

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

The Kansas Department of Health and Environment (KDHE), Division of Public Health, Kansas Health and Environmental Laboratories (KHEL), will conduct a public hearing at 10:00 a.m. Wednesday, October 25, 2023, in the Azure Conference Room, 4th Floor, Curtis State Office Building, 1000 SW Jackson, Topeka, Kansas, to consider the adoption of proposed amended regulation K.A.R. 28-14-2, regarding a schedule of fees for tests performed by the KHEL for Kansas public water supplies.

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

Summary of Regulation:

K.A.R. 28-14-2. Schedule of fees. Updates the pricing and language of 48 billable public water supply tests; adds nine new tests to the schedule of fees; removes five obsolete tests from the schedule of fees.

Economic Impact:

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

Cost to the public and regulated community: Total cost of the fee adjustments is \$791,949. These costs are charged to KHEL clients who will either absorb the cost or pass it on to the public. This results in an average increase of roughly 35 percent for KHEL clients. Based on feedback received from KHEL clients about the potential fee changes, the vast majority of facilities would be absorbing the costs. Only three facilities of the nearly 1,000 facilities that KHEL services responded to agency outreach and stated that they would pass these costs on to the public.

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Costs to other governmental agencies or units: The main clientele of KHEL are public water supplies in the state. The costs specified above apply to city and county governments, the four tribal nations, and the Wolf Creek Nuclear Power Plant.

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

The time period between the publication of this notice and the scheduled hearing constitutes a 60-day public comment period for the purpose of receiving written public comments on the proposed regulation. All interested parties may submit written comments prior to 5:00 p.m. on the day of the hearing to Paul Harrison, Kansas Department of Health and Environmental Laboratories, 6810 SE Dwight St., Topeka, KS 66620 or by email to paul.harrison@ks.gov. Interested parties are encouraged to participate in the public hearing by submitting written comments.

During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulation as well as an opportunity to submit their written comments. It is requested that each individual giving oral comments also provide a written copy of the comments for the record. In order to give each individual an opportunity to present their views, it may be necessary for the hearing officer to request that each presenter limit an oral presentation to an appropriate time frame.

Complete copies of the proposed regulation and the corresponding economic impact statement and environmental benefit statement may be obtained from the KDHE Laboratory website at <https://www.kdhe.ks.gov/908/Laboratories> or by contacting Paul Harrison, 785-296-1656.

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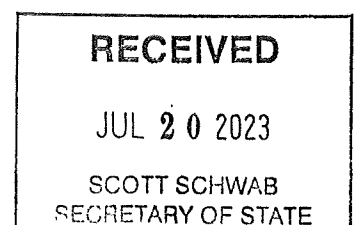
Questions pertaining to the proposed regulation should be directed to Paul Harrison at the contact information above.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and the economic impact statement and environmental benefit 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 Paul Harrison.

Declaración española: El aviso anterior se refiere al período de comentarios públicos y el calendario de audiencias públicas para enmienda propuestas al reglamento de fija de tarifas para las pruebas ambientales realizadas por KDHE para los suministros públicos de agua. Si desean obtener más información en español o tiene otras preguntas, por favor, comuníquese con el Coordinador de No Discriminación de KDHE al 785-296-5156 o en: KDHE.NonDiscrimination@ks.gov.

English statement: The above notice refers to the public comment period and public hearing schedule for the proposed amendments to the regulation fixing fees for environmental tests performed by KDHE for public water supplies. If you would like more information in Spanish or have other questions, please contact the KDHE Non-Discrimination Coordinator at 785-296-5156 or KDHE.NonDiscrimination@ks.gov.

Janet Stanek
Secretary



28-14-2. Schedule of fees. Each public water supply system submitting any samples for analysis to the office of laboratory services of the Kansas department of health and environment shall receive a quarterly statement reflecting the cost of services rendered during the previous calendar quarter. Fees shall be paid to the Kansas department of health and environment within 30 days of the date on the statement. Failure to pay fees may result in denial of future analytical services until the public water supply system pays all outstanding fees.

