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**Kansas Meat and Poultry Inspection Act
Kansas Statutes Annotated**

K.S.A. 65-6a18. Definitions. As used in this act: (a) "Secretary" means the secretary of agriculture.

(b) "Person" means any individual, partnership, firm, corporation, association or other business unit or governmental entity.

(c) "Meat broker" means any person, firm or corporation engaged in the business of buying or selling carcasses, parts of carcasses, meat or meat food products of livestock on commission, or otherwise negotiating purchases or sales of such articles other than for the person's own account or as an employee of another person.

(d) "Poultry products broker" means any person engaged in the business of buying or selling poultry products on commission, or otherwise negotiating purchases or sales of such articles other than for the person's own account or as an employee of another person.

(e) "Animal food manufacturer" means any person engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of livestock, domestic rabbits or poultry.

(f) "Intrastate commerce" means commerce within the state of Kansas.

(g) "Meat food product" means any product capable of use as human food which is made wholly or in part from any meat or other portions of the carcasses of any livestock or domestic rabbits, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry and which are exempted from definition as a meat food product by the secretary under such conditions as the secretary may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products.

(h) "Poultry" means any domesticated bird, whether live or dead.

(i) "Poultry product" means any poultry carcass, or part thereof or any product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry and which are exempted by the secretary from definition as a poultry product under such conditions as the secretary may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products.

(j) "Capable of use as human food" means any carcass, or part or product of a carcass, of any animal unless it is denatured or otherwise identified as required by regulations adopted by the state board of agriculture to deter its use as human food or it is naturally inedible by humans.

(k) "Prepared" means slaughtered, canned, salted, rendered, boned, cut up or otherwise manufactured or processed.

(l) "Adulterated" means any carcass, or part thereof, any meat or meat food product, or any poultry or poultry product under one or more of the following circumstances:

(1) If the product bears or contains any poisonous or deleterious substance which may render it injurious to health, except that if the substance is not an added substance, the product shall not be considered adulterated if the quantity of such substance on or in the product does not render it injurious to health;

(2)(A) if the product bears or contains, by reason of administration by feeding or by injection of any substance to the live animal or otherwise, any added poisonous or added deleterious substance, other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive, which, in the judgment of the secretary, may make the product unfit for human food;

(B) if the product is, in whole or in part, a raw agricultural commodity and bears or contains a pesticide chemical which is unsafe within the meaning of rules and regulations adopted by the secretary of agriculture;

- (C) if the product bears or contains any food additive which is deemed unsafe in accordance with rules and regulations adopted by the secretary of agriculture;
- (D) if the product bears or contains any color additive which is deemed unsafe in accordance with rules and regulations adopted by the secretary of agriculture; or
- (E) any such product which is not adulterated under provisions (B), (C) or (D) shall nevertheless be deemed adulterated if the use of the pesticide chemical, the food additive or the color additive on or in such product is prohibited by rules and regulations of the secretary of agriculture in establishments at which inspection is maintained under this act;
- (3) if the product consists, in whole or in part, of any filthy, putrid or decomposed substance or is for any other reason unsound, unhealthful, unwholesome or otherwise unfit for human food;
- (4) if the product has been prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health;
- (5) if the product is, in whole or in part, the product of an animal which has died otherwise than by slaughter;
- (6) if the container for the product is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;
- (7) if the product has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to rules and regulations adopted by the secretary of agriculture;
- (8) (A) if any valuable constituent on or in the product has been, in whole or in part, omitted or abstracted therefrom;
- (B) if any substance has been extracted and substitution made therefor, in whole or in part, or if any damage to, or inferiority of, the product has been concealed in any manner; or
- (C) if any substance has been added to such product, or if any substance has been mixed or packed therewith, so as (i) to increase the bulk or weight of the product (ii) to reduce the quality or strength of the product or (iii) to make the product appear better or of greater value than it is, except that this provision does not apply to any cured or smoked pork product by reason of its containing added water; or
- (9) if the product is a margarine containing animal fat and if any of the raw material used therein consisted, in whole or in part, of any filthy, putrid or decomposed substance.
- (m) "Misbranded" means any carcass, part thereof, meat or meat food product, or poultry or poultry product, under any one or more of the following circumstances:
- (1) If the labeling on the product or product container is false or misleading in any particular;
- (2) if the product is offered for sale under the name of another food;
- (3) if the product is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;
- (4) if the container on the product is so made, formed or filled as to be misleading;
- (5) if the product is in a package or other container, unless it bears a label showing (A) the name and place of business of the manufacturer, packer or distributor and (B) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count; under clause (A) of this provision, reasonable variations may be permitted and exemptions as to small packages may be established by rules and regulations adopted by the secretary of agriculture;
- (6) if any word, statement or other information, which is required by or under authority of this act to appear on the label or other labeling for the product, is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (7) if the product purports to be, or is represented to be, a food for which a definition and standard of identity or composition has been prescribed by rules and regulations of the secretary of agriculture, unless (A) it conforms to such definition and standard and (B) the label thereon bears the name of the food specified in the definition and standard, and insofar as may be required by such rules and regulations, the common names of optional ingredients (other than spices, flavoring and coloring) present in such food;
- (8) if the product purports to be, or is represented to be, a food for which a standard of fill of container has been prescribed by rules and regulations of the secretary of agriculture and if such product falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such rules and regulations specify, a statement that it falls below such standard;
- (9) if the product is not subject to provision (7), unless its label bears (A) the common or usual name of the food, if there is any, and (B) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient, except that spices, flavorings and colorings, when authorized by the secretary, may be designated as spices, flavorings and colorings without naming each; to the extent that compliance with the requirements of clause (B) of this provision is impracticable or results in deception or unfair competition, exemptions shall be established by rules and regulations adopted by the secretary of agriculture;
- (10) if the product purports to be, or is represented to be, for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as the secretary, after consultation with the secretary of agriculture of the United States, determines to be, and by rules and regulations adopted by the secretary of agriculture are prescribed to be, necessary in order to fully inform a purchaser as to its value for such uses;
- (11) if the product bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it bears labeling stating that fact; to the extent that compliance with the requirements of this provision is impracticable, exemptions shall be established by rules and regulations adopted by the secretary of agriculture; or
- (12) if the product fails to bear directly thereon, or on the product container, as the secretary of agriculture may

prescribe by rules and regulations, the inspection legend unrestricted by any of the foregoing and such other information as the secretary of agriculture may require in such rules and regulations to assure that the product will not have any false or misleading labeling and that the public will be informed of the manner of handling required to maintain the product in a wholesome condition.

(n) "Label" means a display of written, printed or graphic matter upon the immediate container (not including package liners) of any article.

(o) "Labeling" means all labels and other written, printed or graphic matter (1) upon any article or any of its containers or wrappers or (2) accompanying the article.

(p) "Federal meat inspection act" means the act so entitled, approved March 4, 1907, (21 U.S.C.A. 601 et seq., 34 Stat. 1260) as amended by the federal wholesome meat act (8 Stat. 584).

(q) "Federal food, drug and cosmetic act" means the act so entitled, approved June 25, 1938, (21 U.S.C.A. 301 et seq., 52 Stat. 1040) and acts amendatory thereof or supplementary thereto.

(r) "Federal poultry products inspection act" means the act so entitled, approved August 28, 1957, (21 U.S.C.A. 451 et seq., 71 Stat. 441) as amended by the federal wholesome poultry products act (82 Stat. 791).

(s) "Pesticide chemical," "food additive," "color additive" and "raw agricultural commodity" have the meanings for purposes of this act as ascribed thereto under K.S.A. 65-656 and amendments thereto.

(t) "Official mark" means the official inspection legend or any other symbol prescribed by rules and regulations of the state board of agriculture to identify the status of any article or animal under this act.

(u) "Official inspection legend" means any symbol prescribed by rules and regulations of the secretary of agriculture showing that an article was inspected and passed in accordance with this act.

(v) "Official certificate" means any certificate prescribed by rules and regulations of the secretary of agriculture for issuance by an inspector or other person performing official functions under this act.

(w) "Official device" means any device prescribed or authorized by the secretary of agriculture for use in applying any official mark.

(x) "Slaughterhouse" means any plant which carries on the slaughter and dressing of animals but which does not engage in the further processing of meat into meat food products.

(y) "Packing plant" or "packing house" means any installation processing meat into meat food products.

(z) "Buffalo" means the American buffalo or bison (*Bos*, *Bison bison* or *Bison americanus*).

(aa) "Livestock" means cattle, buffaloes, sheep, swine, goats, domesticated deer, all creatures of the ruminant family that are not indigenous to this state, including but not limited to ostriches, emus and rheas or horses, mules or other equines. Livestock shall not include buffalo or domesticated deer slaughtered for sport or recreational purpose.

(bb) "Slaughter facility" means a slaughterhouse or poultry dressing plant.

(cc) "Processing facility" means a packing house, sausage plant or poultry packing plant.

(dd) "Domesticated deer" means any member of the family cervidae which was legally obtained and is being sold or raised in a confined area for breeding stock; for any carcass, skin or part of such animal; for exhibition; or for companionship.

K.S.A. 65-6a19. Cooperation with U.S. department of agriculture. The secretary of agriculture is hereby authorized to cooperate with the United States department of agriculture in the enforcement of this act and the federal meat and poultry inspection acts.

