

State of Kansas Kansas Bureau of Investigation

Notice of Public Hearing on Proposed Administrative Regulation

October 5, 2023

A public hearing will be conducted on Friday, December 8, 2023, at 9:00 a.m. in the Headquarters Main Conference Room at the Kansas Bureau of Investigation (KBI), 1620 SW Tyler, Topeka, Kansas, to consider the adoption of a proposed rule and regulation of the Kansas Bureau of Investigation (KBI), on a permanent basis.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rule and regulation. All interested parties may submit written comments prior to the hearing to the Kansas Bureau of Investigation, 1620 SW Tyler, Topeka, Kansas 66612, or by email to Bryan.Ross@kbi.ks.gov. All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed regulation during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulation and 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 Bryan Ross at 785-296-8200, (or TTY 1-800-766-3777). Handicapped parking is located on the south end of the KBI building, off of Tyler Street.

A summary of the proposed regulation and its economic impact follows. (Note: Statements indicating that a regulation is “not anticipated to have any economic impact” are intended to indicate that no economic impact on the KBI, other state agencies, state employees, or the general public has been identified.)

A copy of the proposed regulation and the Economic Impact Statement for the proposed regulation can be requested from Bryan.Ross@kbi.ks.gov, or by writing to Kansas Bureau of Investigation, 1620 SW Tyler, Topeka, KS 66612 (attn: Bryan Ross).

K.A.R. 10-22-1 – Approved field tests. This regulation lists approved field tests for controlled substances. For admission of field test results at a preliminary examination, law enforcement officers are required to use the field tests specified in this regulation. The proposed amendments to K.A.R. 10-22-1 will add an immunoassay-based field test approved by the Director of the Kansas Bureau of Investigation for detection of fentanyl, specifically DetectaChem Inc.’s MobileDetect™ Fentanyl Test Strip Kit.

The proposed amendment to this regulation is not anticipated to have any economic impact.

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Proposed

Tony Mattivi
Director
Kansas Bureau of Investigation

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10-22-1. Approved field tests. (a) Law enforcement officers shall use only the field tests specified in this regulation on suspected controlled substances for admission of the field test results at any preliminary examination pursuant to K.S.A. 22-2902, and amendments thereto.

(b) The following reagents shall be the only reagents approved by the director of the Kansas bureau of investigation (KBI) for reagent-based field tests:

- (1) Chen's reagent;
- (2) cobalt thiocyanate reagent;
- (3) Dille-Koppanyi reagent;
- (4) Duquenois-Levine reagent;
- (5) Ehrlich's reagent;
- (6) fast blue B or BB reagent or the salts of either reagent;
- (7) Fröhdes reagent;
- (8) Mandelin reagent;
- (9) Marquis reagent;
- (10) Mecke's reagent;
- (11) nitric acid reagent;
- (12) Sanchez reagent;
- (13) Scott reagent;
- (14) sodium nitroprusside reagent, which is also known as nitrosylpentacyanoferrate, nitroprussidnatrium, sodium nitroprussate, sodium nitrosylpentacyanoferrate, or disodium pentacyanonitrosylferrate. This reagent may be used only in conjunction with the Marquis reagent; and

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(15) Zwikker reagent.

(c) The following instruments shall be the only instruments approved by the director of the KBI for instrument-based field tests:

(1) B&W Tek TacticID®-N handheld Raman analyzer, without utilizing the “mixture ID” software feature;

(2) Thermo Scientific TruNarc™ handheld narcotics analyzer;

(3) Thermo Scientific FirstDefender™ RM chemical identification system handheld Raman analyzer;

(4) Thermo Scientific Gemini™ analyzer handheld Raman and Fourier transform infrared (FTIR) analyzer; and

(5) Smiths Detection HazMatID™ Elite handheld FTIR analyzer.

(d) The following test shall be the only immunoassay test approved by the director of the KBI for immunoassay-based field tests:

(1) DetectaChem Inc.’s MobileDetect™ Fentanyl Test Strip Kit. (Authorized by and implementing K.S.A. 22-2902c; effective March 11, 2005; amended June 17, 2005; amended Sept. 20, 2019; amended Feb. 11, 2022; amended P-_____.)

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Kansas Administrative Regulations Economic Impact Statement (EIS)

Kansas Bureau of Investigation

Agency

Bryan A. Ross

Agency Contact

785-296-6782

Contact Phone Number

10-22-1

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. 10-22-1 is a regulation listing approved field tests for controlled substances. For admission of field test results at a preliminary examination, law enforcement officers are required to use the field tests specified in this regulation. The proposed amendments to K.A.R. 10-22-1 will add immunoassay-based field tests approved by the Director of the Kansas Bureau of Investigation and the inclusion of one such approved immunoassay-based field test for detection of fentanyl.

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.)*

Not applicable.

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;

This regulation will not enhance or restrict business activities and growth.

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

This regulation will not have an economic effect on businesses or local government, or on the state economy as a whole.

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

This regulation will not affect businesses.

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

The benefit of the proposed amendments to K.A.R. 10-22-1 is that it provides the option of an immunoassay-based field test for law enforcement agencies to administer to detect fentanyl. The approved immunoassay-based field test provides fast results that are accurate and easy to interpret. Any costs would result from an agency's decision to acquire certain field tests. The amendments to K.A.R. 10-22-1 alone would not result in any costs being incurred by an agency.

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- 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;

No such measures are necessary, as this regulation will not affect business and economic development.

- 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 – \$0

Costs to Members of the Public – \$0

Total Annual Costs – \$0

(sum of above amounts)

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

Not applicable, as the cost estimate is \$0.

- ☐ 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 and regulation(s), did the agency hold a public hearing to find that the estimated costs
- ☐ No
- ☒ Not Applicable 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.

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.

Not applicable, as the implementation of the proposed regulation will not change aggregate state revenues and expenditures.

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.

No dollar estimate can be provided because the regulation will have no economic impact on individuals, small employers, or the general public.

- 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

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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.

Not applicable. The proposed regulation will not increase or decrease revenues or impose functions or responsibilities on cities, counties, or school districts that will increase expenditures.

- 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 KBI has not consulted with or solicited information from other entities or agencies because the KBI does not anticipate any effects on such entities or agencies as a result of the proposed regulation.

Section IV

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

- ☐ 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.

[Click here to enter agency response.](#)

- 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.

[Click here to enter agency response.](#)

- 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).

[Click here to enter agency response.](#)

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

[Click here to enter agency response.](#)

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