(a) Until the fees specified in subsection (b) are effective, the fee for each sample analysis shall be the following:

(a) (1) Inorganic chemical analyses:

(1) <u>(A)</u> Alkalinity	\$10.00
(2) <u>(B)</u> Ammonia nitrogen	\$15.00
(3) <u>(C)</u> Bromate	\$10.00
(4) <u>(D)</u> Bromide	\$10.00
(5) <u>(E)</u> Chlorate	\$10.00
(6) <u>(F)</u> Chloride	\$10.00
(7) <u>(G)</u> Chlorite	\$10.00
(8) <u>(H)</u> Fluoride	\$10.00
(9) <u>(I)</u> Mercury	\$18.00
(10) <u>(J)</u> Metals	\$9.00
(11) <u>(K)</u> Nitrate	\$10.00
(12) <u>(L)</u> Nitrite	\$10.00
(13) <u>(M)</u> Ortho-phosphate	\$10.00

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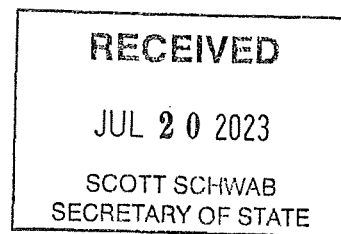
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(14) <u>(N)</u> pH	\$6.00
(15) <u>(O)</u> Silica	\$9.00
(16) <u>(P)</u> Specific conductivity	\$8.00
(17) <u>(Q)</u> Sulfate	\$10.00
(18) <u>(R)</u> Total dissolved solids (180° C)	\$15.00
(19) <u>(S)</u> Total organic carbon (TOC)	\$20.00
(20) <u>(T)</u> Total phosphate	\$10.00
(21) <u>(U)</u> Total suspended solids	\$15.00
(22) <u>(V)</u> Turbidity	\$10.00
(b) <u>(2)</u> Organic chemical analyses:	
(1) <u>(A)</u> Atrazine and Alachlor	\$100.00
(2) <u>(B)</u> Organochlorine pesticides and poly-chlorinated biphenyls screen	\$150.00
(3) <u>(C)</u> Triazine pesticide screen	\$40.00
(4) <u>(D)</u> Chlorinated acid pesticide screen	\$125.00
(5) <u>(E)</u> Semi-volatile acid organic compound screen	\$250.00
(6) <u>(F)</u> Carbamate pesticide screen	\$150.00
(7) <u>(G)</u> Volatile organic compound screen including dibromochloropropane and ethylene dibromide	\$100.00

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(8) <u>(H)</u> Total trihalomethanes, consisting of the sum of the concentrations of trichloromethane, bromodichloromethane, dibromochloromethane, and bromoform	\$50.00
(9) <u>(I)</u> Total haloacetic acids, consisting of the sum of the concentrations of monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid	\$125.00
(e) <u>(3)</u> Microbiological analyses:	
(1) <u>(A)</u> Coliform determination	\$12.00
(d) <u>(4)</u> Radiochemical analyses:	
(1) <u>(A)</u> Gamma isotopic	\$60.00
(2) <u>(B)</u> Gross alpha	\$35.00
(3) <u>(C)</u> Gross beta	\$35.00
(4) <u>(D)</u> Radium-226	\$75.00
(5) <u>(E)</u> Radium-228	\$75.00
(6) <u>(F)</u> Radon	\$35.00
(7) <u>(G)</u> Tritium	\$60.00
(8) <u>(H)</u> Uranium	\$70.00



(b) 180 days from the effective date of this regulation, the fee for each sample analysis

shall be as follows:

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(1) Inorganic chemical analyses:

<u>(A) Alkalinity</u>	<u>\$10.00</u>
<u>(B) Ammonia nitrogen</u>	<u>\$20.00</u>
<u>(C) Bromate</u>	<u>\$12.00</u>
<u>(D) Bromide</u>	<u>\$12.00</u>
<u>(E) Chlorate</u>	<u>\$12.00</u>
<u>(F) Chloride</u>	<u>\$12.00</u>
<u>(G) Chlorite</u>	<u>\$12.00</u>
<u>(H) Corrosivity</u>	<u>\$12.00</u>
<u>(I) Fluoride</u>	<u>\$12.00</u>
<u>(J) Hardness</u>	<u>\$15.00</u>
<u>(K) Lead and Copper</u>	<u>\$25.00</u>
<u>(L) Mercury</u>	<u>\$22.00</u>
<u>(M) Metals</u>	<u>\$11.00</u>
<u>(N) Nitrate</u>	<u>\$12.00</u>
<u>(O) Nitrite</u>	<u>\$12.00</u>
<u>(P) Ortho-phosphate</u>	<u>\$12.00</u>
<u>(Q) pH</u>	<u>\$5.00</u>
<u>(R) Silica</u>	<u>\$11.00</u>
<u>(S) Specific conductivity</u>	<u>\$15.00</u>
<u>(T) Sulfate</u>	<u>\$12.00</u>

