

**Department of Agriculture, Division of Water Resources
Notice of Hearing on Proposed
Administrative Regulations, Statewide**

Proposed

A public hearing will be conducted at 10:00 a.m. Tuesday, July 25, 2017, in room 124 of the Kansas Department of Agriculture, 1320 Research Park Dr., Manhattan, Kansas, to consider the adoption of proposed regulations.

Individuals wishing to participate by teleconference may go to one of the following locations on the date and time of the public hearing:

Garden City Field Office, 2508 Johns Street, Garden City

Stafford Field Office, 300 S. Main Street, Stafford

Stockton Field Office, 820 S. Walnut, Stockton

Topeka Field Office, 6531 SE Forbes Ave., Suite B, Topeka

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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 rules and regulations. All interested parties may submit written comments prior to the hearing to the Secretary of Agriculture, 1320 Research Park Dr., Manhattan, Kansas, 66502, or by e-mail to ronda.hutton@ks.gov. All interested parties will be given a reasonable opportunity to present their views orally on the adoption of the proposed regulations during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes. These regulations are proposed for adoption on a permanent basis. A summary of the proposed regulations and their economic impact follows:

K.A.R. 5-5-9 and K.A.R. 5-5-10 - The proposed amendments to the regulations will modify how the consumptive use of a water right will be calculated when converting an irrigation water right to a different beneficial use made of water.

Economic Impact Statement:

Under current regulations the consumptive use calculation is based on perfected acres by water right. Determining the perfected acres requires a water right owner to contact the Kansas Department of Agriculture's Division of Water Resources or a Groundwater Management District for that number. The proposed amendments will create a more transparent process by adopting a map that contains a conversion factor by county. The conversion factor will allow an owner or a potential new user to calculate the consumptive use of a water right without having to contact an agency for the perfected areas. This will be a conversion from the current authorized quantity. The conversion factor will be easily attained by referring to the map adopted by the regulation.

This regulation is not mandated by federal law.

The proposed amendment will result in no fiscal impact to the department.

The proposed amendments will result in no fiscal impact to other government agencies. The amendment will have a positive fiscal impact to someone wanting to change an existing irrigation water right to another beneficial use by understanding the conversion factor in the beginning of the process.

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No other methods were considered by the state.

K.A.R. 5-5-16 - The proposed amendments to the regulation will modify how the consumptive use of a water right will be calculated when converting an irrigation water right to a different beneficial use made of water and adding an additional well to a water right.

Economic Impact Statement:

To ensure we have a consistent method in our current regulations (K.A.R. 5-5-9 and K.A.R. 5-5-10) when we are converting water rights from irrigation to another beneficial use of water and adding an additional well for the new beneficial use. This regulation is not mandated by federal law.

The proposed amendment will result no fiscal impact to the department.

The proposed amendments will result in no fiscal impact to other government agencies. The amendment should have no fiscal impact to the regulated community.

No other methods were considered by the state.

K.A.R. 5-14-11 - The proposed amendments to the regulation will modify how the civil penalty on a delinquent water use report will be applied based on when the water use report and civil penalty is received by the department.

Economic Impact Statement:

To ensure we have a consistent method in our current regulations applying the delinquent water use civil penalty so the water user has a very clear and transparent regulation to understand how the penalty is applied. This regulation is not mandated by federal law.

The proposed amendment will result in a positive fiscal impact to the department for a short amount of time. Currently the penalty is \$50 per water right when the report is filed between March 1 and June 1. After June 1, the penalty is \$250. The statute authorizing this regulation was changed to increase the penalty to \$1000 and a suspension of use until the report is filed. We have approximately 25 files in the \$1000 category. We could potentially see \$9,000 if half of these files comply. Half will close the rights, so we will not see an impact from the closed files. We have approximately 250 files in the \$50 category. Therefore, based on the difference of \$50 increasing to \$250, we could see a \$50,000 increase in first year. We will not sustain this level because the higher penalty will gain compliance. The number of delinquent reports will decrease.

The proposed amendments will result in no fiscal impact to other government agencies. The amendment will have fiscal impact, as described above, to the regulated community if they fail to file their reports. If the reports are filed prior to March 1, there is no penalty or cost.

