19-729a, and cement kilns burning "hospital or medical/infectious wastes" shall not be subject to the requirements of these regulations.

(4) Incinerators, boilers, or industrial furnaces subject to the hazardous waste facility permitting requirements of section 3005 of the federal solid waste disposal act, 42 U.S.C. §6925, shall not be subject to these regulations.

(5) Incinerators subject to 40 C.F.R. Part 60, Subparts Cb, Ea, or Eb for municipal waste combustors shall not be subject to these HMIWI regulations.

(c) Incinerators subject to the requirements of K.A.R. 28-19-729 through 28-19-729h shall not be subject to the requirements of K.A.R. 28-19-40 through 28-19-43. (Authorized by K.S.A. 1998 Supp. 65-3005; implementing K.S.A. 1998 Supp. 65-3005, K.S.A. 1998 Supp. 65-3007, and K.S.A. 65-3010; effective May 5, 2000.)

28-19-729a. "Hospital/medical/infectious waste incinerators"; definitions. (a) The definitions in 40 C.F.R. 60.51c, as in effect on July 1, 1998, are adopted by reference.

(b) "HMIWI" or "hospital/medical/infectious waste incinerator" is defined in 40 C.F.R. 60.51c.

(c) "Small rural hospital/medical/infectious waste incinerator" means a small HMIWI, as defined in 40 C.F.R. 60.51c, that burns less than 2,000 pounds of "hospital or medical/infectious waste" per week and is located more than 50 miles from the boundary of the nearest standard metropolitan statistical area (SMSA).

(d) "Standard metropolitan statistical area" (SMSA) means, for the purposes of these HMIWI regulations, the following:

(1) In Kansas:

(A) The Topeka SMSA comprised of Shawnee county;

(B) the Lawrence SMSA comprised of Douglas county;

(C) the Wichita SMSA comprised of Butler, Harvey, and Sedgwick counties; and

(D) the Kansas City SMSA comprised of Johnson, Leavenworth, Miami, and Wyandotte counties;

(2) in Missouri:

(A) The Joplin SMSA comprised of Jasper county; and

(B) the St. Joseph SMSA comprised of Buchanan county;

(3) in Oklahoma:

(A) The Enid SMSA comprised of Garfield county; and

(B) the Tulsa SMSA comprised of Creek, Osage, Rogers, Tulsa, and Wagoner counties in Oklahoma; and

(4) the Lincoln SMSA comprised of Lancaster county in Nebraska. (Authorized by and implementing K.S.A. 1998 Supp. 65-3005; effective May 5, 2000.)

28-19-729b. "Hospital/medical/infectious waste incinerators"; emission standards. (a) (1) The owner or operator of a "hospital/medical/infectious waste incinerator," or HMIWI, subject to these HMIWI regulations shall not cause or permit emissions from the HMIWI to exceed a visible contaminant emission greater than 10 percent opacity during a six-minute block average, measured as specified in 40 C.F.R. 60.56c as adopted in K.A.R. 28-19-729g.

(2) The owner or operator of any HMIWI subject to these regulations shall not cause or permit emissions from the HMIWI of any pollutants to exceed the emission limits listed in Table 1 of this regulation, measured as specified in 40 C.F.R. 60.56c,

Table 1
Emission Limits for HMIWI

Pollutant	Units	Emission Limits (7% oxygen, dry basis)			
		HMIWI Size			
		Small Rural	Small	Medium	Large
Particulate Matter (PM)	Milligrams per dry standard cubic meter (mg/dscm)	197	115	69	34
Carbon Monoxide (CO)	Parts per million by volume (ppmv)	40	40	40	40
Dioxins/furans	Nanograms per dscm total dioxins/furans, or Nanograms per dscm TEQ*	800 total 15 TEQ	125 total 2.3 TEQ	125 total 2.3 TEQ	125 total 2.3 TEQ
Hydrogen Chloride (HCl)	ppmv, or percent (%) reduction	3,100 ppmv	100 ppmv 93%	100 ppmv 93%	100 ppmv 93%
Sulfur Dioxide (SO_2)	ppmv	55	55	55	55
Nitrogen Oxides (NO_x)	ppmv	250	250	250	250
Lead (Pb)	mg/dscm, or percent (%) reduction	10 mg/dscm	1.2 mg/dscm 70%	1.2 mg/dscm 70%	1.2 mg/dscm 70%
Cadmium (Cd)	mg/dscm, or percent (%) reduction	4 mg/dscm	0.16 mg/dscm 65%	0.16 mg/dscm 65%	0.16 mg/dscm 65%
Mercury (Hg)	mg/dscm, or percent (%) reduction	7.5 mg/dscm	0.55 mg/dscm 85%	0.55 mg/dscm 85%	0.55 mg/dscm 85%

* TEQ is used to abbreviate "Toxic Equivalent." See 40 CFR 60.51c as adopted in K.A.R. 28-19-729a.

(b) Exceptions. Air emissions opacity levels that exceed the specified limits in paragraph (a)(1) of this regulation shall not be considered a violation of this regulation if the owner or operator of the emission unit demonstrates to the satisfaction of the department that the opacity exceedence is due solely to the presence of uncombined water in the plume. (Authorized by and implementing K.S.A. 1998 Supp. 65-3005; effective May 5, 2000.)

28-19-729c. Standards for "hospital/medical/infectious waste incinerators"; compliance schedule. (a) Except as otherwise provided in subsection (b) of this regulation, the owner or operator of each HMIWI subject to the emission limits in K.A.R. 28-19-729b shall comply with all of the applicable requirements of K.A.R. 28-19-729 through 28-19-729h on or before the date one year after the effective date of EPA's approval of the state's HMIWI plan.

(b) (1) The owner or operator of an HMIWI may petition the department for an extension to the compliance date specified in subsection (a) of this regulation. This petition shall be prepared in accordance with the provisions of subsection (c) of this regulation.

(2) The compliance date for each HMIWI for which a compliance date extension petition is approved shall be no later than September 15, 2002.

(c) Each petition for a compliance date extension shall be submitted to the department within 180 days after the effective date of EPA's approval of the state's HMIWI emission guidelines implementation plan, and shall include the following components:

(1) Documentation and analysis to support the need for an extension, including an evaluation of the option to transport the waste off-site to a commercial medical waste treatment and disposal facility on a temporary or permanent basis;

(2) submittal of an emissions control plan, describing the air pollution controls or process modifications, or both, that are to be used to comply with the emission limits in K.A.R. 28-19-729b;

(3) a compliance schedule, with dates, for the following steps:

(i) The awarding of contracts for air pollution control systems, process modifications, or orders for purchase of components;

(ii) the initiation of on-site construction or installation of air pollution control equipment, process modifications, or both;

(iii) the completion of on-site construction or installation of air pollution control equipment, process modifications, or both; and

(iv) the conduct of performance testing, and final compliance with the applicable requirements of K.A.R. 28-19-729b through 28-19-729h.

(d) The owner or operator of an HMIWI for which a timely and complete compliance date extension petition has been submitted to the department may continue to operate the HMIWI until the petition has been approved or disapproved, if the owner or operator adheres to the compliance schedule outlined in the submitted petition. (Authorized by and implementing K.S.A. 1998 Supp. 65-3005; effective May 5, 2000.)

28-19-729d. "Hospital/medical/infectious waste incinerators"; operation, operator training, and qualification standards. (a) (1) For the purposes of these regulations, a "trained and qualified HMIWI operator" or "HMIWI operator" means a person who has completed the requirements of subsections (b) and (c) of this regulation, and who maintains the qualifications in accordance with the requirements of subsection (e) as required.

(2) A trained and qualified HMIWI operator either shall be at the HMIWI facility at all times or shall be generally able to reach the facility within one hour at all times the incinerator is in operation.

(3) Any HMIWI subject to these regulations shall be operated only by a trained and qualified HMIWI operator, or by a person or persons working under the direct supervision of a trained and qualified HMIWI operator.

(b) The HMIWI operator training shall be obtained by completing an HMIWI operator training course that includes, at a minimum, the following elements:

(1) Training on the following subjects:

(A) Environmental concerns, including pathogen destruction and types of emissions;

(B) basic combustion principles, including products of combustion;

(C) operation of the type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures;

(D) combustion controls and monitoring;

(E) operation of air pollution control equipment and factors affecting performance, if applicable;

(F) methods to monitor pollutants, including continuous emission monitoring systems and monitoring of HMIWI and air pollution control device operating parameters, and equipment calibration procedures, where applicable;

(G) inspection and maintenance of the HMIWI, air pollution control devices, and continuous emission monitoring systems;

(H) actions to correct malfunctions or conditions that may lead to malfunction;

(I) bottom and fly ash characteristics and handling procedures;

(J) applicable federal, state, and local regulations;

(K) work safety procedures;

(L) pre-startup inspections; and

(M) recordkeeping requirements;

(2) an examination designed and administered by the instructor of the training course; and

(3) reference material distributed to the attendees covering the course topics.

(c) HMIWI operator qualification shall be obtained by the following:

(1) Completion of a training course that satisfies the criteria listed in paragraph (b)(1) of this regulation; and

(2) six months of experience as an HMIWI operator, six months of experience as a direct supervisor of an HMIWI operator, or completion of at least two burn cycles under the observation of a qualified HMIWI operator.