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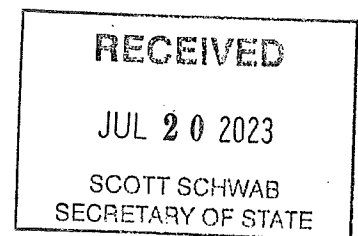
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<u>(U) Total dissolved solids (180° C)</u>	<u>\$18.00</u>
<u>(V) Total kjeldahl nitrogen (TKN)</u>	<u>\$20.00</u>
<u>(W) Total organic carbon (TOC)</u>	<u>\$25.00</u>
<u>(X) Total phosphorus</u>	<u>\$20.00</u>
<u>(Y) Total suspended solids (TSS)</u>	<u>\$18.00</u>
<u>(Z) Turbidity</u>	<u>\$15.00</u>
<u>(2) Organic chemical analyses:</u>	
<u>(A) Atrazine and Alachlor</u>	<u>\$125.00</u>
<u>(B) Herbicides</u>	<u>\$200.00</u>
<u>(C) Pesticides including polychlorinated biphenyl</u>	
<u>(PCB) screen</u>	<u>\$200.00</u>
<u>(D) Poly and perfluoroalkyl substances (PFAS)</u>	<u>\$250.00</u>
<u>(E) PFAS field reagent blank</u>	<u>\$100.00</u>
<u>(F) Semi-volatile organic compound (SVOC)</u>	
<u>screen</u>	<u>\$250.00</u>
<u>(G) Volatile organic compound (VOC) screen</u>	<u>\$115.00</u>
<u>(H) Total trihalomethanes, consisting of the sum</u>	
<u>of the concentrations of trichloromethane,</u>	
<u>bromodichloromethane, dibromochloromethane,</u>	
<u>and bromoform</u>	<u>\$60.00</u>
<u>(I) Total haloacetic acids, consisting of the sum of</u>	

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<u>the concentrations of monochloroacetic acid,</u>	
<u>dichloroacetic acid, trichloroacetic acid,</u>	
<u>monobromoacetic acid, and dibromoacetic acid</u>	<u>\$125.00</u>
<u>(3) Microbiological analyses:</u>	
<u>(A) Anatoxin</u>	<u>\$125.00</u>
<u>(B) Coliform determination (presence-absence)</u>	<u>\$20.00</u>
<u>(C) Coliform determination (quantitative)</u>	<u>\$25.00</u>
<u>(D) Cylindrospermopsin</u>	<u>\$125.00</u>
<u>(E) Legionella</u>	<u>\$100.00</u>
<u>(F) Microcystin</u>	<u>\$125.00</u>
<u>(G) Saxitoxin</u>	<u>\$125.00</u>
<u>(4) Radiochemical analyses:</u>	
<u>(A) Gamma isotopic</u>	<u>\$90.00</u>
<u>(B) Gross alpha</u>	<u>\$45.00</u>
<u>(C) Gross beta</u>	<u>\$45.00</u>
<u>(D) Radium-226</u>	<u>\$90.00</u>
<u>(E) Radium-228</u>	<u>\$90.00</u>
<u>(F) Radon</u>	<u>\$60.00</u>
<u>(G) Tritium</u>	<u>\$90.00</u>



(Authorized by and implementing K.S.A. 65-156 and K.S.A. 2013 ~~Supp.~~ 75-5608; effective Jan.

1, 1966; amended, E-79-13, June 15, 1978; amended May 1, 1979; amended May 1, 1982;

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K.A.R. 28-14-2, page 7

amended, T-88-13, May 18, 1987; amended May 1, 1988; amended Jan. 4, 1993; amended Nov.

1, 2002; amended June 6, 2014; amended P-_____.)

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Kansas Administrative Regulations Economic Impact Statement (EIS)

Kansas Department of Health & Environment
Agency

Susan Vogel
Agency Contact

785 296-1291
Contact Phone Number

28-14-2
K.A.R. Number(s)

☒ Permanent ☐ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.
- ☒ No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?
- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.
- ☒ No If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

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Section I

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

K.A.R. 28-14-2, schedule of fees, as proposed would update the pricing and language of 48 billable tests performed by the Kansas Health & Environmental Laboratories (KHEL) for public water supplies across the State. In addition, it would add nine new tests to the schedule and remove five obsolete tests.

