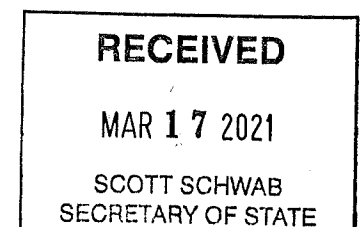


**STATE OF KANSAS**  
**Department of Health and Environment**  
**Notice of Public Hearing on Proposed Administrative Regulations**

The Kansas Department of Health and Environment (KDHE), Bureau of Environmental Field Services, Livestock Waste Management Section, will conduct a public hearing at 10:00 a.m. Wednesday May 26, 2021, to receive public comment regarding the adoption of proposed amended Livestock Waste Management regulations K.A.R. 28-18-4 and 28-18a-4.

Due to recent concerns regarding COVID-19, only remote public participation is available. To participate in the teleconference hearing, call 1-877-400-9499 and enter conference code 9011059037#. 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 Matthew T. Steele, Ph.D., P.E., Section Chief, Livestock Waste Management Section, Bureau of Environmental Field Services,



Kansas Department of Health and Environment, 1000 SW Jackson, Suite 430, Topeka KS 66612, by email to [Matthew.T.Steele@ks.gov](mailto:Matthew.T.Steele@ks.gov), or by fax to 785-559-4258.

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

**Summary of Regulations:**

**K.A.R. 28-18-4. Filing of applications and payment of fees.** Clarifies application filing requirements for owners of multiple facilities and requires the signatory to meet requirements of 40 C.F.R.122.22.

**K.A.R. 28-18a-4. Filing of applications and payment of fees.** Clarifies application filing requirements for owners of multiple facilities and requires the signatory to meet requirements of 40 C.F.R.122.22.

**Economic Impact:**

Cost to the agency: The proposed regulations will not result in increased costs to the agency.

Cost to the regulated community and public: There would be a net savings to industry as less time would need to be spent interpreting the current ambiguous regulations K.A.R. 28-18-4 and 28-18a-4 and a cost savings in avoided litigation should a permit be challenged under the current ambiguous regulation.

KDHE consulted with industry groups to determine how current operations are structured to optimize an application and permitting process for determining whether two operations should be permitted as separate confined feeding facilities or a single confined feeding facility as authorized by statute. Industry groups indicated that a more prescriptive definition of separate and single facilities that focused on the separateness of waste management systems maximized environmental benefits, while providing industry a predictable permitting process.

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Cost to other governmental agencies or units: The proposed regulations will not result in increased costs to other governmental agencies or units.

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

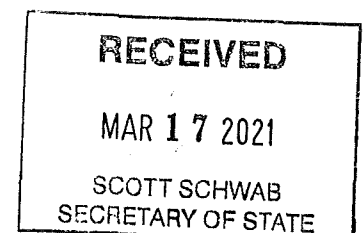
Complete copies of the proposed regulations and the corresponding economic impact statement may be obtained from the KDHE Livestock Waste Management website at <https://www.kdheks.gov/feedlots/index.html>, or by contacting Matthew Steele at [Matthew.T.Steele@ks.gov](mailto:Matthew.T.Steele@ks.gov), phone 785-296-4039, or fax 785-559-4258. Questions pertaining to the proposed regulations should be directed to Matthew Steele 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 Matthew Steele at the contact information above.

Any updated information on how to participate in the remote public hearing will be provided on the KDHE Livestock Waste Management Section website specified in this notice of hearing.

Lee A. Norman, M.D.

Secretary



28-18-4. Filing of applications and payment of fees. (a) ~~Each application shall be filed according to~~ Each entity seeking a permit shall submit the application required by K.A.R. 28-16-59.

(b) ~~For the purpose of providing~~ In order for the department to provide adequate public notice regarding a permit for any proposed new construction or proposed new expansion of a confined feeding facility, a public livestock market, a collection center, a transfer station, or a truck-washing facility for animal wastes, each applicant shall provide to the secretary the name ~~or names~~ and mailing address ~~or addresses~~ of each of the following:

(1) The United States post office or offices serving the immediate area of the confined feeding facility; and

(2) each owner of a habitable structure or any property located within one mile of the confined feeding facility.