K.S.A. 65-6a20. Inspection of livestock, rabbits and poultry before slaughter; separate slaughter for diseased; inspection of carcasses. For the purpose of preventing the use in intrastate commerce, as hereinafter provided, of meat and meat food products and poultry and poultry products which are adulterated, the secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all livestock, domestic rabbits and poultry before they shall be allowed to enter into any slaughtering, packing, canning or similar establishment in this state in which slaughtering and preparation of meat or meat food products or poultry and poultry products of such animals are conducted for intrastate commerce. All livestock, domestic rabbits and poultry found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other livestock, domestic rabbits and poultry and when so slaughtered, the carcasses of such livestock, domestic rabbits or poultry shall be subject to a careful examination and inspection as provided by the rules and regulations adopted by the state board of agriculture.

K.S.A. 65-6a21. Post-mortem inspection of carcasses capable of use as human food; marking or labeling; destruction of adulterated carcasses for food purposes; removal of inspectors for failure to destroy. For the purposes of the Kansas meat and poultry inspection act, the secretary shall cause to be made, by inspectors appointed therefor, a post-mortem examination and inspection of the carcasses and parts thereof of all livestock, domestic rabbits and poultry which are capable of use as human food and which are to be prepared at any slaughtering, canning, salting, packing or similar establishment in this state in which such articles are prepared for intrastate commerce. The carcasses and parts thereof of all such animals found to be not adulterated shall be marked, stamped, tagged or labeled as "inspected and passed." The inspectors shall label, mark, stamp or tag as "inspected and condemned" all carcasses and parts thereof animals found to be adulterated. All carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by the establishment in the presence of an inspector, and the secretary may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof. After the first inspection and when they deem it necessary, the inspectors shall reinspect such carcasses or parts thereof to determine whether since the first inspection such carcasses or parts thereof have become adulterated. If any carcass or any part thereof, upon examination and inspection subsequent to

the first examination and inspection, is found to be adulterated, it shall be destroyed for food purposes by the establishment in the presence of an inspector. The secretary may remove inspectors from any establishment which fails to so destroy any such condemned carcass or part thereof.

K.S.A. 65-6a22. Inspection of carcasses prior to entry into department for processing; inspection of meat and poultry food products returned to slaughtering or processing establishment; limitation of entry of carcasses and products.

The provisions of K.S.A. 65-6a21 and amendments thereto shall apply to all carcasses or parts of carcasses of livestock, domestic rabbits and poultry, or the meat or meat products or poultry or poultry products thereof, which are capable of use as human food and which may be brought into any slaughtering, canning, salting, packing or similar establishment where inspection under this act is maintained. The examination and inspection shall be conducted before such carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products or poultry food products. The provisions of K.S.A. 65-6a21 and amendments thereto shall also apply to all such products which, after having been issued from any such slaughtering, canning, salting, packing or similar establishment, are returned to the same or to any similar establishment where such inspection is maintained. The secretary may limit the entry of carcasses, parts of carcasses, meat and meat products, poultry and poultry products and other materials into any establishment at which inspection under this act is maintained under such conditions as the secretary may prescribe to assure that allowing the entry of such articles into such inspected establishments will be consistent with the purposes of this act.

K.S.A. 65-6a23. Inspection of meat and poultry food products; inspectors ingress and egress; marking or labeling of products; destruction of adulterated products; removal of inspectors.

For the purposes hereinbefore set forth the secretary shall cause to be made by inspectors appointed for that purpose an examination and inspection of all meat food products and poultry products prepared in any slaughtering, canning, salting, packing or similar establishment, where such articles are prepared for intrastate commerce, and for the purposes of any examination and inspection said inspectors shall, upon showing proper credentials, have free ingress and egress into any part of any establishment regulated by this act; and said inspectors shall mark, stamp, tag or label as "Kansas inspected and passed" all such products found to be not adulterated; and said inspectors shall label, mark, stamp or tag as "Kansas inspected and condemned" all such products found adulterated, and all such condemned meat food products and poultry products shall be destroyed for food purposes, as hereinbefore provided, and the secretary may remove inspectors from any establishment which fails to so destroy such condemned meat food products and poultry products.

K.S.A. 65-6a24. Packaged meat and poultry products; labeling and container standards; violations, procedure; hearing; judicial review.

(a) When any meat or meat food product, or poultry or poultry product prepared for intrastate commerce which has been inspected and marked "Kansas inspected and passed" shall be placed or packed in any can, pot, tin, canvas or other receptacle or covering in any establishment where inspection under the provisions of this act is maintained, the person preparing said product shall cause a label to be attached to said can, pot, tin, canvas or other receptacle or covering, under supervision of an inspector, which label shall state that the contents thereof have been "Kansas inspected and passed" under the provisions of this act, and no inspection or examination of meat or meat food products or poultry or poultry products deposited or inclosed in cans, tins, pots, canvas or other receptacle or covering in any establishment where inspection under the provisions of this act is maintained shall be deemed to be complete until such meat or meat food products or poultry or poultry products have been sealed or inclosed in said can, tin, pot, canvas or other receptacle or covering under the supervision of an inspector.

(b) All carcasses, parts of carcasses, meat and meat food products, poultry and poultry products, inspected at any establishment under the authority of this act and found to be not adulterated, shall at the time they leave the establishment bear, in distinctly legible form, directly thereon or on their containers, as the secretary may require, the information required under K.S.A. 65-6a18 (m).

(c) The secretary, whenever he determines such action is necessary for the protection of the public, may prescribe: (1) The style and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling of any meat or meat products, poultry or poultry products; (2) definitions and standards of identity or composition for articles subject to this act and standards of fill of container for such articles shall be adopted by the secretary of agriculture in the manner provided by law.

(d) No article subject to this act shall be sold or offered for sale by any person in intrastate commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the secretary, are permitted.

(e) If the secretary has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this act is false or misleading in any particular, the secretary may order that such use be withheld unless the marking, labeling or container is modified in such manner as the secretary prescribes so that it will not be false or misleading. If the person using or proposing to use the marking, labeling or container does not accept the determination of the secretary, such person may request a hearing, but the use of the marking, labeling or container shall, if the secretary so directs, be withheld pending hearing and final determination by the secretary. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(f) Any action of the secretary pursuant to this section is subject to review in accordance with the Kansas judicial review act.

History: L. 1969, ch. 296, § 7; L. 1986, ch. 318, § 88; L. 1988, ch. 356, § 189; L. 2004, ch. 101, § 91; July 1; amended 2010.

K.S.A. 65-6a25. Sanitary conditions of establishments; sanitation rules and regulations; adulterated meat, poultry or products. The secretary shall cause to be made, by veterinarians or by other competent inspectors, such inspection of all slaughtering, canning, salting, packing or similar establishments in which livestock, domestic rabbits or poultry are slaughtered and in which the meat and meat food products and poultry and poultry products thereof are prepared for intrastate commerce as may be necessary to become informed concerning the sanitary conditions of the establishment and to prescribe the rules and regulations of sanitation under which such establishments shall be maintained. Where the sanitary conditions of any such establishments are such that the meat or meat food products or poultry or poultry products are rendered adulterated, the secretary shall refuse to allow the meat or meat products or poultry or poultry products to be labeled, marked, stamped or tagged as "Kansas inspected and passed."

K.S.A. 65-6a26. Inspection during both day and nighttime operation; inspection fee schedule; overtime payment. The secretary shall cause an examination and inspection of all livestock, domestic rabbits and poultry, and the food products thereof, which are slaughtered and prepared in establishments for the purposes of intrastate commerce, to be made during the nighttime as well as during the daytime when such slaughtering or the preparation of such food products is conducted during the nighttime. The secretary of agriculture shall by rule and regulation establish a schedule of fees to be charged against establishments for inspections made other than during regularly scheduled inspection periods and for all costs incurred in paying overtime to inspectors required for the inspection of such establishments.

K.S.A. 65-6a27. Violations of act. (a) It shall be a violation of this act for any person:

- (1) To slaughter any livestock, domestic rabbits or poultry, except in compliance with this act;
 - (2) to prepare any meat, meat food product, poultry or poultry product which is capable of use as human food, at any establishment preparing such products, except in compliance with the requirements of this act;
 - (3) to do, with respect to any meat, meat food product, poultry or poultry product which is capable of use as human food, any act, while being distributed or transported or while being held for sale after such distribution or transportation, which has the effect of causing such products to be adulterated or misbranded; or
 - (4) to engage in a business specified in subsection (a) of K.S.A. 65-6a34 and amendments thereto or engage in business or operate a packing house, sausage plant, poultry packing plant, slaughterhouse or poultry dressing plant unless such person is currently registered with the secretary in accordance with the provisions of K.S.A. 65-6a34 and amendments thereto and has paid the fees required for the current calendar year as required by that section.
- (b) It shall be a violation of this act for any person to sell, offer or expose for sale or to distribute or transport:
- (1) Any carcass or part thereof which is capable of use as human food, or any meat, meat food product, poultry or poultry product which is adulterated or misbranded; or
 - (2) any carcass or part thereof which is capable of use as human food, or any meat, meat food product, poultry or poultry product, which is required to be inspected under the provisions of this act, unless such products have been so inspected and passed.

K.S.A. 65-6a28. Acts involving official marks, labels and certificates of simulation thereof prohibited. (a) No brand manufacturer, printer or other person shall cast, print, lithograph or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the secretary.