The schedule is broken down into four sections: Inorganic chemical analyses, Organic chemical analyses, Microbiological analyses, and Radiochemical analyses. Most tests in the schedule are receiving an increase in price due to steady increases in reagent and equipment costs since the last time this regulation was updated. Inflation over the last year has exacerbated this issue. The price increases are needed to keep KHEL from losing money on the work performed for 973 public water facilities (public water supplies or discharge facilities), 4 tribal nations, and Wolf Creek Nuclear Power Plant. One test is seeing a decrease in cost.

The majority of the new additions in this schedule are for microbiology analyses including the testing of microcystins which are caused by harmful algal blooms across the States open water bodies. KHEL has also added pricing for the poly and perfluoroalkyl substances (PFAS), the so-called "forever chemicals." KHEL is increasingly being asked to test for these compounds, but currently has no mechanism to charge their clients for this testing.

KHEL utilizes fees from these services as part of its operating budget so updating them to reflect current supply and staffing costs is essential. It has been more than eight years since this regulation has been updated and the cost to perform testing has only increased during that time. Updating this regulation will ensure that KHEL has the funds necessary to perform the testing requested by its clients.

The regulation, as proposed, would leave the current fee structure in place until six months after the new regulation adoption to allow our clients to budget for the changes.

Section II

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

Pursuant to 42 U.S.C. §300f *et seq.*, 33 U.S.C. 1251 *et seq.*, U.S. public law 92-500, as amended by public law 92-217, public law 95-576, public law 96-483, and public law 97-117, K.S.A. 65-161 *et seq.*, 65-171d, 65-3001 *et seq.* or 65-3430 *et seq.* or 65-3452a *et seq.* or 65-34,105 *et seq.*, environmental testing is required for drinking water, wastewater, and hazardous waste. The requirements for testing drinking water and wastewater are described in 40 CFR Parts 141 and 136, respectively.

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KHEL's current business model relies on charging its customers for the environmental testing it performs. This approach is identical to Colorado, Nebraska, and Oklahoma who all charge their clientele for environmental testing to support their laboratory. Missouri charges small fees for a handful of tests, but they require all PWS's in the State to pay an annual fee for laboratory services. This fee generates a total of approximately 4.9 million dollars for Missouri's water laboratory. While Kansas has the same model as Colorado, Nebraska, and Oklahoma, KHEL currently charges less than any of these States for nearly every single environmental test offered by KHEL.

Section III

Agency analysis specifically addressing the following:

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

KHEL's client base for environmental testing are public water facilities, tribal nations, and Wolf Creek Nuclear Power Plant. There is the potential for public water facilities to pass off the increased costs to the public. This concern was addressed when reaching out to KHEL stakeholders to discover how their budgets would be impacted by these potential changes. KHEL does not predict that these proposed rates will have any impact on business activities across the State. Please see section III, H of this document for more details.

It should be noted that facilities are not required to use KHEL for their compliance testing needs. If they are able to obtain a better service elsewhere, there is nothing that precludes them from pursuing that service.

- 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(s) and regulation(s) and on the state economy as a whole;

There will be no implementation costs for this regulation because this is an update and not a new regulation proposal. KHEL only has a handful of very small commercial clients. These regulations will have a potential effect on the client base that KHEL currently serves: the public water supplies (and potentially their payers), 4 tribal nations, and Wolf Creek Nuclear Power Plant.

The proposed rate changes would create changes ranging from a decrease of \$1 per test up to an increase of \$50 per test depending on the analysis requested. These rate changes in dollar figures correlate to a change of 16% decrease to 108% increase. The largest percent increase comes from microbiology testing (i.e. *E. coli*) which is adjusting from \$12 per test to either \$20 per test or \$25 per test depending on if the client wants qualitative results (i.e. Is it there?) or quantitative results (i.e. How much is there?). The material cost for this test has increased significantly over the years which is the main driving force behind the large increase in pricing. For context, the State of Colorado currently charges \$20 and \$22 for the qualitative and quantitative tests, respectively, while Oklahoma charges \$27.50 for either test.