(c) In addition to the application requirements of K.A.R. 28-16-59, for any new construction or new expansion of a confined feeding facility, each applicant shall submit ~~all of~~ the following information:

(1) A map identifying the location and layout of the confined feeding facility or the confined feeding facility perimeter;

(2) a map identifying the location of any habitable structure or city, county, state, or federal park within one mile of the confined feeding facility or the confined feeding facility perimeter;

(3) a map identifying all water wells on the confined feeding facility property;

(4) a map identifying any streams and bodies of surface water within one mile of the

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confined feeding facility or the confined feeding facility perimeter;

(5) for confined feeding facilities that utilize a waste-retention lagoon or pond, any information that the applicant possesses indicating the presence of any unplugged oil, gas, or salt solution mining wells located at the proposed or existing confined feeding facility;

(6) a waste management plan for any confined feeding facility whose operator is not required to obtain a federal permit;

(7) a nutrient management plan for any confined feeding facility whose operator is required to obtain a federal permit;

(8) a groundwater monitoring plan, if required by the secretary; and

(9) a closure plan for any confined feeding facility whose operator is required to obtain a federal permit and that is located over the Equus Beds.

~~(d)(1) Confined feeding facilities on separate pieces of land without a contiguous ownership boundary shall be classified as separate operations, and each applicant shall be assessed a fee under K.A.R. 28-16-56d~~ If adjacent confined feeding facilities use a common animal waste management system or if two or more confined feeding facilities do not adjoin but use a common animal waste management system, the multiple confined feeding facilities shall be considered one confined feeding facility.

(2) If two or more confined feeding facilities do not adjoin and do not have a common waste management system or if two or more confined feeding facilities adjoin but do not use a common animal waste management system, the confined feeding facilities shall be considered separate confined feeding facilities.

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K.A.R. 28-18-4, page 3

(e) Each applicant for a confined feeding facility permit shall submit the application fee required by K.A.R. 28-16-56d.

(f) Each applicant for a confined feeding facility permit shall sign the permit application as required by 40 C.F.R. 122.22, dated July 1, 2019, which is hereby adopted by reference.

(Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-166a, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-171h; effective, E-67-5, May 31, 1967; effective Jan. 1, 1968; amended Jan. 15, 1999; amended March 16, 2007; amended P-\_\_\_\_\_.)

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28-18a-4. Filing of applications and payment of fees. (a) ~~Each application shall be filed according to~~ Each applicant for a swine facility permit shall submit the application required by K.A.R. 28-16-59 or K.S.A. 65-1,178 and amendments thereto, as applicable.

(b) ~~For the purpose of providing~~ In order for the department to provide adequate public notice regarding a permit for any proposed new construction or proposed new expansion of a swine facility, ~~the swine operator~~ each applicant for a swine facility permit shall provide to the secretary the name ~~or names~~ and mailing address ~~or addresses~~ of each of the following:

(1) The United States post office or offices serving the immediate area of the swine facility; and

(2) each owner of a habitable structure or any property located within one mile of the swine facility perimeter, ~~as described by~~ pursuant to K.S.A. 65-171d, and amendments thereto.

(c) In addition to the application requirements of K.A.R. 28-16-59, for any new construction or new expansion of a swine facility, each ~~swine~~ applicant for a swine facility permit shall submit the following information:

(1) A map identifying the location and layout of the swine facility or the swine facility perimeter;

(2) a map identifying the location of any habitable structure or city, county, state, or federal park within one mile of the swine facility or the swine facility perimeter;

(3) a map identifying the location of any wildlife refuge within 16,000 feet of the swine facility or the swine facility perimeter;

(4) a map identifying all water wells on the swine facility property;

(5) a map identifying any streams and bodies of surface water within one mile of the

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swine facility or the swine facility perimeter;

(6) for swine facilities that utilize a swine waste-retention lagoon or pond, any information that the applicant possesses indicating the presence of any unplugged oil, gas, or salt solution mining wells located at the proposed or existing swine facility;

(7) a waste management plan; for any swine facility whose operator is not required to obtain a federal permit;

(8) for swine facilities with an animal unit capacity of 1,000 animal units or more ~~where~~ if the swine at the swine facility are not owned by the operator of the swine facility, a copy of the executed contract between the ~~facility operator~~ swine operator and the owner of the swine, specifying responsibility for management of the manure and wastewater generated at the swine facility; and

(9) for swine facilities with an animal unit capacity of 1,000 animal units or more, the following information:

(A) A manure management plan;

(B) a nutrient utilization plan that meets the requirements of the Kansas department of agriculture, if the swine facility applies manure or wastewater to land;

(C) an emergency response plan;

(D) an odor control plan;

(E) a dead swine handling plan;

(F) a nutrient management plan;

(G) a groundwater monitoring plan, if required;

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(H) a closure plan, if required; and

(I) for swine facilities with an animal unit capacity of 3,725 animal units or more, financial assurance for closure of the swine facility and closure of the swine waste-retention lagoons or ponds.