- (b) No person shall:
- (1) forge any official device, mark or certificate;
 - (2) without authorization from the secretary use any official device, mark, certificate or simulation thereof, or alter, detach, deface or destroy any official device, mark or certificate;
 - (3) contrary to the regulations prescribed by the secretary of agriculture, fail to use, or to detach, deface or destroy any official device, mark or certificate;
 - (4) knowingly possess, without promptly notifying the secretary or his representative, any official device or any counterfeit, simulated, forged or improperly altered official certificate or any device or label of any carcass of any animal, or part or product thereof, bearing any counterfeit, simulated, forged or improperly altered official mark;
 - (5) knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the secretary of agriculture; or
 - (6) knowingly represent that any article has been inspected and passed or exempted, under this act when, in fact, it has, respectively not been so inspected and passed, or exempted.

K.S.A. 65-6a29. Horses, mules and rabbits; labeling of carcass or products; preparation in separate establishment. No person shall sell, transport, offer for sale or transportation or receive for transportation in intrastate commerce any carcasses of horses, mules or other equines, domestic rabbits or parts of such carcasses of the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by rules and regulations adopted by the secretary of agriculture to show the kinds of animals from which they were derived. When

required by the secretary with respect to establishments at which inspection is maintained under this act, such animals and their carcasses, parts thereof, meat and meat food products shall be prepared in establishments separate from those in which cattle, buffaloes, sheep, swine or goats are slaughtered or their carcasses, parts thereof, meat or meat food products are prepared.

K.S.A. 65-6a30. Meat and poultry inspection program established in board of agriculture; personnel, inspection duties; rules and regulations. (a) There shall be established by the secretary of agriculture a meat and poultry inspection program to enforce the provisions of the Kansas meat and poultry inspection act. The program shall be under the supervision of the secretary of agriculture and the secretary shall appoint such personnel as may be necessary for the proper administration of the Kansas meat and poultry inspection act.

(b) The secretary of agriculture shall make provision for the examination and inspection of all livestock, domestic rabbits and poultry, as provided for under the Kansas meat and poultry inspection act, and of all carcasses and parts thereof, of all meats and meat food products thereof, of all poultry and poultry products thereof and of the sanitary conditions of all establishments in which such carcasses, parts of carcasses and products are prepared. Authorized representatives of the secretary shall refuse to stamp, mark, tag or label any carcass or any part thereof or any meat food product therefrom which is prepared in any establishment until the carcass or part thereof or meat food product has actually been inspected and found to be not adulterated.

(c) The authorized representatives of the secretary shall perform such other duties as are provided by this act and by the rules and regulations adopted by the secretary of agriculture.

(d) The secretary of agriculture shall adopt and amend from time to time such rules and regulations as are necessary for the efficient execution of the provisions of this act. On and after January 1, 2009, the secretary shall not promulgate or enforce any such rules and regulations that are more stringent, restrictive or expansive than required by federal law or any rule and regulation adopted by the United States department of agriculture. If the secretary determines that a more stringent, restrictive or expansive rule and regulation is necessary, the secretary may implement the rule and regulation only after approval by an act of the legislature.

(e) All inspections and examinations made under this act shall be made in the manner described in the rules and regulations adopted by the secretary of agriculture and shall not be inconsistent with the provisions of this act.

History: L. 2008, ch. 48, § 8, July 1.

K.S.A. 65-6a31. Exemption to inspection requirements; custom slaughtering. (a) The provisions of this act shall not apply:

(1) To the slaughtering by any person of animals of such person's own raising or to the preparing by the slaughterer or to the transporting in intrastate commerce of the carcasses, parts thereof meat food products or poultry products of such animals exclusively for use or consumption by such person, members of such person's household, former members of such household or such person's nonpaying guests and employees;

(2) to any person operating a retail store or similar retail type business who prepares only inspected and passed carcasses, parts thereof, meat food products or poultry products for sale to consumers at retail in normal retail quantities; or prepares inspected carcasses, parts thereof, meat food products or poultry products, owned by the consumer and prepared for such consumer's consumption or the consumption of such consumer's household members, nonpaying guests and employees; or

(3) to any person operating a restaurant who prepares only inspected and passed carcasses, parts thereof, meat food products or poultry products for human consumption.

(b)(1) Only those provisions of this act relating to registration, sanitation and adulteration shall apply:

(A) to a person slaughtering livestock, domestic rabbits or poultry delivered by the owner thereof for such slaughter, including the preparation by such slaughterer and the transportation in intrastate commerce of the carcasses, parts thereof, meat food products or poultry products of such animals exclusively for use or consumption by the owner, members of the owner's household or the owner's nonpaying guests and employees; or

(B) to the custom preparation by any person, firm or corporation of carcasses, parts thereof, meat or meat food products, derived from the slaughter by any person of livestock of such person's own raising, or from game animals which are delivered by the owner thereof for such custom preparation and transportation in intrastate commerce of such custom prepared articles, exclusively for use in the household of the owner by the owner and the members of the owner's household and the owner's nonpaying guests and employees.

(2) In cases where such person, firm or corporation engages in such custom operations at an establishment at which inspection under the Kansas meat and poultry inspection act is maintained, the secretary may exempt from such inspection at such establishment any animals slaughtered or any meat or meat food products otherwise prepared on such custom basis, except that custom operations at any establishment shall be exempt from inspection requirements as provided by this section only if the establishment complies with rules and regulations adopted by the secretary of agriculture to assure that any carcasses, parts thereof, meat or meat food products wherever handled on a custom basis, or any containers or packages containing such articles, are separated at all times from carcasses, parts thereof, meat or meat food products prepared for sale and that all such articles prepared on a custom basis, or any containers or packages containing such articles, are plainly marked "not for sale" immediately after being prepared and kept so identified until delivered to the owner and that the establishment conducting the custom operation is maintained and operated in a sanitary manner.

(c) Only those provisions of this act relating to sanitation and adulteration shall apply to a person operating a food locker plant who

(1) prepares meat, meat food products, poultry or poultry products which have been inspected and passed and which are being prepared and sold in normal retail quantities, or

(2) prepares such meat, meat products, poultry or poultry products for the owner thereof.

K.S.A. 65-6a32. Storage and handling of meat, poultry and food products; rules and regulations. The secretary of agriculture may prescribe by rules and regulations the conditions under which carcasses, parts of carcasses, meat and meat food products of livestock and poultry and poultry products, which are capable of use as human food, shall be stored or otherwise handled by any person engaged in the business of buying, selling, freezing, storing, distributing or transporting in or for intrastate commerce such articles whenever the secretary of agriculture deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Violation of any such rules and regulation is prohibited.

K.S.A. 65-6a33. Slaughter and preparation of meat and products not for human food, not inspected; identification. Inspection shall not be provided under this act at any establishment for the slaughter of livestock or poultry, or the preparation of any carcasses or parts or products of such animals, which are not intended for use as human food, but such articles shall be denatured or otherwise identified as prescribed by rules and regulations of the secretary of agriculture prior to their offer for sale, distribution or transportation in intrastate commerce, unless naturally inedible by humans, to deter their use for human food. No person shall buy, sell, transport, distribute or offer for sale, distribution or transportation, or receive for distribution or transportation in intrastate commerce, any carcasses, parts thereof, meat or meat food products or poultry or poultry products of any such animals which are not intended for use as human food unless they are denatured or otherwise identified as required by the rules and regulations of the secretary of agriculture or are naturally inedible by humans.

K.S.A. 65-6a34. Engaging in business; registration required; annual fee. (a) No person shall (1) engage in business, in or for intrastate commerce, as a meat broker or animal food manufacturer, (2) engage in business in such commerce as a wholesaler of any carcasses, or parts or products of the carcasses, of any livestock, domestic rabbits or poultry, whether intended for human food or other purposes, or (3) engage in business as a public warehouseman storing any such articles in or for such commerce, without first having registered with the secretary such person's name and the address of each place of business at which, and all trade names under which, such person conducts such business and having paid the registration fee established by this section, if applicable.

(b) No person shall engage in business or operate a packing house, sausage plant, poultry packing plant, slaughterhouse or poultry dressing plant without registering such person's name and place of business with the secretary, and paying the registration fee established by this section.

(c) Except as provided in subsection (c)(6):

(1) An annual registration fee of \$50 shall be charged for the registration of each meat broker, poultry product broker, animal food manufacturer, seasonal poultry packing or dressing plant, state-owned slaughter or processing facility operated in conjunction with education and research and located at institutions under the jurisdiction of the state board of regents, or slaughter or processing facility operated in conjunction with education and research and located at a public secondary school, and each such registration shall expire on December 31 of each year.

(2) Except for persons who register under paragraph (1) of this subsection (c), an annual registration fee of \$150 shall be charged for the registration of each slaughter facility which slaughters 300 animal units or less annually, and such registration shall expire on December 31 of each year.

(3) An annual registration fee of \$200 shall be charged for the registration of each slaughter or processing facility which operates solely on a custom basis as defined by subsection (b)(1) of K.S.A. 65-6a31 and amendments thereto, and such registration shall expire on December 31 of each year.

(4) Except for those persons who have registered under paragraphs (1), (2) or (3) of this subsection (c), an annual registration fee of \$250 shall be charged for each processing facility and each slaughter facility which slaughters more than 300 animal units annually, and such registration shall expire on December 31 of each year.

(5) As used in this subsection (c), animal units shall be computed by using one unit for each bovine, bison, horse, mule or other equine, .6 unit for each swine, .4 unit for each sheep or goat and as specified by rule and regulation for other animal units.

