

STATE OF KANSAS
Department of Health and Environment
Notice of Public Hearing on Proposed Administrative Regulations

The Kansas Department of Health and Environment (KDHE), Bureau of Community Health Systems, Radiation Control Program, will conduct a public hearing at 10:00 a.m. Tuesday, February 23, 2021, to receive public comment regarding the adoption of proposed amended Right-to-Know regulations K.A.R. 28-65-1, 28-65-2, 28-65-3, and 28-65-4.

Due to recent concerns regarding COVID-19, only remote public participation is available. To participate in the teleconference hearing, call 1-866-620-7326 and enter conference code 8141969688#. During the teleconference hearing, all interested individuals will be given a reasonable opportunity to present their comment orally on the proposed regulations. It is requested that each individual giving oral comment provide a written copy of the comment for the record by email or postal mail to the email or postal mailing address listed in this notice or by fax to the fax number also listed in this notice. In order to give each individual an opportunity to present their comment, it may be necessary for the hearing officer to request that each presenter limit an oral presentation of comment to an appropriate time frame.

Individuals are also encouraged to participate in the public hearing by submitting written comment prior to 5:00 p.m. on the day of the hearing. 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 comment on the proposed amended regulations. Submit written comment, including a written copy of oral comment, to James Uhlemeyer, Environmental Program Administrator, Radiation Control Program, Bureau of Community

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Health Systems, Kansas Department of Health and Environment, 1000 SW Jackson, Suite 330, Topeka KS 66612, by email to James.uhlemeyer@ks.gov, or by fax to 785-559-4251.

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

Summary of Regulations:

K.A.R. 28-65-1. General Provisions. Updates current Right-to-Know regulations that are adopted from twenty-year-out-of-date federal regulations. Updates will modernize Kansas regulations and where federal regulations are adopted, keep the regulations compatible with Kansas regulatory language.

K.A.R. 28-65-2. Definitions. Adds clarifications to existing definitions based on updated federal regulations.

K.A.R. 28-65-3. Submitting notifications and reports. Provides for electronic submission of reporting requirements in general and requires electronic submission of reporting requirements for section 312 submissions regarding hazardous chemicals. Removes alternative aggregate formats for submissions. Establishes a method for claiming trade secrecy in reports.

K.A.R. 28-65-4. Fees. Eliminates the petroleum fuel facility fee table now covered under adopted federal regulations.

Economic Impact:

Cost to the agency: The proposed regulations will not result in increased costs to the agency. Increased use of electronic submissions will be beneficial for KDHE.

Cost to the regulated community and public: The proposed regulations will result in a minimal cost of \$25.00 per year for the large majority of new reporting facilities. Reducing the need for access and archival to hard copies will save a small amount for each reporter, new and existing. Some petroleum fuel retailers, such as convenience stores, will no longer be required to

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report, saving fees entirely for these retailers. Increased use of electronic submissions may reduce costs for businesses. Merging petroleum fuel tank reporting with Tier II reporting will result in a reduction in costs for businesses.

Cost to other governmental agencies or units: Government agencies are not required to report and will not have any additional costs.

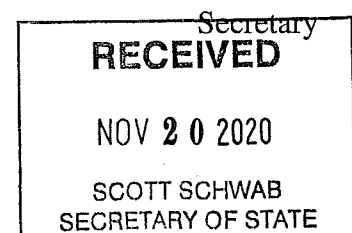
A detailed economic impact is provided in the economic impact statement that is available from the designated KDHE Radiation Control Program contact person or at the Radiation Control Program website, as listed below.

Complete copies of the proposed regulations and the corresponding economic impact statement may be obtained from the KDHE Radiation Control Program website at <https://www.kdheks.gov/radiation/radpubnotice.html>, or by contacting James Uhlemeyer at James.uhlemeyer@ks.gov, phone 785-296-1989, or fax 785-559-4251. Questions pertaining to the proposed regulations should be directed to James Uhlemeyer 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 James Uhlemeyer at the contact information above.

