

Proposed

**Department of Agriculture, Division of Conservation
Notice of Hearing on Proposed
Administrative Regulations, Statewide**

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A public hearing will be conducted at 10:00 a.m., Thursday, April 26, 2018, in the 1st floor meeting room 124 of the Kansas Department of Agriculture, 1320 Research Park Dr., Manhattan, Kansas, to consider the adoption of proposed regulations.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Secretary of Agriculture, 1320 Research Park Dr., Manhattan, Kansas, 66502, or by e-mail at ronda.hutton@ks.gov. All interested parties will be given a reasonable opportunity to present their views orally on the adoption of the proposed regulations during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes. These regulations are proposed for adoption on a permanent basis. A summary of the proposed regulations and their economic impact follows:

K.A.R. 11-13-1 through 11-13-6. The Kansas Sediment and Nutrient Reduction Initiative consists of new requirements for the Kansas Water Quality Initiative created under K.S.A. 2-1915. The Kansas Sediment and Nutrient Reduction Initiative shall follow all criteria and requirements from the amended establishment of the Kansas Conservation Reserve Enhancement Program (CREP) set out in K.S.A. 2-1933. The new requirements for the Initiative will be implemented by the Kansas Department of Agriculture, Division of Conservation to enhance participation under the Farm Service Agency (FSA) continuous Conservation Reserve Program (CRP). A one-time state incentive payment will be made to participants to supplement federal payments for grassed waterways, shallow water areas for wildlife, filter strips, riparian buffers, wetland restorations, farmable wetland/farmable wetland buffers, bottomland timber establishment and habitat buffers for upland birds.

The targeted areas for the initiative are in the Big Creek, Delaware, Little Arkansas, Lower Big Blue, Lower Kansas, Lower Little Blue, Lower Republican, Lower Smoky Hill, Neosho Headwaters, Upper Cottonwood and Lower Cottonwood watersheds. The boundaries include HUC12 watersheds that are above the five high priority reservoirs, are identified as target areas for nutrient and sediment reduction in Watershed Restoration and Protection Strategy (WRAPS) plans, and address additional public water supply concerns (Little Arkansas, Big Creek). These boundaries will contain two tiers of priority enrollment. Tier 1 areas include those HUC12 watersheds identified in WRAPS plans as highest priority target areas for nutrient and sediment reduction. Tier 2 areas will encompass the remaining area within the boundaries.

K.A.R. 11-13-1. Definitions. This regulation establishes the operating definitions for words and terms which are used in the program implementation.

K.A.R. 11-13-2. Initiative requirements for new applications; funds for existing contracts. This regulation states that new applications for the initiative will be required to meet the requirements set out in this set of regulations. The new requirements will be known as the Kansas Sediment and Nutrient Reduction Initiative which consist of new requirements for the Kansas Water Quality Initiative. Current contracts under the initiative will continue to be paid through funds authorized by

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K.S.A. 2-1915.

K.A.R. 11-13-3. Selection of applicants for initiative. This regulation outlines the criteria for which eligible applicants are approved for funding. It outlines two tiers of eligible payments based on location and that acres that are enrolled in existing CRP are not eligible for payments.

K.A.R. 11-13-4. Haying and grazing. This regulation sets forth the opportunities for haying and grazing of eligible acres based upon the existing CRP rules.

K.A.R. 11-13-5. Practices eligible for incentive payments. This regulation outlines which practices are eligible to receive incentive payments through the initiative. It also states that incentive payments are in addition to any CRP payments.

K.A.R. 11-13-6. Incentive payments; refunds. This regulation identifies the basis on which approved applications for the initiative will be evaluated and prioritized for a one time sign up incentive payment. Two tiers of payments are identified in this regulation based on location and eligible acres enrolled. This regulation outlines the process in which an incentive payment refund would be made if the federal CRP contract is terminated or a participant fails to meet initiative requirements.

Economic Impact Statement:

The Kansas Sediment and Nutrient Reduction Initiative is being developed to be the delivery mechanism for landowner sign-up incentive payments for continuous CRP practices previously authorized by K.S.A. 2-1915 and K.S.A. 2-1933. The new requirements will provide more eligible conservation practices with better state incentives to encourage landowners to enroll in more concentrated, targeted geographic areas as well as providing more water quality improvement benefits.

The Division of Conservation's ability to offer the sign-up incentive payments to landowners in the targeted areas would not be contingent on the approval of a nutrient and sediment reduction CREP by FSA. Participation in the Kansas Sediment and Nutrient Reduction Initiative is contingent on the ability of FSA to approve new applications in the CRP program. The CRP program has a total nationwide acre cap. Once the cap is hit, applications cannot be approved.

