State of Kansas

Department of Health and Environment

Permanent Administrative Regulations

Article 65.—EMERGENCY PLANNING AND RIGHT-TO-KNOW

28-65-1. General provisions. (a) The provisions of 40 C.F.R. Parts 350, 355, 370, and 372, dated July 1, 2018, including any notes and appendices, unless otherwise specifically stated in this article of the department's regulations, are hereby adopted by reference. If the same term is defined both in the Kansas statutes or this article of the department's regulations and in any federal regulation adopted by reference in this article of the department's regulations and the term is defined differently, the definition prescribed in the Kansas statutes or this article of the department's regulations shall control.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1) "The United States" shall be replaced with "the state of Kansas."

(2) "Environmental protection agency," "EPA," and "agency" shall be replaced with "Kansas department of health and environment," "KDHE," and "department," respectively, unless the term is used in reference to the EPA web site.

(3) "Administrator" and "regional administrator" shall be replaced with "secretary of the department of health and environment."

(4) "Federal register" shall be replaced with "Kansas register."

(5) "40 C.F.R. 350.16" shall be replaced with "K.A.R. 28-65-3(f)."

(6) "This chapter" and "this section" shall be replaced by "these regulations."

(7) "5 U.S.C. 552(b)(4)" shall be replaced by "K.S.A. 65-3015, and amendments thereto."

(8) "18 U.S.C. 1905" shall be replaced by "K.S.A. 45-215 et seq., and amendments thereto."

(9) "The Office of General Counsel, U.S. Environmental Protection Agency, Mailcode 2310A, 1200 Pennsylvania Avenue, NW, Washington DC 20460" shall be replaced by "the Office of General Counsel, Kansas Department of Health and Environment, 1000 SW Jackson Street, Topeka, Kansas 66612."

(c) The following sections shall be deleted:

(1) 40 C.F.R. 350.3(c); and


28-65-2. Definitions. As used in this article of the department's regulations, each of the following terms shall have the meaning specified in this regulation:
(a) “Commission” has the meaning specified in K.S.A. 65-5702, and amendments thereto.

(b) “Department” means Kansas department of health and environment.

(c) “Extremely hazardous substance” means a substance listed in the appendices to 40 C.F.R. Part 355, emergency planning and notification, dated July 1, 2018 or on the list of Kansas reportable chemicals authorized by K.S.A. 65-5704, and amendments thereto.

(d) “Facility” means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with, that person. For purposes of emergency release notification, the term shall include motor vehicles, rolling stock, and aircraft. For the purposes of toxic release reporting, any facility may contain more than one establishment, as defined in 40 C.F.R. 372.3, which is adopted in K.A.R. 28-65-1.

(e) “Federal act” has the meaning specified in K.S.A. 65-5702, and amendments thereto.

(f) “Kansas tier II form” and “tier II form” mean the hazardous chemical inventory form developed by the department.

(g) “Kansas tier II software” means the computer software developed for the department to allow an owner or operator of a facility to file the Kansas tier II form by electronic submission.


(i) “Operator” means the owner or owner's designee who is director of a business, service, or industrial concern and conducts the affairs or manages an activity.

(j) “Owner” means proprietor or the person in whom is vested ownership, dominion, possession, or title of property.


28-65-3. Submitting notifications and reports. (a) Each notification and report required to be submitted to the commission under sections 302 and 311 of the federal act and this article of the department's regulations shall be completed using the Kansas tier II form, which shall be submitted to the department's radiation control program in hard copy or by electronic submission.

(b) Each notification and report required to be submitted to the commission under section 312 of the federal act and this article of the department's regulations shall be completed using the Kansas tier II software. The Kansas tier II form shall be submitted to the radiation control program of the department electronically.

(c) Each toxic chemical release form submitted pursuant to section 313 of the federal act shall be submitted to the department's radiation control program before July 1 of each year for the previous calendar year.

(d) Each emergency release notification submitted pursuant to section 304 of the federal act shall be submitted to the division of emergency preparedness of the adjutant general's department.

(e) Each owner or operator of a facility required to report under this regulation shall notify the department within 60 days after either of the following:

(1) A change in the name, address, or both, of the owner or operator responsible for filing the facility report; or

(2) facility closure.