Any updated information on how to participate in the remote public hearing will be provided on the KDHE Radiation Control Program website specified in this notice of hearing.

Lee A. Norman, M.D.



28-65-1. General provisions. (a) Any reference by these rules and regulations to standards, procedures, or requirements of The provisions of 40 C.F.R. Parts 350, 355, 370, and 372, as in effect on July 1, 1998 dated July 1, 2018, shall constitute a full adoption by reference of the part, subpart, and paragraph so referenced, including any notes and appendices associated therewith, unless otherwise specifically stated in these regulations this article of the department's regulations, are hereby adopted by reference. When If the same word term is defined both in the Kansas statutes or this article of the department's regulations and in any federal regulation adopted by reference in the this article of the department's regulations and the definitions are not identical term is defined differently, the definition prescribed in the Kansas statutes or this article of the department's regulations shall control.

(b) ~~When used in any provisions adopted from 40 C.F.R. Parts 350, 355, 370, and 372, as in effect on July 1, 1998, the following changes shall apply:~~ The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

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

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

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

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

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

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

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

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

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

(c) The following sections shall be deleted:

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

(2) 40 C.F.R. 350.16. (Authorized by and implementing K.S.A. 65-5704; effective, T-88-62, Dec. 30, 1987; effective May 1, 1988; amended Nov. 22, 1993; amended June 4, 1999; amended P-_____.)

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28-65-2. Definitions. As used in this article of the department's regulations, each of the following terms shall have the meaning specified in this regulation:

(a) "Commission" ~~means the Kansas state emergency response commission established under K.S.A. 65-5703, and amendments thereto~~ has the meaning specified in K.S.A. 65-5702, and amendments thereto.

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

(c) "Extremely hazardous substance" means a substance listed in the appendices to 40 C.F.R. Part 355, emergency planning and notification, ~~as in effect on July 1, 1998~~ dated July 1, 2018 or on the list of Kansas reportable chemicals authorized by K.S.A. 65-5704, and amendments thereto.

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

(e) "Federal act" ~~means Title III of the superfund amendments and reauthorization act of 1986, P.L. 99-499, and the emergency planning and community right to know act of 1987~~ has the meaning specified in K.S.A. 65-5702, and amendments thereto.

(f) "Hazardous chemical" ~~has the meaning given to that term by 40 C.F.R. Part 370, hazardous chemical reporting; community right to know, as in effect on July 1, 1998.~~

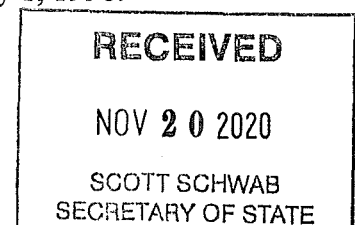
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~~(g)~~ “Kansas tier II form” ~~or and~~ “tier II form” ~~means mean~~ the hazardous chemical inventory form developed by the Kansas department of health and environment.

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

~~(i)~~ ~~(h)~~ “Material safety data sheets (MSDS),” “MSDS,” “safety data sheets,” and “SDS” means mean reporting sheets required under the occupational safety and health act at 15, 29 U.S.C. 651 et seq., as amended, hazard communication program, and 29 C.F.R. 1910.1200, as in effect on July 1, 1998.

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

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

~~(l)~~ “Petroleum fuels” means the following refined petroleum products:

~~(1)~~ Gasoline;

~~(2)~~ gasohol;

~~(3)~~ aviation fuels; and

~~(4)~~ diesel #1 and #2. (Authorized by and implementing K.S.A. 65-5704; effective, T-88-62, Dec. 30, 1987; effective May 1, 1988; amended Nov. 22, 1993; amended Nov. 28, 1994; amended June 4, 1999; amended P-_____.)