The proposed regulations are not mandated by federal law.

Contingent on funding by the Kansas Legislature pursuant to K.S.A. 2-1915 and K.S.A. 2-1933, a maximum enrollment of 10,000 acres, would be estimated at a total financial obligation of approximately \$3.75 million, with \$2.0 million provided by the State of Kansas in sign-up incentive payments and \$1.750 million to fund seven Water Quality Coordinator positions for five years. The program will be initiated in FY2018 or FY2019 with \$281,312 of existing start-up money from the Kansas State Water Plan Fund, and requests for additional funds will only be made as the program enrollment develops accordingly. The Water Quality Coordinator positions would be housed in Kansas Natural Resources Conservation Service Management Units and would be employed by local Conservation Districts.

A Division of Conservation's Riparian and Wetland Program Manager will administer the program in addition to several other programs. The personnel costs to the agency for this position would be

approximately \$80,000 per year. An estimated additional \$2,000 per year will be expended for supplies, work station, postage, computer equipment, meetings and travel expenses. The agency may incur additional administrative costs to conduct field investigations and monitor program success.

The Department of Administration, Division of Accounts and Reports will incur routine, minimal costs associated with the processing of warrants to support the contract payment procedures for the one time incentive payments allocated to landowners. These minor variations in the work regimen of the agency should not require any additional funding.

The Kansas Sediment and Nutrient Reduction Initiative will improve the quality of the project area waterways that serve as drinking water sources for area residents. This program will also support implementation of the Kansas Nutrient Reduction Framework developed by the Kansas Department of Health and Environment, thus demonstrating Kansas' commitment to addressing nutrient-related water quality issues. Practices implemented will reduce sedimentation and thereby slow the rate of storage loss in downstream reservoirs. The program will enhance the effectiveness of other programs and activities in the watersheds that focus on reducing nutrients and sedimentation. In addition, the project will improve wildlife habitat. The buffers, filter strips and other practices installed under the Kansas Sediment and Nutrient Reduction Initiative will enable farmers to protect water quality while maintaining the productivity of their farms.

Goals:

The primary goals of the Kansas Sediment and Nutrient Reduction Initiative include:

- Secure, restore and protect water supply storage and water quality through the installation of practices that reduce sedimentation and nutrient runoff.
- Reduce sediment loading by up to or more than 58,000 tons and phosphorous loading by up to or more than 92,000 pounds.
- Improve wildlife habitat.

Any individual with a disability may request accommodations in order to participate in the public hearing and may request the proposed regulations and impact statement in an accessible format. Requests for accommodations should be made at least five working days in advance of the hearing by contacting Ronda Hutton at (785) 564-6715 or fax (785) 564-6777. Handicapped parking is located on the west side of the building at 1320 Research Park Drive, Manhattan. The entrance to the building is also on the west side and is accessible to individuals with disabilities.

Copies of the regulations and their economic impact statement may be obtained by contacting the Department of Agriculture, Ronda M. Hutton, 1320 Research Park Drive, Manhattan, KS 66502 or (785) 564-6715 or by accessing the department's web site at agriculture.ks.gov. Comments may also be made through our website under the proposed regulation.

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Jackie McClaskey
Secretary
Kansas Department of Agriculture

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Article 13. Kansas Sediment and Nutrient Reduction Initiative

K.A.R. 11-13-1. Definitions. Each of the following terms, as used in this article of the division of conservation's regulations, shall have the meaning specified in this regulation:

(a) "Bottomland timber establishment" means the trees planted in floodplains adjacent to perennial streams to provide wildlife habitat and other benefits.

(b) "CRP" means the conservation reserve program administered by the USDA farm service agency.

(c) "Director" means the executive director of the division of conservation, Kansas department of agriculture or the executive director's designee.

(d) "Farmable wetland or farmable wetland buffer" means land eligible for restoration by improving the land's hydrology and vegetation.

(e) "Filter strip" means a strip or area of grass for removing sediment, organic matter, and other pollutants from runoff and wastewater and for providing food and cover for wildlife.

(f) "FSA" means the farm service agency in the USDA.

(g) "Grassed waterway" means a designated strip of grass that is designed to convey runoff and gully erosion for the purpose of improving water quality and providing wildlife habitat.

(h) "Habitat buffers for upland birds" means a narrow band of native grasses, legumes, forbs, or shrubs, or any combination of these, to provide habitat for bobwhite quail, ring-necked pheasant, and other upland birds and to limit the amount of nutrients, sediment, pesticides, and other contaminants entering water bodies.