~~(d)(1) Swine facilities on separate pieces of land without a contiguous ownership boundary shall be classified as separate operations, and each applicant shall be assessed a fee under K.A.R. 28-16-56d~~ If swine facilities adjoin and have a common swine waste management system or if swine facilities do not adjoin but have a common swine waste management system, the swine facilities shall be classified as one swine facility.

(2) If swine facilities do not adjoin and do not have a common swine waste management system or if swine facilities adjoin but do not have a common swine waste management system, the swine facilities shall be classified as separate swine facilities.

(e) Each applicant for a swine facility permit shall submit the application fee required by K.A.R. 28-16-56d.

(f) Each applicant shall sign the permit application as required by 40 C.F.R. 122.22, as adopted by reference in K.A.R. 28-18-4. (Authorized by K.S.A. 2005-Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005-Supp. 65-166a, K.S.A. 2005-Supp. 65-171d, K.S.A. 65-171h, K.S.A. 65-1,179, 65-1,181, 65-1,184, 65-1,187, 65-1,188, 65-1,189, and 65-1,190; effective Jan. 15, 1999; amended March 16, 2007; amended P-\_\_\_\_\_.)

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Proposed

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

Kansas Department of Health and Environment  
Agency

Susan Vogel  
Agency Contact

785-296-1291  
Contact Phone Number

K.A.R. 28-18-1, 28-18-4, 28-18-14, 28-18-16, 28-18-17, 28-18a-4, 28-18a-24  
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).**

These regulations have been amended to make corrections, update criteria, and specify current requirements.

K.A.R. 28-18-1 - Clarifies ambiguous definitions and includes additional definitions of terms used in regulations.

K.A.R. 28-18-4 - Clarifies application filing requirements for owners of multiple facilities and requires the signatory to meet requirements of 40 C.F.R.122.22.

K.A.R. 28-18-14 – Provides uniform requirements for inspections at all confined feeding facilities.

K.A.R. 28-18-16 – Allows electronic submission of waste-retention lagoon or pond closure reports.

K.A.R. 28-18-17 – Allows electronic submission of seepage rate tests results and cites the updated data in the “Kansas water quality standards: table of numeric criteria,” dated December 15, 2017.

K.A.R. 28-18a-4 –Clarifies application filing requirements for owners of multiple facilities and requires the signatory to meet requirements of 40 C.F.R.122.22.

K.A.R. 28-18a-24 – Corrects an error referencing non-existent K.A.R. 28-18-22(d).

**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)**

Electronic submission of reports and test results referenced in K.A.R. 28-18-16 and K.A.R. 28-18-17 will be required by federal law to be submitted electronically. The remainder of the proposed regulations are not mandated by federal law. The four contiguous states, Colorado, Nebraska, Missouri, and Oklahoma, each have their own established state CAFO permitting programs that operate like the Kansas CAFO

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program. The proposed amended regulations in this package and are generally in line with regulations in the contiguous states.

**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 business activities as the regulations will correct errors in current language, allow submittals using electronic methods, and also give confined feeding facility permit applicants a more concise criteria for whether the facilities are to be permitted as a single facility or multiple facilities.

Furthermore, after a recent district court ruling, it is unclear under the current regulation if two individual owners of two confined feeding facilities on separate tracts of land separated by a road would need to be considered a single facility. Under this proposal it makes clear that an owner of a confined feeding facility does not have to search property records in an attempt to ascertain the location of any adjoining properties that might contain a confined feeding facility even though there is no connection to the applicant and no shared waste management systems. This should save the applicant and agency staff significant administrative expenses to research a verify ownership claims.

**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;**

There would be a net savings to industry as less time would need to be spent interpreting the current ambiguous regulations K.A.R. 28-18-4 and 28-18a-4 and a cost savings in avoided litigation should a permit be challenged under the current ambiguous regulation.

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

All livestock operations that contain confined feeding facilities, regardless of size, would be positively affected by this regulation.

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

There would be a net savings to industry as less time would need to be spent interpreting the current ambiguous regulations K.A.R. 28-18-4 and 28-18a-4 and a cost savings in avoided litigation should a permit be challenged under the current ambiguous regulation.

**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;**

KDHE consulted with industry groups to determine how current operations are structured to optimize an application and permitting process for determining whether two operations should be permitted as separate confined feeding facilities or a single confined feeding facility as authorized by statute. Industry groups indicated that a more prescriptive definition of separate and single facilities that focused on the separateness of waste management systems

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maximized environmental benefits, while providing industry a predictable permitting process.