No other methods were considered by the state.

Any individual with a disability may request accommodations in order to participate in the public hearing and may request the proposed regulations and impact statements in an accessible format. Requests for accommodations should be made at least five working days in

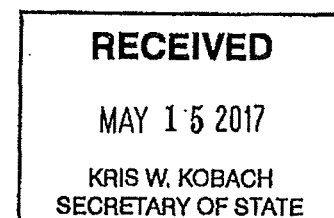
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advance of the hearing by contacting Ronda Hutton at (785) 564-6715 or fax (785) 564-6777. Handicapped parking is available on the west side of the building located at 1320 Research Park Drive in Manhattan. Entrance to the building is also located on west side of the building and is accessible to individuals with disabilities. If you have questions about accessibility for any of the above listed teleconference locations, please contact Ronda Hutton at (785) 564-6715 or email to ronda.hutton@ks.gov.

Copies of the regulations and their economic impact statements may be obtained by contacting the Department of Agriculture, Ronda M. Hutton, 1320 Research Park Drive, Manhattan, KS 66502 or (785) 564-6715 or by accessing the department's Web site at agriculture.ks.gov. Comments may also be made through our website under the proposed regulation.

David W. Barfield
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture



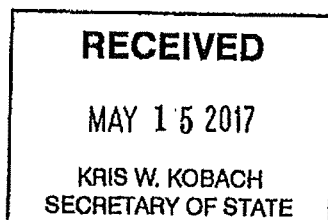
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K.A.R. 5-5-9. ~~Criteria for the Approval of an application for a change in the use made of water from irrigation to any other type of beneficial use of water.~~ (a) The approval of a change in the use made of water from irrigation to any other type of beneficial use of water shall not be approved if it the change will cause the net consumptive use from the local source of water supply to be greater than the net consumptive use from the same local source of water supply by the original irrigation use based on the following criteria requirements:

(1) The maximum annual quantity of water to be allowed by the approved change approval shall be the net irrigation requirement (NIR) for the 50% chance rainfall for the county of origin, as set forth in K.A.R. 5-5-12, multiplied by the maximum acreage legally irrigated under the authority of the water right in any one calendar year during the perfection period. For vested rights, the acreage used shall be the maximum acreage irrigated prior to June 28, 1945; or authorized quantity of the water right multiplied by the return-flow factor specified for the county within which the change is approved, as shown on the department's map titled "irrigation return-flow percentages in Kansas, by county," dated February 16, 2016 and hereby adopted by reference.

(2) ~~if the applicant establishes to the satisfaction of the chief engineer the need for more flexibility in the authorized annual quantity, the application may be approved subject to the following limits.~~

~~(A) The maximum annual quantity of water to be allowed by the change approval shall be the NIR for the 80% chance rainfall for the county of origin, as set forth in K.A.R. 5-5-12, multiplied by the maximum acreage legally irrigated in any one calendar year during the~~



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~~perfection period. For vested rights the acreage used shall be the maximum acreage irrigated prior to June 28, 1945.~~

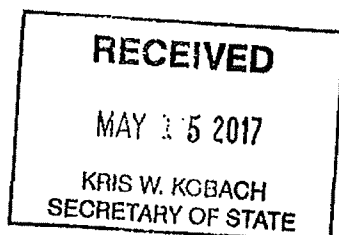
~~(B) The new type of beneficial use shall be further limited by a five year fixed allocation of water in which the NIR for a 50% chance rainfall for the county of origin, as set forth in K.A.R. 5-5-12, is multiplied by five times the maximum acreage lawfully irrigated in any one calendar year during the perfection period. For vested rights, the acreage used shall be the maximum acreage irrigated prior to June 28, 1945.~~

~~(C) An application for a term permit which will circumvent the five year allocation of water limit shall not be approved by the chief engineer.~~

(3) In determining whether the net consumptive use of water will be increased by the proposed change in the use made of water, the applicant shall be given credit by the chief engineer for any return flows from the proposed type of beneficial use which of water that will return to the same local source of supply as the return flows from the originally authorized type of beneficial use of water, as substantiated by the applicant to the satisfaction of the chief engineer by an engineering report or similar type of hydrologic analysis.