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(i) "HUC 12 watershed" means a hydrological unit code consisting of a sequence of 12 numbers identifying a hydrological feature like a river, river reach, or lake or an area like a drainage basin.

(j) "Initiative" means the Kansas water quality buffer initiative and the application requirements for the program specified in this article of the division of conservation's regulations. This term is also known as the Kansas sediment and nutrient reduction initiative.

(k) "NRCS" means natural resources conservation service.

(l) "Practices" means the use of cultural techniques or structures installed or constructed on land for the purpose of improving or maintaining water quality.

(m) "Program-eligible area" means the Big Creek, Delaware, Little Arkansas, Lower Big Blue, Lower Kansas, Lower Little Blue, Lower Republican, Lower Smoky Hill, Neosho Headwaters, Upper Cottonwood, and Lower Cottonwood watersheds.

(n) "Program-eligible boundaries" means the boundaries based on HUC 12 watersheds that are above Tuttle Creek, Milford, Perry, John Redmond, and Clinton reservoirs and are identified as target areas for nutrient and sediment reduction in watershed restoration and protection strategy plans. The program-eligible boundaries shall contain two tiers for priority enrollment, which are called tier 1 areas and tier 2 areas.

(o) "Shallow water areas for wildlife" means wet areas that have been developed or restored and include 6-18 inches of water depth for wildlife.

(p) "Tier 1 areas" means those HUC 12 watersheds identified in watershed restoration and protection strategy plans as the highest priority target areas for nutrient and sediment reduction within program-eligible boundaries.

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(q) "Tier 2 areas" means all areas within the program-eligible boundaries that are not tier 1 areas.

(r) "Unfarmable field" means the remaining portion of a field in which 51 percent or more of the total acreage has been enrolled in CRP.

(s) "USDA" means United States department of agriculture.

(t) "Wetland restoration" means the restoration of constructed wetlands for the purpose of intercepting tile runoff, reducing nutrient loss, improving water quality, and enhancing agricultural production practices.

(u) "WRAPS" means watershed restoration and protection strategy, which consists of a planning and management framework intended to engage stakeholders in a process to identify watershed restoration. The process documents stakeholder goals, strategies to achieve the goals, and the resources required to implement the strategies. (Authorized by and implementing K.S.A. 2017 Supp. 2-1915; effective P-_____.)

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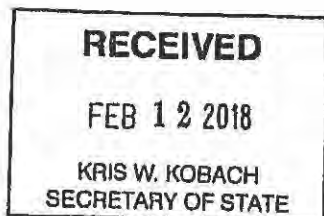
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K.A.R. 11-13-2. Initiative requirements for new applications; funds for existing contracts.

On and after the effective date of this regulation, all new applications for the initiative shall be required to meet the requirements in this article of the division of conservation's regulations.

These requirements shall be known as the Kansas sediment and nutrient reduction initiative, which consists of the new requirements for the Kansas water quality initiative. All persons with parcels currently enrolled in the initiative with contracts whose terms have not yet expired shall continue to be paid through funds made available under K.S.A. 2-1915, and amendments thereto, and any other available sources. (Authorized by and implementing K.S.A. 2017 Supp. 2-1915; effective P-_____.)



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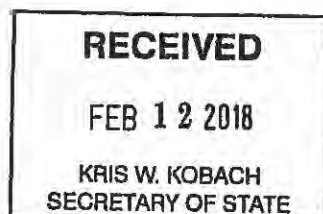
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K.A.R. 11-13-3. Selection of applicants for initiative. Funding may be distributed to initiative applicants for proposed projects that meet the eligibility requirements specified in K.S.A. 2-1915 and K.S.A. 2017 Supp. 2-1933, and amendments thereto, and the director's requirements as follows:

(a) Land shall lie within a tier 1 area or a tier 2 area of the initiative-eligible area and meet the basic eligibility criteria for CRP.

(b) To be eligible for tier 1 area payments, all of the land shall be within the tier 1 area. To be eligible for tier 2 area payments, all of the land shall be within the tier 2 area.

(c) Land that has an existing CRP contract or an approved offer with a CRP contract pending shall not be eligible for the initiative. (Authorized by K.S.A. 2017 Supp. 2-1915; implementing K.S.A. 2017 Supp. 2-1915 and 2-1933; effective P-_____.)