(d) HMIWI operator qualification shall be valid from the date on which the examination is passed or the completion of the required experience, whichever is later.

(e) To maintain qualification, the trained and qualified HMIWI operator shall complete an annual review or refresher course covering the following:

(1) Update of regulations;

(2) incinerator operation, including startup and shutdown procedures;

(3) inspection and maintenance;

(4) responses to malfunctions or conditions that may lead to malfunction; and

(5) discussion of operating problems encountered by attendees.

(f) A lapsed qualification shall be renewed by one of the following procedures:

(1) For a lapse of less than three years, the HMIWI operator shall complete and pass a standard annual refresher course described in subsection (e) of this regulation.

(2) For a lapse of three years or more, the HMIWI operator shall complete and pass a training course with the minimum criteria described in paragraph (b)(1) of this regulation.

(g) The owner or operator of an HMIWI subject to these regulations shall maintain documentation at the facility that addresses the following:

(1) A summary of the applicable standards under this regulation;

(2) a description of basic combustion theory applicable to HMIWI;

(3) procedures for receiving, handling, and charging waste;

(4) HMIWI startup, shutdown, and malfunction procedures;

(5) procedures for maintaining proper combustion air supply levels;

(6) procedures for operating the HMIWI and associated air pollution control systems within the standards established under this regulation;

(7) procedures for responding to periodic malfunction or conditions that may lead to malfunction;

(8) procedures for monitoring HMIWI emissions;

(9) reporting and recordkeeping procedures; and

(10) procedures for handling ash.

(h) The owner or operator of a HMIWI subject to these regulations shall review with each HMIWI operator the information listed in subsection (g) of this regulation.

(1) The initial review of the information listed in subsection (g) of this regulation shall be conducted within one year of the date of EPA approval of the state's HMIWI plan, or before the assumption of responsibilities affecting HMIWI operation, whichever date is later.

(2) Subsequent reviews of the information listed in subsection (g) of this regulation shall be conducted annually. (Authorized by and implementing K.S.A. 1998 Supp. 65-3005; effective May 5, 2000.)

28-19-729e. "Hospital/medical/infectious waste incinerators"; waste management plan. The owner or operator of the HMIWI facility shall prepare a waste management plan in accordance with 40 C.F.R. 60.55c, as in effect on July 1, 1998, which is hereby adopted by reference. (Authorized by and implementing K.S.A. 1998 Supp. 65-3005; effective May 5, 2000.)

28-19-729f. "Hospital/medical/infectious waste incinerators"; inspections. (a) The owner or operator of each small rural HMIWI subject to this regulation, as defined in K.A.R. 28-19-729a(c), shall conduct an initial equipment inspection of the HMIWI within one year from the date the department receives EPA approval of the state's HMIWI plan.

(b) At a minimum, the owner or operator shall perform the following:

(1) Inspect all burners, pilot assemblies, and pilot sensing devices for proper operation, and clean the pilot flame sensor, as necessary;

(2) ensure proper adjustment of primary and secondary chamber combustion air, and adjust as necessary;

(3) inspect hinges and door latches, and lubricate as necessary;

(4) inspect dampers, fans, and blowers for proper operation;

(5) inspect HMIWI door and door gaskets for proper sealing;

(6) inspect motors for proper operation;

(7) inspect primary chamber refractory lining, and clean and repair or replace the lining as necessary;

(8) inspect the incinerator shell for corrosion and hot spots;

(9) inspect the secondary and tertiary chambers and stack, and clean as necessary;

(10) inspect the mechanical loader, including limit switches, for proper operation, if applicable;

(11) visually inspect the waste bed grates, and repair or seal, or both, as appropriate;

(12) for the burn cycle that follows the inspection, document that the incinerator is operating properly and make any necessary adjustments;

(13) inspect air pollution control devices for proper operation, if applicable;

(14) inspect waste heat boiler systems to ensure proper operation, if applicable;

(15) inspect bypass stack components;

(16) ensure proper calibration of thermocouples, sorbent feed systems, and any other monitoring equipment; and

(17) generally observe that the equipment is maintained in good operating condition.

(c) (1) Within 10 operating days following an equipment inspection, all necessary repairs shall be completed, unless the owner or operator obtains a written approval from the department, extending the time allowed for the necessary repairs.

(2) All approvals for time extensions to this requirement shall establish the date by which all necessary repairs are to be completed.

(d) Each small rural HMIWI subject to the emission limits specified in K.A.R. 28-19-729b shall undergo an equipment inspection annually, no later than 12 months following the previous annual equipment inspection, which shall include the inspection elements in subsections (b) and (c) of this regulation. (Authorized by and implementing K.S.A. 1998 Supp. 65-3005; effective May 5, 2000.)

28-19-729g. "Hospital/medical/infectious waste incinerators"; compliance, performance testing, and monitoring guidelines. (a) (1) Except as provided in subsection (b) of this regulation, each individual HMIWI subject to these regulations shall meet the compliance and performance testing requirements in 40 C.F.R. 60.56c, as in effect on July 1, 1998, which is adopted by reference except for the fugitive emissions testing requirements in 40 C.F.R. 60.56c(b)(12) and (c)(3).

(2) To meet the testing requirements of paragraph (a)(1) of this regulation, the operator or owner of each HMIWI shall use the appropriate test methods listed in 40 C.F.R. 60.56c and adopted in K.A.R. 28-19-720.

(b) Each small rural HMIWI subject to these regulations, as defined in K.A.R. 28-19-729a(c), shall meet the following compliance and performance testing requirements:

(1) (A) The owner or operator of the small rural HMIWI shall conduct the performance testing in accordance with the requirements in 40 C.F.R. 60.56c(a), (b)(1) through (b)(9), (b)(11) for mercury (Hg) only, and (c)(1).

(B) The 2,000 pounds per week limitation in K.A.R. 28-19-729a(c) shall not apply during these

performance tests.

(2) The owner or operator of the small rural HMIWI shall establish a maximum charge rate and minimum secondary chamber temperature as site-specific operating parameters during the initial performance test to determine compliance with applicable emission limits.

(3) (A) Following the date on which the initial performance test is completed, the owner or operator of the small rural HMIWI shall ensure that the HMIWI does not operate above the maximum charge rate or below the minimum secondary chamber temperature, measured as three-hour rolling averages, calculated each hour as the average of the previous three hours, or as the average of the burn cycle if the burn cycle is less than three hours, at all times except during periods of startup, shutdown, and malfunction.

(B) Operating parameter limits shall not apply during performance tests.

(C) Operation either above the maximum charge rate or below the minimum secondary chamber temperature shall constitute a violation of the established operating parameters.

(4) Except as provided in paragraph (b)(5) of this regulation, operation of the HMIWI above the maximum charge rate and below the minimum secondary chamber temperature, each measured on a three-hour rolling average or as the average of the burn cycle if the burn cycle is less than three hours, simultaneously shall constitute a violation of the particulate matter, carbon monoxide, and "dioxin/furan" emission limits.

(5) (A) The owner or operator of the small rural HMIWI may conduct a repeat performance test within 30 days of violation of an applicable operating parameter to demonstrate that the designated facility is not in violation of the applicable emission limit.

(B) Repeat performance tests conducted pursuant to this subsection shall be conducted under operating parameters equivalent to the operating conditions that indicated a violation under paragraph (b)(4) of this regulation.

(c) Except as specified in subsection (d) of this regulation, each HMIWI subject to these regulations shall meet the monitoring requirements of 40 C.F.R. 60.57c, as in effect on July 1, 1998, which is hereby adopted by reference.

(d) The owner or operator of each small rural HMIWI subject to these regulations, as defined in K.A.R. 28-19-729a, shall meet the following monitoring requirements:

(1) Install, calibrate to the manufacturer's specifications, maintain, and operate a device for measuring and recording the temperature of the secondary chamber on a continuous basis, the output of which shall be recorded, at a minimum frequency of once every minute throughout operation.

(2) The owner or operator of the small rural HMIWI shall install, calibrate to the manufacturer's specifications, maintain, and operate a device that automatically measures and records the date, time, and weight of each charge of waste fed to the HMIWI.

(3) (A) The owner or operator of a small rural HMIWI subject to these regulations shall obtain the monitoring data required by paragraphs (d)(1) and (d)(2) of this regulation at all times during HMIWI operation, except during periods of monitoring equipment malfunction, calibration, or repair.

(B) The owner or operator shall obtain and record valid monitoring data for not less than 75 percent of the operating hours per day, and for not less than 90 percent of the operating hours per calendar quarter that the HMIWI is combusting "hospital or medical/infectious waste." (Authorized by K.S.A. 1999 Supp. 65-3005; implementing K.S.A. 1999 Supp. 65-3005 and K.S.A. 1999 Supp. 65-3007; effective May 5, 2000)

28-19-729h. "Hospital/medical/infectious waste incinerators"; reporting and recordkeeping. (a) Except as otherwise provided in subsection (b) of this regulation, the owner or operator of an HMIWI that is subject to these regulations shall meet the reporting and recordkeeping requirements listed in 40 C.F.R. 60.58c(b), (c), (d), (e), and (f), as in effect on July 1, 1998 and hereby adopted by reference, excluding 40 C.F.R. 60.58c(b)(2)(ii), fugitive emissions, and (b)(7), siting.