(6) Persons who become subject to registration under this section after January 1 shall pay an amount equal to 1/12 of the annual registration fee which would have been due for a full year, multiplied by the number of full calendar months remaining in the registration year and adjusted to the nearest dollar amount.

(d) Any person whose completed application for renewal of a registration required by this section is not received by January 15 of the year of renewal shall be subject to a reinstatement fee which shall be paid in addition to the required registration fee. If the completed application for renewal of a registration required by this section is received by the secretary after January 15 and on or before January 31 of the year of renewal, the reinstatement fee shall be \$10. If the completed application for renewal of a registration required by this section is received after January 31 of the year of renewal, the amount of the reinstatement fee shall be increased at the rate of \$25 per month for each additional month or fraction thereof. No registration required by this section shall be reinstated if it has been delinquent for one year. No registration required by this section shall be issued until all applicable reinstatement fees, if any, have been paid.

65-6a34a. Denial or suspension of registration; hearing; appeal. (a) The secretary may deny, suspend, revoke or modify the provisions of any registration issued under the Kansas meat and poultry inspection act, if the secretary finds, after notice

and opportunity for a hearing are given in accordance with the Kansas administrative procedure act, that the applicant or registrant has:

(1) Been convicted of or pleaded guilty to a violation of the Kansas meat and poultry inspection act or any rule and regulation promulgated thereunder;

(2) failed to comply with any provision or requirement of the Kansas meat and poultry inspection act or any rule and regulation adopted thereunder;

(3) interfered with or prevented the secretary or any authorized inspector or any other authorized representative of the secretary from the performance of that person's job duties regarding any inspection or the administration of the provisions of the Kansas meat and poultry inspection act; or

(4) denied the secretary or any authorized representative of the secretary access to any premises required to be inspected under the provisions of the Kansas meat and poultry inspection act.

(b) The registration holder may appeal from the decision and order, in accordance with the provisions of the Kansas judicial review act.

(c) This section shall be part of and supplemental to the Kansas meat and poultry inspection act, article 6a of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

History: L. 1993, ch. 127, § 6;L. 2010, ch. 60, § 8;L. 2010, ch. 155, § 19; July 1.

K.S.A. 65-6a35. Cooperation with U.S. secretary of agriculture; appointment to advisory committees. (a) The Kansas department of agriculture is hereby designated as the state agency which shall be responsible for cooperating with the secretary of agriculture of the United States under the provisions of section 301 of the federal meat inspection act, and section 5 of the federal poultry inspection act.

(b) In such cooperative efforts, the secretary of agriculture is authorized to accept from the secretary of agriculture of the United States advisory assistance in planning and otherwise developing the state program, technical and laboratory assistance and training (including necessary curricular and instructional materials and equipment), and financial and other aid for administration of such a program.

(c) The secretary of agriculture is further authorized to recommend to the secretary of agriculture of the United States such officials or employees of this state as the secretary of agriculture shall designate, for appointment to the advisory committees provided for in section 301 of the federal meat inspection act; and the secretary of agriculture or the secretary's delegate shall serve as the representative of the governor for consultation with secretary of agriculture of the United States under paragraph (c) of section 301 of the act.

K.S.A. 65-6a36. Refusal to provide or withdraw inspection services for applicant or recipient convicted of certain offenses; hearing. (a) The secretary may, for such period, or indefinitely, as the secretary deems necessary to effectuate the purposes of this act, refuse to provide, or withdraw, inspection service under this act with respect to any establishment if the secretary determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, such service, that such applicant or recipient is unfit to engage in any business requiring inspection under this act because the applicant or recipient, or anyone responsibly connected with the applicant or recipient, has been convicted, in any federal or state court, of (1) any felony based upon the acquiring, handling, transporting or distributing of unwholesome, adulterated, mislabeled or deceptively packaged food or upon fraud in connection with transactions in food, or (2) more than one violation of any law, or other than a felony, based upon the acquiring, handling, transporting or distributing or unwholesome, adulterated, mislabeled or deceptively packaged food or upon fraud in connection with transactions in food. This section shall not affect in any way other provisions of this act for withdrawal of the inspection services from establishments failing to maintain sanitary conditions or to destroy condemned carcasses, parts, meat or meat food products, poultry or poultry products.

(b) Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

K.S.A. 65-6a37. Adulterated or misbranded meat or products; procedure. The procedure to be followed with respect to meat or meat products believed to be adulterated or misbranded shall be in like manner as that set forth in K.S.A. 65-660 for foods in general.

K.S.A. 65-6a38. Act not affecting trade of locker plant located near border of state. Nothing in this act shall be construed as limiting or prohibiting the operator of any frozen food locker plant, whose plant is so located near the border of the state that its normal trade area includes territory in a neighboring state, from continuing to provide custom slaughtering and related services, meeting the standards and in compliance with the requirements established under the provisions of this act, to persons living within such normal trade area. The providing of custom slaughtering and related services to persons within such normal trade area shall not be considered as constituting the engaging in interstate commerce for the purpose of this act.

K.S.A. 65-6a39. Jurisdiction to enforce act vested in district court. The district courts are vested with jurisdiction specifically to enforce and to prevent and restrain violations of this act, and shall have jurisdiction in all other kinds of cases arising under this act, except as provided in K.S.A. 65-6a24(e).

K.S.A. 65-6a40. Penalties. Any person who violates any of the provisions of this act or the provisions of any rule or regulation adopted under the provisions of this act for which no other criminal penalty is provided shall be deemed guilty of a nonperson misdemeanor and upon conviction thereof shall be punished by imprisonment for not more than one year, or by a

fine of not more than \$1,000, or by both such imprisonment and fine. If such violation involves intent to defraud, or any transportation or distribution or attempted transportation or distribution of an article that is adulterated, such person shall be deemed guilty of a nonperson felony and upon conviction thereof shall be punished by imprisonment for not more than three years or by a fine of not more than \$10,000, or by both such imprisonment and fine. No person shall be subject to penalties under this section for receiving for transportation or distribution any article or animal in violation of this act if such receipt was made in good faith.

K.S.A. 65-6a41. Refusal to furnish certain information and documents to secretary unlawful. It shall be unlawful for any person to refuse to furnish, on request of a representative of the secretary, the name and address of the person from whom he received any article or animal which does not meet the requirements of this act, and copies of all documents, if any there be, pertaining to the delivery of the article or animal to him.

K.S.A. 65-6a43. Severability of act. If any provision of this act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the act and of the application of such provision to other persons and circumstances shall not be affected thereby.

K.S.A. 65-6a44. Adoption of regulations. The secretary of agriculture is hereby authorized to prepare and adopt regulations for the proper enforcement of the act. The secretary of agriculture may adopt regulations for the exemption of the operations of any person from inspection or other requirements of this act if and to the extent such operations would be exempt from corresponding requirements of the federal meat inspection act or the federal poultry inspection act.

K.S.A. 65-6a44a. Secretary to establish standards of identify for water added pork products. (a) The secretary of agriculture shall adopt rules and regulations establishing standards of identity for water added pork products within 60 days after the effective date of this act.

(b) The provisions of this section are a part of and supplemental to the Kansas meat and poultry inspection act.

K.S.A. 65-6a45. Meat and poultry inspection; disposition of moneys received; meat and poultry inspection fee fund. The secretary of agriculture shall remit all moneys received by or for the secretary under article 6a of chapter 65 of Kansas Statutes Annotated, 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 meat and poultry inspection fee fund. 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 or by a person or persons designated by the secretary.

K.S.A. 65-6a46. Title of act. This act may be cited as the Kansas meat and poultry inspection act.

K.S.A. 65-6a56. Violations of meat and poultry inspection act; civil penalties; disposition of moneys. (a) Any person who violates any of the provisions of the Kansas meat and poultry inspection act, article 6a of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, or any rule and regulation promulgated thereunder, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (b) in the amount fixed by rules and regulations of the secretary of agriculture in an amount not less than \$100 nor more than \$5,000 for each violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) A duly authorized agent of the secretary, upon finding that any person or agent or employee thereof has violated any provision of the Kansas meat and poultry inspection act or any rule and regulation promulgated thereunder, may impose a civil penalty as provided by this section upon such person.

(c) No civil penalty shall be imposed pursuant to this section except on written order of the duly authorized agent of the secretary to the person who committed the violation or to the person whose agent or employee committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to the secretary. Any such person, within 20 days after notification, may make written request to the secretary for a hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(d) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the Kansas judicial review act.

(e) Any civil penalty recovered pursuant to the provisions of this section shall be remitted 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 state general fund.

(f) This section shall be part of and supplemental to the Kansas meat and poultry inspection act, article 6a of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

History: L. 1991, ch. 176, § 1; L. 2001, ch. 5, § 221; L. 2004, ch. 101, § 103; July 1; amended 2010.

K.S.A. 74-568. State board of agriculture and secretary of the state board of agriculture abolished; transfer of powers and duties to the department of agriculture and secretary of agriculture. (a) The state board of agriculture created by K.S.A. 74-503, and amendments thereto, and the office of the secretary of the state board of agriculture created by K.S.A. 74-

503, and amendments thereto, are hereby abolished.

(b) Except as otherwise provided by this act, all of the powers, duties and functions of the existing state board of agriculture and the existing secretary of the state board of agriculture are hereby transferred to and conferred and imposed upon, the department of agriculture and the secretary of agriculture established by this act.

