

State of Kansas
Department of Health and Environment
Notice of Hearing on Proposed Administrative Regulations

The Kansas Department of Health and Environment (KDHE), Division of Public Health, Bureau of Epidemiology and Public Health Informatics, will conduct a public hearing at 11:00 a.m. Thursday, October 15, 2020, in the Azure Conference Room, fourth floor, Curtis State Office Building, 1000 SW Jackson, Topeka, Kansas, to consider the adoption of proposed new KDHE Article 1 regulations 28-1-40, 28-1-41, 28-1-42, 28-1-43 and 28-1-44, regarding contact tracing. These regulations are being proposed as temporary regulations and as permanent regulations. A summary of the proposed regulations and estimated economic impact follows:

Summary of Regulations:

K.A.R. 28-1-40. Definitions. In addition to the terms defined in L. 2020 Special Session, ch. 1, sec. 16, and amendments thereto, adds defined terms: department, personal information, protected health information, and third party as used in K.A.R. 28-1-40 through 28-1-43.

K.A.R. 28-1-41. Contact tracers. Specifies the qualifications and training requirements and the oath or affirmation for individual contact tracers acting under the authority of the secretary or a local health officer.

K.A.R. 28-1-42. Contact data; communication with contacts. Specifies the personal information and health data that may be collected for any contact by an individual acting as a contact tracer under the authority of the secretary or a local health officer. Provides the text for a contact tracer to use whenever communicating with a contact. Requires that a contact tracer document whether the text was provided and the contact's responses to the questions.

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K.A.R. 28-1-43. Surrender or destruction of contact data. Sets forth when contact tracers must surrender contact data to the secretary or local health officer and when contact data must be destroyed.

K.A.R. 28-1-44. Sunset provision. Specifies that K.A.R. 28-1-40 through 28-1-43 will have no force and effect after May 1, 2021, or when L. 2020 Special Session, ch. 1, sec. 16, expires, whichever is later.

Economic Impact:

Cost to the agency: The proposed regulations will result in minimal costs to KDHE that can be absorbed in the ongoing KDHE budget. KDHE has overseen contact tracing for a number of years, working with local health departments and businesses.

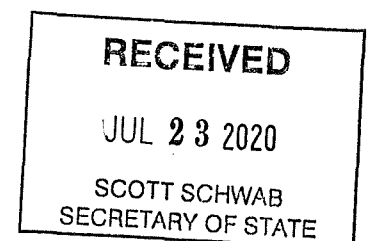
Cost to the public: KDHE does not anticipate that any costs will be passed to members of the public because of the proposed regulations. These regulations do not impose costs on businesses and economic development.

Cost to other governmental agencies or units: The proposed regulations will impose costs on local health departments. However, KDHE estimates that the annual and total implementation and compliance costs of these regulations on local health departments will be minimal.

While these proposed regulations will only result in minimal costs, the cost of contact tracing due to COVID-19 will be extensive.

A detailed economic impact is provided in the economic impact statement that is available from the KDHE contact person or at the KDHE Bureau of Epidemiology and Public Health Informatics website, as listed below.

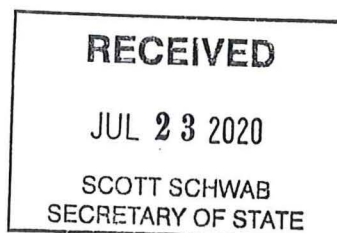
The time period between the publication of this notice and the scheduled hearing



constitutes a 60-day public comment period for the purpose of receiving written public comments on the proposed regulations. All interested parties may submit written comments prior to 5:00 p.m. on the day of the hearing to Farah S. Ahmed, MPH, PhD, Environmental Health Officer and State Epidemiologist, Bureau of Epidemiology and Public Health Informatics, Kansas Department of Health and Environment, Curtis State Office Bldg., 1000 SW Jackson, Suite 330, Topeka, KS 66612-1365, by email to Farah.Ahmed@ks.gov or by fax to 1-877-427-7318. During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulations as well as an opportunity to submit their written comments. It is requested that each individual giving oral comment also provide a written copy for the record. In order to give each individual an opportunity to present their views, it may be necessary for the hearing officer to request that each presenter limit an oral presentation to an appropriate time frame.