(b) The owner or operator of each small rural HMIWI subject to the emission limits in K.A.R. 28-19-729b shall comply with the following reporting and recordkeeping requirements:

(1) The owner or operator of the small rural HMIWI shall maintain records of the annual equipment inspections, any required maintenance, and any repairs not completed within 10 days of an inspection or the time frame established by the department pursuant to K.A.R. 28-19-729f(c).

(2) The owner or operator of the small rural HMIWI shall submit an annual report, signed by the facility manager, containing information recorded in accordance with paragraph (b)(1) of this regulation no later than March 1

following the calendar year in which data were collected.

(3) The owner or operator shall send subsequent annual reports no later than 12 calendar months following the previous report.

(4) Once the unit is subject to the department's class I air operating permit program, the owner or operator shall submit these reports semiannually. (Authorized by K.S.A. 1998 Supp. 65-3005; implementing K.S.A. 1998 Supp. 65-3005 and K.S.A. 1998 Supp. 65-3007; effective May 5, 2000.)

28-19-730 through 28-19-734. Reserved.

28-19-735. National emission standards for hazardous air pollutants. (a) 40 C.F.R. part 61, and its appendices, as in effect on July 1, 2003, are adopted by reference except for the following:

(1) 40 C.F.R. 61.04;

(2) 40 C.F.R. 61.16;

(3) 40 C.F.R. 61.17;

(4) 40 C.F.R. 61, subpart H;

(5) 40 C.F.R. 61, subpart I; and

(6) 40 C.F.R. 61, subpart K.

(b) Unless the context clearly indicates otherwise, the following meanings shall be given to these terms as they appear in 40 C.F.R. part 61:

(1) The term "administrator" shall mean the secretary or the secretary's authorized representative.

(2) The term "United States environmental protection agency" or any term referring to the United States environmental protection agency shall mean the department.

(3) The term "state" shall mean the state of Kansas. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3008 and 65-3010; effective Jan. 23, 1995; amended June 6, 1997; amended June 11, 1999; amended December 3, 2004.)

28-19-736 through 28-19-739. Reserved.

28-19-740 through 28-19-749. Reserved.

28-19-750. Hazardous air pollutants; maximum achievable control technology. (a) 40 C.F.R. part 63 and its appendices, as in effect on July 1, 2003, are adopted by reference, except for the following:

(1) 40 C.F.R. 63.12;

(2) 40 C.F.R. 63.13;

(3) 40 C.F.R. 63.15;

(4) 40 C.F.R. 63.40 through 63.44; and

(5) 40 C.F.R. Part 63, subpart E.

(b) Unless the context clearly indicates otherwise, the following meanings shall be given to these terms as they appear in 40 C.F.R. part 63.

(1) The term "administrator" shall mean the secretary or the secretary's authorized representative.

(2) The term "United States environmental protection agency" or any term referring to the United States environmental protection agency shall mean the department.

(3) The term "state" shall mean the state of Kansas. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3008 and 65-3010; effective Jan. 23, 1995; amended June 6, 1997; amended June 11, 1999; amended December 3, 2004.)

28-19-750a. Consolidated federal air regulations; synthetic organic chemical manufacturing industry. (a) 40 C.F.R. part 65, as in effect on July 1, 2003, is adopted by reference except for the following:

(1) 40 C.F.R. 65.9;

(2) 40 C.F.R. 65.10;

(3) 40 C.F.R. 65.12; and

(4) 40 C.F.R. 65.14.

(b) Unless the context clearly indicates otherwise, the following meanings shall be given to these terms as they appear in 40 C.F.R. part 65:

(1) The term "administrator" shall mean the secretary or the secretary's authorized representative.

(2) The term "United States environmental protection agency" or any term referring to the United States environmental protection agency shall mean the department.

(3) The term "state" shall mean the state of Kansas. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3008 and 65-3010; effective December 3, 2004.)

28-19-751. Hazardous air pollutants; limitations applicable to modification of major sources. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995; revoked Aug. 13, 1999.)

28-19-752. Hazardous air pollutants; limitations applicable to construction of new major sources or reconstruction of existing major sources.
(Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995; revoked Aug. 13, 1999.)

28-19-752a. Hazardous air pollutants; limitations applicable to construction of new major sources or reconstruction of existing major sources. (a) Applicability.

(1) For the purposes of this regulation, 40 C.F.R. §63.40, as in effect as of July 1, 1997 is adopted by reference.

(2) Except as otherwise provided by 40 C.F.R. §63.40(c), (e), and (f), this regulation shall apply to the owner or operator of each proposed new major source of hazardous air pollutants (HAPs) and the owner or operator of each existing major source of hazardous air pollutants for which reconstruction is proposed.

(b) Definitions.

(1) For the purposes of this regulation, 40 C.F.R. §63.41, as in effect as of July 1, 1997, is adopted by reference.

(2) “Case-by-case MACT determination” means a determination pursuant to the provisions of subsection (d) of this regulation so that emissions of HAPs from the constructed or reconstructed source will be controlled to a level no less stringent than the maximum achievable control technology, or “MACT”, emission limitation for new sources.

(c) Prohibition. After the effective date of this regulation, the owner or operator shall not begin actual construction or reconstruction of a major source of HAP unless the conditions of both paragraphs (1) and (2) of this subsection are met:

(1) The owner or operator has fully complied with all requirements of the construction permit program, K.A.R. 28-19-300, et seq. for preconstruction review, including applicable requirements of section (d) of this regulation, and of subpart A of 40 CFR part 63 as adopted by K.A.R. 28-19-750.

(2) (A) The major source category has been specifically regulated or exempted from regulation under a standard issued in 40 C.F.R. part 63 pursuant to 42 U.S.C. §7412(d), 42 U.S.C. §7412(h), or 42 U.S.C. §7412(j); or

(B) The owner or operator of the source has applied to the department through the preconstruction review process of K.A.R. 28-19-300, et seq., as required by paragraph (1) of this subsection for, and received from the department a final and effective case-by-case MACT determination pursuant to the provisions of subsection (d) of this regulation so that emissions of HAPs from the constructed or reconstructed source will be controlled to a level no less stringent than the maximum achievable control technology emission limitation for new sources.

(d) Requirements. The owner or operator of a source subject to this regulation shall apply for the construction permit under 28-19-300, et seq. and comply with the provisions of 40 C.F.R. §63.43, as in effect as of July 1, 1997, which are adopted by reference, except for the following subsections of 40 C.F.R. §63.43:

(1) 40 C.F.R. §63.43(h)(1); and

(2) 40 C.F.R. §63.43(i).

(e) Requirements for constructed or reconstructed major sources subject to subsequently adopted MACT standard or MACT requirement. The owner or operator of each major source subject to this regulation shall comply with the applicable provisions of 40 C.F.R. §63.44, in effect as of July 1, 1997, which is adopted by reference. (Authorized by K.S.A. 1998 Supp. 65-3005; implementing K.S.A. 1998 Supp. 65-3008; effective Aug. 13, 1999.)

28-19-753. Hazardous air pollutants; limitations applicable to sources for which the USEPA fails to meet certain deadlines. (a) This regulation shall be applicable to a source only if the USEPA fails to promulgate an emission standard for the category or subcategory applicable to the source within the time-frame scheduled by the USEPA at 58 FR 63941, December 3, 1993.

(b) Within 18 months after the date the emission limitation was to be promulgated by the USEPA, the owner or operator of a major source to which the emission limitation would apply, shall file with the department an application to modify the operating permit of the major source. As part of the application to modify the operating permit, the owner or operator shall:

(1) determine the applicable emission limitation for the source pursuant to subsection (c) of this regulation;

(2) specify how the applicable emission limitation was determined;

(3) specify the manner in which the emissions unit or stationary source will meet the applicable emission limitation; and

(4) commit to test methods and procedures to demonstrate compliance with the applicable emission limitation.

(c) The applicable emission limitation shall be either:

(1) for stationary sources within a category or subcategory listed at 57 FR 31576, July 16, 1992, with 30 or more sources. The average emission limitation achieved by the best performing 12 percent of the existing sources, for which the administrator of the USEPA has emissions information, in such category or subcategory; or

(2) for stationary sources within a category or subcategory listed at 57 FR 31576, July 16, 1992, with fewer than 30 sources, the average emission limitation achieved by the best performing 5 sources, for which the administrator of the USEPA has or could reasonably obtain emissions information, in such category or subcategory.

(d) If the USEPA promulgates an emission standard pursuant to section 112(d) of the federal clean air act that is applicable to the major source prior to the date on which a permit application is approved, the emission limitation in the operating permit shall reflect the promulgated standard rather than the emission limitation proposed in the application, provided that the source shall have the compliance period provided at section 112(i) of the federal clean air act.