(c) Except as otherwise provided by this act, the department of agriculture and the secretary of agriculture established by this act shall be the successor in every way to the powers, duties and functions of the state board of agriculture and the secretary of agriculture in which the same were vested prior to the effective date of this act. Every act performed in the exercise of such powers, duties and functions by or under the authority of the department of agriculture or the secretary of agriculture established by this act shall be deemed to have the same force and effect as if performed by the state board of agriculture or the secretary of the state board of agriculture, respectively, in which such powers, duties and functions were vested prior to the effective date of this act.

(d) Except as otherwise provided by this act, whenever the state board of agriculture, or words of the like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the secretary of agriculture established by this act.

(e) Except as otherwise provided by this act, whenever the secretary of the state board of agriculture, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the secretary of agriculture established by this act.

(f) All rules and regulations of the state board of agriculture or the secretary of the state board of agriculture in existence on the effective date of this act shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the secretary of agriculture by this act until revised amended or nullified pursuant to law.

(g) All rules and regulations of the division of water resources of the state board of agriculture or the chief engineer of the division of water resources of the state board of agriculture in existence on the effective date of this act shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the chief engineer of the division of water resources of the department of agriculture established by this act until revised, amended, revoked or nullified pursuant to law.

(h) All orders and directives of the state board of agriculture or the secretary of the state board of agriculture in existence in the effective date of this act shall continue to be effective and shall be deemed to be orders and directives of the secretary of agriculture established by this act, until revised, amended or nullified pursuant to law.

(i) On the effective date of this act, the secretary of agriculture shall succeed to whatever right, title or interest the state board of agriculture has acquired in any real property in this state, and the secretary shall hold the same for and in the name of the state of Kansas. On and after the effective date of this act, whenever any statute, contract, deed or other document concerns the power or authority of the state board of agriculture or the secretary of the state board of agriculture to acquire, hold or dispose of real property or any interest therein, the secretary of agriculture shall succeed to such power or authority.

(j) The secretary of agriculture established by this act shall be continuations of the state board of agriculture and the secretary of the state board of agriculture.

Chapter 50.--UNFAIR TRADE AND CONSUMER PROTECTION

Article 9.--FOOD ADVERTISING AND SALES PRACTICES

K.S.A. 50-901. Definitions. As used in this act: (a) "Buyer" means both actual and prospective purchasers but does not include persons purchasing for resale.

(b) "Carcass" means any carcass of cattle, sheep, swine, domestic rabbits or goats.

(c) "Food plan" means any plan offering meat, poultry or seafood for sale or the offering of such product in combination with each other or with any other food or non-food product or service for a single price.

(d) "Misrepresent" means use any untrue, misleading or deceptive oral or written statement, advertisement, label, display, picture, illustration or sample.

(e) "Person" means individual, partnership, firm, corporation, association or other entity.

(f) "Represent" means use any form of oral or written statement, advertisement, label, display, picture, illustration or sample.

(g) "Seller" means any person, individual or business entity, corporation, league, franchise, franchisee, franchisor or any authorized representative or agent thereof who offers meat, poultry, seafood, or combinations of such items, for retail purchase to the public.

History: L. 1984, ch. 218, § 1; July 1.

K.S.A. 50-902. Inaccurate or deceptive advertising prohibited. No person shall advertise for sale, solicit, offer to sell or sell foods by newspapers, handbills, placards, radio, television or other medium unless the advertising is truthful and accurate. Such advertising shall not be misleading or deceiving in respect to grade, quality, quantity or price per pound or piece or in any other manner.

History: L. 1984, ch. 218, § 2; July 1.

K.S.A. 50-903. Deceptive practices prohibited; bait selling; price representation; product representation;

tie-in sales. No person advertising, offering for sale or selling all or part of a carcass or food plan shall engage in any misleading or deceptive practices, including, but not limited to, any one or more of the following:

(a) *Bait Selling.* (1) Disparaging or degrading any product advertised or offered for sale by the seller, displaying any product or depiction of a product to any buyer in order to induce the purchase of another product or representing that a product is for sale when the representation is used primarily to sell another product. Nothing in this subsection (a)(1) shall be construed to prohibit the enhancement of sales of any product by the use of a gift.

(2) Substituting any product for that ordered by the buyer without the buyer's written consent.

(3) Failing to have available a sufficient quantity of the product represented as being for sale to meet reasonable anticipated demands, unless the available amount is disclosed fully and conspicuously.

(b) *Price Representation.* (1) Using any price list or advertisement subject to changes without notice unless so stated, and which contains prices other than the seller's current billing prices, unless changes are subject to consumer's advance acceptance or rejection at or before the time of order or delivery.

(2) Misrepresenting the amount of money that the buyer will save on purchases of any products which are not of the same grade or quality.

(3) Failing to disclose fully and conspicuously in advertisement and invoice in at least ten-point type any charge for cutting, wrapping, freezing, delivery or other services.

(4) Representing the price of any product to be offered for sale in units larger than one pound in terms other than price per single pound. Nothing in paragraph (4) of this subsection (b) shall be construed to prevent the price of such units from also being represented by individual serving, by fluid measure or by other meaningful description.

(c) *Product Representation.* (1) Misrepresenting the cut, grade, brand or trade name, or weight or measure of any product.

(2) Using the abbreviation "U.S." in describing a product not graded by the United States department of agriculture, except that a product may be described as "U.S. Inspected" when true.

(3) Referring to a quality grade other than the United States department of agriculture quality grade, unless the grade name is preceded by the seller's name in type at least as large and conspicuous as the grade name.

(4) Misrepresenting a product through the use of any term similar to a government grade.

(5) Failing to disclose in uniform ten-point type, when a yield grade is advertised, a definition of the yield grade in the following terms:

Yield Grade 1 - Extra lean

Yield Grade 2 - Lean

Yield Grade 3 - Average waste

Yield Grade 4 - Wasty

Yield Grade 5 - Exceptionally wasty

(6) Comparing quality to a United States department of agriculture yield grade, unless it is fully and conspicuously disclosed that the quality is not a U.S.D.A. yield grade but only an opinion.

(7) Advertising or offering for sale carcasses, sides or primal cuts as such, while including disproportionate numbers or amounts of less expensive components of those cuts, or offering them in tandem with less expensive components from other carcasses, sides or primal cut parts.

(8) Failing to disclose fully and conspicuously the correct government grade for any product if the product is represented as having been graded.

(9) Failing to disclose fully and conspicuously that the yield of consumable meat from any carcass or part of a carcass will be less than the weight of the carcass or part of the carcass. The seller shall, for each carcass or part of carcass advertised, use separately and distinctly, in at least ten-point type, the following disclosure: "Sold gross weight subject to trim loss."

(10) Misrepresenting the amount or proportion of retail cuts that a carcass or part of carcass will yield.

(11) Failing to disclose fully and conspicuously whether a quarter of a carcass is the front or hind quarter, and quarters, sides or halves must consist of only anatomically natural proportions of cuts from front or hind quarters.

(12) Representing any part of a carcass as a "half" or "side" unless it consists exclusively of a front and hind quarter. Both quarters must be from the same side of the same animal unless the seller discloses fully and conspicuously that they are or may be from different sides or different animals, as the case may be. Any section advertised and offered for sale either as an individual unit or as an inclusion with the purchase of a quarter, side or half must be described and called by its commonly known name. Each quarter shall be of the same grade or quality as the other quarter comprising the half or side and the seller shall advise the buyer of the weight of each quarter prior to sale. In selling quarters individually or as part of a half or side, if actual weights are not known or cannot be determined prior to sale, approximate weights may be used if: (A) The buyer is informed that the weights are approximate; (B) the advertised weight ranges do not cover a spread of more than 10%; (C) the difference between advertised and sale weights does not exceed 5%; and (D) the seller agrees with the buyer, in writing, to make a cash refund or grant a credit on delivery for the difference between actual weight and the approximate weight on which the sale was made.

(13) Using the words "bundle," "sample order" or words of similar import to describe a quantity of meat or

poultry unless the seller itemizes each type of cut and the weight of each type of cut which the buyer will receive.

(14) Advertising or offering a free, bonus or extra product or service combined with or conditioned on the purchase of any other product or service unless the additional product or service is accurately described, including, whenever applicable, grade, net weight or measure, type and brand or trade name. The words "free," "bonus" or other words of similar import shall not be used in any advertisement unless the advertisement clearly and conspicuously sets forth the total price or amount which must be purchased to entitle the buyer to the additional product or service.

(15) Misrepresenting the breed, origin or diet of slaughtered animals or parts of slaughtered animals offered for sale. Sellers making claims as to breed, origin or diet shall have written records available to substantiate the claims.

(d) Requiring the purchase of a food freezer or other food storage refrigeration unit from the seller or any specified supplier as a prerequisite to, or a necessary part of, any food plan.

History: L. 1984, ch. 218, § 3; July 1.

K.S.A. 50-904. Penalties; consumer protection act proceedings; agent liability. (a) Any person who violates any provision of this act is guilty of a class C misdemeanor for the first conviction, a class B misdemeanor for the second conviction and a class A misdemeanor for a third or subsequent conviction.

(b) In addition to or instead of the criminal penalties provided by subsection (a), a person who violates any provision of this act shall be subject to proceedings under the Kansas consumer protection act.