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28-65-3. Submitting notifications and reports. (a) Except as provided in K.A.R. 28-65-4(e)(3),

Each notification and report required to be submitted to the commission under sections 302, and 311, and 312 of the federal act and ~~these~~ this article of the department's regulations shall be completed using the Kansas tier II form ~~or the Kansas tier II software~~. The Kansas tier II form ~~or the Kansas tier II software~~, which shall be submitted to the ~~bureau of air and~~ department's radiation control program of the department in hard copy or by electronic submission.

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

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

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

(d) ~~Hazardous chemical and extremely hazardous substance information submitted under the provisions of sections 302, 311, and 312 of the federal act and subsection (a) of this regulation may be submitted in an alternative aggregate format that includes more than one facility if the following conditions are met:~~

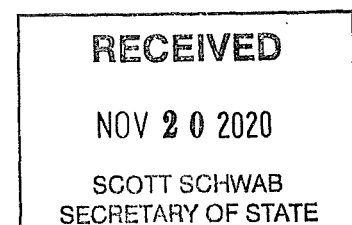
(1) ~~The facilities reported are under common ownership or a common operator.~~

(2) ~~A separate listing, including the names and locations of the facilities to which the~~

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~~Kansas tier II form or the Kansas tier II software is to apply, is submitted with the report.~~

~~(3) The chemical types and quantities reported on the Kansas tier II form or the Kansas tier II software are similar and representative of those present at all facilities listed.~~

~~(4) The proposed alternative aggregate format has been previously reviewed and approved by the department for compliance with the requirements of this article.~~

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

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

(2) facility closure.

(f) Each claim of trade secrecy under sections 311, 312, and 313 of the federal act and each public petition requesting disclosure of chemical identities claimed as a trade secret shall be filed on a form provided by the department. The address to send all claims of trade secrecy under sections 311, 312, and 313 of the federal act shall be the address on the form provided by the department. (Authorized by and implementing K.S.A. 65-5704; effective, T-88-62, Dec. 30, 1987; effective May 1, 1988; amended, T-89-19, May 27, 1988; amended Sept. 26, 1988; amended Nov. 22, 1993; amended Nov. 28, 1994; amended June 4, 1999; amended

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28-65-4. Fees. (a) Except as provided in subsections subsection (d) and (e) of this regulation, each owner or operator of a facility required to report under section 312 of the federal act and K.A.R. 28-65-3 shall pay an annual report fee based upon the sum of the maximum daily reportable quantities of extremely hazardous substances or hazardous chemicals, or both, present at the facility as reported on the Kansas tier II form. These fees shall be calculated on forms provided by the department using the tables in paragraphs (c)(1) and (c)(2) of this regulation as appropriate. The fees required under this subsection shall be submitted to the department ~~prior to~~ before March 1 of each year at the time of submission of the Kansas tier II form.

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

(c) ~~Fees payable under subsection (a) of this regulation shall be determined using tables 1 and 2 below as applicable.~~

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

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Table 1

Sum of the maximum daily amounts of all extremely hazardous substances reported (pounds)	Annual fee
1 - 9,999	\$25
10,000 - 999,999	\$50
1,000,000 or greater	\$150

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

Table 2

Sum of the maximum daily amounts of all hazardous chemicals reported (pounds)	Annual fee
10,000 - 99,999	\$25
100,000 - 999,999	\$50
1,000,000 - 9,999,999	\$150
10,000,000 or greater	\$300

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

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

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Table 3

Sum of the total chemical releases reported (pounds)	Annual fee
100 - 19,999	\$250
20,000 - 99,999	\$700
100,000 - 999,999	\$1,700
1,000,000 or greater	\$3,000

(d) Each owner or operator of an oil or gas well that is required to report under section 312 of the federal act and K.A.R. 28-65-3 shall pay an annual fee of \$25. For the purposes of this subsection, the term "well" shall have the meaning ~~given such term by~~ specified in K.S.A. 55-150, and amendments thereto. The fee required under this ~~section~~ subsection shall be submitted to the department ~~prior to~~ before March 1 of each year at the time of submission of the ~~information required on the Kansas tier II form.~~

