STATE OF KANSAS
Department of Health and Environment

Notice of Public Hearing on Proposed Administrative Regulations

The Kansas Department of Health and Environment (KDHE), Division of Environment, Bureau of Air, will conduct a public hearing at 10:00 a.m. Wednesday, November 4, 2020, to consider the adoption of proposed amended air quality regulation K.A.R. 28-19-720, and revocation of K.A.R. 28-19-719. KDHE will submit the final revocation of K.A.R. 28-19-719 to the U.S. Environmental Protection Agency (USEPA) for approval into the State Implementation Plan (SIP).

Due to recent concerns regarding COVID-19, only remote public participation is available. To participate in the hearing, call (866) 620-7326 and enter conference code 3147467296#. During the hearing, all interested individuals will be given a reasonable opportunity to present their views orally on the proposed regulations. If an individual wishes to give oral comment during the remote hearing, email or mail a written copy of the comment to the email or postal mailing address provided in this notice. 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.

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 individuals are encouraged to submit written comments prior to 5:00 p.m. on the day of the hearing to Douglas Watson, Air Monitoring and Planning Section, Kansas Department of Health and Environment, Bureau of Air, 1000 S.W. Jackson, Suite 310, Topeka, 66612-1366, by email to...
kdhe.boaregsipcomments@ks.gov, or by fax to (785) 296-7455.

A summary of the proposed regulations and the estimated economic impact follows:

**Summary of Regulations:**

**K.A.R. 28-19-720.** KDHE proposes to amend K.A.R. 28-19-720 to maintain agreement with the USEPA allowing Kansas to be the delegated authority to enforce New Source Performance Standards (NSPS) requirements in the State of Kansas. Adopting these amendments allows KDHE to gain primary enforcement authority over NSPS amendments adopted through June 2017. Without adopting these amendments, KDHE loses primary enforcement capability for these amendments, which will result in a split authority between KDHE and the USEPA for Kansas sources regarding NSPS requirements.

**K.A.R. 28-19-719.** KDHE proposes to revoke K.A.R. 28-19-719, the Kansas City summertime Reid Vapor Pressure (RVP) regulation. The Kansas City area is attaining the 2015 ozone standard based on 2015-2017, 2016-2018, and 2017-2019 monitoring data, and modeling shows that ozone forming compounds from transportation sources will continue to decrease even without the RVP regulation. The Bureau of Air concludes that a regulation change from summertime 7.0 psi RVP to summertime 9.0 psi RVP gasoline will not interfere with continued attainment of the 2015 ozone standard. The regulation is no longer necessary and is proposed for revocation.

**Economic Impact:**

The proposed regulations impose no additional costs to the implementing agency, other governmental agencies, units, or the general public.

Questions pertaining to the proposed regulations should be emailed to kdhe.boaregsipcomments@ks.gov or directed to Douglas Watson at (785) 296-0190.
copies of the proposed regulations and the corresponding regulatory impact statements may be obtained from the KDHE Bureau of Air public notice website at

https://www.kdheks.gov/bar/publicnotice.html or by emailing a request to

kdhe.boaregsipcomments@ks.gov, by contacting Douglas Watson at (785) 296-0190, or by fax to (785) 296-7455.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and the regulatory impact statements 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 Douglas Watson at (785) 296-0190 or emailing kdhe.boaregsipcomments@ks.gov.

Any updated information on how to participate in the public hearing will be provided on the KDHE Bureau of Air public notice website specified in this notice of hearing.

Lee A. Norman, M.D.
Secretary
28-19-720. New source performance standards. (a)(1) 40 C.F.R. part 60 and its appendices, as revised on July 1, 2010 and as amended by 76 fed. reg. 10524 (2011), 76 fed. reg. 37967-37977 (2011), and 78 fed. reg. 6695-6700 (2013), are hereby adopted by reference except for the following:

(A) Subpart CCCC;

(B) (i) Provisions that are not delegable by the USEPA to the state or for which only the USEPA administrator retains authority, including the subparts, sections, and paragraphs containing any of the following:

(i) (A) Alternative methods of compliance approachable only by the USEPA administrator;

(ii) (B) emission guidelines;

(iii) (C) delegation of authority;

(iv) (D) hearing and appeal procedures;

(v) (E) requirements regulating any stationary source located outside of Kansas; or

(vi) (F) requirements regulating any geographic area located outside of Kansas; and

(C) (2) provisions no longer in effect on the effective date of this regulation.