(e) If, after a permit is issued approving the application to modify the major source filed pursuant to this regulation, the USEPA promulgates an emissions standard pursuant to section 112(d) of the federal clean air act that would be applicable to the major source in lieu of the emission limitation established in the permit, the operating permit of the major source shall be revised upon the next renewal to reflect the standard promulgated the USEPA. The renewed permit shall also provide the owner or operator of the major source a reasonable time to comply with the applicable standard promulgated by the USEPA, which shall be no longer than eight years after such standard is promulgated or eight years after the date on which the source is first required to comply with the emissions limitations established under this regulation, whichever is earlier.

(f) Each application for a permit modification under this regulation shall be:

(1) subject to the provisions of K.A.R. 28-19-518;

(2) submitted on forms provided or approved by the department; and

(3) considered significant permit modifications subject to the provisions of K.A.R. 28-19-513 (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

28-19-800. General conformity of federal actions. (a) 40 CFR part 93, subpart B, as promulgated on November 30, 1993, is adopted by reference, except for 40 CFR 93.151 and 43 CFR 93.160(f) which are deleted.

(b) Unless the context clearly indicates otherwise:

(1) the term "state" shall mean the state of Kansas; and

(2) the terms "applicable implementation plan" or "applicable SIP" shall refer to the Kansas state air implementation plan. (Authorized by and implementing K.S.A. 1995 Supp. 65-3005, effective March 15, 1996.)

28-19-801. Transportation conformity.

(a) The provisions of this regulation shall apply:

(1) to areas of the state which have been identified as not meeting the national primary ambient air quality standard for ozone in the manner prescribed by the provisions of section 107(d) of the federal clean air act, 42 U.S.C. §7407, as promulgated at 40 CFR part 81, as in effect July 1, 1986 and amended at 51 Fed. Reg. 25,202, July 11, 1986;

and

(2) with respect to emissions of ozone precursors.

(b) Applicable provisions of the federal transportation conformity rule.

(1) The following sections of 40 CFR part 93, subpart A, entitled "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," promulgated by the U.S. environmental protection agency on November 24, 1993, are adopted by reference: §§93.100, 93.103, 93.104, 93.106, 93.107, 93.108, 93.109, 93.110, 93.111, 93.113, 93.114, 93.115, 93.118, 93.119, 93.120, 93.122, 93.123, 93.124, 93.129, 93.132, 93.134, and 93.135.

(2) 40 CFR §93.102, as promulgated on November 24, 1993, is adopted by reference except that subparagraphs (b)(1), (b)(2), (b)(3)(ii) and (b)(3)(iii) are deleted.

(3) 40 CFR §93.128, as promulgated on November 24, 1993, is adopted by reference, except that subparagraph (e)(2) is deleted.

(4) 40 CFR §93.130, as promulgated on November 24, 1993, is adopted by reference with the following modifications:

(A) subparagraph (b)(5) of 40 CFR §93.130 is renumbered as subparagraph (a)(6);

(B) the reference in subparagraph (b) of 40 CFR 93.130 to "paragraphs (b)(1) through (5) of this section" shall read "paragraphs (b)(1) through (4) of this section";

(C) references in subparagraph (c)(1) of 40 CFR §93.130 to "paragraph (a) of this section" shall read "paragraph (b) of this section";

(D) any references made to 40 CFR §93.130 in any of the sections of 40 CFR part 93, subpart A, adopted by reference pursuant to subparagraph (b)(1) of this regulation shall be deemed to refer to this subparagraph (b)(4);

(E) any references in 40 CFR §93.130 to 40 CFR §93.127 are deleted; and

(F) subparagraph (e) of 40 CFR §93.130 is deleted.

(5) 40 CFR §93.136, as promulgated on November 24, 1993, is adopted by reference except that:

(A) subparagraphs (a)(1), (a)(6), and (a)(7) are deleted; and

(B) any reference made to 40 CFR §93.136 in any of the sections of 40 CFR, part 93, subpart A, adopted by reference pursuant to subparagraph (b)(1) of this regulation, shall be deemed to refer to this subparagraph (b)(5).

(6) The following is adopted in lieu of adoption by reference of 40 CFR §93.133, as promulgated on November 24, 1993, parts of which are inapplicable to the areas of the state identified in paragraph (a) of this regulation:

(A) Before a conformity determination is made, enforceable written commitments must be obtained from project sponsors for any project-level mitigation or control measures which are either:

(i) conditions of the conformity determination for a transportation plan or transportation improvement program; or

(ii) included in the project design concept and scope that is used in the regional emissions analysis required by 40 CFR §93.118 through §93.120 and 40 CFR §93.122 through §93.124.

(B) During the control strategy and maintenance periods, if the metropolitan planning organization or project sponsor believes the mitigation or control measures are no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measures if:

(i) it can demonstrate that the requirements of 40 CFR §93.118 and 40 CFR §93.119 are satisfied without the mitigation or control measures; and

(ii) it so notifies the agencies involved in the interagency consultation process required under paragraph (d) of this regulation. The metropolitan planning organization and the U.S. department of transportation shall confirm that the transportation plan and transportation improvement program still satisfy the requirements of 40 CFR §93.118 and 40 CFR §93.119 and that the conformity determinations for the transportation plan, transportation improvement program, and project are still valid without implementation of the mitigation or control measures.

(C) The reference to 40 CFR §93.133(a) in 40 CFR §93.115, which is adopted by reference pursuant to subparagraph (b)(1) of this regulation, shall be deemed to refer to this subparagraph (b)(6).

(7) Any reference to federal regulations in 23 CFR part 450 in any of the sections of 40 CFR part 93 adopted by reference pursuant to this regulation, is to 23 CFR part 450 as in effect on the date of adoption of this regulation.

(8) Any reference to 40 CFR §93.105, consultation, in any of the sections of 40 CFR part 93 adopted by reference, shall be deemed to refer to paragraph (d) of this regulation.

(c) Definitions.

(1) 40 CFR §93.101, definitions, as promulgated on November 24, 1993, is adopted by reference.

(2) For the purpose of this rule the term "Kansas consulting agencies" shall mean;

(A) the Kansas department of health and environment;

(B) the Kansas department of transportation;

(C) the Wyandotte county health department; and

(D) the Johnson county environmental department.

(d) Interagency consultation requirements.

(1) Consultation pursuant to this section shall take place during all periods identified in 40 CFR §93.109, which is adopted by reference pursuant to paragraph (b) of this regulation.

(2) The Kansas consulting agencies shall participate in a consultation process with representatives of:

(A) the Missouri department of natural resources, division of environmental quality, and Missouri local air agencies that elect to participate in the consultation process;

(B) the Missouri department of transportation and Missouri local transportation agencies;

(C) the federal highway administration of the U.S. department of transportation, the federal transit administration of the U.S. department of transportation, and the U.S. environmental protection agency; and

(D) the Mid-America regional council, in its capacity as the lead planning agency for the Kansas City air quality region certified by the state of Kansas under section 174 of the federal clean air act, 42 U.S.C. §7504, and in its capacity as the metropolitan planning organization for the Kansas City metropolitan areas, designated by the governor of the state of Kansas as responsible for transportation planning under section 134 of Title 23 U.S.C.

(3) Consultation shall be required for:

(A) any conformity determination pertaining to transportation plan, programs, and projects required pursuant to section 176(c)(4) of the federal clean air act, 42 U.S.C. §7506(c)(4), and 40 CFR part 93, subpart A, as promulgated on November 24, 1993; and

(B) all matters listed at 40 CFR §93.105(c), as promulgated on November 24, 1993, which is hereby adopted by reference, with the following modifications:

(i) subparagraph (1)(v) of 40 CFR §93.105(c) is deleted; and

(ii) the reference in subparagraph (5) of 40 CFR §93.105(c) to 40 CFR §93.130 shall be deemed to refer to subparagraph (b)(4) of this regulation. (Authorized by and implementing K.S.A. 1995 Supp. 65-3005; effective March 15, 1996.)

State of Kansas Air Quality Statutes

Chapter 65.--PUBLIC HEALTH
Article 30.--AIR QUALITY CONTROL

65-3001. Title of act. K.S.A. 65-3002, 65-3003, 65-3005 through 65-3013 and 65-3015 through 65-3020 and K.S.A. 65-3008a, 65-3008b and 65-3024 through 65-3028, and amendments thereto, shall be known and may be cited as the Kansas air quality act.
History**:** L. 1967, ch. 347, § 1; L. 1970, ch. 261, § 1; L. 1993, ch. 13, § 1; March 25.

65-3002. Definitions. As used in this act, unless the context clearly requires otherwise:

(a) "Air contaminant" means dust, fumes, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof, but not including water vapor or steam condensate.

(b) "Air contamination" means the presence in the outdoor atmosphere of one or more air contaminants.

(c) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is, or tends significantly to be, injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property, or would contribute to the formation of regional haze.

(d) "Alter" means any physical change in, or change in the method of operation of, an air contaminant emission stationary source which increases the amount of any regulated air pollutant emitted by such source or which results in the emission of any regulated air pollutant not previously emitted.

(e) "Emission" means a release into the outdoor atmosphere of air contaminants.

(f) "Deciview" means an atmospheric haze index that expresses changes in visibility conditions as defined in 40 C.F.R. 51.301 as in effect on July 1, 2005.