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The proposed rate changes were applied to a year's worth of KHEL data to see what the direct impact would be for KHEL's clients on an annual basis. The table below represents some of that work. These facilities were chosen because they are inclusive of one of KHEL's largest environmental clients, some medium sized clients (in terms of testing volume), and some of the smaller clients. It also includes one of the largest percent increases of any of client which jumps from \$36 per year to \$60 per year.

KHEL Client Name	Total Samples	Annual Cost	Annual Cost at Proposed Fees
Hays, City of	319	\$7417	\$9802
Wichita, City of	130	\$8983	\$12134
Manhattan, City of	862	\$20492	\$28620
Lawrence, City of	28	\$708	\$908
Water District No.1 of Johnson County	73	\$2294	\$2908
Silver Creek Farm Water District	3	\$36	\$60
Golden Shore Water Association	6	\$70	\$112
The Farm at Elberly	2	\$20	\$24

Overall, the proposed rate changes would turn into a 16-70% increase for KHEL's clients depending on the types of services requested. However, these increases seem like they will have minimal impact on the large majority of KHEL clients based off input received from the stakeholder outreach described in section III, H.

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

Facilities impacted would be the public water facilities, tribal nations, and Wolf Creek Nuclear Power Plant.

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

The largest benefit to the proposed rule is keeping KHEL solvent so they can continue to serve all the facilities that rely on them for their services. Almost all Kansans obtain their drinking water from a public water system and many systems discharge into the natural environment. These systems are required to test their water for multiple chemicals and organisms that are harmful to human health and the environment. Having KHEL available as an option to serve these communities is vital to protecting the health of Kansans. KHEL offers tremendous service and serves communities for all their regular needs and at the times when they need it the most. For example, KHEL does not charge any facility an emergency or weekend fee if testing needs to be performed over the weekend to get their system off a boil water advisory due to the potential of *E. coli* being found in their drinking water.

Without KHEL's work all systems would be forced to fulfill their testing requirements themselves or find a third party to do it for them. This would be a huge economic burden to these facilities because bringing testing in-house has a huge up-front cost and the price of

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testing through a third party is generally higher than KHEL even with the proposed increases. KHEL offers their customers excellent service at an affordable price. KHEL also prides itself on providing results in a timely fashion and holding themselves to a high standard.

- 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;

During the KHEL cost analysis all staff were careful to include only what it takes to run the test; nothing more. KHEL exists to serve the public and should not profit from any fees collected for service. The cost analysis was reviewed multiple times to make sure the correct amount of supplies was inputted for each testing methodology and the correct amount of staff time.

In addition, KHEL reached out to all of their clients with the proposed price increases to understand how it would impact them and help guide us as to whether or not this would hinder economic development. When given the option to submit any comments they wanted, not a single respondent stated that it would slow down business or economic growth. More details can be found in section III, H of this document.

- F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.

Note: Do not account for any actual or estimated cost savings that may be realized.

Costs to Affected Businesses – \$0

Costs to Local Governmental Units – \$682,660

Costs to Members of the Public – \$109,289

Total Annual Costs – \$791,949

(sum of above amounts)

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

Prior to analyzing any data, KHEL performed a price audit to make sure that all pricing codes in the laboratory's database were true and accurate. Testing data was obtained from KHEL's laboratory information management system (LIMS) for one entire calendar year. That data set contained all samples ran for the year, client name and ID, test name and ID, as well as the day KHEL received and the results reported. The annual volume was analyzed along with the pricing list that also exists in the database. A new pricing list was then created that contained all the proposed testing charges.

The total price was calculated for all clients for both the current and the proposed testing rates. The difference between those two totals came to \$791,949. This data set also allowed for summing the testing cost of each individual client. This allowed for a direct before and after comparison of all clients as well as breaking them apart individually.

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To determine how much of the cost would be passed onto the public, KHEL utilized stakeholder engagement to arrive at the above number. Out of the 186 clients that responded to the request for input, only three of them mentioned that they would pass these costs along to their customers. However, 13.8% said that the proposed rates would have an impact on their facility. Using this number as a guide, roughly 13.8% of all costs would be forwarded to the public which equates to \$109,289 of the total charges. More details can be found in Section III, subsection H.

- ☐ Yes If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing 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.
- ☒ No
- ☐ Not Applicable

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

The proposed fee changes indicated above would increase the fees collected by \$791,949 which is deposited into KHEL's operating fund. This impact is expected to remain constant for both this fiscal year and next fiscal year.