(4) (3) The authorized quantity to be changed to the new type of beneficial use of water shall never exceed the maximum annual quantity authorized by the water right.

(5) (4) If a water right which that overlaps the authorized place of use of one or more other water rights, either in whole or in part, is being changed to a different type of beneficial use of water, the total net consumptive use of all water rights after the change is approved shall not exceed the total net consumptive use of all of the rights before the change is approved.



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(6) (5) The approval for a change in the use made of water shall also be limited by that quantity reasonable for the use proposed by the change in the use made of water in order to prevent waste pursuant to K.A.R. 5-1-1.

(b) Upon request of the applicant, the historic net consumptive use actually made during the perfection period, or ~~prior to~~ before June 28, 1945 ~~in the case of~~ for vested rights, under the water right proposed to be changed shall be considered by the chief engineer, ~~but~~. The burden shall be on the owner to document that historic net consumptive use with an engineering study, or an equivalent documentation and analysis, and demonstrate to the satisfaction of the chief engineer that the analysis submitted by the applicant is a more accurate estimate of the historic net consumptive use than the net consumptive use calculated using the methodology ~~set forth~~ specified in paragraph (a)(1).

(c) If the methods ~~set forth~~ specified in subsection (a) produce an authorized annual quantity of water ~~which appears to be unrealistic and that~~ could result in impairment of other water rights, the chief engineer shall make a site-specific net consumptive use analysis to determine the quantity of water ~~which~~ that was actually beneficially consumed under the water right. If the water right is within a groundwater management district and the district has additional site-specific data available, the data may be submitted to the chief engineer for consideration. The quantity approved shall be limited to the quantity determined to be reasonable by the chief engineer's analysis.

(d) A term permit that would increase the consumptive use of the water right or would otherwise circumvent the limits specified in this regulation shall not be issued to any applicant.

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(Authorized by K.S.A. 82a-706a; implementing K.S.A. ~~1993~~ 2016 Supp. 82a-708b; effective

Nov. 28, 1994; amended P-_____.)

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K.A.R. 5-5-10. Partial changes in the use made of water from irrigation to another type of beneficial use of water. (a) ~~In a case where~~ If an irrigation right is to be divided and only a portion of the rate and quantity will be changed to a different use made beneficial use of water, only that portion of the annual quantity of the water right being changed to a different type of beneficial use of water shall be reduced as necessary to prevent the net consumptive use from increasing substantially.

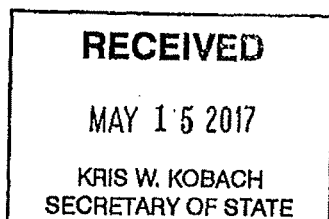
(b) The authorized place of use for the irrigation right shall ~~generally~~ may be reduced in proportion to the reduction in annual quantity caused by the change. If the irrigator ~~desires~~ wants to retain more than ~~his or her~~ that person's proportional allotment of acres after the change, the procedures ~~outlined~~ specified in K.A.R. 5-5-11(b)(2)(B)(ii) shall be followed to determine whether the irrigator shall be allowed to retain more acreage.

(c) The authorized rate of diversion shall be divided between the irrigation use and the non-irrigation use. ~~Any~~ Each reasonable division of the rate by the parties shall be approved. A reasonable division of the rate shall be based on the actual rate of withdrawal at the time of the application and the existing physical conditions of the water source at the time of the application. The division of the maximum rate of diversion need ~~shall~~ not be required to be proportional to the division of the quantity ~~as long as~~ if the division of the rate of diversion is reasonable to divert each portion of the annual quantity of water after the division of the water right is made.