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K.A.R. 11-13-4. Haying and grazing. Any eligible initiative applicant that is authorized to hay or graze, or both, pursuant to an existing CRP contract may conduct these activities upon initiative-eligible land without penalty. (Authorized by K.S.A. 2016 Supp. 2-1915; implementing K.S.A. 2016 Supp. 2-1915 and 2-1933; effective P-_____.)

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K.A.R. 11-13-5. Practices eligible for incentive payments. (a) Any of the following practices may be eligible for incentive payments:

- (1) Grassed waterways;
- (2) shallow water areas for wildlife;
- (3) filter strips;
- (4) riparian buffers;
- (5) wetland restorations;
- (6) improvements to farmable wetland or farmable wetland buffers by utilizing any of the practices listed in this regulation or any other conservation practice approved by the director;
- (7) bottomland timber establishment; or
- (8) habitat buffers for upland birds.

(b) Payments made through the initiative shall be in addition to any CRP payments.

(Authorized by K.S.A. 2017 Supp. 2-1915; implementing K.S.A. 2017 Supp. 2-1915 and 2-1933; effective P-_____.)

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K.A.R. 11-13-6. Incentive payments; refunds. (a) Incentive payments under the initiative shall be made on a one-time basis coinciding with enrollment in the CRP. Each incentive payment shall be an upfront payment on all eligible acres enrolled.

(b) Incentive payments shall not exceed the following:

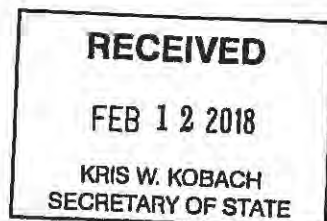
(1) \$225.00 per acre in tier 1 areas; and

(2) \$162.50 per acre in tier 2 areas.

(c) Any acres determined to be in an unfarmable field may be eligible for the one-time incentive payment if the applicant agrees to establish and maintain permanent vegetative cover for the duration of the CRP contract.

(d) If a CRP contract is terminated by the FSA for any contract violation or for any other reason, a refund of the incentive payment shall be required.

(e) A refund of the incentive payment shall be required from any initiative participant who fails to meet the initiative requirements. (Authorized by K.S.A. 2017 Supp. 2-1915; implementing K.S.A. 2017 Supp. 2-1915 and 2-1933; effective P-_____.)



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**KANSAS DEPARTMENT OF AGRICULTURE
ECONOMIC IMPACT STATEMENT
(Proposed) K.A.R. 11-13-1 through K.A.R. 11-13-6**

I. Summary of proposed regulations, including purpose.

The Kansas Sediment and Nutrient Reduction Initiative consists of new requirements for the Kansas Water Quality Initiative created under K.S.A. 2-1915. The Kansas Sediment and Nutrient Reduction Initiative shall follow all criteria and requirements from the amended establishment of the Kansas Conservation Reserve Enhancement Program (CREP) set out in K.S.A. 2-1933. The new requirements for the Initiative will be implemented by the Kansas Department of Agriculture, Division of Conservation to enhance participation under the Farm Service Agency (FSA) continuous Conservation Reserve Program (CRP). A one-time state incentive payment will be made to participants to supplement federal payments for grassed waterways, shallow water areas for wildlife, filter strips, riparian buffers, wetland restorations, farmable wetland/farmable wetland buffers, bottomland timber establishment and habitat buffers for upland birds.

The targeted areas for the initiative are in the Big Creek, Delaware, Little Arkansas, Lower Big Blue, Lower Kansas, Lower Little Blue, Lower Republican, Lower Smoky Hill, Neosho Headwaters, Upper Cottonwood and Lower Cottonwood watersheds. The boundaries include HUC12 watersheds that are above the five high priority reservoirs, are identified as target areas for nutrient and sediment reduction in Watershed Restoration and Protection Strategy (WRAPS) plans, and address additional public water supply concerns (Little Arkansas, Big Creek). These boundaries will contain two tiers of priority enrollment. Tier 1 areas include those HUC12 watersheds identified in WRAPS plans as highest priority target areas for nutrient and sediment reduction. Tier 2 areas will encompass the remaining area within the boundaries.

K.A.R. 11-13-1. Definitions. This regulation establishes the operating definitions for words and terms which are used in the program implementation.

K.A.R. 11-13-2. Initiative requirements for new applications; funds for existing contracts. This regulation states that new applications for the initiative will be required to meet the requirements set out in this set of regulations. The new requirements will be known as the Kansas Sediment and Nutrient Reduction Initiative which consist of new requirements for the Kansas Water Quality Initiative. Current contracts under the initiative will continue to be paid through funds authorized by K.S.A. 2-1915.