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

There will be no impact to small employers outside of any public water systems that may be defined as a small employer. For those entities, some costs from the public water supplies may be passed onto their customers. KHEL calculates that \$109,289 of this total will be passed onto the general public based on the stakeholder feedback.

- 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 this regulation was published in the *Kansas Register*, standard agency procedure was followed and the three organizations were contacted electronically for comment with copies of the regulation, economic impact statement, environmental benefit statement, and published notice of hearing.

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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).

KHEL created a user-friendly electronic survey, open to the public, that collected 7 pieces of information from respondents. The data fields collected for this survey were submission date, first name, last name, organization, two questions about the proposed rate changes, and general comments. The two questions asked in the survey were:

- Will the proposed regulation change create a significant fiscal impact for your facility?
 - Respondents could answer Yes, No, or Not Sure
- What estimated percentage of your city's, county's, or company's budget goes to laboratory services?
 - Respondents could answer 0-10%, 10-20%, 20-30%, etc. or Not Sure

Letters were then created and addressed to all KHEL environmental clients. The letters contained information about why KHEL was reaching out to them, and it contained a URL as well as QR code to view and submit the survey. The survey link contained both the current and proposed regulations. These letters were then sent to the fiscal contact on file in KHEL's database for all customers by their normal means of communication. The survey was left open for thirty days.

KHEL received responses from 186 environmental clients (~20% of all clients). From those 186 responses, 26 of them (~14%) stated that these proposed rate increases would have a significant impact on their facility.

67% of respondents said that 0-10% of their facilities budget goes to laboratory services. 22% of respondents said 10-20% of their budget goes to laboratory services. Six respondents said 20-30%, one respondent said 90-100%, and 33 respondents stated that they were not sure how much of their budget goes to laboratory services.

66 facilities left general comments. The majority of the general comments were positive and understanding of the reasoning for rate increases. Three facilities who responded and clearly stated that they would need to pass these costs onto their customers. Multiple respondents asked for a 6-12 month lead time for implementation to give them time to set their city or county budgets.

Based off of the input received from stakeholders, KHEL did not adjust the proposed rates after receiving their responses because the majority of those that replied were not impacted by the change.

Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

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Revised 05/03/2022

- ☒ Yes If yes, complete the remainder of Section IV.
☐ No If no, skip the remainder of Section IV.

A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

The total change in costs is estimated to be \$791,949 and will mostly be billed to public water suppliers across the State. The total annual cost to KHEL clients with the proposed fee increase is approximately \$2.4 million with roughly \$1.6 million already being paid by KHEL clients on an annual basis. Per the procedure laid out in Section III, H the majority of respondents from the stakeholder feedback indicated that they would absorb the cost while some of them will pass it along to the public.

B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

There is no initial cost to implement or enforce the proposed rule. This rule already exists and is being updated to reflect the current costs on KHEL to operate. The cost of enforcement is negligible as KHEL has very few clients who do not pay their testing bill on time.

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

If the proposed regulation is not adopted, then KHEL would either need to pursue additional funds through the State General Fund or stop providing those services that are the largest cost burden to the laboratory. In the latter instance, KHEL clients would be forced to either perform the testing themselves or find a private sector lab that could do the testing for them. Both of these cases would lead to increased cost to the facility. In order to start testing themselves would take a significant amount of capital and investment up front. Moving their testing to the private sector will also be more expensive as the proposed prices are the same or lower than most commercial laboratories. Also, KHEL does not charge additional fees if the facility requires testing on a holiday or weekend as sometimes happen for unexpected and unpredictable reasons.

Either of the above instances would end up costing the facilities, the public, and businesses more money.

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D. Provide a detailed statement of the data and methodology used in estimating the costs used.

The methodology used is the same as identified in subsections B and F within section III of this document. Data was obtained from KHEL's database to determine total volumes in charges invoiced to their customers. The new proposed rates were then used to calculate what facilities would be charged if the regulation changes were adopted and the facilities sent in the same volume of tests. The difference in those two numbers came out to \$791,949. That was then used to determine that total amount charged on annual basis by KHEL would be roughly \$2.4 million. The data was picked over and looked at multiple different clients to determine if there were any anomalies or outliers. For example, facilities where the cost would increase astronomically compared to everyone else. Nothing of the sort was found. KHEL then reached out to all their clients to show them the proposed fee changes and obtain their feedback. KHEL did not adjust their fees after receiving this feedback as the majority of responses were positive.