- 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

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

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.

There are no changes in the permitting process, changes are clarifying ambiguous language.

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 regulations will not have an effect on the cities, counties, or school districts within the state. However, when the notice of hearing for the 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).

Industry associations and affected businesses were given several opportunities to provide feedback at stakeholder meetings.

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- 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 current regulations K.A.R. 28-18-4 and 28-18a-4 are ambiguous and have been subject to recent litigation. Litigation over ambiguous regulation requirements could cost the State lost administrative time and resources of staff, and confined feeding facilities lost administrative time, legal fees, and investment in a constructed facility if an approved permit is later invalidated by a court.

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Division of Environment  
Bureau of Environmental Field Services

## **ENVIRONMENTAL BENEFIT STATEMENT**

Pursuant to K.S.A. 77-416, and amendments hereto

**PROPOSED AMENDMENT TO LIVESTOCK WASTE MANAGEMENT REGULATIONS:  
K.A.R. 28-18-4 and K.A.R. 28-18a-4**

April 2021

## **Executive Summary of Amended Regulations**

K.S.A. 65-171d authorizes the Secretary of the Kansas Department of Health and Environment to make rules and regulations to protect the soil and waters of the state from pollution and adopt by reference any regulation relating to water quality and effluent standards promulgated by the federal government pursuant to the provisions of the federal clean water act.

The Livestock Waste Management Program is based upon statutes and regulations addressing general water pollution and specific statutes and regulations addressing water pollution from confined feeding facilities. Kansas statutes establishing requirements for confined feeding facilities were created in the late 1960's. In the 1990's the statutes and regulations underwent significant revisions primarily addressing location requirements and swine feeding operations. The statutes divided the requirements into portions specific to swine and other portions applying to all other confined feeding operations.

The Kansas statutes and regulations require a water pollution control permit if a facility 1) has a significant potential to pollute ~~rivers and streams~~ surface waters or groundwater of the state, or 2) contains or stores wastewater, or 3) required by the US EPA, generally if the capacity of the facility or feedlot is over 1,000 animal units (the term animal unit is defined in statute, K.S.A. 65-1 71d.).

These proposed amended regulations reflect modifications developed with stakeholder input will provide greater certainty to the regulated community in determining facility boundaries. The modifications do not directly provide any environmental benefit.

### **28-18-4 and 28-18a-4. Filing of applications and payment of fees.**

These modifications reflect proposed amendments to the contents of permit applications for confined feeding facilities in order address current program requirements. The modifications do not directly provide any environmental benefit.

Amendments to both regulations clarify permit application filing requirements for owners of multiple confined feeding facilities and requires the signatory to meet federal requirements.

The clarification of permitting requirements will not alter existing habitable structure separation distances, nor separation distances to ground water or surface waters. However, the clarification may require current permitted confined feeding facilities to combine with other permitted confined feeding facilities if the two facilities share any part of the current waste management system.

## **I. Environmental Benefit Statement**

### **1) Need for proposed amendments and environmental benefit likely to accrue.**

#### **a) Need.**

Due to judicial findings of Case No. 2018-CV-000465 - Sierra Club vs. KDHE and the court reversing the agency actions of granting separate permits to adjacent swine feeding facilities in Phillips County and Norton County, the proposed amendments to the State regulations provide a more prescriptive description of what shall be considered as one confined feeding facility versus separate single facilities, and focuses on the separateness of animal waste management systems.

The proposed changes optimize the application and permitting process for determining whether multiple operations should be permitted as separate confined feeding facilities or as a single confined feeding facility as authorized by statute. Industry groups indicated that a more prescriptive definition of separate and single facilities that focused on the separateness of waste management systems maximized environmental benefits, while providing industry a predictable permitting process.

#### **b) Environmental benefit**

The environmental benefit of the proposed amended regulations provides a clear description of when adjacent confined feeding facilities, or two or more physically unconnected confined feeding facilities that utilize the same animal waste management system, are considered as one confined feeding facility for permitting requirements. The permitting requirements implement required set-back limits of a confined feeding facility from habitable structures, public and private water wells, and surface waters according to the animal unit capacity of the confined feeding facility.



**2) When applicable, a summary of the research indicating the level of risk to the public health or the environment being removed or controlled by the proposed rules and regulations or amendment.**

This section is not applicable.

**3) If specific contaminants are to be controlled by the proposed regulations or amendment, a description indicating the level at which the contaminants are considered harmful according to current available research.**

This section is not applicable.