(ii) Subpart CCCC in 40 C.F.R. part 60, as in effect on July 1, 2005, is adopted by reference, except for the following:

(A) Provisions that are not delegable by the USEPA to the state or for which only the USEPA administrator retains authority, including the sections and paragraphs containing alternative methods of compliance approachable only by the USEPA administrator; and

(B) provisions no longer in effect on the effective date of this regulation.
(b) The definitions adopted by reference in subsection (a) shall apply only to this regulation. Unless the context clearly indicates otherwise, the following meanings shall be given to these terms as they appear in the portions of 40 C.F.R. part 60 adopted by reference in subsection (a):

(1) The term "administrator" shall mean the secretary or the secretary’s authorized representative.

(2) The term "United States environmental protection agency" and any term referring to the United States environmental protection agency shall mean the department.

(3) The term "state" shall mean the state of Kansas.

(c) The owner or operator of each source that is subject to this regulation shall submit to the department any required annual reports specified in 40 C.F.R. part 60 within 180 days of the last day of the year for which the report is required, unless the owner or operator is required in this article of the department’s regulations to submit annual reports on a different schedule.

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

Kansas Department of Health and Environment  Susan Vogel  296-1291
Agency  Agency Contact  Contact Phone Number
K.A.R. 28-19-719
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. 28-19-719, Fuel Volatility (RVP rule), limits the volatility of motor vehicle gasoline during summertime (June 1 – September 15) in the former Kansas City (KC) ozone maintenance area, specifically Johnson and Wyandotte counties. The rule reduces ambient ozone levels by limiting the amount of gasoline that evaporates into the atmosphere and volatile organic compounds emissions. The KC area is no longer a maintenance area for ozone and is attaining the 2015 ozone standard based on 2015-2017, 2016-2018 and 2017-2019 monitoring data. A modeling analysis was conducted and demonstrates that removal of the RVP rule requirements will not interfere with continued attainment of the 2015 ozone standard and projected emissions will maintain below 2017 actual ozone emission levels. Therefore, the Kansas Department of Health and Environment (KDHE) is proposing to revoke K.A.R. 28-19-719.

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)

In January 2020, the Missouri Department of Natural Resources proposed a rescission of their parallel federally mandated RVP rule to be finalized and effective by September 30, 2020. This action prompted KDHE to evaluate the continued requirement of the RVP rule in Kansas. Before the State of Kansas can remove its current federally mandated RVP rule, the state must develop, and the United States Environmental Protection Agency (EPA) must approve, a revision of the Kansas State Implementation Plan (SIP). The SIP revision must demonstrate that the change in RVP rule requirements do not interfere with attainment or maintenance of the National Ambient Air Quality Standards (NAAQS). KDHE has prepared a Technical Support Document (TSD) demonstrating that the revocation of K.A.R. 28-19-719 will not interfere with attainment, maintenance, or reasonable further progress for any NAAQS or with any other applicable requirement of the Clean Air Act (CAA). Additionally, KDHE has collaborated with EPA Region 7 to ensure that the revocation of the rule is approvable, effectively removing the federal mandate.

III. Agency analysis specifically addressing following:

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SCOTT SCHWAB
SECRETARY OF STATE

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

The revocation of K.A.R. 28-19-719 is not expected to enhance or restrict business activities and 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 revocation of K.A.R. 28-19-719 is not expected to place implementation or compliance costs on any specific business, sectors, ratepayers, individuals, local governments or the state economy as a whole.

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

The RVP rule limits the volatility of motor vehicle gasoline in the Kansas City area and affects persons who sell, dispense, supply, offer for sale, offer for supply, transport, or exchange in trade for gasoline intended for final use in Johnson and Wyandotte counties. The proposed revocation of K.A.R. 28-19-719 is not expected to add any additional costs for private entities.

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

This regulatory action is estimated to save consumers between 7.0 to 13.1 million dollars annually on gasoline costs.

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;

This regulatory action is not expected to add costs or to negatively impact business or 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.

$0.00

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.

$0.00

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 Petroleum Marketers and Convenience Store Association (PMCA) of Kansas provided KDHE with an estimate for the low RVP fuels cost in the Kansas City Metro area. The required Kansas City area low RVP fuel is priced on average 8 to 15 cents higher per gallon than all other summertime gasoline in Kansas. According to Kansas Department of Transportation (KDOT) data\(^1\), roads in Johnson and Wyandotte counties in 2017 received approximately 20.4 million daily vehicle miles of travel (VMT). The EPA\(^2\) estimates that the 2017 average fuel economy for cars, light trucks, and SUVs was 24.9 miles per gallon. As such, it is estimated that 87.6 million gallons of gasoline were consumed in Johnson and Wyandotte counties in 2017 during the period from June 1 to September 15. KDHE estimates a cost savings ranging from approximately 7.0 to 13.1 million dollars annually for consumers in these counties with the revocation of the RVP rule.