(g) "Facility" means any building, structure, machine, equipment, device or installation (or group of buildings, structures, machines, equipment, devices or installations), whether temporary or permanent, located on one or more contiguous or adjacent properties and under common control of the same person (or persons under common control). Such term shall not include locomotives, diesel trucks or truck tractors unless otherwise required by the federal clean air act, as amended in November 1990.

(h) "Modify" or "modification," when used in conjunction with an approval or permit action, means an amendment to an existing approval or permit initiated by the permittee. When used to describe a change in any air contaminant emission stationary source, "modify" shall have the same meaning as the term "alter."

(i) "Permittee" means the holder of an approval or the holder of a permit and includes both the owner and the operator of any approved or permitted air contaminant emission source.

(j) "Person" means any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state or federal government, trust, estate or any other legal entity.

(k) "Regional haze" means visibility impairment, measured in deciviews, occurring over a large geographic area caused by the cumulative emissions of gaseous and particulate air contaminants from numerous sources.

(l) "Reopen" means to seek an amendment to an existing approval or permit initiated by any person other than the permittee.

(m) "Secretary" means the secretary of health and environment.

(n) "Stationary source" means any building, structure, facility or installation which emits or may emit any air contaminant. History**:** L. 1967, ch. 347, § 2; L. 1970, ch. 261, § 2; L. 1974, ch. 352, § 135; L. 1993, ch. 13, § 2; L. 2006, ch. 84, § 1; July 1.

65-3003. Responsibility of secretary; administration. The responsibility for air quality conservation and control of air pollution is hereby placed with the secretary of health and environment. The secretary shall administer this act through the division of environment. History**:** L. 1967, ch. 347, § 3; L. 1970, ch. 261, § 3; L. 1974, ch. 352, § 136; July 1.

65-3004. History**:** L. 1967, ch. 347, § 4; L. 1970, ch. 261, § 4; L. 1974, ch. 348, § 29; Repealed, L. 1974, ch. 352, § 189; July 1.

65-3005. Powers of the secretary. The secretary shall have the power to:

(a) Adopt, amend and repeal rules and regulations implementing and consistent with this act.

(b) Hold hearings relating to any aspect of or matter in the administration of this act concerning air quality control, and in connection therewith, compel the attendance of witnesses and the production of evidence.

(c) Issue such orders, permits and approvals as may be necessary to effectuate the purposes of this act and enforce the same by all appropriate administrative and judicial proceedings.

(d) Require access to records relating to emissions which cause or contribute to air pollution.

(e) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution originating in Kansas that affects air quality in Kansas or in other states or both.

(f) Adopt rules and regulations governing such public notification and comment procedures as authorized by this act.

(g) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this act.

(h) (1) Encourage local units of government to handle air pollution problems within their respective jurisdictions and on a cooperative basis; (2) provide technical and consultative assistance therefor; and (3) enter into agreements with local units of government to administer all or part of the provisions of the Kansas air quality act in the units' respective jurisdictions.

(i) Encourage and conduct studies, investigations and research relating to air contamination and air pollution and their causes, effects, prevention, abatement and control.

(j) Encourage air contaminant emission sources to voluntarily implement strategies, including the development and use of innovative technologies, market-based principles and other private initiatives to reduce or prevent pollution.

(k) Determine by means of field studies and sampling the degree of air contamination and air pollution in the state and the several parts thereof.

(l) Establish ambient air quality standards for the state as a whole or for any part thereof.

(m) Collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution.

(n) Advise, consult and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with interested persons or groups.

(o) Accept, receive and administer grants or other funds or gifts from public and private entities, including the federal government, for the purpose of carrying out any of the functions

of this act. Such funds received by the secretary pursuant to this section shall be deposited in the state treasury to the account of the department of health and environment.

(p) Enter into contracts and agreements with other state agencies or subdivisions, local governments, other states, interstate agencies, the federal government or its agencies or private entities as is necessary to accomplish the purposes of the Kansas air quality act.

(q) Conduct or participate in intrastate or interstate emissions trading programs or other programs that demonstrate equivalent air quality benefits for the prevention, abatement and control of air pollution in Kansas or in other states or both.

(r) Prepare and adopt a regional haze plan as may be necessary to prevent, abate and control air pollution originating in Kansas that affects air quality in Kansas or in other states or both. Any regional haze plan prepared by the secretary shall be no more stringent than is required by 42 U.S.C. 7491.

(s) Participate in the activities of any visibility transport commission established under 42 U.S.C. 7492. The secretary shall report to the governor and the legislature on the activities of any such visibility transport commission annually. History**:** L. 1967, ch. 347, § 5; L. 1970, ch. 261, § 5; L. 1974, ch. 352, § 137; L. 1993, ch. 13, § 3; L. 2006, ch. 84, § 2; July 1.

65-3006. Same; publication and enforcement of regulations; employment of personnel; services. The secretary shall:

(a) Publish and enforce the rules, regulations and standards promulgated hereunder. The secretary shall furnish a copy of such rules, regulations or standards adopted hereunder to any citizen upon request.

(b) Employ such professional, technical and other staff, and provide such technical, scientific and other services as may be required, including laboratory facilities, for the purpose of effectuating the provisions of this act from funds appropriated and available for the purposes of this act. History**:** L. 1967, ch. 347, § 6; L. 1970, ch. 261, § 6; L. 1974, ch. 352, § 138; L. 1975, ch. 312, § 10; July 1.

65-3007. Air contaminant sources; classification; monitoring; reporting. (a) The secretary, by rule and regulation, shall classify air contaminant sources which, in the secretary's judgment, may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which relate to air pollution and may require reporting for any such class or classes. The classifications promulgated by the secretary shall be made to apply to the state as a whole or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(b) The secretary shall require air contaminant emission sources to monitor emissions, operating parameters, ambient impact of any source emissions or any other parameters deemed necessary by the secretary. The secretary may require air contaminant emission sources to keep records and make reports consistent with the purposes of this act.

(c) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules and regulations of the secretary require reporting shall make reports containing information as may be required by the secretary concerning location, size and height of contaminant outlets, processes employed, fuels used and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled. History**:** L. 1967, ch. 347, § 7; L. 1970, ch. 261, § 7; L. 1974, ch. 352, § 139; L. 1975, ch. 312, § 11; L. 1993, ch. 13, § 4; March 25.

65-3008. Approvals and permits for emission stationary sources. (a) No person shall construct, own, operate, install, alter or use any air contaminant emission stationary source which, in accordance with rules and regulations, the secretary finds may cause or contribute to air pollution, unless an appropriate approval or permit has been issued for the source by the secretary under this act. Approvals or permits issued by the secretary may be subject to conditions consistent with the purposes of this act and rules and regulations promulgated under this act.

(b) The secretary shall require that applications for approvals and permits, and renewals thereof, under this act shall be accompanied by application fees and such plans, specifications, compliance plans or other information as the secretary deems necessary. Applications shall be submitted on forms provided by the secretary and shall be signed by a responsible official of the source, who shall certify the accuracy of the information submitted.

(c) The issuance or holding of an approval or permit shall not convey any property right or exclusive privilege to the holder thereof.

(d) Without any further action on the part of the secretary, an approval or a permit shall become void and without effect on its expiration date unless a completed application form and any required fee are filed with the secretary on or before the expiration date of the approval or the permit. For purposes of this subsection, the secretary may specify by rule and regulation an amount of time prior to the expiration date of an operating permit by which a complete application form and any required fee must be filed with the secretary in order to be considered timely filed. The secretary may provide for a grace period by rule and regulation.

(e) The secretary may issue by rule and regulation a general approval or permit covering numerous similar sources. Any general approval or permit shall comply with all requirements applicable to approvals or permits under this act. Any source covered by a general approval or permit must apply to the secretary and receive authority to operate under the general approval or permit.

(f) The secretary may fix, charge and collect fees for approvals and permits, and the renewal thereof, to cover all or any part of the cost of administering the provisions of Kansas air quality act, other than K.S.A. 65-3027. The secretary shall adopt rules and regulations fixing such fees. The fees shall be deposited in the state treasury and credited to the state general fund, except that if all or any portion of the regulatory services for which a fee is collected under this section is performed by a county, city-county or multicounty health department, that portion of such fee which pertains to such services, as determined by the secretary, shall be credited to the local air quality control authority regulation services fund, which is hereby created in the state treasury, and shall be paid from such fund to such local air quality control authority. History**:** L. 1967, ch. 347, § 8; L. 1970, ch. 261, § 8; L. 1974, ch. 352, § 140; L. 1981, ch. 250, § 1; L. 1983, ch. 286, § 3; L. 1984, ch. 313, § 126; L. 1993, ch. 13, § 5; March 25.

65-3008a. Same; public comment and hearing; review. (a) No permit shall be issued, modified, renewed or reopened without first providing the public an opportunity to comment and request a public hearing on the proposed permit action. The request for a public hearing on the issuance of a permit shall set forth the basis for the request and a public hearing shall be held if, in the judgment of the secretary, there is sufficient reason.