(c) An individual who violates any provision of this act while acting in the name of or on behalf of any person is liable to the same extent as if the individual were acting in the individual's own name or own behalf.

History: L. 1984, ch. 218, § 4; July 1.

K.S.A. 50-905. Inspection of places of business; access; reports of violations. (a) The secretary of agriculture shall provide, in conjunction with and in addition to the inspection program established under K.S.A. 65-6a30 and amendments thereto, for inspection of places of business of sellers who are subject to this act.

(b) Personnel of the Kansas department of agriculture designated by the secretary of agriculture shall have access to those places of business during regular business hours for the purpose of inspecting carcasses or parts of carcasses sold by the seller and observing the sales practices of the seller to determine whether there is compliance with the provisions of this act.

(c) The secretary of agriculture, or personnel designated by the secretary, shall report any suspected violations of this act to the county or district attorney of the county where the alleged violation occurred and to the attorney general.

History: L. 1984, ch. 218, § 5; L. 2004, ch. 101, § 87; July 1.

K.S.A. 50-906. Remedies supplemental. The remedies provided in this act are in addition to and not in substitution for any other remedies provided by law.

History: L. 1984, ch. 218, § 6; July 1.

ADMINISTRATIVE REGULATIONS

K.A.R. 4-16-1a Definitions. (a) Each of the following terms, as used in the portions of the code of federal regulations adopted by reference in K.A.R. 4-16-1c, shall have the meaning specified in this subsection:

(1) "The act," "act," and "federal meat inspection act" shall mean K.S.A. 65-6a18 et seq. and amendments thereto.

(2) "Administrator," except as used in 9 C.F.R. 303.1(d)(2)(iii)(b), shall mean the secretary of the department of agriculture or the secretary's designee.

(3) "Beef" shall mean the skeletal muscle of any cattle. Beef shall not include any of the following:

(A) The muscles of the tongue, heart, or esophagus;

(B) the muscles found in the lips, muzzle, or ears;

(C) any portions of bone, including hard bone, bone marrow, and related components; or

(D) any amount of brain trigeminal ganglia, spinal cord, or dorsal root ganglia (DRG).

(4) "Cheek meat" shall mean meat that is the trimmed cheeks of the carcass of cattle.

(5) "Commerce" shall mean intrastate commerce.

(6) "Federal food, drug and cosmetic act" shall mean the Kansas food, drug and cosmetic act, K.S.A. 65-655 et seq. and amendments thereto.

(7) "Federal inspection" shall mean inspection by the Kansas department of agriculture.

(8) "Form," either by number or by any other designation, shall mean a form supplied by the Kansas department of agriculture.

(9) "Inspected for wholesomeness by U.S. department of agriculture" shall mean inspected and passed by

the Kansas department of agriculture.

(10) "Official establishment" and "establishment" shall mean any permanently located building or adjacent premises that are registered pursuant to this act, where livestock, as defined in K.S.A. 65-6a18(aa) and amendments thereto, domestic rabbits, or meat food products capable of use as human food are prepared, as defined by K.S.A. 65-6a18(k) and amendments thereto.

(11) "Program," "food safety and inspection service," "inspection service," "service," "department," and "FSIS" shall mean the meat and poultry inspection program of the Kansas department of agriculture.

(12) "Secretary," "national supervisor," "area supervisor," "circuit supervisor," and "station supervisor" shall mean the secretary of the department of agriculture or the secretary's designee.

(13) "U.S." and "the United States" shall mean Kansas or the state of Kansas, as appropriate.

(14) "U.S. inspected" and "government inspected" shall mean inspected by the Kansas department of agriculture.

(b) The phrase "official review and copying" in 9 C.F.R. 417.5(f), as adopted by reference in K.A.R. 4-16-1c, shall mean review and copying by the secretary of the department of agriculture or the secretary's designee.

(Authorized by K.S.A. 65-6a25 and K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a20, K.S.A. 65-6a21, K.S.A. 65-6a22, K.S.A. 65-6a23, K.S.A. 65-6a25, and K.S.A. 2007 Supp. 65-6a30; effective May 1, 1982; amended May 1, 1986; amended Jan. 1, 1989; amended Jan. 21, 1991; amended Jan. 25, 1993; amended Dec. 12, 1994; amended Sept. 5, 1997; amended Sept. 1, 2006; amended Dec. 5, 2008.)

K.A.R. 4-16-1c Adoption by reference. (a) The following portions of title 9 of the code of federal regulations, as revised on January 1, 2008, except as otherwise specified, are hereby adopted by reference:

(1) Part 301, except the following terms and their definitions in 301.2: "the act," "adulterated," "livestock," "misbranded," "official import inspection established," and "territory";

(2) part 302, except section 302.2;

(3) part 303, except sections 303.1(d)(3) and 303.2;

(4) parts 304 through 306, except sections 306.1, 306.2, and 306.3;

(5) part 307, except sections 307.5 and 307.6;

(6) part 309;

(7) part 310;

(8) part 311;

(9) part 312, except section 312.8;

(10) parts 313 through 316;

(11) part 317, except section 317.7;

(12) part 318, except section 318.8;

(13) part 319;

(14) part 320;

(15) part 325, except section 325.3;

(16) part 329;

(17) section 354.1, except subparagraphs (a) and (n);

(18) section 354.2;

(19) sections 354.10 through 354.14;

(20) sections 354.23 through 354.24;

(21) sections 354.26 through 354.30;

(22) sections 354.45 through 354.49;

(23) sections 354.53 through 354.92;

(24) sections 354.120 through 354.133;

(25) sections 354.160 through 354.247;

(26) parts 416 and 417; and

(27) parts 424 through 500.

(b) Copies of this material or the pertinent portions thereof shall be available from the meat and poultry inspection program of the department of agriculture, Topeka, Kansas. (Authorized by K.S.A. 65-6a25 and K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a20, K.S.A. 65-6a21, K.S.A. 65-6a22, K.S.A. 65-6a23, K.S.A. 65-6a25, and K.S.A. 2007 Supp. 65-6a30; effective May 1, 1986; amended May 1, 1988; amended Jan. 1, 1989; amended Jan. 21, 1991; amended Jan. 25, 1993; amended Dec. 12, 1994; amended Sept. 5, 1997; amended Sept. 1, 2006; amended Dec 5, 2008.)

K.A.R. 4-16-3a Exemptions. (a) Notwithstanding the requirements for the exemption as a "custom slaughterer" as set forth in 9 C.F.R. 303.1(a) and (b) adopted by reference in K.A.R. 4-16-1c, both the custom slaughtering of dead or dying animals by any person and the custom processing of the carcasses of dead or dying animals by any person shall be prohibited.

(b)(1) The custom slaughtering of diseased or disabled animals by any person and the custom processing of the carcasses of diseased or disabled animals by any person may be allowed if both of the following requirements

are met:

- (A) The animal shall be examined by a licensed veterinarian on the day of slaughter.
- (B) The animal shall be accompanied by a health certificate that meets the following requirements:
 - (i) Is issued on the day of slaughter by that veterinarian. This health certificate shall be valid only on the

date of issuance;

- (ii) includes a record of the animal's body temperature, taken at the time of the veterinary examination;
- (iii) for cattle, states that the animal was ambulatory when examined;
- (iv) includes a description of the condition of the animal; and
- (v) states that the animal is free of any visible signs of infection or contagious disease.

(2) Notwithstanding the slaughter of an apparently healthy animal or an animal for which a health certificate has been issued, an establishment shall not custom process any carcass of an animal so infected that consumption of the resulting products of the animal could pose a health risk. This prohibition shall include all carcasses showing signs of any of the following:

- (A) Acute inflammation of the lungs, pleura, pericardium, peritoneum, or meninges;
- (B) septicemia or pyemia, whether puerperal, traumatic, or without any evident cause;
- (C) gangrenous or severe hemorrhagic enteritis or gastritis;
- (D) acute, diffuse metritis or mammitis;
- (E) phlebitis of the umbilical veins;
- (F) septic or purulent traumatic pericarditis;
- (G) any of the following conditions or similar conditions, either singly or in combination:
 - (i) Any acute inflammation, abscess, or suppurating sore, if associated with acute nephritis;
 - (ii) fatty and degenerated liver;
 - (iii) swollen, soft spleen;
 - (iv) marked pulmonary hyperemia;
 - (v) general swelling of lymph nodes;
 - (vi) diffuse redness of the skin;
 - (vii) cachexia; or
 - (viii) icteric discoloration of the carcass; or
- (H) salmonellosis.

(3) The department shall not be responsible for the costs associated with obtaining a health certificate.

(4)(A) An establishment may lose the privilege of custom slaughtering and custom processing diseased or disabled animals if any of the following occurs at the establishment:

- (i) Custom slaughter, custom processing, or both, without the required health certificate;
- (ii) custom slaughtering, custom processing, or both, with an inaccurate, incomplete, or falsified health certificate. Evidence of the falsification of any health certificate shall be forwarded to USDA-APHIS and to the Kansas board of veterinary medical examiners;
- (iii) custom slaughtering, custom processing, or both, of an animal that is so infected that consumption of the resulting products from that animal could pose a health risk; or
- (iv) any other violation of this act or any regulations adopted pursuant to this act.

(B) The slaughtering of diseased or disabled animals on a custom basis without the required health certificate may result in the revocation of the custom exemption.