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 revocation is not expected to increase or decrease the revenues of cities, counties, or school districts or impose functions or responsibilities on these entities. However, when the notice of hearing for the revocation of K.A.R. 28-19-719 is published in the Kansas Register, standard agency procedure will be followed and the three organizations will be contacted electronically with attached copies of the proposed revocation, economic impact statement, environmental benefit statement and published notice of hearing.

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\(^1\) [http://www.ksdot.org/Assets/wwwksdotorg/bureaus/burTransPlan/prodinfo/Mileage_Travel/CountyDVMT2017.pdf](http://www.ksdot.org/Assets/wwwksdotorg/bureaus/burTransPlan/prodinfo/Mileage_Travel/CountyDVMT2017.pdf)

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).

KDHE held meetings to discuss the RVP rule revocation with the EPA Region 7, Mid-America Regional Council (MARC), Missouri Department of Natural Resources, as well as representatives from the ethanol industry. MARC was utilized to facilitate communication and community outreach when the RVP rule was implemented and, therefore, was consulted for the proposed revocation. The ethanol industry representatives were consulted to ensure that Johnson and Wyandotte counties will be provided conventional summertime gasoline during the summer months.

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).

Failure to revoke the RVP rule will result in retaining the higher gasoline costs for consumers, a potential loss of tax dollars for the State of Kansas, and a decline in revenue for gas stations located in Wyandotte and Johnson counties. Consumers are estimated to pay approximately 7.0 to 13.1 million dollars more for low RVP gasoline than for conventional summertime gasoline. Gas stations on the Kansas side of the Kansas City Metro area will have less business as customers will be more inclined to purchase the less expensive gasoline on the Missouri side of the KC Metro area. Decreased demand for gasoline in Wyandotte and Johnson counties will translate into a loss of tax revenue for the State of Kansas. Gas stations may experience a loss of revenue not only on gasoline but also on other convenience store products.
Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the Budget

Kansas Department of Health and Environment
Agency

Susan Vogel
Agency Contact

28-19-720
K.A.R. Number(s)

785-296-1291
Contact Phone Number

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).**

The Bureau of Air of the Kansas Department of Health and Environment (KDHE) is proposing to amend Kansas Administrative Regulation (K.A.R.) 28-19-720, “New Source Performance Standards” (NSPS). Operating under delegated authority from the Environmental Protection Agency (EPA), the state of Kansas has been designated the primary authority to implement and enforce federal standards that are adopted into state regulations. To retain primacy for these standards and maintain delegated authority from the EPA, KDHE is obligated to update these regulations periodically. The NSPS include emissions limitations, work practices, and other enforceable methods for accomplishing the goal of reducing air pollutant emissions from stationary sources in Kansas.

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)**

KDHE is required to adopt current federal regulations before gaining enforcement authority to administer previously enacted federal provisions. To date, the state authority for NSPS exists only for federal rules promulgated through June 30, 2010. Facilities in Kansas are nonetheless subject to provision of federal EPA rules adopted after July 1, 2010, which the EPA has full authority to implement and enforce. The amendments being proposed are identical to the federal EPA standards, as federal standards are adopted verbatim by reference.

Colorado, Missouri, Nebraska and Oklahoma all adopt the federal NSPS requirements by reference. The Environmental Protection Agency (EPA) has established procedures by which Kansas is automatically delegated the authority to implement Federal standards when they adopt regulations which are identical to the Federal standards.
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;

These amendments are already in force at the federal level. There are no additional business enhancements or restrictions anticipated by adopting these amendments.

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 cost of compliance for Kansas businesses, public utility ratepayers, individuals and local governments is not increased, per se, by the proposed state rulemaking because these rules are already in force at the federal level.

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

The following table describes the source (industry) categories affected by these federal standards, as well as the number of facilities within those source categories located in Kansas. The direct affect would be the state primacy over compliance and enforcement of these standards once adopted by reference.

