

State of Kansas

Department of Health and Environment

Notice of Public Hearing

The Kansas Department of Health and Environment (KDHE) is proposing to revise the Kansas State Implementation Plan to demonstrate that the State of Kansas, as represented by Governor Sam Brownback or his authorized designee, complies with Section 128 requirements of the federal Clean Air Act.

If requested, a public hearing for this action will be held at 10 AM on Tuesday, April 23, 2013, in the Curtis State Office Building, Flint Hills Conference Room (3rd Floor), 1000 SW Jackson, Topeka, Kansas. If no request for this hearing is received by 5:00 PM, Friday, April 19, 2013, then the public hearing will be cancelled with notice of this cancellation posted on the Bureau of Air (BOA) website at <http://www.kdheks.gov/bar/planning/pnplanning.html>. Phone inquiries may be made to Melissa Weide at (785) 291-3272.

The federal CAA Section 128(a)(2), pursuant to Section 110(a)(2)(E)(ii), requires that each state implementation plan shall include provisions addressing conflict of interest requirements. This proposed State Implementation Plan (SIP) revision does not include any rulemaking action, is administrative in nature, and addresses the Section 128 requirements by reference to specific corresponding state statutes and regulations.

KDHE addressed the Clean Air Act requirements regarding conflict of interest in a December 1994, Title V Program submittal, with authorized legal opinion, to the U.S. Environmental Protection Agency (EPA) demonstrating that Kansas laws provide adequate authority to implement all aspects of the Title V Program including conflict of interest disclosure requirements, specifically, K.S.A. 46-247(c). This statute defines required disclosure of any

potential conflicts of interest by the heads of any agency responsible for issuing permits and enforcement orders. KDHE is including the statutory provision K.S.A. 46-247(c) and related definition statutes, K.S.A. 46-221 and 46-229, in the Infrastructure SIP submittal to EPA for approval and to demonstrate that Kansas meets the requirements of CAA Section 128.

Details concerning this revision can be obtained by contacting Melissa Weide, Kansas Department of Health and Environment, BOA at (785) 291-3272 or mweide@kdheks.gov. The proposed plan may be viewed at the KDHE BOA website, cited above, as well as the following locations:

- Department of Air Quality, Unified Government of Wyandotte County - Kansas City, Kansas Health Department, 619 Ann Avenue, Kansas City, KS
- Johnson County Environmental Department, 11811 S. Sunset, Suite 2700, Olathe, KS
- KDHE Northwest District Office, 2301 E. 13th St., Hays, KS
- KDHE North Central District Office, 2501 Market Place Ste. D, Salina, KS
- KDHE Northeast District Office, 800 W. 24th St., Lawrence, KS
- KDHE Southeast District Office, 1500 W. 7th St., Chanute, KS
- Wichita-Sedgwick County Dept. of Community Health, 1900 E. 9th St., Wichita, KS
- KDHE Southwest District Office, 302 W. McArtor Rd., Dodge City, KS
- Curtis State Office Building, 1000 SW Jackson St., Ste. 310, Topeka, KS

Comments from the interested public should be addressed to the Kansas Department of Health and Environment, Bureau of Air, Attention: Melissa Weide, 1000 SW Jackson, Suite 310, Topeka, KS 66612-1366 or emailed to mweide@kdheks.gov. Public comments must be received no later than 5 PM on Friday, April 19, 2013 to assure consideration. All written and email comments and public hearing testimony will be equally considered.

Any individual with a disability may request accommodations in order to participate in the public hearing and may request the proposed plan in accessible format. Requests for accommodation to participate in the hearing should be made by Tuesday, April 16, 2013, by contacting Pat Bottenberg at (785) 291-3278 or pbottenberg@kdheks.gov.

Robert Moser, M.D., Secretary
Department of Health and Environment

SUPPORT DOCUMENTS
NOTICE OF PUBLIC HEARING

The attached documents are made available for those seeking detailed federal Clean Air Act and Kansas statutory requirements referenced in the Notice of Public Hearing.

- Required Element of the Infrastructure SIP
(CAA Section 128, Section 110(a)(2)(E))

- Kansas Statutes, Chapter 46, Article 2
(46-247, 46-221, 46-229)

INFRASTRUCTURE SIP – REQUIRED ELEMENT

This document content is a required element of the Infrastructure SIP which cites specific Kansas statutes that fulfill CAA Section 128 requirements pursuant to Section 110(a)(2)(E).

VI. Section 110(a)(2)(E) Adequate personnel, funding, and authority

“(E) provide

(i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof),
(ii) requirements that the State comply with the requirements respecting State boards under section 7428 of this title, and
(iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;”
[42 U.S.C. 7410(a)(2)(E)]

Kansas Statutes from Chapter 46, Article 2, specify conflict of interest requirements for members of KDHE. These requirements specifically prohibit all state and local public officials from participating in governmental decisions for which they have a substantial financial interest as defined at K.S.A. 46-229. The statutes found at K.S.A. 46-247 *et seq.* require the Secretary of KDHE to file a statement of substantial interests. Specifically, the following statutes fulfill the CAA Section 128 (42 U.S.C. 7428) requirements referenced in Section 110(a)(2)(E) for disclosure of financial interests by the “head of an executive agency” responsible for issuing permits and enforcement orders:

46-247. *Individuals required to file written statements of substantial interests; exception.*

(c) State officers, employees and members of boards, councils and commissions under the jurisdiction of any state agency who are listed as designees by the head of a state agency pursuant to K.S.A. 46-285, and amendments thereto.