(c) Except as specified in this subsection, the following animals with any of these conditions shall not be eligible for slaughter or processing for human food on a custom basis at any establishment and shall not be issued a health certificate:

- (1) Livestock that are known to have reacted to the tuberculin test;
- (2) any swine having a temperature of 106° F or higher and any cattle, sheep, or goats having a temperature of 105° F or higher;
- (3) any animal found in a comatose or semicomatose condition;
- (4) nonambulatory disabled cattle, which shall mean cattle that cannot rise from a recumbent position and that cannot walk, including those cattle with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column, or metabolic conditions;
- (5) all livestock showing symptoms of anaplasmosis, ketosis, leptospirosis, listeriosis, parturient paresis, pseudorabies, rabies, scrapie, tetanus, grass tetany, transport tetany, strangles, purpura hemorrhagica, azoturia, infectious equine encephalomyelitis, toxic encephalomyelitis (forage poisoning), dourine, acute influenza, generalized osteoporosis, glanders (farcy), acute inflammatory lameness, or extensive fistula;
- (6) all swine found to be affected with hog cholera;
- (7) all swine that are of lots in which one or more animals have been found to be affected with hog cholera;
- (8) any animal found to be affected with epithelioma of the eye;
- (9) any animal found to be affected with anthrax;
- (10) any animal of a lot in which anthrax is found, until it has been determined by a veterinary inspection that no anthrax-infected livestock remain in the lot;
- (11) all cattle found, upon veterinary inspection, to be affected with anasarca in an advanced stage and characterized by an extensive and generalized edema;

(12) any hog showing that it is affected with acute swine erysipelas;
(13) any animal showing signs of the onset of parturition, until after parturition and passage of the placenta;
(14) any goat that has reacted to a test for brucellosis; or
(15) any animal suspected of having been treated with or exposed to any substance that could impart a biological residue that would make the edible tissues unfit for human food or otherwise adulterated.

(d) Only those requirements of the act relating to sanitation and adulteration shall apply to the slaughtering or processing, or both, of healthy rabbits by any person if either of the following conditions is met:

(1) The rabbits are raised by that person and are for the exclusion use or consumption by that person, members of that person's household, former members of that person's household, or that person's nonpaying guests and employees.

(2)(A) That person slaughters not more than 250 rabbits in a calendar year;

(B) the rabbits are for distribution directly to household consumers from that person's own premises; and

(C) that person does not engage in the business of buying or selling any rabbits or rabbit products capable of use as human food in a calendar year. (Authorized by K.S.A. 2005 Supp. 65-6a44; implementing K.S.A. 2005 Supp. 65-6a31; effective Jan. 1, 1989; amended Sept. 1, 2006.)

K.A.R. 4-16-7a. Overtime work by inspection personnel. (a) Each establishment that requires inspection services at any time other than the establishment's regularly scheduled inspection periods shall be subject to overtime charges to defray the department's costs of providing these inspection services. These charges shall be applicable to the following:

(1) Any time in excess of the hours regularly scheduled for inspection in a particular day;

(2) any day in which inspection services are not regularly scheduled; and

(3) any time when emergency inspection services are required by the establishment.

(b) The amount of overtime for inspection services shall be calculated in quarter-hour units. The rate charged for this overtime shall be \$25 per hour, with a required minimum charge of two hours. (Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a26; effective May 1, 1986; amended Jan. 1, 1989; amended July 1, 1993; amended Jan. 17, 2003; amended July 18, 2008.)

K.A.R. 4-16-129a. Special marking for custom products. Each custom prepared carcass, parts thereof, and each package of custom prepared or processed product shall be plainly marked "CUSTOM--NOT FOR SALE" in letters not less than three-eighths inch in height immediately after being received or prepared.

K.A.R. 4-16-250. Adoption by reference. (Authorized by K.S.A. 65-6a44; implementing K.S.A. 65-6a25, 65-6a30 and 65-6a35; effective May 1, 1987; revoked Sept. 1, 2006.)

K.A.R. 4-16-251. Adoption by reference. (Authorized by K.S.A. 65-6a44; implementing K.S.A. 65-6a25, 65-6a30 and 65-6a35; effective May 1, 1987; revoked Sept. 1, 2006.)

K.A.R. 4-16-252 Temperature requirements. (Authorized by K.S.A. 65-6a44; implementing K.S.A. 65-6a25 and 65-6a30; effective Dec. 26, 1988; revoked Sept. 1, 2006.)

K.A.R. 4-16-260 Miscellaneous beef products. (Authorized by K.S.A. 65-6a44; implementing K.S.A. 65-6a20; effective May 1, 1988; revoked Sept. 1, 2006.)

K.A.R. 4-16-300. Civil penalty; order. Each order assessing a civil penalty shall include the following:

(a) A statement citing K.S.A. 65-6a56, and amendments thereto, authorizing the assessment of a civil penalty;

(b) a specific reference to each provision of the act or implementing regulation that the respondent is alleged to have violated;

(c) a concise statement of the factual basis for each alleged violation;

(d) the amount of the civil penalty that is assessed; and

(e) the notice of the respondent's right to request a hearing. (Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a56; effective July 1, 1992; amended Dec. 12, 1994; amended July 18, 2008.)

K.A.R. 4-16-301. (Authorized by K.S.A. 65-6a44; implementing K.S.A. 65-6a56; effective July 1, 1992; amended Dec. 12, 1994; revoked July 18, 2008.)

K.A.R. 4-16-302. Amount of civil penalty. (a) A separate civil penalty shall be assessed for each violation of any provision of the Kansas meat and poultry inspection act or any implementing regulation that results from each independent act or failure to act by any person, or the person's agent or employee. In determining whether a given violation is independent of and substantially distinguishable from any other violation for the purpose of assessing

separate civil penalties, consideration shall be given to whether each violation requires an element of proof not required by another violation. If several violations require the same elements of proof and are not distinguishable, assessment of separate civil penalties shall be within the discretion of the secretary or the secretary's authorized representative.

(b) For each violation, the amount of the civil penalty shall be within the following ranges:

(1) For each violation of K.S.A. 65-6a34 or K.S.A. 65-6a41, and amendments thereto, or any regulations implementing these statutes, the civil penalty shall be not less than \$100 and not more than \$1,000.

(2) For each violation of K.S.A. 65-6a22, K.S.A. 65-6a24, K.S.A. 65-6a25, K.S.A. 65-6a27(a), K.S.A. 65-6a29, K.S.A. 65-6a31, or K.S.A. 65-6a32, and amendments thereto, or any regulations implementing these statutes, the civil penalty shall be not less than \$100 and not more than \$2,500.

(3) For each violation of K.S.A. 65-6a20, K.S.A. 65-6a21, K.S.A. 65-6a23, K.S.A. 65-6a27(b), 65-6a28, or K.S.A. 65-6a33, and amendments thereto, or any regulations implementing these statutes, the civil penalty shall be not less than \$100 and not more than \$5,000.

(c) For the second or each subsequent occurrence of a violation within a three-year period for which a civil penalty has been assessed, the civil penalty assessed for the subsequent violation shall be not less than double the amount of the civil penalty assessed for the original violation but not more than the maximum amount for the category listed. (Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a56; effective July 1, 1992; amended July 18, 2008.)

K.A.R. 4-16-303. Criteria to determine dollar amount of the civil penalty. In determining the amount of civil penalty, the gravity of the violation shall be considered by the secretary or the secretary's designee. Factors to be considered shall include the following: (a) The potential of the act to injure or endanger the health of any consumer, or the general public;

(b) the severity of actual or potential injuries;

(c) the respondent's history of compliance with the Kansas meat and poultry inspection act and the implementing regulations;

(d) any action taken by the respondent to remedy the specific violation or to mitigate any adverse effects that were the result of the violation; and

(e) specification of whether or not the violation involved any adulterated article, misrepresentation, or fraud.

(Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a56; effective July 1, 1992; amended July 18, 2008.)

K.A.R. 4-16-304. Informal settlement. (a) Any respondent may request a settlement conference if the respondent timely filed a written request for hearing. The request may be made before the prehearing conference.

(b) If a settlement is reached, the parties shall reduce the settlement to writing and present the proposed written consent agreement to the secretary. The consent agreement shall state that, for the purpose of the proceeding, the following conditions are met:

(1) The respondent admits the jurisdictional allegations and admits the facts stipulated in the consent agreement.

(2) The respondent neither admits nor denies the specific violations contained in the order.

The respondent consents to the assessment of a stated civil penalty, if any is assessed. The consent agreement shall include all terms of the agreement and shall be signed by all parties or their counsel. (Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a56; effective July 1, 1992; amended Dec. 12, 1994; amended July 18, 2008.)

K.A.R. 4-16-305. Adjusting the amount of the civil penalty. (a) Each respondent shall present all evidence on the issue of adjustment of the civil penalty at the settlement conference. This evidence may include mitigating factors or new evidence not previously known to the secretary when the order was issued.

(b) Upon presentation by the respondent of new evidence establishing facts and circumstances that were unknown to the secretary or to the secretary's duly authorized agent when the order was issued and that relate to the gravity of the violation, an adjusted civil penalty may be assessed. If these additional facts establish that a respondent did not commit a violation, the order shall be amended or vacated.

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

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

(1) Whether or not a civil penalty is reduced shall be within the sole discretion of the secretary or the secretary's duly authorized representative.

(2) Reductions shall not occur unless evidence of mitigating factors has been presented by a respondent. (Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a56; effective July 1, 1992; amended Dec. 12, 1994; amended July 18, 2008.)

