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Proposed

**Department of Agriculture, Dairy and Feed Safety Program**  
**Notice of Hearing on Proposed**  
**Administrative Regulation**

The Kansas Department of Agriculture ("KDA") will conduct a public hearing at 10:00 a.m. on April 14, 2022, to consider the adoption of a proposed regulation. Due to the public health concerns posed by the COVID-19 pandemic, the hearing proceedings will be conducted virtually via video conferencing system only. Anyone desiring to participate in the public hearing via video conference must pre-register at:

[https://kansasag.zoom.us/meeting/register/tZUkdeyqrjMoHNIO210zZVoUDbPrqA\\_vvgvm](https://kansasag.zoom.us/meeting/register/tZUkdeyqrjMoHNIO210zZVoUDbPrqA_vvgvm).

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments regarding the proposed regulation. All interested parties may submit written comments prior to the hearing by mail or email to: Kansas Department of Agriculture, Attn: Ronda Hutton, 1320 Research Park Dr., Manhattan, Kansas 66502, or [ronda.hutton@ks.gov](mailto:ronda.hutton@ks.gov). All interested parties will also be given a reasonable opportunity to orally present their views regarding the adoption of the proposed regulation 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. This regulation is proposed for adoption on a permanent basis. A summary of the proposed regulation and its economic impact follows:

K.A.R. 4-7-804 – The Kansas Department of Agriculture (KDA) is proposing revisions to update the fees for dairy laboratory analyses performed by the Kansas Department of Agriculture Laboratory ("KDAL"). The revisions are proposed because the current fee schedule contained in K.A.R. 4-7-804 was enacted in 2002 and no longer covers the costs associated with each laboratory analysis. Additionally, the proposed regulation offers new laboratory analyses that KDAL did not have the capacity to complete when the current regulation was adopted. Moreover, the proposed regulation will not impact other dairy laboratory analyses performed by KDAL, which KDA will continue to provide at no cost to dairy licensees.

Under the proposed fee revisions, KDA will charge \$15.00, \$30.00, \$50.00, \$80.00, and \$130.00 for the various types of dairy laboratory analyses specified in the regulation, which increases the rates from the existing prices of \$5.00 and \$10.00, depending on the analysis.

**Economic Impact Statement:**

The proposed regulation is not mandated by the federal government and only one contiguous state, Oklahoma, offers the type of dairy laboratory analyses specified in this regulation. However, the Oklahoma Department of Agriculture Laboratory's current fee schedule does not allow the laboratory to impose fees to offset the expenses it incurs in performing the analyses. The department of agriculture laboratories in Colorado, Nebraska, and Missouri do not provide dairy laboratory analyses like those specified in this regulation.

Because KDA has historically performed very few analyses of the type specified in the proposed regulation, KDA does not anticipate the proposed regulation will enhance or restrict business activity or growth in Kansas. The Kansas Dairy Association, Kansas Farm Bureau, the Kansas Livestock Association, and all of KDA's dairy manufacturing plant licensees were consulted throughout the development of this regulation and did not express concern that the proposed regulation would restrict their business activities or growth.

The direct economic effect of the proposed regulation may vary based on the number of dairy laboratory analyses requested by dairy licensees each year. However, based on data collected during 2020 and 2021, KDA estimates that the proposed regulation will result in approximately \$240 in total additional costs being incurred by members of the dairy industry, who may in turn pass those increased costs on to their customers. As a result, the proposed regulation will have a minimal effect on the state economy as a whole.

The benefits of the proposed regulation outweigh the costs, as it will allow KDAL to cover necessary expenses in performing analyses to ensure the Kansas dairy industry produces safe and high-quality products. Additionally, the proposed fees will allow KDAL to cover necessary costs associated with the dairy laboratory analyses specified in the regulation, but they are not so high that KDAL will profit from dairy laboratory analyses. For example, KDAL performed a total of seven dairy laboratory analyses of the type specified in the regulation during 2020 and 2021 combined and collected a total of \$35 for those analyses. KDAL's actual cost incurred for performing those analyses was \$290.37. This resulted in a net loss to KDAL of \$255.37. If the same analyses were performed pursuant to the proposed new fee schedule, KDAL would collect \$275, and KDAL's actual cost would be \$274.35.