(f) Each claim of trade secrery under sections 311, 312, and 313 of the federal act and each public petition requesting disclosure of chemical identities claimed as a trade secret shall be filed on a form provided by the department. The address to send all claims of trade secrecy under sections 311, 312, and 313 of the federal act shall be the address on the form provided by the department. (Authorized by and implementing K.S.A. 65-5704; effective, T-88-62, Dec. 30, 1987; effective May 1, 1988; amended, T-89-19, May 27, 1988; amended Sept. 26, 1988; amended Nov. 22, 1993; amended Nov. 28, 1994; amended June 4, 1999; amended March 26, 2021.)
28-65-4. Fees. (a) Except as provided in subsection (d), each owner or operator of a facility required to report under section 312 of the federal act and K.A.R. 28-65-3 shall pay an annual report fee based upon the sum of the maximum daily reportable quantities of extremely hazardous substances or hazardous chemicals, or both, present at the facility as reported on the Kansas tier II form. These fees shall be calculated on forms provided by the department using the tables in paragraphs (c)(1) and (c)(2) as appropriate. The fees required under this subsection shall be submitted to the department before March 1 of each year at the time of submission of the Kansas tier II form.

(b) Each owner or operator of a facility required to file the toxic chemical release form required under section 313 of the federal act and K.A.R. 28-65-3 shall pay an annual report fee based upon the total quantity of chemicals released as reported on the federal form R. These fees shall be calculated on forms provided by the department using table 3 in paragraph (c)(4). The fees required under this subsection shall be submitted to the department before July 1 of each year at the time of submission of the federal form R.

(c)(1) Fees on the total maximum daily reportable quantity of extremely hazardous substances listed on the Kansas tier II form required under subsection (a) shall be determined using table 1 as follows:

<table>
<thead>
<tr>
<th>Sum of the maximum daily amounts of all extremely hazardous substances reported (pounds)</th>
<th>Annual fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1–9,999</td>
<td>$25</td>
</tr>
<tr>
<td>10,000–999,999</td>
<td>$50</td>
</tr>
<tr>
<td>1,000,000 or greater</td>
<td>$150</td>
</tr>
</tbody>
</table>

(2) Fees on the total maximum daily reportable quantity of hazardous chemicals listed on the Kansas tier II form required under subsection (a) shall be determined using table 2 as follows:

<table>
<thead>
<tr>
<th>Sum of the maximum daily amounts of all hazardous chemicals reported (pounds)</th>
<th>Annual fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>10,000–99,999</td>
<td>$25</td>
</tr>
<tr>
<td>100,000–999,999</td>
<td>$50</td>
</tr>
<tr>
<td>1,000,000–9,999,999</td>
<td>$150</td>
</tr>
<tr>
<td>10,000,000 or greater</td>
<td>$300</td>
</tr>
</tbody>
</table>

(3) For the purposes of this subsection, the term "hazardous chemical" shall not include any extremely hazardous substances or sand, gravel, clay, salt, or brine or other comparable substances as approved by the department in the calculation of fees.

(4) Fees payable under subsection (b) on the total quantity of chemicals released reported on the federal form R shall be determined as follows:

<table>
<thead>
<tr>
<th>Sum of the total chemical releases reported (pounds)</th>
<th>Annual fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>100–19,999</td>
<td>$250</td>
</tr>
<tr>
<td>20,000–99,999</td>
<td>$700</td>
</tr>
<tr>
<td>100,000–999,999</td>
<td>$1,700</td>
</tr>
<tr>
<td>1,000,000 or greater</td>
<td>$3,000</td>
</tr>
</tbody>
</table>

(d) Each owner or operator of an oil or gas well that is required to report under section 312 of the federal act and K.A.R. 28-65-3 shall pay an annual fee of $25. For the purposes of this subsection, the term "well" shall have the meaning specified in K.S.A. 55-150, and amendments thereto. The fee required under this subsection shall be submitted to the department before March 1 of each year at the time of submission of the Kansas tier II form.
(e) All fees shall be remitted by check, draft, or money order payable to the department and shall be nonrefundable. Any owner or operator may make an aggregate payment covering more than one facility by a single check, draft, or money order if a statement that indicates each individual facility name, address, and the amount of the fee for which payment is made accompanies each aggregate payment.

(f) An owner or operator of a facility subject to this article of the department’s regulations shall not be charged a fee for chemical information submitted on a voluntary basis beyond that required under K.A.R. 28-65-3 if the optional nature of the information is clearly marked in the appropriate box on the Kansas tier II form. (Authorized by and implementing K.S.A. 65-5704; effective Nov. 22, 1993; amended Nov. 28, 1994; amended March 26, 2021.)

Lee A. Norman, M.D.
Secretary

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