(d) The division of the annual quantity shall be ~~made~~ calculated as follows:

(1) ~~Step one:~~

(A) ~~Multiply the net irrigation requirement (NIR) for the 50% chance rainfall for the county of origin, as set forth in K.A.R. 5-5-12, times the maximum number of acres irrigated in~~



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~~any one calendar year during the perfection period. For vested rights, the acreage used shall be the maximum acreage irrigated prior to June 28, 1945.~~

~~(B) This will result in~~ Calculate the maximum quantity that could be changed to another type of beneficial use of water if the entire water right were changed pursuant to K.A.R. 5-5-9(a)(1).

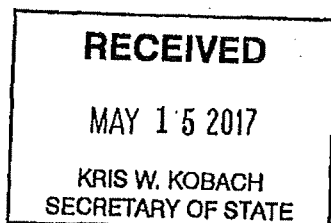
~~(2) Step two:~~

(A) Divide the annual quantity sought ~~desired~~ to be changed to the new beneficial use of water by the maximum quantity that could be changed if the entire water right were changed.

~~(B) This will~~ The result in shall be the percentage of the entire reduced water right that will be changed to the new beneficial use of water. The remaining percentage of the current water right may ~~can~~ be retained by the irrigation water right owner.

~~(3) Step three:~~

(A) Multiply the remaining percentage times the total currently authorized quantity. ~~This~~ The result shall be the annual quantity of water ~~which~~ that may be retained by the irrigation water right owner. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1993 2016 Supp. 82a-708b; effective Nov. 28, 1994; amended P-_____.)



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K.A.R. 5-5-16. Additional wells. (a) An application for approval to change the a point of diversion ~~to add~~ by adding an additional point of diversion to divert groundwater, by either constructing a new well or moving a portion of a water right to a well that has previously been authorized by the chief engineer, shall not be approved unless it the application meets the following requirements:

(1) ~~The provisions~~ Each proposed point of diversion shall meet the requirements of K.S.A. 82a-708b, and amendments thereto, and any applicable regulations adopted by the chief engineer ~~shall be met~~.

(2) The total maximum quantity of water authorized to be diverted each calendar year by the original well or wells, and the additional well or wells, shall not exceed any of the following limits:

(A) The maximum annual quantity of water that has been perfected;

(B) the maximum annual quantity of water authorized to be diverted before approval of the change; or

(C) the maximum consumptive use of water during the perfection period as required by K.A.R. 5-5-3 and as specified in either ~~paragraph (a) (2) (C) (i) or (ii)~~ of the following:

(i) If the water right authorizes the use of water for irrigation use, the consumptive use of water shall be presumed to not be increased in violation of K.A.R. 5-5-3 if the maximum annual quantity requested does not exceed the quantity in acre-feet calculated by use of the following formula: multiply the maximum number of acres legally irrigated in any one year during the perfection period by the 80 percent chance net irrigation requirements (N.I.R.), as ~~set forth~~

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specified in K.A.R. 5-5-12 expressed in acre-feet, and divide that number by a delivery efficiency of 0.85; or

(ii) ~~if the beneficial use authorized is not irrigation, the net consumptive use during the perfection period shall be determined using the best information available.~~ water right authorizes the use of water for irrigation and an additional well or wells are authorized for a beneficial use of water that is not irrigation, the consumptive use of the portion of the water right used for irrigation shall be determined as specified in paragraph (a)(2)(C)(i). The non-irrigation portion of the water right available for diversion shall be determined as specified in K.A.R. 5-5-9 and K.A.R. 5-5-10.

(3) The total maximum rate of diversion that may be authorized for the original well or wells and the additional well or wells shall not be greater than the total maximum rate of diversion that could have been diverted from the original well or wells if they were currently being replaced by new wells at substantially the originally authorized location or locations in the same local source of supply. ~~A reasonable value for~~ The maximum rate of diversion shall be one of the following:

(A) The total rate of diversion based on a current water flow rate test done on the point or points of diversion; or

(B) ~~a value based on~~ resulting from a valid hydraulic analysis, which may include rate tests, pump tests, and water level data, submitted by the applicant and acceptable to the chief engineer based on the veracity of its data and its proper application of scientific principles, showing the current capacity of the aquifer to yield water at the currently authorized point or points of diversion.



