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**Proposed**

**State of Kansas**

**Department of Health and Environment**

**Notice of Hearing on Proposed Administrative Regulations**

The Kansas Department of Health and Environment (KDHE), Division of Public Health, Bureau of Epidemiology and Public Health Informatics, will conduct a public hearing at 2:00 p.m. Thursday, December 16, 2021, to receive public comment regarding the adoption of proposed amended KDHE Article 1 contact tracing regulations 28-1-40, 28-1-41, 28-1-42, 28-1-43 and 28-1-44.

Due to recent public health concerns, 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 public 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 prior to the hearing 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.

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 regulations. Individuals are encouraged to participate in the public hearing by submitting written comment prior to 5:00 p.m. on the day of the hearing. Submit written comment, including a written copy of oral comment, to Farah S. Ahmed, MPH, PhD, Environmental Health Officer and State Epidemiologist, Bureau of Epidemiology and Public Health Informatics, Kansas Department of Health and Environment, Curtis State Office Bldg.,

1000 SW Jackson, Topeka, KS 66612-1365, by email to [Farah.Ahmed@ks.gov](mailto:Farah.Ahmed@ks.gov), or by fax to 1-877-427-7318.

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

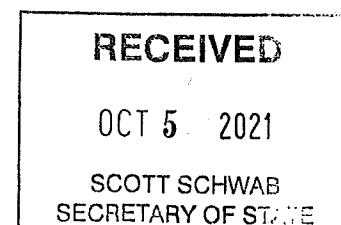
**Summary of Regulations:**

**K.A.R. 28-1-40. Definitions.** In addition to the terms defined in L. 2021, ch. 116, sec. 38, and amendments thereto, defines the terms department, personal information, protected health information, and third party, as used in L. 2021, ch.116, sec. 38, and amendments thereto.

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

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

**K.A.R. 28-1-43. Surrender or destruction of contact data.** Sets forth when contact tracers must surrender contact data to the secretary or local health officer and when contact data must be destroyed safely and securely in a manner approved by the secretary when contact data is no longer necessary for the purpose of contact tracing.



**K.A.R. 28-1-44. Sunset provision.** Specifies that K.A.R. 28-1-40 through 28-1-43 will have no force and effect after June 30, 2022.

**Economic Impact:**

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

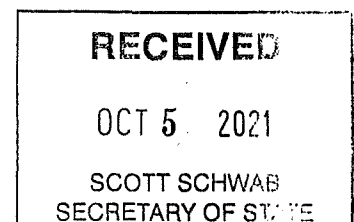
Cost to the public: KDHE does not anticipate that any costs will be passed to members of the public because of the proposed regulations. These regulations do not impose costs on businesses and economic development.

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

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

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

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



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

Lee A. Norman, M.D.  
Secretary

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28-1-40. Definitions. (a) In addition to the terms defined in ~~L. 2020 Special Session, ch. 1, sec. 16~~ L. 2021, ch. 116, sec. 38 and amendments thereto, each of the following terms, as used in K.A.R. 28-1-40 through 28-1-43, shall have the meaning specified in this ~~regulation~~ subsection:

~~(a)~~ (1) “Department” means Kansas department of health and environment.

~~(b)~~ (2) “Personal information” means contact data collected as specified in K.A.R. 28-1-42 and “personal information” collected pursuant to K.S.A. 50-7a01, and amendments thereto.

~~(c)~~ (3) “Protected health information” has the meaning specified in K.S.A. 65-6822, and amendments thereto.

~~(d)~~ (b) As used in L. 2021, ch. 116, sec. 38 and amendments thereto, “third party” ~~means shall mean~~ any of the following, other than any of the entities specified in K.S.A. 65-118 and amendments thereto:

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

(2) an organization; or

(3) a business; ~~or~~

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

(Authorized by and implementing ~~L. 2020 Special Session, ch. 1, sec. 16~~ L. 2021, ch. 116, sec. 38; effective, T-28-7-30-20, July 30, 2020; effective Nov. 20, 2020; amended P-\_\_\_\_\_.)

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

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

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

"I,       [name]      , acknowledge that I have completed the training to become a contact tracer. I am familiar with the provisions contained in and duties required by ~~L. 2020 Special Session, ch. 1, sec. 16~~ L. 2021, ch. 116, sec. 38, attached hereto and incorporated by reference, including the duty of confidentiality stated therein. I do solemnly swear (or affirm) that I will comply with those Kansas COVID-19 contact tracing provisions while acting as a contact tracer. So help me God.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_"

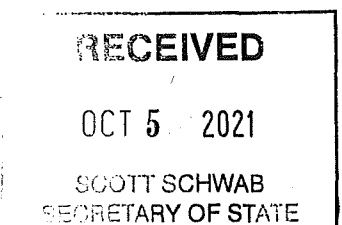
(c) Any individual having conscientious scruples against taking an oath ending with a reference to a deity may affirm with like effect without the need to make a reference to the deity.

(d) The oath or affirmation specified in subsection (b) may be executed before the secretary, the secretary's designee, a local health officer, or the local health officer's designee. (Authorized by and implementing ~~L. 2020 Special Session, ch. 1, sec. 16~~ L. 2021, ch. 116, sec. 38; effective, T-28-7-30-20, July 30, 2020; effective Nov. 20, 2020; amended P-\_\_\_\_\_.)

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

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

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

- (1) Age;
- (2) ~~physical biometrics~~ vaccination and testing status;
- (3) temperature; and
- (4) symptoms.

(c) Whenever a contact tracer communicates with a contact, the contact tracer shall advise the contact that the contact ~~is under no compulsion or prohibition~~ shall not be compelled to participate in or be prohibited from participating in the contact tracing.