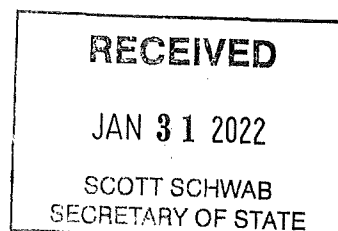
KDA does not anticipate that the proposed regulation will significantly increase or decrease the revenues of Kansas cities, counties or school districts, or impose functions or responsibilities on cities, counties or school districts that will increase their expenditures or fiscal liability. Letters were sent to the League of Kansas Municipalities, the Kansas Association of School Boards, and the Kansas Association of Counties inquiring as to whether those entities believed the proposed regulation would impose increased costs or responsibilities on their members. No responses were received from those entities.

KDA consulted with and solicited information from all of KDA's dairy manufacturing plant licensees, the Kansas Dairy Association, Kansas Farm Bureau, and the Kansas Livestock Association.

The proposed regulation presents no environmental impact.

Any individual with a disability may request accommodations to participate in the public hearing and may request the proposed regulation and economic impact statement in an accessible format. Requests for accommodations should be made at least five working days in advance of the hearing by contacting Ronda Hutton, via telephone at (785) 564-6715 or via fax at (785) 564-6777.

Copies of the regulation and its economic impact statement may be obtained by contacting KDA via mail at the Kansas Department of Agriculture, Attn: Ronda Hutton, 1320 Research Park Drive, Manhattan, KS 66502, via telephone at (785) 564-6715, or via KDA's website at: [agriculture.ks.gov](http://agriculture.ks.gov). Comments may also be made via KDA's website at: <https://www.agriculture.ks.gov/document-services/public-comment>.



Mike Beam  
Secretary  
Kansas Department of Agriculture

**K.A.R. 4-7-804. Schedule of fees for ~~non-regulatory~~ nonregulatory laboratory work.**

(a) Each person ~~for whom~~ who requests a test is performed by the dairy laboratory of the Kansas department of agriculture laboratory to perform any of the following analyses ~~for non-regulatory~~ purposes shall pay the department \$5.00 \$15.00 for each of the following tests analysis:

- (1) ~~Standard plate count for raw or pasteurized milk or milk products;~~
- (2) ~~coliform plate count with confirmation for raw or pasteurized milk or milk products;~~
- (3) ~~direct microscopic somatic cell count for raw milk products;~~
- (4) ~~B lactam analysis with confirmation for raw and pasteurized milk or milk products;~~
- (5) ~~dairy water coliform bacteria and heterotrophic plate count;~~
- (6) ~~empty container sterility analysis;~~
- (7) ~~thermometer calibration at two temperature points;~~
- (8) ~~added water analysis in raw milk; and~~
- (9) ~~butterfat analysis for raw or retail milk or milk products.~~

(1) An analysis to determine the presence of coliforms or *E. coli* in water used for dairy production or dairy processing;

(2) an analysis to determine the percentage of added water in raw milk;

(3) an analysis to determine the percentage of butterfat in raw milk, retail milk, or milk products; and

(4) an analysis to determine the amount of extraneous material in raw milk.

(b) Each person who requests any of the following analyses by the department ~~for whom~~ a test is performed by the dairy laboratory of the Kansas department of agriculture for non-

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regulatory purposes shall pay the department ~~\$10.00~~ \$30.00 for each of the following tests

analysis:

~~(1) Electronic somatic cell count;~~

~~(2) inhibitor analysis other than a B-lactam analysis; and~~

~~(3) aflatoxin analysis.~~

(1) An analysis to determine the total bacteria count in raw milk, pasteurized milk, or milk products, using the standard plate count method;

(2) an analysis to determine the total coliform plate count in pasteurized milk or milk products;

(3) an analysis to determine the total bacteria count in water used for dairy production or dairy processing; and

(4) an analysis to determine the total bacteria and coliform plate count in food-grade packaging materials used for dairy foods.

~~(c) Any non-regulatory laboratory test may be refused to be performed by the secretary, at the secretary's discretion. Each person who requests any of the following analyses by the department shall pay the department \$50.00 for each analysis:~~

(1) An analysis to determine the presence of beta-lactam antibiotic drug residues in raw milk, pasteurized milk, or milk products;

(2) an analysis to determine the percentage of protein in raw milk;

(3) an analysis to determine the manual count of somatic cells in raw milk; and

(4) an analysis to determine the presence of tetracycline antibiotic drug residue or sulfonamide antibiotic drug residue in raw milk.

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(d) Each person who requests any of the following analyses by the department shall pay the department \$80.00 for each analysis:

(1) An analysis to determine the electronic count of somatic cells in raw milk;

(2) an analysis to determine the proportion of alkaline phosphatase in pasteurized milk;

and

(3) an analysis to determine the quantification of aflatoxin in raw milk.

(e) Each person who requests the department to perform an analysis to determine the quantification of vitamins A and D<sub>3</sub> in pasteurized milk shall pay the department \$130.00 for each analysis.