(e) ~~Each owner or operator of a facility that contains petroleum fuels as defined in K.A.R. 28-65-2 that is required to report under section 312 of the federal act and K.A.R. 28-65-3 shall be exempt from the fee requirements of subsection (a) of this regulation as applicable to petroleum fuels in storage tanks provided:~~

(1) ~~The storage tank is registered under the provisions of K.A.R. 28-44-16 or K.A.R. 28-44-29; and~~

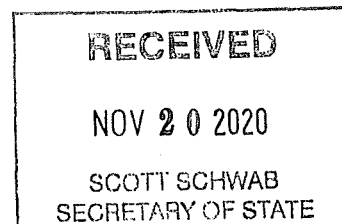
(2) ~~the owner or operator has paid an annual registration fee in compliance with K.A.R. 28-44-17 or 28-44-28; and~~

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(3) the owner or operator has submitted the necessary information to the department on the special storage tank program forms provided by the department to comply with the reporting requirements of section 312 of the federal act, K.A.R. 28-65-3, K.A.R. 28-44-16 and K.A.R. 28-44-29.

(f) Each owner or operator of a facility that qualifies for a fee exemption under subsection (e) of this regulation that has chemicals present other than petroleum fuels that are reportable under section 312 of the federal act and K.A.R. 28-65-3 shall pay annual report fees in compliance with subsection (a) of this regulation as applicable to the remaining chemicals.

(g) Each owner or operator of a facility that qualifies for a fee exemption under subsection (e) may elect to comply with the provisions of these regulations by submitting the Kansas tier II form in lieu of submitting the required information on the special storage tank program form. Such owners or operators that elect to submit the Kansas tier II form shall calculate and pay annual report fees in compliance with subsection (a) of this regulation as applicable.

(h) Each owner or operator subject to these regulations shall not be assessed an annual report fee in total greater than \$3000 during any single report year excluding late fees.

(i) (e) All fees shall be remitted by check, draft, or money order payable to the department and shall be non-refundable nonrefundable. Any owner or operator may make an aggregate payment covering more than one facility by a single check, draft, or money order provided if a statement accompanies each aggregate payment which that indicates the each individual facility names name, addresses address, and fees for each facility the amount of the

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fee for which payment is made accompanies each aggregate payment.

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

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

Kansas Department of Health and Environment
Agency

Susan Vogel
Agency Contact

296-1291
Contact Phone Number

28-65-1, 28-65-2, 28-65-3, 28-65-4
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. 28-65-1 through 28-65-4 are the Kansas Emergency and Right-to-Know regulations that facilitate public knowledge of and access to information on the presence of hazardous and toxic chemicals in their communities; and support planning for emergency response and management. These regulations protect communities and local emergency personnel responding to fires and other disasters. These rules also cover what trade secrets do not have to be revealed through the Right-to-Know program and how corporations can claim them.

Updates to these regulations enhance protection of the public from undue harm in case of an incident and at minimal cost to the regulated facilities. Most notably, the special reporting considerations for petroleum fuel facilities has been removed to align with the federal higher reporting thresholds. There are no changes in the fee structure.

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)

The update will allow Kansas to remain compatible with current federal regulations. The federal "Emergency Planning and Community Right-to-Know Act" (EPCRA), 42 U.S.C. § §11001 et seq., was adopted by Congress in 1986. EPCRA Section 312 (42 U.S.C. §11022) requires regulated facilities to submit a report of their emergency and hazardous chemical inventory to the State Emergency Response Commission (SERC), the Local Emergency Planning Committee (LEPC), and the local fire department annually.

States are required to:

- Establish procedures for receiving and processing public requests for information collected under EPCRA
- Review local emergency response plans
- Designate local emergency planning districts
- Appoint a Local Emergency Planning Committees (LEPC) for each district
- Supervise the activities of the LEPC

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- In guidance issued on July 13, 2010, the U.S. Environmental Protection Agency (EPA) provided the following interpretation of its Tier II reporting regulations under EPCRA:

States have the flexibility to use any system for collecting chemical inventory information under section 312 and to establish the means to ensure the information is true, accurate, and complete so they may effectively and efficiently manage chemical risks and provide information to the public. (75 FR 39852, at 39856, July 13, 2010.)