Complete copies of the proposed regulations and the corresponding economic impact statement may be obtained from the KDHE Bureau of Epidemiology and Public Health Informatics website, at <http://www.kdheks.gov/bephi/index.html> at the Regulations and Statutes link, or by contacting Farah S. Ahmed at Farah.Ahmed@ks.gov, 785-296-6426, or fax 1-877-427-7318. Questions pertaining to the proposed regulations should be directed to Farah S. Ahmed at the contact information above.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and the economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Farah S. Ahmed.



Lee A. Norman, M.D.
Secretary

28-1-40. Definitions. In addition to the terms defined in L. 2020 Special Session, ch. 1, sec. 16 and amendments thereto, each of the following terms, as used in K.A.R. 28-1-40 through 28-1-43, shall have the meaning specified in this regulation:

(a) "Department" means Kansas department of health and environment.

(b) "Personal information" means contact data collected as specified in K.A.R. 28-1-42 and "personal information" collected pursuant to K.S.A. 50-7a01, and amendments thereto.

(c) "Protected health information" has the meaning specified in K.S.A. 65-6822, and amendments thereto.

(d) "Third party" means any of the following, other than any of the entities specified in K.S.A. 65-118 and amendments thereto:

(1) An individual, other than a contact tracer;

(2) an organization;

(3) a business; or

(4) an entity similar to any of the entities specified in paragraphs (d)(1) through (3).

(Authorized by and implementing L. 2020 Special Session, ch. 1, sec. 16; effective,

T-_____, _____; effective P-_____.)

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28-1-41. Contact tracers. (a) Each individual acting as a contact tracer under the authority of the secretary or a local health officer shall meet the following qualifications and training requirements:

- (1) Be at least 18 years of age;
- (2) possess a high school diploma or GED certificate; and
- (3) complete a contact tracing training program approved by the secretary.

(b) Each individual acting as a contact tracer under the authority of the secretary or a local health officer shall execute the following oath or affirmation:

"I, [name] , acknowledge that I have completed the training to become a contact tracer. I am familiar with the provisions contained in and duties required by L. 2020 Special Session, ch. 1, sec. 16, attached hereto and incorporated by reference, including the duty of confidentiality stated therein. I do solemnly swear (or affirm) that I will comply with those Kansas COVID-19 contact tracing provisions while acting as a contact tracer. So help me God.

Signature: _____ Date: _____"

(c) Any individual having conscientious scruples against taking an oath ending with a reference to a deity may affirm with like effect without the need to make a reference to the deity.

(d) The oath or affirmation specified in subsection (b) may be executed before the secretary, the secretary's designee, a local health officer, or the local health officer's designee.

(Authorized by and implementing L. 2020 Special Session, ch. 1, sec. 16; effective,

T-_____, _____; effective P-_____.)

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28-1-42. Contact data; communication with contacts. (a) Each individual acting as a contact tracer under the authority of the secretary or a local health officer shall be limited to collecting the following personal information for any contact:

- (1) Identity;
- (2) address;
- (3) telephone number;
- (4) electronic-mail address;
- (5) geographical or similar location information at certain points in time; and
- (6) the name of each individual who could be an additional contact.

(b) Each individual acting as a contact tracer under the authority of the secretary or a local health officer shall be limited to collecting the following health data for any contact:

- (1) Age;
- (2) physical biometrics;
- (3) temperature; and
- (4) symptoms.

(c) Whenever a contact tracer communicates with a contact, the contact tracer shall advise the contact that the contact is under no compulsion or prohibition from participating in the contact tracing.

(1) The contact tracer shall use the following text, or a substantially similar text, when advising the contact:

“Participation in COVID-19 contact tracing is voluntary. You may not be compelled or prohibited from participation with contact tracing for COVID-19. If in good faith you do

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provide information requested by a contact tracer, you shall be immune from civil, criminal, and administrative liability for disclosing the information. If you do not provide information, you are not subject to civil, criminal, or administrative penalties. Do you understand what I have said? May I ask you questions concerning a COVID-19 contact tracing?"