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Division of Environment
Office of Laboratory Services

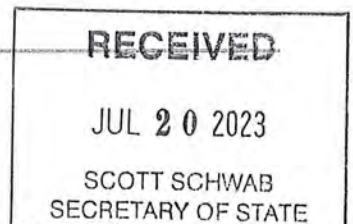
ENVIRONMENTAL BENEFIT STATEMENT
AND
ADDITIONAL ECONOMIC IMPACTS FOR ENVIRONMENTAL REGULATIONS

Pursuant to K.S.A. 77-416(d) – (e)

PROPOSED AMENDMENT OF LABORATORY SCHEDULE OF FEES REGULATION:

K.A.R. 28-14-2

July 2023



I. Environmental Benefit Statement

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

a) Need

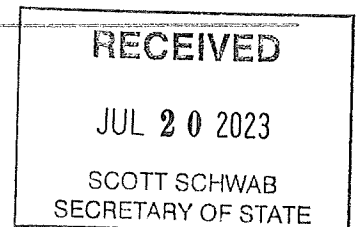
Pursuant to 42 U.S.C. §300f et seq., 33 U.S.C. 1251 et seq., U.S. public law 92-500, as amended by public law 92-217, public law 95-576, public law 96-483, and public law 97-117, K.S.A. 65-161 et seq., 65-171d, 65-3001 et seq. or 65-3430 et seq. or 65-3452a et seq. or 65-34,105 et seq., environmental testing is required for drinking water, wastewater, and hazardous waste. The requirements for testing drinking water and wastewater are described in 40 CFR Parts 141 and 136, respectively. K.A.R. 28-14-2, schedule of fees, as proposed would update the pricing and language of 48 billable tests performed by the Kansas Health & Environmental Laboratories (KHEL) for public water supplies across the State. In addition, it would add nine new tests to the schedule and remove five obsolete tests.

KHEL utilizes fees from these services as part of its operating budget so updating them to reflect current supply and staffing costs is essential. It has been more than eight years since this regulation has been updated and the cost to perform testing has only increased during that time. Updating this regulation will ensure that KHEL has the funds necessary to perform the testing requested by its clients.

KHEL's current business model relies on charging its customers for the environmental testing it performs. This approach is identical to Colorado, Nebraska, and Oklahoma who all charge their clientele for environmental testing to support their laboratory. Missouri charges small fees for a handful of tests, but they require all PWS's in the State to pay an annual fee for laboratory services. This fee generates a total of approximately 4.9 million dollars for Missouri's water laboratory. While Kansas has the same model as Colorado, Nebraska, and Oklahoma, KHEL currently charges less than any of these States for nearly every single environmental test offered by KHEL.

b) Environmental benefit

The largest benefit to the proposed rule is keeping KHEL solvent so they can continue to serve all the facilities that rely on them for their services. Almost all Kansans obtain their drinking water from a public water system and many systems discharge into the natural environment. These systems are required to test their water for multiple chemicals and organisms that are harmful to human health and the environment. Having KHEL available as an option to serve these communities is vital to protecting the health of Kansans. KHEL offers tremendous service and serves communities for all their regular needs and at the times when they need it the most.



For example, KHEL does not charge any facility an emergency or weekend fee if testing needs to be performed over the weekend to get their system off a boil water advisory due to the potential of E. coli being found in their drinking water.

Without KHEL's work all systems would be forced to fulfill their testing requirements themselves or find a third party to do it for them. This would be a huge economic burden to these facilities because bringing testing in-house has a huge up-front cost and the price of testing through a third party is generally higher than KHEL even with the proposed increases. KHEL offers their customers excellent service at an affordable price. KHEL also prides itself on providing results in a timely fashion and holding themselves to a high standard.

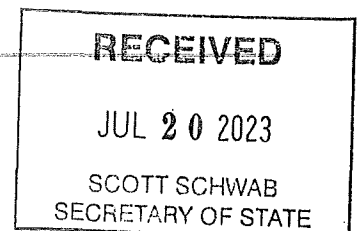
2) When applicable, a summary of the research indicating the level of risk to the public health or the environment being removed or controlled by the proposed rules and regulations or amendment.