Most states, including Kansas, charge a fee per facility or owner/operator for certain sectors of industry and then a separate per-chemical fee for everybody else. Fees are often higher for chemicals listed in EPCRA as "extremely hazardous substances." Colorado charges \$10 / facility and \$10 / chemical reported, or \$25 / chemical for extremely hazardous substances. Fees are capped at \$1,000. They adopted right-to-know regulations in Colorado Revised Statutes § §24-33.5-1501 et seq. Colorado also requires submission via the Internet, with few exceptions. Inconvenience alone is not acceptable. Oklahoma uses a similar fee structure, but charges \$15 / chemical and \$30 / extremely hazardous substance, with exceptions for oil and natural gas production facilities and agriculture chemical dealerships. Those are charged at \$12 / facility.

Missouri allows petroleum producers to subtract federal hazardous chemical transportation fees from their filing fees and combine all petroleum substances into a single "hazardous chemical" for payment reasons. Missouri has a \$10,000 cap on their total fees.

Table 1. Fee Comparison for Right-to-Know Programs in Neighboring States

	Per chemical	Per facility	Per extremely hazardous substance	Fee cap	Is manual submission allowed?
Missouri	\$100 for the first three, \$20 per thereafter	\$50 (petroleum)	N/A	\$10,000	Yes
Oklahoma	\$15	\$12 (petroleum and agriculture chemicals)	\$30	\$1,000	Yes
Nebraska	\$0	\$0	\$0	\$0	Yes, but highly discouraged
Colorado	\$10	\$10 (all facilities)	\$25	\$1,000	No
Kansas	\$25-\$300 based on total amount stored	\$25 (per owner/operator for oil and gas wells)	\$25-\$150 based on total amount stored	\$450	No

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 regulations will enhance compatibility with neighboring states, encouraging growth of Kansan businesses and local offices of businesses from other states. Changes are minor and will be extremely beneficial to the local

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fire departments and LEPCs who are currently receiving hard copy reports for above ground storage tank chemicals.

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 total fee imposed on companies or individuals will not change with one exception. Approximately 1000 businesses which store petroleum fuels over the reporting threshold in above ground storage tanks, may have a slight increase in fees. The impact for 94% of approximately 1,000 facilities is estimated at \$25 per year. The elimination of a special fee structure and reporting considerations for petroleum fuel tanks is replaced by standardized similar fees in the main text of the regulations. The electronic submission system will save money on postage and paper for both businesses and KDHE.

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

In the original implementation of the federal Right-To-Know program, above and below ground retail petroleum fuel tanks were included in reports. Kansas elected to allow these tank owners to use the hardcopy forms they were already filling out for the Kansas Storage Tank program instead of filing with the Right-to-Know program. This exempted them from paying fees to the Right-to-Know program.

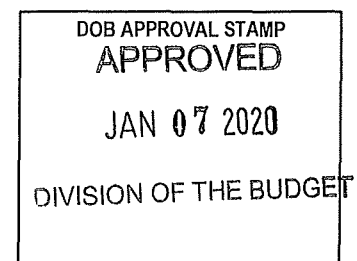
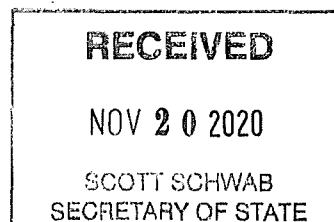
The minimum threshold planning or reporting quantity of retail petroleum fuels has since been raised to exclude most of these below ground tanks, and the facilities which operate these tanks will no longer need to report. The most directly affected businesses would be facilities which store petroleum fuel above the threshold in above ground tanks, which are now largely exempted from fees. Above ground tanks must now be reported through the Tier II database system for the Right-to-Know program, but benefits exist to balance the minimal cost as described in section D.