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(4) A condition shall be placed on the approval of the application for change authorizing the additional well or wells that provides that, for the sole purpose of administering wells concerning direct impairment, the additional well or wells shall be considered to have the priority of the date the application was filed to add the additional well or wells.

(b) The applicant shall submit the following information:

(1) A well completion log of the currently authorized well or a stratigraphic log of a test hole located within 300 feet of the currently authorized well;

(2) the depth of the currently authorized well;

(3) the current depth to the static water level of the currently authorized well;

(4) a stratigraphic log of a test hole located within 300 feet of the proposed location of each of the proposed additional well or wells; and

(5) any additional information that the chief engineer ~~needs to understand the nature of the proposed additional well or wells~~ may require to understand the nature of the proposed additional well or wells.

(c) The proposed additional well or wells shall meet one of the following conditions:

(1) Meet the well spacing requirements to all other wells with a priority earlier than the date on which the change application was filed; or

(2) if demonstrate by a hydraulic analysis, which may include rate tests, pump tests, and water level data, shows, as submitted by the applicant and acceptable to the chief engineer based on the veracity of its data and its proper application of scientific principles, that the approval of ~~the proposed an~~ additional well within 300 feet of the a currently authorized well location, or within the geographic center of a currently authorized battery of wells, will neither impair any

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water rights senior to the date on which the application for change was filed nor prejudicially and unreasonably affect the public interest, be located ~~within a 300-foot radius of one of the wells, or the geocenter if the currently authorized point of diversion is a battery of wells,~~ authorized pursuant to the water right upon which the change application has been filed.

(d) Each point of diversion authorized by an approval of an application for change for an additional well shall have a specific assignment of a maximum instantaneous rate of diversion and a maximum annual quantity of water.

(e) Each well authorized by a water right that has been changed under the provisions of this regulation shall be equipped with a separate water flowmeter that meets or exceeds the specifications for water flowmeters adopted by the chief engineer.

(f) Each approval of an additional well or wells shall have a condition that reserves jurisdiction for the chief engineer to review the approval of the additional well or wells at intervals of ~~no fewer than~~ at least five years, and not more than 10 years, to determine if the total annual quantity of water actually being withdrawn by all wells authorized by the approval of an application for change is exceeding the total annual quantity of water that could have been physically withdrawn if the additional well or wells had not been approved. If the chief engineer determines during the review that the total annual quantity being withdrawn by all the wells, including the additional wells, exceeds the total annual quantity of water that could have been physically withdrawn by the original well or wells, the total maximum annual quantity that can be withdrawn by all the wells shall be reduced by the chief engineer to the total maximum annual quantity that could have been physically withdrawn by the original well or wells. (Authorized by

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K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2002 2016 Supp. 82a-708b;
effective Sept. 22, 2000; amended Oct. 24, 2003; amended P- _____.)

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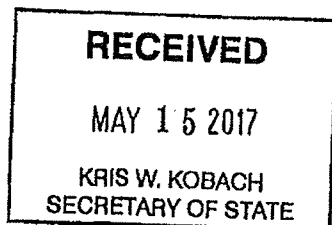
K.A.R. 5-14-11. Civil fines; water use reporting. (a) ~~Each~~ Any owner of a water right or approval of application ~~who fails to perform either of the following shall~~ may be assessed a civil penalty of \$250 \$1,000 per year for each water right or approval of application ~~that is not timely filed or that is materially incomplete or inaccurate~~ for which the owner does not perform the following:

(1) Timely submit an annual water use report pursuant to K.S.A. 82a-732, and amendments thereto; ~~or~~ and

(2) submit a complete and accurate water use report ~~as required by~~ pursuant to K.S.A. 82a-732, and amendments thereto.

(b) If the owner submits both the complete and accurate water use report and payment of the civil penalty after March 1 but before June 1, the civil penalty per water right or approval of application ~~shall~~ may be reduced to \$50 \$250 for each water right or approval of application.

If the owner submits the reduced civil penalty but not the water use report after March 1, the civil penalty may increase on June 1 to the maximum civil penalty of \$1,000 for each water right or approval of application. The initial reduced civil penalty received after March 1 but before June 1 shall be applied toward the maximum civil penalty owed. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a, and K.S.A. 2016 Supp. 82a-732, and K.S.A. 2016 Supp. 82a-737; effective Oct. 24, 2003; amended P-_____.)