K.A.R. 4-17-1a Definitions. (a) Each of the following terms, as used in the portions of the code of federal regulations adopted by reference in K.A.R. 4-17-1c, shall have the meaning specified in this subsection:

(1) "The act," "act," and "Federal poultry products inspection act" shall mean the Kansas meat and poultry inspection act, K.S.A. 65-6a18 et seq. and amendments thereto.

(2) "Administrator," except as used in 9 C.F.R. 381.10(d)(2)(iii)(b), shall mean the secretary of the department of agriculture.

(3) "Commerce" shall mean intrastate commerce.

(4) "Department" shall mean the Kansas department of agriculture.

(5) "Federal food, drug and cosmetic act" shall mean the Kansas food, drug and cosmetic act, K.S.A. 65-655 et seq. and amendments thereto.

(6) "Federal inspection" shall mean inspection by the Kansas department of agriculture. (7) "Federal meat inspection act" shall mean the "Kansas meat and poultry inspection act," K.S.A. 65-6a18 et seq. and amendments thereto.

(8) "Form," either by number or by any other designation, shall mean a form supplied by the Kansas department of agriculture.

(9) "Egg products inspection act" shall mean the "Kansas egg law," K.S.A. 2-2501 et seq. and amendments thereto.

(10) "Official establishment" and "establishment" shall mean any permanently located building or adjacent premises that are registered pursuant to this act, where poultry or poultry products capable of use as human food are prepared as defined in K.S.A. 65-6a18(k) and amendments thereto.

(11) "Program," "food safety and inspection service," "inspection service," "service," and "FSIS" shall mean the meat and poultry inspection program of the department of agriculture.

(12) "Secretary," "national supervisor," "area supervisor," "circuit supervisor," and "station supervisor" shall mean the secretary of the department of agriculture.

(13) "U.S." and "United States" shall mean Kansas or the state of Kansas, as appropriate.

(14) "U.S. inspected" and "government inspected" shall mean inspected by the Kansas department of agriculture.

(b) The phrase "official review and copying" in 9 C.F.R. 417.5(f), which is adopted by reference in K.A.R. 4-17-1c, shall mean review and copying by the secretary of the department of agriculture or the secretary's designee. (Authorized by K.S.A. 2005 Supp. 65-6a44; implementing K.S.A. 2005 Supp. 65-6a20, K.S.A. 65-6a21, K.S.A. 65-6a22, K.S.A. 65-6a23, K.S.A. 65-6a25, and K.S.A. 2005 Supp. 65-6a30; effective Jan. 1, 1989; amended Jan. 21, 1991; amended Jan. 25, 1993; amended Sept. 5, 1997; amended Sept. 1, 2006.)

K.A.R. 4-17-1c Adoption by reference. (a) The following sections of 9 C.F.R. part 381, as revised on January 1, 2005, are hereby adopted by reference.

(1) 381.1, except the following terms and their definitions in subsection (b): "act," "adulterated," "misbranded," "territory," and "U.S. refused entry";

(2) 381.3 through 381.7, except 381.5;

(3) 381.10 through 381.35, except sections 381.10(a)(2) through 381.10(a)(7), 381.13(b), and 381.33, with the following modification: in section 381.10(b)(1), the number "20,000" shall be replaced by the number "1,000";

(4) 381.36;

(5) 381.37;

(6) 381.65 through 381.103;

(7) 381.108 through 381.182;

(8) 381.189 through 381.194;

(9) 381.210 through 381.218; and

(10) 381.300 through 381.500;

(b) Copies of this material or the pertinent portions thereof shall be available from the meat and poultry inspection program of the department of agriculture, Topeka, Kansas.

(Authorized by K.S.A. 2005 Supp. 65-6a44; implementing K.S.A. 2005 Supp. 65-6a20, K.S.A. 65-6a21, K.S.A. 65-6a22, K.S.A. 65-6a23, K.S.A. 65-6a25, and K.S.A. 2005 Supp. 65-6a30; effective Jan. 1, 1989; amended Jan. 21, 1991; amended Jan. 25, 1993; amended Dec. 12, 1994; amended Sept. 5, 1997; amended Sept. 1, 2006.)

K.A.R. 4-17-5a. Exemptions. (Authorized by K.S.A. 65-6a44; implementing K.S.A. 65-6a31; effective Jan. 1, 1989; amended Jan. 25, 1993; amended Dec. 12, 1994; revoked Sept. 1, 2006.)

K.A.R. 4-17-300. Civil penalty; order. Each order assessing a civil penalty shall include the following:

(a) A statement citing K.S.A. 65-6a56, and amendments thereto, authorizing the assessment of a civil penalty;

(b) a specific reference to each provision of the act or implementing regulation that the respondent is alleged to have violated;

(c) a concise statement of the factual basis for each alleged violation;

- (d) the amount of the civil penalty; and
- (e) the notice of the respondent's right to request a hearing. (Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a56; effective July 1, 1992; amended Dec. 12, 1994; amended July 18, 2008.)

K.A.R. 4-17-301. (Authorized by K.S.A. 65-6a44; implementing K.S.A. 65-6a56; effective July 1, 1992; amended Dec. 12, 1994; revoked July 18, 2008.)

K.A.R. 4-17-302. Amount of civil penalty. (a) A separate civil penalty shall be assessed for each violation of any provision of the Kansas meat and poultry inspection act or any implementing regulation that results from each independent act or failure to act by any person or the person's agent or employee. In determining whether a given violation is independent of and substantially distinguishable from any other violation for the purpose of assessing separate civil penalties, consideration shall be given to whether each violation requires an element of proof not required by another violation. If several violations require the same elements of proof and are not distinguishable, assessment of separate civil penalties shall be within the discretion of the secretary or the secretary's authorized representative.

(b) For each violation, the amount of the civil penalty shall be within the following ranges:

(1) For each violation of K.S.A. 65-6a34 or K.S.A. 65-6a41, and amendments thereto, or any regulations implementing these statutes, the civil penalty shall be not less than \$100 and not more than \$1,000.

(2) For each violation of K.S.A. 65-6a22, K.S.A. 65-6a24, K.S.A. 65-6a25, K.S.A. 65-6a27(a), K.S.A. 65-6a29, K.S.A. 65-6a31, or K.S.A. 65-6a32, and amendments thereto, or any regulations implementing these statutes, the civil penalty shall be not less than \$100 and not more than \$2,500.

(3) For each violation of K.S.A. 65-6a20, K.S.A. 65-6a21, K.S.A. 65-6a23, K.S.A. 65-6a27(b), 65-6a28, or K.S.A. 65-6a33, and amendments thereto, or any regulations implementing these statutes, the civil penalty shall be not less than \$100 and not more than \$5,000.

(c) For the second and each subsequent occurrence of a violation within a three-year period for which a civil penalty has been assessed, the civil penalty assessed for the subsequent violation shall be not less than double the amount of the civil penalty assessed for the original violation but not more than the maximum amount for the category listed. (Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a56; effective July 1, 1992; amended July 18, 2008.)

K.A.R. 4-17-303. Criteria to determine dollar amount of the civil penalty. In determining the amount of any civil penalty, the gravity of the violation shall be considered by the secretary or the secretary's designee. Factors to be considered shall include the following: (a) The potential of the act to injure or endanger the health of any consumer, or the general public;

(b) the severity of actual or potential injuries;

(c) the respondent's history of compliance with the Kansas meat and poultry inspection act and the implementing regulations;

(d) any action taken by the respondent to remedy the specific violation or to mitigate any adverse effects that were the result of the violation; and

(e) specification of whether or not the violation involved any adulterated article, misrepresentation, or fraud.

(Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a56; effective July 1, 1992; amended July 18, 2008.)

K.A.R. 4-17-304. Informal settlement. (a) Any respondent may request a settlement conference if the respondent timely filed a written request for hearing. The request may be made before the prehearing conference.

(b) If a settlement is reached, the parties shall reduce the settlement to writing and present the proposed written consent agreement to the secretary. The consent agreement shall state that, for the purpose of the proceeding, the following conditions are met:

(1) The respondent admits the jurisdictional allegations and admits the facts stipulated in the consent agreement.

(2) The respondent neither admits nor denies the specific violations contained in the order.

(3) The respondent consents to the assessment of a stated civil penalty, if any is assessed.

The consent agreement shall include all terms of the agreement and shall be signed by all parties or their counsel. (Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a56; effective July 1, 1992; amended Dec. 12, 1994; amended July 18, 2008.)

K.A.R. 4-17-305. Adjusting the amount of the civil penalty. (a) Each respondent shall present all evidence on the issue of adjustment of the civil penalty at the settlement conference. This evidence may include mitigating factors or new evidence not previously known to the secretary when the order was issued.

(b) Upon presentation by the respondent of new evidence establishing facts and circumstances that were unknown to the secretary or to the secretary's duly authorized agent when the order was issued and that relate to the gravity of the violation, an adjusted civil penalty may be assessed. If these additional facts establish a respondent

did not commit a violation, the order shall be amended or vacated.

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

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

(1) Whether or not a civil penalty is reduced shall be within the sole discretion of the secretary or the secretary's duly authorized representative.

(2) Reductions shall not occur unless evidence of mitigating factors has been presented by the respondent.
(Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a56; effective July 1, 1992; amended Dec. 12, 1994; amended July 18, 2008.)