(b) The secretary shall affirm, modify or reverse the decision on such permit after the public comment period or public hearing. Any person who participated in the public comment process or the public hearing who otherwise would have standing under K.S.A. 77-611, and amendments thereto, shall have standing to obtain judicial review of the secretary's final action on the permit pursuant to the act for judicial review and civil enforcement of agency actions in the court of appeals. Any such person other than the applicant for or holder of the

permit shall not be required to have exhausted administrative remedies in order to be entitled to review. The court of appeals shall have original jurisdiction to review any such final agency action. The record before the court of appeals shall be confined to the agency record for judicial review and consist of the documentation submitted to or developed by the secretary in making the final permit decision, including the permit application and any addenda or amendments thereto, the permit summary, the draft permit, all written comments properly submitted to the secretary, all testimony presented at any public hearing held on the permit application, all responses by the applicant or permit holder to any written comments or testimony, the secretary's response to the public comments and testimony and the final permit.

(c) When determined appropriate by the secretary, the procedures set out in subsection (a) may be required prior to the issuance, modification, renewal or reopening of an approval. History**:** L. 1993, ch. 13, § 6; L. 2006, ch. 79, § 1; April 13.

65-3008b. Same; suspension, revocation, denial, modification, issuance. (a) The secretary may suspend or revoke an approval or a permit if the permittee has violated any provision of the approval or the permit, any provision of this act or any rule and regulation adopted under this act and applicable to the permitted source.

(b) As applicable to the source for which the approval or permit is sought, the secretary may deny an approval or permit, or a renewal thereof, if the applicant fails to: (1) Submit a complete application; or (2) submit an application fee.

(c) The secretary may deny a permit for any proposed new stationary source if the owner or operator of such a source fails to demonstrate to the satisfaction of the secretary that any other stationary source owned or operated by such person, or by any entity controlling, controlled by or under common control with such person, in this state is in compliance, or meeting a schedule for compliance, with all applicable emission limitations and standards under this act and the federal clean air act, and amendments thereto.

(d) The secretary may modify or reopen an approval or a permit for cause. The secretary shall reopen a permit whenever requirements under this act become applicable to a permitted source and three or more years remain on the original term of the permit. Any permit revision incorporating a requirement adopted by the secretary shall be effective as soon as practicable, but not later than 18 months after the promulgation of the requirement by the United States environmental protection agency.

(e) Within 15 days after the issuance of a notice of intent to take any action authorized by subsection (a), (b), (c) or (d), or within 15 days after the secretary's written decision to affirm, modify or reverse a permit decision pursuant to subsection (b) of K.S.A. 65-3008a, the permittee may file a request for a hearing with the secretary. Each such notice of intent shall specify the provision of this act or rule and regulation allegedly violated, the facts constituting the alleged violation and the secretary's intended action. Each notice of intent or written decision to affirm, modify or reverse a permit decision shall state the permittee's right to request a hearing. Such hearing shall be conducted in accordance with the Kansas administrative procedure act.

(f) The filing of a request by the permittee for an approval or permit modification, revocation or amendment, or the filing by the permittee of a notification of planned changes or anticipated noncompliance, does not stay any approval or permit condition.

(g) No permit shall be issued, modified, amended, revised or renewed unless the United States environmental protection agency has certified that such permit complies with the requirements of the federal clean air act, except that a permit may be issued if the United States environmental protection agency has not notified the secretary of the United States environmental protection agency's decision within 45 days after receipt of the proposed permit by such agency.

(h) The secretary shall issue or deny the permit (including requests for modification or to reopen the permit):

(1) Within three years of the date the United States environmental protection agency approves the state permitting program pursuant to the provisions of the federal clean air act, as amended in November 1990, for permit applications submitted within the first full year after such date;

(2) pursuant to the time schedule provided by title IV (acid rain) of the 1990 amendments to the federal clean air act, for air contaminant emission sources subject to that title; or

(3) within 18 months after receiving a complete application, in all other cases.

(i) Failure of the secretary to issue or deny the permit, or grant or deny a request to modify or reopen the permit, within the period stated in subsection (h) shall not result in the default issuance of a permit, permit amendment, permit modification or permit renewal nor shall such failure result in any other entity assuming jurisdiction to act on the permit or the request. History**:** L. 1993, ch. 13, § 7; March 25.

65-3009. Inspections. The secretary may designate competent representatives who may enter and inspect any property, premise or place at any reasonable time for the purpose of investigating either an actual or possible source of air pollution or of ascertaining the state of compliance with this act and regulations in force pursuant thereto. No person shall refuse entry or access to any authorized representative of the secretary who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection. If requested, the owner or operator of the premises shall receive a report setting forth levels of emissions and any other facts found which relate to compliance status. History**:** L. 1967, ch. 347, § 9; L. 1970, ch. 261, § 9; L. 1974, ch. 352, § 141; July 1.

65-3010. Emission control requirements. (a) The secretary shall establish emission control requirements, and requirements for open burning (including appropriate prohibition thereof). Such requirements may be either for such areas as a whole or may vary from area to area, as may be appropriate to facilitate accomplishment of the purposes of this act and in order to take necessary or desirable account of varying local conditions. Any emission which does not conform to a requirement in force pursuant to this subsection shall constitute a violation of this act.

(b) Every local air quality conservation program that is established pursuant to K.S.A. 65-3016, as amended, shall be in compliance with the rules and regulations set forth for that area by the secretary.

(c) Variations from the requirements of subsection (b) of this section may be included in a local air quality conservation program only after approval by the secretary, following demonstration to the satisfaction of the secretary that the proposed requirements are not less stringent than the standards and requirements established by the secretary and are otherwise consistent with the purposes of this act. Any requirement placed in force pursuant to this subsection shall be preceded by public hearing. The secretary, upon evidence that conditions have changed or that additional or other information is relevant to a decision with respect to the emission control or open burning requirements concerned may, after public hearing, withdraw any approval previously given to a local requirement pursuant to this subsection.

(d) The secretary shall establish reasonable ambient air quality standards for the state as a whole, or any part thereof, and shall require the emission control requirements of any local program to be consistent with such standards in addition to meeting any other

requirements pursuant to this section. History**:** L. 1967, ch. 347, § 10; L. 1970, ch. 261, § 10; L. 1974, ch. 352, § 142; July 1.

65-3011. Enforcement; procedure. (a) If the secretary or the director of the division of environment finds that any person has violated any provision of any approval, permit or compliance plan or any provision of this act or any rule and regulation promulgated under this act, the secretary may issue an order finding such person in violation of the act and directing the person to take such action as necessary to correct the violation. Any order issued shall specify the length of time after receipt of the order during which the person must correct the violations.

(b) Any person to whom an order is issued pursuant to subsection (a) may request a hearing within 15 days after service of the order. Hearings before the secretary shall be conducted in accordance with the Kansas administrative procedure act. History**:** L. 1967, ch. 347, § 11; L. 1970, ch. 261, § 11; L. 1974, ch. 352, § 143; L. 1988, ch. 356, § 201; L. 1993, ch. 13, § 9; March 25.

65-3012. Action to protect health or environment. (a) Notwithstanding any other provision of this act, the secretary may take such action as may be necessary to protect the health of persons or the environment: (1) Upon receipt of information that the emission of air pollution presents a substantial endangerment to the health of persons or to the environment; or (2) for an imminent or actual violation of this act, any rules and regulations adopted under this act, any orders issued under this act or any permit conditions required by this act.

(b) The action the secretary may take under subsection (a) includes but is not limited to:

(1) Issuing an order directing the owner or operator, or both, to take such steps as necessary to prevent the act or eliminate the practice. Such order may include, with respect to a facility or site, temporary cessation of operation.

(2) Commencing an action to enjoin acts or practices specified in subsection (a) or requesting the attorney general or appropriate county or district attorney to commence an action to enjoin those acts or practices. Upon a showing by the secretary that a person has engaged in those acts or practices, a permanent or temporary injunction, restraining order or other order may be granted by any court of competent jurisdiction. An action for injunction under this subsection shall have precedence over other cases in respect to order of trial.

(3) Applying to the district court in the county in which an order of the secretary under subsection (b)(1) will take effect, in whole or in part, for an order of that court directing compliance with the order of the secretary. Failure to obey the court order shall be punishable as contempt of the court issuing the order. The application under this subsection for a court order shall have precedence over other cases in respect to order of trial.

(c) In any civil action brought pursuant to this section in which a temporary restraining order or preliminary injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order or preliminary injunction not be issued or that the remedy at law is inadequate, and the temporary restraining order or preliminary injunction shall issue without such allegations and without such proof.

(d) Any order of the secretary pursuant to subsection (b)(1) is subject to hearing and review in accordance with the Kansas administrative procedure act. History: L. 1967, ch. 347, § 12; L. 1970, ch. 261, § 12; L. 1974, ch. 352, § 144; L. 1993, ch. 13, § 12; March 25.

65-3013. Variances; hearing. (a) Any person who owns or is in control of any plant, building, structure, process or equipment may apply to the secretary for a variance from rules and regulations governing the quality, nature, duration or extent of emissions. The

application shall be accompanied by such information and data as the secretary may reasonably require. The secretary may grant such variance if the secretary finds that:

(1) The emissions occurring or proposed to occur do not endanger or tend significantly to endanger human health or safety; and

(2) Compliance with the rules and regulations from which variance is sought would produce serious hardships without equal or greater benefits to the public.