<table>
<thead>
<tr>
<th>NSPS - Source Category</th>
<th>Affected Facilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ce - Hospital/Medical/Infectious Waste Incinerators.</td>
<td>2</td>
</tr>
<tr>
<td>Db - Industrial-Commercial-Institutional Steam Generating Units</td>
<td>16</td>
</tr>
<tr>
<td>Dc - Small Industrial-Commercial-Institutional Steam Generating Units</td>
<td>155</td>
</tr>
<tr>
<td>F - Portland Cement Plants</td>
<td>2</td>
</tr>
<tr>
<td>GG - Stationary Gas Turbines</td>
<td>26</td>
</tr>
<tr>
<td>IIII - Stationary Compression Ignition Internal Combustion Engines</td>
<td>229</td>
</tr>
<tr>
<td>J - Petroleum Refineries</td>
<td>4</td>
</tr>
<tr>
<td>JJJJ - Stationary Spark Ignition Internal Combustion Engines</td>
<td>641</td>
</tr>
<tr>
<td>KK - Lead-Acid Battery Manufacturing Plants</td>
<td>3</td>
</tr>
<tr>
<td>KKK - Equipment Leaks of VOC from Onshore Natural Gas Processing Plants</td>
<td>8</td>
</tr>
<tr>
<td>KKKK - Stationary Combustion Turbines</td>
<td>9</td>
</tr>
<tr>
<td>LLL - Onshore Natural Gas Processing</td>
<td>4</td>
</tr>
<tr>
<td>NNN - Synthetic Organic Chemical Manufacturing Industry</td>
<td>4</td>
</tr>
<tr>
<td>O - Sewage Treatment Plants</td>
<td>1</td>
</tr>
<tr>
<td>OOOO - Crude Oil and Natural Gas Production, Transmission and Distribution</td>
<td>23</td>
</tr>
<tr>
<td>UU - Asphalt Processing and Asphalt Roofing Manufacture</td>
<td>4</td>
</tr>
<tr>
<td>D - Fossil-Fuel Fired Steam Generators</td>
<td>4</td>
</tr>
<tr>
<td>Ja - Petroleum Refineries</td>
<td>3</td>
</tr>
<tr>
<td>OOOOa - Crude Oil and Natural Gas Production, Transmission and Distribution</td>
<td>25</td>
</tr>
<tr>
<td>Da - Electric Utility Steam Generating Units</td>
<td>1</td>
</tr>
<tr>
<td>CCCC - Commercial and Industrial Solid Waste Incineration Units</td>
<td>24</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>1188</strong></td>
</tr>
</tbody>
</table>
D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

One major benefit of adopting the federal EPA standards is that the affected facilities get to work with the State, as opposed to the EPA, to achieve compliance. Currently, there exists a split authority to enforce these rules, with Kansas primacy for rules in effect up to July 1, 2010 and EPA for all new standards and amendments to existing promulgated after this date of adoption. This split or dual regulatory authority for implementation and enforcement of the standards subject to this rule-making could result in loss of consistency of application and possible confusion for the regulated community regarding the relative roles of the state and federal agencies.

Additionally, the State receives grant money from the federal government to implement and enforce EPA standards at the state level. These amendments are needed to maintain the States’ authority under the existing delegation agreement with the EPA to ensure that the Kansas Air Quality Regulations are current and consistent with federal requirements. The cost of not adopting these regulations includes loss of ability to administer federal requirements to Kansas constituents, confusion for regulated community due to the split-authority status, as well as potential loss of grant money.

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;

These amendments are already in force at the federal level. No additional costs and/or impacts are anticipated by the adoption of these standards.

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.

$0.00

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 cost of compliance for Kansas citizens is not increased by the proposed state rulemaking because these rules are already in force at the federal level.

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.

When the notice of hearing for these regulations is published in the Kansas Register, standard agency procedure will be followed, and the three organizations will be contacted electronically 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).

These proposed rules are already in force at the federal level. EPA is compelled to solicit comments/information from all interested parties as part of the federal rulemaking process for every federal standard promulgated. When criticism is received, the EPA will evaluate the comments and decide whether to withdraw the rule or amend it considering the comment(s). Therefore, the proposed regulations have all been reviewed and critiqued thoroughly before adoption.

KDHE holds a meeting with the Clean Air Act Advisory Group annually and presents updates on future rulemakings for discussion. Once this administrative amendment is approved for adoption, KDHE will proceed with the required sixty-day public comment period and public hearing.

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).

The proposed amendments are necessary to maintain primacy for the standards incorporated by reference in the Kansas Administrative Regulations. KDHE is obligated to periodically update these adoptions to stay current and consistent with federal requirements. The cost of not adopting these regulations includes loss of ability to administer federal requirements to Kansas constituents, as well as potential loss of grant money. Additionally, the current split authority for implementation and enforcement of standards may result in confusion for the regulated community, as well as a loss of consistency in their application.