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

“Participation in COVID-19 contact tracing is voluntary. You ~~may~~ shall not be compelled to participate in or be prohibited from participation ~~with in~~ contact tracing for

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

(2) The contact tracer shall document in the contact data whether the text was provided and what were the contact's responses to the questions. (Authorized by and implementing ~~L. 2020 Special Session, ch. 1, sec. 16~~ L. 2021, ch. 116, sec. 38; effective, T-28-7-30-20, July 30, 2020; effective Nov. 20, 2020; amended P-\_\_\_\_\_.)

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28-1-43. Surrender or destruction of contact data. (a) Each individual acting as a contact tracer for the secretary or a local health officer who possesses contact data pursuant to ~~L. 2020 Special Session, ch. 1, sec. 16~~ L. 2021, ch. 116, sec. 38, and amendments thereto, shall surrender all contact data to the secretary or the local health officer when ~~the contact data is no longer needed to monitor the contact's health and~~ the contact has been released from quarantine.

(b) Each individual who possesses contact data permitted to be collected as specified in K.A.R. 28-1-42 shall safely and securely destroy, in a manner approved by the secretary, any contact data that contains protected health information, individual movement or mobility data, or personal information whenever the secretary determines that the contact data that contains protected health information, individual movement or mobility data, or personal information is no longer necessary for the purpose of ~~containing the spread of COVID-19~~ contact tracing, as defined in L. 2021, ch. 116, sec. 38 and amendments thereto. (Authorized by and implementing ~~L. 2020 Special Session, ch. 1, sec. 16~~ L. 2021, ch. 116, sec. 38; effective, T-28-7-30-20, July 30, 2020; effective Nov. 20, 2020; amended P-\_\_\_\_\_.)

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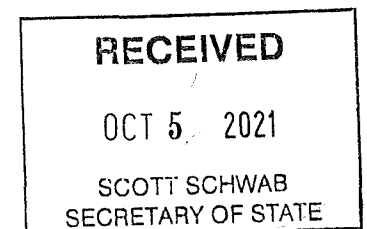
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28-1-44. Sunset provision. K.A.R. 28-1-40 through 28-1-43 shall have no force and effect after May 1, 2021 or upon the expiration of L. 2020 Special Session, ch. 1, sec. 16 and amendments thereto, whichever is later June 30, 2022. (Authorized by and implementing L. 2020 Special Session, ch. 1, sec. 16 L. 2021, ch. 116, sec. 38; effective, T-28-7-30-20, July 30, 2020; effective Nov. 20, 2020; 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

K.A.R. 28-1-40, 28-1-41, 28-1-42, 28-1-43, and 28-1-44

K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to:

Division of the Budget  
900 SW Jackson, Room 504-N  
Topeka, KS 66612

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

K.A.R. 28-1-40 through 28-1-44 provides the requirements and limitations for contact tracing related to COVID-19 as provided by Section 38 of 2021 Senate Bill 159 passed during the 2021 Legislative Session. Contact tracing uses information received from infected and potentially infected individuals as to where they may have been and who they may have been around. Contact tracing is a tool used in controlling the spread of disease where public health tracks the disease and notifies people who may have been exposed. It is a critical tool for containing a disease. These regulations specify the training required to be a contact tracer, requirements to be a contact tracer, the health data that can be collected, the personal information that can be collected, and when contact data must be destroyed. These regulations would sunset at the end of fiscal year 2022, June 30, 2022.

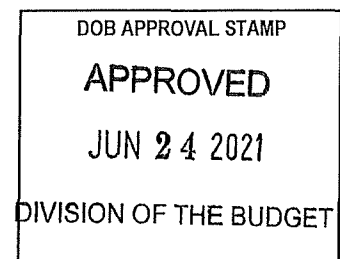
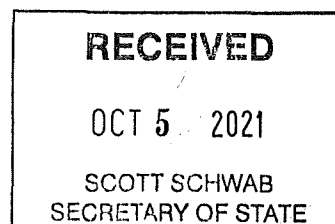
**II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different, then include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

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

**III. Agency analysis specifically addressing following:**

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

K.A.R. 28-1-40 through 28-1-44 will not restrict business activities or growth.



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

Currently, state and local health departments conduct contact tracing for a variety of diseases, including COVID-19 (see K.A.R. 28 -1-2) and maintain records for those tracings. The provisions in these regulations are a continuation of the regulations required by 2020 Special Session, ch.1, sec. 16, so any impact should be minimal unless there are a significant increase in the number of positive cases.

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

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

Businesses will not be directly affected by these regulations.

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

Benefits exist in contact tracing to control the spread of disease. These regulations specify the limits on the contact data that can be collected. The cost of implementation is minimal. See B above.

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

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

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

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

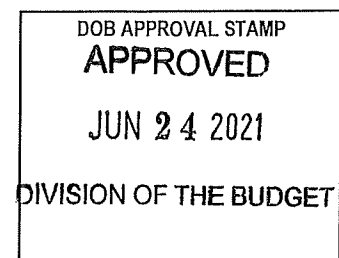
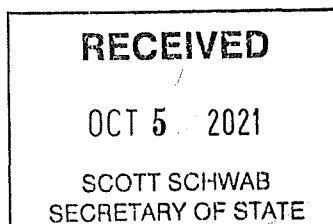
**An estimate, expressed as a total dollar figure, of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.**

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

The KDHE does not anticipate that costs will be passed to local governments, or will be minimal. No costs will be passed to the members of the public.

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

YES ☐ NO ☒



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

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

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

YES ☐ NO ☒

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

The proposed amended regulations will have no 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).**

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

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

Not applicable.