(b) No variance shall be granted pursuant to this section except after public hearing on due notice and until the secretary has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(c) Any variance or renewal thereof shall be granted within the requirements of subsection (a) and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

(1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available and subject to the taking of any substitute or alternate measures that the secretary may prescribe.

(2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as the secretary finds is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

(3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subsections (c)(1) and (2), it shall be for not more than one year.

(d) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the secretary on account of the variance, no renewal thereof shall be granted, unless following public hearing on the complaint on due notice, the secretary finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least 60 days prior to the expiration of the variance. Immediately upon receipt of an application for renewal the secretary shall give public notice of such application in accordance with rules and regulations of the secretary.

(e) A variance or renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the secretary. Within 15 days after the secretary's written decision to grant or deny a variance or renewal thereof, the applicant or holder of a variance or renewal may file a request for a hearing with the secretary. Such hearing shall be conducted in accordance with the Kansas administrative procedure act. However, any person who participated in the public comment process or the public hearing or who otherwise would have standing under K.S.A. 77-611, and amendments thereto, and is adversely affected by any final action of the secretary pursuant to this section shall have standing to obtain judicial review of the secretary's final action on the variance or renewal in the court of appeals. Any such person other than the applicant for or holder of the permit shall not be required to have exhausted administrative remedies in order to be entitled to review. The court of appeals shall have original jurisdiction to review any such final agency action. The record before the court of appeals shall be confined to the agency record for judicial review and consist of the documentation submitted to or developed by the secretary in making the final variance or renewal decision, including the variance or renewal application and any addenda or amendments thereto, the variance or renewal summary, the draft variance or renewal, all

written comments properly submitted to the secretary, all testimony presented at any public hearing held on the variance or renewal application, all responses by the applicant or holder of a variance or renewal to any written comments or testimony, the secretary's response to the public comments and testimony and the final variance or renewal.

(f) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of K.S.A. 65-3012, and amendments thereto, to any person or any person's property. History**:** L. 1967, ch. 347, § 13; L. 1970, ch. 261, § 13; L. 1974, ch. 352, § 145; L. 1986, ch. 318, § 93; L. 1988, ch. 356, § 202; L. 2006, ch. 79, § 2; April 13.

65-3014. History**:** L. 1967, ch. 347, § 14; L. 1970, ch. 261, § 14; L. 1974, ch. 352, § 146; L. 1986, ch. 318, § 94; Repealed, L. 1993, ch. 13, § 18; March 25.

65-3015. Records and information open; trade secret exception. (a) Except as provided in subsection (b), any records, reports or information obtained pursuant to this act shall be available to the public.

(b) Upon a showing satisfactory to the secretary by any person that records, reports or information, or a particular part thereof (other than emission data), to which the secretary has access under this act, if made public, would divulge methods or processes entitled to protection as trade secrets of such person under the uniform trade secrets act (K.S.A. 60-3320 et seq. and amendments thereto), the secretary shall consider such record, report or information, or particular portion thereof, confidential, except that: (1) Such record, report or information may be disclosed to officers, employees or authorized representatives of the United States government concerned with carrying out responsibilities under the federal clean air act and amendments thereto; and (2) this subsection shall not apply to any provision in any air quality approval or permit issued by the secretary and the public shall have access to such approvals and permits in their entirety. History**:** L. 1967, ch. 347, § 15; L. 1970, ch. 261, § 15; L. 1973, ch. 254, § 1; L. 1974, ch. 352, § 147; L. 1993, ch. 13, § 13; L. 2005, ch. 67, § 7; July 1.

65-3015a. History**:** L. 1970, ch. 261, § 20; Repealed, L. 1973, ch. 254, § 2; July 1.

65-3016. Local air quality conservation programs. Any city, county, city and county, or any combination of two (2) or more cities, counties or cities and counties are authorized to conduct tests and surveys to determine the degree of purity of the air within its jurisdiction, and may request consultation, technical assistance and cooperation from the secretary in conducting such tests and surveys. If such tests and surveys indicate that unsatisfactory air quality exists, is likely to exist or is likely to occur, the governing body of said city or county shall have the authority, upon approval of the secretary, to establish a local air quality conservation authority: *Provided,* That no local air quality conservation authority shall be so approved, except after a public hearing as provided in this act. Any local air quality conservation authority which was in existence prior to May 1, 1967, may apply to the secretary for approval as a local air quality conservation authority hereunder. In approving or disapproving the formation of a local air quality conservation authority, the secretary shall determine: (1) The need for a local air quality conservation authority in the jurisdiction proposed; (2) the likely ability of the local air quality conservation authority, as proposed, to maintain satisfactory air quality in its jurisdiction; and (3) whether or not the jurisdiction of the proposed local air quality conservation authority completely contains the affected area.

Local air quality control authorities shall have authority to enforce the rules, regulations and standards adopted by the secretary and to establish such additional rules, regulations and standards as necessary to maintain satisfactory air quality within their jurisdiction:

Provided, That any rule, regulation or standard established by a local air quality conservation authority pertaining to health hazard shall be in compliance with the rules and regulations set forth for that area by the secretary: *Provided further,* That until the secretary shall adopt rules, regulations and standards respecting any area within the jurisdiction of a local air quality conservation authority, the rules, regulations and standards of such local authority respecting said area or areas shall have full force and effect without approval thereof by the secretary.

Upon the establishment of a local air quality conservation authority, such authority and the secretary shall have concurrent jurisdiction over the local area with power and authority to maintain adequate air quality in accordance with the rules, regulations and standards adopted by the secretary.

When two (2) or more cities, two (2) or more counties or a city and a county, or any combination thereof, are affected by a common air mass of unsatisfactory quality and the respective local air quality control authorities, if such exist, are for any reason unable to agree upon a solution or settlement to such air quality problem, the secretary shall, after review and investigation, render decisions and make findings in settlement thereof. History**:** L. 1967, ch. 347, § 16; L. 1970, ch. 261, § 16; L. 1974, ch. 352, § 148; July 1.

65-3017. Motor vehicle pollution. (a) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate, and in furtherance of the purposes of this act, the secretary may provide by rules and regulations for the control of emissions from motor vehicles. Such rules and regulations may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of such equipment and of vehicles. Any rules or regulations pursuant to this section shall be consistent with provisions of federal law or regulations, if any, relating to control of emissions from the vehicles concerned. The secretary shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles, if such feature or equipment has been certified, approved or otherwise authorized pursuant to federal law.

(b) As used in this section "motor vehicle" shall have the same meaning as in K.S.A. 8-1437. History**:** L. 1967, ch. 347, § 17; L. 1970, ch. 261, § 17; L. 1974, ch. 352, § 149; L. 1975, ch. 33, § 8; L. 1976, ch. 52, § 4; July 1.

65-3018. Administrative fines. (a) The secretary or the director of the division of environment, upon a finding that a person has violated any provision of K.S.A. 65-3025 and amendments thereto, may impose a penalty not to exceed $10,000 which shall constitute an actual and substantial economic deterrent to the violation for which it is assessed. In the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) No penalty shall be imposed pursuant to this section except after notice of violation and opportunity for hearing upon the written order of the secretary or the director of the division of environment issued to the person who committed the violation. The order shall state the violation, the penalty to be imposed and the right to request a hearing thereon. The request for hearing shall be in writing, directed to the secretary and filed with the secretary within 15 days after service of the order. Hearings under this section shall be conducted in accordance with the Kansas administrative procedure act.

(c) Nothing in this act shall be construed to abridge, limit or otherwise impair the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding therefor. History**:** L. 1967, ch. 347, § 18; L. 1970, ch. 261, § 18; L. 1974, ch. 352, § 150; L. 1993, ch. 13, § 14; March 25.

65-3019. Application of act; limitations. Nothing in this act shall be construed to:

(a) Grant the secretary any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works and shops.

(b) Affect the relations between employers and employees.

(c) Supersede or limit the applicability of any law or ordinance relating to industrial health, safety or sanitation. History**:** L. 1967, ch. 347, § 19; L. 1970, ch. 261, § 19; L. 1974, ch. 352, § 151; July 1.

65-3020. Severability. If any clause, paragraph, subsection or section of this act shall be held invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such clause, paragraph, subsection or section. History**:** L. 1967, ch. 347, § 20; May 2.

65-3021. Power generation facility; impact upon air quality; definitions. As used in this act the following terms shall have the meanings ascribed to them herein: (a) "Power generation facility" means any physical plant used for the production or generation of electricity, or coal gasification facility.

(b) "Secretary" means the secretary of health and environment.

(c) "Person" means any individual, company, corporation, institution, municipality, township, county, state agency or federal agency. History**:** L. 1978, ch. 352, § 1; July 1.