(2) The contact tracer shall document in the contact data whether the text was provided and what were the contact's responses to the questions. (Authorized by and implementing L. 2020 Special Session, ch. 1, sec. 16; effective, T-_____, _____; effective P-_____.)

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28-1-43. Surrender or destruction of contact data. (a) Each individual acting as a contact tracer for the secretary or a local health officer who possesses contact data pursuant to L. 2020 Special Session, ch. 1, sec. 16, and amendments thereto, shall surrender all contact data to the secretary or the local health officer when the contact data is no longer needed to monitor the contact's health and the contact has been released from quarantine.

(b) Each individual who possesses contact data permitted to be collected as specified in K.A.R. 28-1-42 shall destroy any contact data that contains protected health information, individual movement or mobility data, or personal information whenever the secretary determines that the contact data that contains protected health information, individual movement or mobility data, or personal information is no longer necessary for the purpose of containing the spread of COVID-19. (Authorized by and implementing L. 2020 Special Session, ch. 1, sec. 16; effective, T-_____, _____; effective P-_____.)

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Proposed

28-1-44. Sunset provision. K.A.R. 28-1-40 through 28-1-43 shall have no force and effect after May 1, 2021 or upon the expiration of L. 2020 Special Session, ch. 1, sec. 16 and amendments thereto, whichever is later. (Authorized by and implementing L. 2020 Special Session, ch. 1, sec. 16; effective, T- _____, _____; effective P- _____.)

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**Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the Budget**

Proposed

Kansas Department of Health and Environment
Agency

Susan Vogel
Agency Contact

296-1291
Contact Phone Number

K.A.R. 28-1-40, 28-1-41, 28-1-42, 28-1-43, and 28-1-44 P-- New
K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to: Division of the Budget
900 SW Jackson, Room 504-N
Topeka, KS 66612

I. Brief description of the proposed rule(s) and regulation(s).

K.A.R. 28-1-40 through 28-1-45 provides the requirements and limitations for contact tracing related to COVID-19 as provided by Section 16 of 2020 House Bill 2016 passed during the June 2020 Special Legislative Session. Contact tracing uses information received from infected and potentially infected individuals as to where they may have been and who they may have been around. Contact tracing is a tool used in controlling the spread of disease where public health tracks the disease and notifies people who may have been exposed. It is a critical tool for containing a disease. These regulations specify the training required to be a contact tracer, requirements to be a contact tracer, the health data that can be collected, the personal information that can be collected, and when contact data must be destroyed. These regulations would sunset when Section 16, 2020 Special Session House Bill 2016 sunsets. That date is currently set by the law as May 1, 2021.

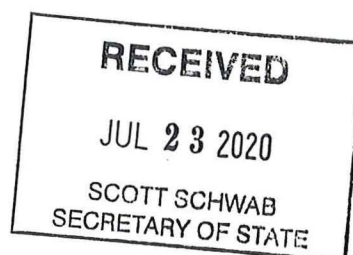
II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)*

These regulations are not required by federal regulations. The border states do not have regulations similar to these proposed regulations.

III. Agency analysis specifically addressing following:

A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

K.A.R. 28-1-40 through 28-1-45 will not restrict business activities or growth.



B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;

The primary impact will be on state and local health departments, but any cost estimates would be highly speculative and dependent on methods used and whether any significant increase in numbers occur before the law and regulations sunset on May 1, 2021.

Currently, state and local health departments conduct contact tracing for a variety of diseases (see K.A.R. 28 -1-2) and maintain records for those tracings. The added requirements of Section 16, 2020 Special Session HB 2016 (for qualifications and training, an oath, and record keeping specific to COVID-19) do not significantly add to the duties and procedures already in place. As a result, KDHE suggests minimal impact. KDHE, below, looks at cost for implementation and administration of oaths for 100 part-time workers as questionable economic projection. Training is not considered since KDHE contact tracing curriculum is free as are a number of national training courses.