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**KANSAS DEPARTMENT OF AGRICULTURE
ECONOMIC IMPACT STATEMENT
K.A.R. 5-5-9 and 5-5-10 Amended**

I. Summary of proposed regulation, including its purpose.

The proposed amendments to the regulations will modify how the consumptive use of a water right will be calculated when converting an irrigation water right to a different beneficial use made of water.

II. Reason or reasons the proposed regulation is required, including whether or not the regulation is mandated by federal law.

Under current regulations the consumptive use calculation is based on perfected acres by water right. Determining the perfected acres requires a water right owner to contact the Kansas Department of Agriculture's Division of Water Resources or a Groundwater Management District for that number. The proposed amendments will create a more transparent process by adopting a map that contains a conversion factor by county. The conversion factor will allow an owner or a potential new user to calculate the consumptive use of a water right without having to contact an agency for the perfected areas. This will be a conversion from the current authorized quantity. The conversion factor will be easily attained by referring to the map adopted by the regulation.

This regulation is not mandated by federal law.

III. Anticipated economic impact upon the Kansas Department of Agriculture.

The proposed amendment will result in no fiscal impact to the department.

IV. Anticipated financial impact upon other governmental agencies and upon private business or individuals.

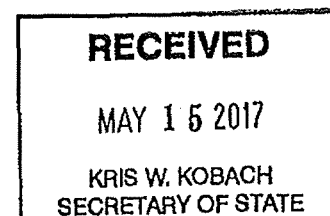
The proposed amendments will result in no fiscal impact to other government agencies. The amendment will have a positive fiscal impact to someone wanting to change an existing irrigation water right to another beneficial use by understanding the conversion factor in the beginning of the process.

V. Less costly or intrusive methods that were considered, but rejected, and the reason for rejection.

No other methods were considered by the state.

VI. Environmental Impact.

Neutral



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**KANSAS DEPARTMENT OF AGRICULTURE
ECONOMIC IMPACT STATEMENT
K.A.R. 5-5-16 amended**

I. Summary of proposed regulation, including its purpose.

The proposed amendments to the regulations will modify how the consumptive use of a water right will be calculated when converting an irrigation water right to a different beneficial use made of water and adding an additional well to a water right.

II. Reason or reasons the proposed regulation is required, including whether or not the regulation is mandated by federal law.

To ensure we have a consistent method in our current regulations (K.A.R. 5-5-9 and K.A.R. 5-5-10) when we are converting water rights from irrigation to another beneficial use of water and adding an additional well for the new beneficial use. This regulation is not mandated by federal law.

III. Anticipated economic impact upon the Kansas Department of Agriculture.

The proposed amendment will result no fiscal impact to the department.

IV. Anticipated financial impact upon other governmental agencies and upon private business or individuals.

The proposed amendments will result in no fiscal impact to other government agencies. The amendment should have no fiscal impact to the regulated community.

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**KANSAS DEPARTMENT OF AGRICULTURE
ECONOMIC IMPACT STATEMENT
K.A.R. 5-14-11 amended**

I. Summary of proposed regulation, including its purpose.

The proposed amendments to the regulation will modify how the civil penalty on a delinquent water use report will be applied based on when the water use report and civil penalty is received by the department.

II. Reason or reasons the proposed regulation is required, including whether or not the regulation is mandated by federal law.

To ensure we have a consistent method in our current regulations applying the delinquent water use civil penalty so the water user has a very clear and transparent regulation to understand how the penalty is applied. This regulation is not mandated by federal law.

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IV. Anticipated financial impact upon other governmental agencies and upon private business or individuals.

The proposed amendments will result in no fiscal impact to other government agencies. The amendment will have fiscal impact, as described above, to the regulated community if they fail to file their reports. If the reports are filed prior to March 1, there is no penalty or cost.

V. Less costly or intrusive methods that were considered, but rejected, and the reason for rejection.

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VI. Environmental Impact.

Neutral