65-3022. Same; determining and monitoring of power generation facilities environmental impact; programs for; fees; rules and regulations. In order to defray costs in determining and monitoring the environmental impact of power generation facilities with respect to air quality and, in the case of nuclear powered generation facilities, the overall radiological impact thereof, the secretary is authorized and directed to adopt rules and regulations to provide for the establishment of fees and for the collection thereof from each such facility. Such fees shall be determined and collected annually, and such determination shall be based upon the size and type of such facilities. In establishing programs for determining and monitoring environmental impact, the secretary shall take into consideration monitoring programs conducted by other persons and where possible avoid duplication of effort and expense. The secretary may also provide for quality review and evaluation of monitoring conducted by other persons in order to further the objectives of this act and to determine the extent and necessity of monitoring programs to be conducted by the department of health and environment. History**:** L. 1978, ch. 352, § 2; July 1.

65-3023. Same; fees; disposition of moneys; power generating facility fee fund created. The secretary shall remit all moneys received from fees under K.S.A. 65-3022, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the power generating facility fee fund, which fund is hereby created. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary. History**:** L. 1978, ch. 352, § 3; L. 1983, ch. 286, § 4; L. 2001, ch. 5, § 242; July 1.

65-3024. Emissions fees. (a) The secretary may fix, charge and collect annual emissions fees in amounts necessary to pay the direct and indirect costs of administering the provisions of the Kansas air quality act. The secretary shall adopt rules and regulations fixing such fees and shall periodically increase or decrease such fees consistent with the need to cover the

direct and indirect costs of administering the program. To the extent possible, annual emission fees shall be based upon actual emissions determined pursuant to rules and regulations adopted by the secretary. For purposes of determining emission fees for a facility, emissions of any single regulated pollutant in excess of 4,000 tons per year shall not be included in the calculation when determining the total emissions from the facility.

(b) There is hereby established in the state treasury the air quality fee fund. Revenue from the following sources shall be deposited in the state treasury and credited to the fund:

(1) Fees collected under subsection (a);

(2) any moneys recovered by the state under the provisions of this act, including administrative expenses, civil penalties and moneys paid under any agreement, stipulation or settlement; and

(3) interest attributable to investment of moneys in the fund.

(c) Moneys deposited in the fund shall be expended only for the purpose of administering the Kansas air quality act, including funding of a technical and environmental compliance assistance program, and for no other governmental purposes.

(d) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the air quality fee fund interest earnings based on:

(1) The average daily balance of moneys in the air quality fee fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(e) All expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this section. History**:** L. 1993, ch. 13, § 8; L. 1996, ch. 253, § 13; May 23.

65-3025. Unlawful acts. It shall be unlawful for any person to do any of the following:

(a) Violate any provision of an order issued under this act.

(b) Violate any provision of an approval or permit issued under this act.

(c) Violate any provision of this act or any rule and regulation promulgated under this act, unless the secretary makes a determination relating to the permittee that the specified provisions referred to in such determination are not applicable to the source and the permit includes that determination or a concise summary thereof. Compliance with the provisions of a permit shall be deemed compliance with applicable provisions of this act or any rule and regulation promulgated under this act if the permit includes the applicable requirements of such provisions. Nothing in this subsection (c) or in any permit shall alter or affect: (1) The provisions of section 303 of the federal clean air act (emergency orders), including the authority of the administrator of the United States environmental protection agency under that section; (2) the provisions of K.S.A. 65-3012 and amendments thereto; (3) the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance; (4) the applicable requirements of the acid rain program consistent with section 408a of the federal clean air act; (5) the ability of the United States environmental protection agency to obtain information from a source pursuant to section 114 of the federal clean air act; or (6) the ability of the secretary to obtain information from a source pursuant to this act.

(d) Construct, modify, alter, use or operate an air contaminant emission stationary source without an approval or permit allowing such construction, modification, alteration, use or operation.

(e) At any time, refuse or hinder entry, inspection, sampling or examination or copying of records related to the purposes of this act by an agent or employee of the secretary after such agent or employee identifies and gives notice of the agent's or employee's purpose.

(f) Fail to pay any fee required by this act or rules and regulations promulgated under this act.

(g) Knowingly make any false material statement, representation or certification in any application, record, report, permit or other document filed, maintained or used for purposes of compliance with this act.

(h) Knowingly destroy, alter or conceal any record required to be maintained under rules and regulations promulgated by the secretary under this act. History**:** L. 1993, ch. 13, § 10; March 25.

65-3026. Criminal penalties. (a) Violation of any provision of subsections (a) through (f) of K.S.A. 65-3025, and amendments thereto, is a class A nonperson misdemeanor.

(b) Knowingly violating any provision of K.S.A. 65-3025 is a severity level 10, nonperson felony.

(c) In the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(d) The county or district attorney of every county shall file appropriate actions for enforcement of this section upon request of the secretary or upon the county or district attorney's own motion after consultation with the secretary. History**:** L. 1993, ch. 13, § 11; L. 1995, ch. 251, § 19; July 1.

65-3027. Small business assistance program; compliance advisory panel. (a) There is hereby created the small business stationary source technical and environmental compliance assistance program, to be administered by the secretary. The program shall include each of the following:

(1) Adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources and programs to encourage lawful cooperation among such sources and other persons to further compliance with this act.

(2) Adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution.

(3) A designated office within the Kansas department of health and environment, reporting directly to the secretary, to serve as ombudsman for small business stationary sources in connection with implementation of this act.

(4) A compliance assistance program for small business stationary sources which assists small business stationary sources in determining applicable requirements and in receiving permits under this act in a timely and efficient manner.

(5) Adequate mechanisms to assure that small business stationary sources receive notice of their rights under this act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final rule and regulation or standard adopted under this act.

(6) Adequate mechanisms for informing small business stationary sources of their obligations under this act, including mechanisms for referring such sources to qualified auditors or for providing audits of the operations of such sources to determine compliance with this act.

(7) Procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance; or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. No such modification may be

granted unless it is in compliance with the applicable requirement of this act and rules and regulations promulgated hereunder.

(b) "Small business stationary source" means a stationary air contaminant emission source that:

(1) Is owned or operated by a person that employs 100 or fewer individuals;

(2) is a small business concern as defined in the federal small business act;

(3) is not a major stationary source;

(4) does not emit 50 tons or more per year of any regulated air contaminant; and

(5) emits less than 75 tons per year of all regulated air contaminants.

(c) Upon petition by a source, the secretary, after notice and opportunity for public comment, may include as a small business stationary source for purposes of this section any stationary source which does not meet the criteria of subsection (b)(3), (4) or (5) but which does not emit more than 100 tons per year of all regulated air contaminants.

(d) The secretary may exclude from the small business stationary source definition any category or subcategory of sources that the administrator of the United States environmental protection agency determines to have sufficient technical and financial capabilities to meet the requirements of the federal clean air act without the application of this program, as provided by section 507(c)(3)(A) of the 1990 amendments to the federal clean air act.

(e) The secretary, in consultation with the administrator of the United States environmental protection agency and the administrator of the United States small business administration and after providing notice and the opportunity for public hearing, may exclude from the small business stationary source definition any category or subcategory of sources that the secretary determines to have sufficient technical and financial capabilities to meet the requirements of the act without the application of this section.

(f) There is hereby created a compliance advisory panel composed of seven individuals. The compliance advisory panel shall:

(1) Render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered and degree and severity of enforcement;

(2) make periodic reports to the administrator of the United States environmental protection agency concerning compliance of the small business stationary source technical and environmental compliance assistance program with the requirements of the federal paperwork reduction act, the regulatory flexibility act and the equal access to justice act;

(3) review information for small business stationary sources to assure such information is understandable by the layperson; and

(4) have the small business stationary source technical and environmental compliance assistance program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(g) The compliance advisory panel shall consist of:

(1) Two members who are not owners, or representatives of owners, of small business stationary sources, appointed by the governor to represent the general public;

(2) two members who are owners, or who represent owners, of small business stationary sources, one appointed by the speaker and one appointed by the minority leader of the Kansas house of representatives;

(3) two members who are owners, or who represent owners, of small business stationary sources, one appointed by the president and one appointed by the minority leader of the Kansas senate; and

(4) one member appointed by the secretary to represent the department of health and environment.

(h) Members of the compliance advisory panel serving on the effective date of this act by appointment by the governor, the speaker of the house of representatives or the president

of the senate shall serve for terms ending June 30, 1998; members serving on the effective date of this act by appointment by the minority leader of the house of representatives, the minority leader of the senate or the secretary of health and environment shall serve for terms ending June 30, 1997. Upon expiration of such terms, the term of each member appointed to a vacancy created by expiration of a term shall be two years commencing on July 1 immediately following expiration of the term of the member's predecessor. Any vacancy occurring on the panel shall be filled for the unexpired term by appointment by the original appointing authority.

(i) A chairperson shall be elected annually by the members of the compliance advisory panel. A vice-chairperson shall be designated by the chairperson to serve in the absence of the chairperson.

(j) The secretary may reduce any fee required by this act for any classification of small business sources to take into account the financial resources of such classification. History**:** L. 1993, ch. 13, § 15; L. 1997, ch. 18, § 1; Apr. 3.

65-3028. Rules and regulations continued in effect. All rules and regulations promulgated pursuant to K.S.A. 65-3001 *et seq*., and amendments thereto, in existence on the effective date of this act shall continue to be effective until revised, amended, repealed or nullified pursuant to law. History**:** L. 1993, ch. 13, § 16; March 25.

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NOTICE

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