If the proposed changes are not adopted, KHEL will need to start looking at which tests cost them the most money to run and start refusing that service to their clients. The federal and state requirements for those facilities to test will remain in effect, forcing those facilities to get those test results from somewhere. KHEL is certified by the EPA Region 7 Drinking Water Certification Program. They produce valuable, accurate results of known and documented quality. Kansas has over 1,000 public water supply systems that deliver drinking water directly to Kansas homes. These facilities rely on KHEL's accuracy and timeliness to know how their facility may be impacting the environment. Taking this service away would potentially create a frenzy where some testing is missed or performed improperly.

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.

The proposed regulation amendments do not specify the control of any contaminants. However, it does layout the fees that KHEL can collect for analysis of any contaminants that are considered potentially harmful now and in the future.

II. Additional Economic Impacts for Environmental Regulations



In addition to the Economic Impact Statement prepared for the Kansas Division of the Budget, for all environmental rules and regulations the following descriptions of costs are included:

1) Capital and annual costs of compliance with the proposed amendments and the persons who will bear those costs.

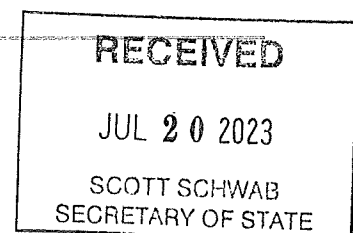
The total change in costs is estimated to be \$791,949 and will mostly be billed to public water suppliers across the State. The total annual cost to KHEL clients with the proposed fee increase is approximately \$2.4 million with roughly \$1.6 million already being paid by KHEL clients on an annual basis. Per the procedure laid out in the Economic Impact Statement prepared for the Kansas Division of Budget under Section III, subsection H the majority of respondents from the stakeholder feedback indicated that they would absorb the cost while some of them will pass it along to the public.

2) Initial and annual costs of implementing and enforcing the proposed amendments, including the estimated amount of paperwork, and the state agencies, other governmental agencies or other persons or entities who will bear the costs.

There is no initial cost to implement or enforce the proposed rule. This rule already exists and is being updated to reflect the current costs on KHEL to operate. The cost of enforcement is negligible as KHEL has very few clients who do not pay their testing bill on time.

3) Costs which would likely accrue if the proposed regulations are not adopted, the persons who will bear the costs and those who will be affected by the failure to adopt the regulations.

If the proposed regulation is not adopted, then KHEL would either need to pursue additional funds through the State General Fund or stop providing those services that are the largest cost burden to the laboratory. In the latter instance, KHEL clients would be forced to either perform the testing themselves or find a private sector lab that could do the testing for them. Both of these cases would lead to increased cost to the facility. For these facilities to bring this testing in-house, would take a significant amount of capital and investment up front as well as laboratory testing experience. Moving their testing to the private sector will also be more expensive as the proposed prices are the same or lower than most commercial laboratories. Also, KHEL does not charge additional



fees if the facility requires testing on a holiday or weekend as sometimes happen for unexpected and unpredictable reasons. Either of the above instances would end up costing the facilities, the public, and businesses more money.

4) A detailed statement of the data and methodology used in estimating the costs used in the statement.

Prior to analyzing any data, KHEL performed a price audit to make sure that all pricing codes in the laboratory's database were true and accurate. Testing data was obtained from KHEL's laboratory information management system (LIMS) for one entire calendar year. That data set contained: all samples ran for the year, client name and ID, test name and ID, the date KHEL received the sample, and the results reported. The annual volume was analyzed along with the pricing list that also exists in the database. A new pricing list was then created that contained all the proposed testing charges.

The total price was calculated for all clients for both the current and the proposed testing rates. The difference between those two totals came to \$791,949. This data set also allowed for summing the testing cost of each individual client. This allowed for a direct before and after comparison of all clients as well as breaking them apart individually.

To determine how much of the cost would be passed onto the public, KHEL utilized stakeholder engagement to arrive at the above number. Out of the 186 clients that responded to the request for input, only three of them mentioned that they would pass these costs along to their customers. However, 13.8% said that the proposed rates would have an impact on their facility. Using this number as a guide, roughly 13.8% of all costs would be forwarded to the public which equates to \$109,289 of the total charges. More details can be found in the Economic Impact Statement prepared for the Kansas Division of Budget under Section III, subsections B and H.