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

The adoption of current regulations will enhance the compatibility of Kansas facilities with those of nearby states, reduce the burden on local fire departments and LEPCs, and enhance the capability of the Right-to-Know program to provide critical data to local communities. Retailers with below ground petroleum fuels benefit because the majority will no longer need to report. Currently, petroleum fuel facilities are required to file a form with the KDHE Bureau of Environmental Remediation Storage Tanks Section. This form is then sent to local fire departments and LEPCs in hard copy. By including those registrants in with the current right-to-know program, there is greater accessibility to the data through the existing online portal, and less of a chance of hard copies being lost. Having the data all in one place make it easier to navigate and inform personnel as necessary. There is no increased cost for most participants and minimal (\$25) increased costs for large above ground fuel tanks.

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;

There are no cost increases from this regulation for a majority of registered facilities. Costs for above ground fuel tanks may increase, as they are no longer exempt from fees.



- 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.**

\$26,300

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.

\$26,300 / year

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

YES ☐ NO ☒

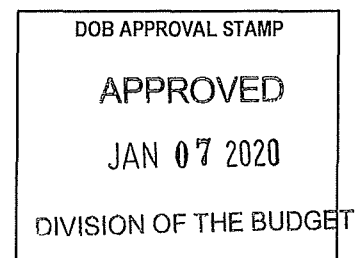
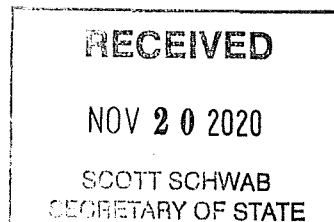
Give a detailed statement of the data and methodology used in estimating the above cost estimate.

These regulations do not raise fees. Therefore, there is no significant increased cost to calculate. Removing the fee exemption for petroleum fuel tanks should not affect the majority of businesses that the Right-to-Know program regulates. Those affected are projected to have only minimal increases. The impact for 94% of approximately 1,000 facilities is estimated at \$25 per year. Forty-five facilities are estimated to be impacted at \$50 per year, and twelve at \$150 per year. This is a very liberal estimate and the actual cost is likely to be lower. Estimates were made through a manual review of current registrants for above ground tank capacity. This is an overestimation, as some facilities already have other chemicals stored and would only be shifting from one fee bracket to another, reducing the overall estimate.

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 amended regulations do not change the revenues of cities, counties or school districts and do not impose functions or responsibilities to increase expenditures. Cities sometimes report information voluntarily, but they are exempt from paying fees. LEPCs, fire departments, and other local emergency personnel would save time and expense by no longer needing to retain hard copies of Tier II information and perform any data entry activities to transfer the hardcopy data into electronic format. However, 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 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 agency posted an Information Notice on the KDHE/Right-to-Know Program website, informing about the proposed regulation. The Information Notice referenced the contact information to submit comments or questions and that there will be a notification of a public hearing when it is scheduled. Additionally, an e-mail with the Information Notice and draft regulations has been sent to all current users of the Tier II reporting system, LEPCs, local emergency managers, and stakeholder associations. .

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).

If not adopted, Kansas will be out of compatibility with federal regulations and will not be able to collect data on all required hazardous chemicals or share that information with the local stakeholders. Being incompatible with federal regulations may lead to confusion for small business owners moving to the state and establishing businesses. Training about Right-to-Know processes will also be simplified by adopting more current standards. These regulations will obviate the need for special forms and will provide a more effective and streamlined oversight process for the program.

Without these regulations, local fire departments and LEPCs will continue to use their existing hard copy reports, which will have to be stored on site and manually entered into an electronic system. The data in these reports has had no oversight to verify compliance with reporting requirements.

RECEIVED

NOV 20 2020

**SCOTT SCHWAB
SECRETARY OF STATE**

DOB APPROVAL STAMP

APPROVED

JAN 07 2020

DIVISION OF THE BUDGET