46-221. *State officer or employee, candidate and state officer elect defined.*

46-229. *“Substantial interest” and “client or customer” defined.*

These statutes are provided in the State of Kansas Conflict of Interest Provisions defined in the following document.

**Infrastructure SIP - Required Element
(CAA Section 128)**

2012 Kansas Statutes

46-247. Individuals required to file written statements of substantial interests; exception. The following individuals shall file written statements of substantial interests, as provided in K.S.A. 46-248 to 46-252, inclusive, and amendments thereto:

....

(c) State officers, employees and members of boards, councils and commissions under the jurisdiction of the head of any state agency who are listed as designees by the head of a state agency pursuant to K.S.A. 46-285, and amendments thereto.

....

History: L. 1974, ch. 353, § 33; L. 1979, ch. 164, § 1; L. 1982, ch. 218, § 2; L. 1983, ch. 172, § 2; L. 1988, ch. 180, § 1; L. 1991, ch. 150, § 47; L. 2002, ch. 188, § 10; L. 2005, ch. 126, § 6; L. 2009, ch. 134, § 10; L. 2010, ch. 150, § 11; July 1.

46-221. State officer or employee, candidate and state officer elect defined. (a) "State officer or employee" means (1) any individual who is an elected or appointed state officer, (2) any individual who is in the classified service or unclassified service of the Kansas civil service act, (3) all officers and employees of the legislative branch and of the governor's office, irrespective of how compensated or period of employment, and (4) any individual who receives monthly or semimonthly compensation for services from the state or any state agency. State officer or employee does not include any justice or commissioner of the supreme court or judge of the judicial branch or employee or officer of the judicial branch or any member of a board, council or commission who is appointed by the supreme court or who is elected or appointed to exercise duties pertaining to functions of the judicial branch, when such person is engaged in performing a function or duty for the judicial branch. Also, state officer or employee does not include any appointed member of an advisory council, commission or board, who serves without compensation other than amounts for expense allowances or reimbursement of expenses as provided for in subsection (e) of K.S.A. 75-3223 and amendments thereto, when such member is engaged in performing a function or duty for such council, commission or board.

(b) "Candidate" means an individual who: (1) Appoints a treasurer or a candidate committee; (2) makes a public announcement of intention to seek nomination or election to state office; (3) makes any expenditure or accepts any contribution for the purpose of influencing such person's nomination or election to any state office; or (4) files a declaration or petition to become a candidate for state office.

(c) "State officer elect" means an individual who has been elected to state office or appointed to fill a vacancy in a state office but who has not yet taken the oath of office.

History: L. 1974, ch. 353, § 7; L. 1975, ch. 272, § 1; L. 1978, ch. 332, § 29; L. 1995, ch. 172, § 1; July 1.

46-229. "Substantial interest" and "client or customer" defined. "Substantial interest" means any of the following:

(a) If an individual or an individual's spouse, either individually or collectively, has owned within the preceding 12 months a legal or equitable interest exceeding \$5,000 or 5% of any business, whichever is less, the individual has a substantial interest in that business.

(b) If an individual or an individual's spouse, either individually or collectively, has received during the preceding calendar year compensation which is or will be required to be included as taxable income on federal income tax returns of the individual and spouse in an aggregate amount of \$2,000 from any business or combination of businesses, the individual has a substantial interest in that business or combination of businesses.

(c) If an individual or an individual's spouse, either individually or collectively, has received directly or indirectly in the preceding 12 months, gifts or honoraria having an aggregate value of \$500 or more from any person, the individual has a substantial interest in that person. If a gift is received for which the value is unknown, the individual shall be deemed to have a substantial interest in the donor. A substantial interest does not exist under this subsection by reason of: (1) A gift or bequest received as the result of the death of the donor; (2) a gift from a spouse, parent, grandparent, sibling, aunt or uncle; or (3) acting as a trustee of a trust for the benefit of another.

(d) If an individual or an individual's spouse holds the position of officer, director, associate, partner or proprietor of any business, the individual has a substantial interest in that business, irrespective of the amount of compensation received by the individual or individual's spouse.

(e) If an individual or an individual's spouse receives compensation which is a portion or percentage of each separate fee or commission paid to a business or combination of businesses, the individual has a substantial interest in any client or customer who pays fees or commissions to the business or combination of businesses from which fees or commissions the individual or the individual's spouse, either individually or collectively, received an aggregate of \$2,000 or more in the preceding calendar year.

As used in this subsection, "client or customer" means a business or combination of businesses.

History: L. 1974, ch. 353, § 15; L. 1983, ch. 172, § 1; L. 1984, ch. 189, § 1; L. 1987, ch. 198, § 1; July 1.