Cost of Contact Tracers:

Staff - If the state and local health departments hire staff to conduct contact tracing solely for COVID-19, the employee would not be full-time given the sunset. Assuming 100 additional part-time employees state-wide for the August 1, 2020 to April 30, 2021 time frame (a 9 month / 36-week period) at 20 hours per week and using \$12 and \$20 per hour as payment range, that cost equates to a cost range of \$864,000 to \$1,440,000. How this cost would be divided between the State and the counties would be speculative.

Contract – Contact tracing contracts are widely variable due to the variability of contract requirements. A recent academic survey of contact tracing contracts from the United States applied to a 2013 measles outbreak in Canada concluded the range of costs would be from \$76,267 to \$2,078,225 with the probable cost as \$297,000. See <https://www.ncbi.nlm.nih.gov/books/NBK304890/> Methodology was not noted. Since there would likely be a number of contracts if this method is used (for the State and for counties that elect to go this route), KDHE is reluctant to state a particular figure. Logically, KDHE contends that the contract cost would be less than using part-time staff so as to reap the financial benefit.

Oath - Assuming 100 specific COVID-19 tracers state-wide and 10 minutes for the administration of the oath and the storing of the COVID-19 tracing oath into a record keeping system, that would amount to 1000 minutes total state-wide or 16.67 hours. Using \$12 and \$20 / hour for computation, that one-time cost results in a range of \$200 to \$333.33.

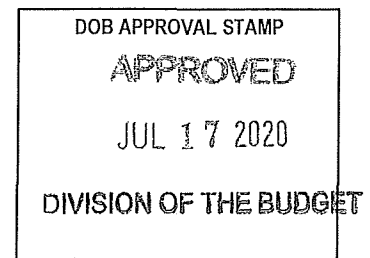
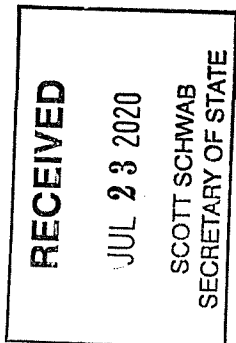
No impact on state or local government rates, utility rates or the economy is anticipated.

C. Businesses that would be directly affected by the proposed rule and regulation;

Businesses will not be directly affected by these regulations.

D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

Benefits exist in contact tracing to control the spread of disease. These regulations specify the limits on the contact data that can be



collected. The cost of implementation and benefits are both minimal. See B above.

- E. **Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;**

The regulations do not impose costs on businesses and economic development.

- F. **An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.**

The KDHE estimates that the annual implementation and compliance costs as a result of these regulations will be minimal. See B above.

An estimate, expressed as a total dollar figure, of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

The KDHE estimates that the total implementation and compliance costs will be minimal. See B above.

The KDHE does not anticipate that any costs will be passed to local governments or the members of the public.

Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES ☐ NO ☒

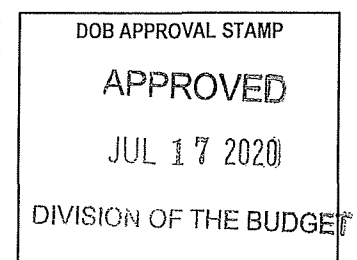
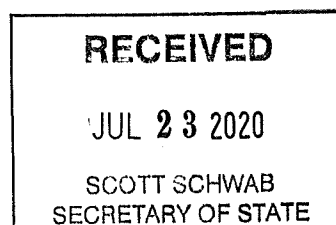
Give a detailed statement of the data and methodology used in estimating the above cost estimate.

The above cost estimate was based on the activities to implement these specific regulations. See B above.

Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES ☐ NO ☒

- G. **If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the**



League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

The proposed new regulations will have no effect on the cities, counties or school districts within the state. However, when the notice of hearing for the permanent regulations is published in the *Kansas Register*, standard agency procedure will be followed, and the three organizations will be contacted electronically for comment with attached copies of the regulations, economic impact statement and published notice of hearing.

H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

The KDHE has overseen contact tracing for a number of years, working with local health departments and businesses, although information was not solicited for these specific regulations.

I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

Not applicable.