K.A.R. 11-13-3. Selection of applicants for initiative. This regulation outlines the criteria for which eligible applicants are approved for funding. It outlines two tiers of eligible payments based on location and that acres that are enrolled in existing CRP are not eligible for payments.

K.A.R. 11-13-4. Haying and grazing. This regulation sets forth the opportunities for haying and grazing of eligible acres based upon the existing CRP rules.

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K.A.R. 11-13-5. Practices eligible for incentive payments. This regulation outlines which practices are eligible to receive incentive payments through the initiative. It also states that incentive payments are in addition to any CRP payments.

K.A.R. 11-13-6. Incentive payments; refunds. This regulation identifies the basis on which approved applications for the initiative will be evaluated and prioritized for a one time sign up incentive payment. Two tiers of payments are identified in this regulation based on location and eligible acres enrolled. This regulation outlines the process in which an incentive payment refund would be made if the federal CRP contract is terminated or a participant fails to meet initiative requirements.

II. Reason or reasons the proposed regulations are required, including whether or not the regulation is mandated by federal law.

The Kansas Sediment and Nutrient Reduction Initiative is being developed to be the delivery mechanism for landowner sign-up incentive payments for continuous CRP practices previously authorized by K.S.A. 2-1915 and K.S.A. 2-1933. The new requirements will provide more eligible conservation practices with better state incentives to encourage landowners to enroll in more concentrated, targeted geographic areas as well as providing more water quality improvement benefits.

The Division of Conservation's ability to offer the sign-up incentive payments to landowners in the targeted areas would not be contingent on the approval of a nutrient and sediment reduction CREP by FSA. Participation in the Kansas Sediment and Nutrient Reduction Initiative is contingent on the ability of FSA to approve new applications in the CRP program. The CRP program has a total nationwide acre cap. Once the cap is hit, applications cannot be approved.

The proposed regulations are not mandated by federal law.

III. Anticipated economic impact upon the Kansas Department of Agriculture

Contingent on funding by the Kansas Legislature pursuant to K.S.A. 2-1915 and K.S.A. 2-1933, a maximum enrollment of 10,000 acres, would be estimated at a total financial obligation of approximately \$3.75 million, with \$2.0 million provided by the State of Kansas in sign-up incentive payments and \$1.750 million to fund seven Water Quality Coordinator positions for five years. The program will be initiated in FY2018 or FY2019 with \$281,312 of existing start-up money from the Kansas State Water Plan Fund, and requests for additional funds will only be made as the program enrollment develops accordingly. The Water Quality Coordinator positions would be housed in Kansas Natural Resources Conservation Service Management Units and would be employed by local Conservation Districts.

A Division of Conservation's Riparian and Wetland Program Manager will administer the program in addition to several other programs. The personnel costs to the agency for this position would be approximately \$80,000 per year. An estimated additional \$2,000 per year will be expended for supplies, work station, postage, computer equipment, meetings and travel expenses.

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The agency may incur additional administrative costs to conduct field investigations and monitor program success.

IV. Anticipated financial impact upon other governmental agencies and upon private business or individuals.

The Department of Administration, Division of Accounts and Reports will incur routine, minimal costs associated with the processing of warrants to support the contract payment procedures for the one time incentive payments allocated to landowners. These minor variations in the work regimen of the agency should not require any additional funding.

V. Less Costly or Intrusive Methods That Were Considered, But Rejected, And The Reason For Rejection.

None.

VI. Environmental Impact

The Kansas Sediment and Nutrient Reduction Initiative will improve the quality of the project area waterways that serve as drinking water sources for area residents. This program will also support implementation of the Kansas Nutrient Reduction Framework developed by the Kansas Department of Health and Environment, thus demonstrating Kansas' commitment to addressing nutrient-related water quality issues. Practices implemented will reduce sedimentation and thereby slow the rate of storage loss in downstream reservoirs. The program will enhance the effectiveness of other programs and activities in the watersheds that focus on reducing nutrients and sedimentation. In addition, the project will improve wildlife habitat. The buffers, filter strips and other practices installed under the Kansas Sediment and Nutrient Reduction Initiative will enable farmers to protect water quality while maintaining the productivity of their farms.

Goals:

The primary goals of the Kansas Sediment and Nutrient Reduction Initiative include:

- Secure, restore and protect water supply storage and water quality through the installation of practices that reduce sedimentation and nutrient runoff.
- Reduce sediment loading by up to or more than 58,000 tons and phosphorous loading by up to or more than 92,000 pounds.
- Improve wildlife habitat.