(f) The performance of any analysis for nonregulatory purposes may be refused by the secretary. (Authorized by and implementing K.S.A. 2001 Supp. 65-777; effective Dec. 20, 2002; amended P-\_\_\_\_\_.)

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

Kansas Department of Agriculture  
Agency

Ronda Hutton  
Agency Contact

785-564-6715  
Contact Phone Number

K.A.R. 4-7-804  
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

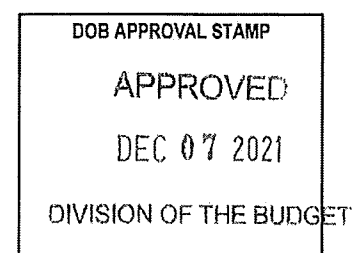
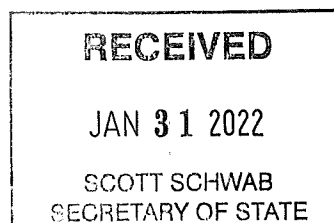
**I. Brief description of the proposed rule(s) and regulation(s).**

The Kansas Department of Agriculture ("KDA") is proposing revisions to K.A.R. 4-7-804 in order to update the fees for dairy laboratory analyses performed by the Kansas Department of Agriculture Laboratory ("KDAL"). The revisions are proposed because the current fee schedule in K.A.R. 4-7-804 was enacted in 2002 and no longer covers the costs associated with each laboratory analysis. Additionally, the proposed regulation offers new laboratory analyses that KDAL did not have the capacity to complete when the current regulation was adopted. Moreover, the proposed regulation will not impact other dairy laboratory analyses performed by KDAL, which KDA will continue to provide no cost to dairy licensees.

Under the proposed fee revisions, KDA will charge \$15.00, \$30.00, \$50.00, \$80.00, and \$130.00 for various types of dairy laboratory analyses specified in the regulation, which increases the rates from the existing prices of \$5.00 and \$10.00.

**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)***

The proposed regulation is not mandated by the federal government and only one contiguous state, Oklahoma, offers the type of dairy laboratory analyses specified in this regulation. However, the Oklahoma Department of Agriculture Laboratory's current fee schedule does not allow the laboratory to impose fees to offset the expenses it incurs in performing the analyses. The department of agriculture laboratories in Colorado, Nebraska, and Missouri do not provide dairy laboratory analyses like those specified in this regulation.



**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;**

Because KDA has historically performed very few analyses of the type specified in the proposed regulation, KDA does not anticipate the proposed regulation will enhance or restrict business activity or growth in Kansas. The Kansas Dairy Association, Kansas Farm Bureau, the Kansas Livestock Association, and all of KDA's dairy manufacturing plant licensees were consulted throughout the development of this regulation and did not express concern that the proposed regulation would restrict their 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;**

The direct economic effect of the proposed regulation may vary based on the number of dairy laboratory analyses requested by dairy licensees each year. However, based on the most recent data collected during 2020 and 2021, KDA estimates that approximately \$240 in additional cost will be incurred by members of the dairy industry, who may in turn pass those increased costs on to their customers. As a result, the proposed regulation will have a minimal effect on the state economy as a whole.

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

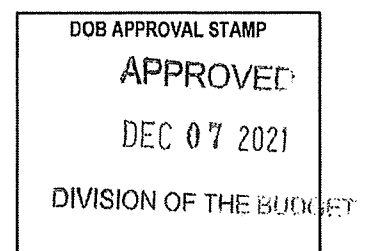
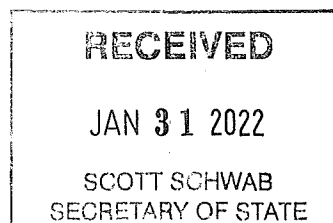
Dairy producers and manufacturers will be directly affected by the proposed regulation, and they may pass increased costs on to their customers. However, the overall impact on Kansas businesses as a result of these proposed regulations will be minimal due to the small number of these analyses KDAL performs each year.

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

The benefits of the proposed regulation outweigh the costs, as it will allow KDAL to cover necessary expenses in performing analyses to ensure the Kansas dairy industry produces safe and high-quality products. For example, KDAL performed a total of seven dairy laboratory analyses of the type specified in the regulation during 2020 and 2021 combined and collected a total of \$35 for those analyses. KDAL's actual cost incurred for performing those analyses was \$290.37. This resulted in a net loss to KDAL of \$255.37. If the same analyses were performed pursuant to the proposed new fee schedule, KDAL would collect \$275 and KDAL's actual cost would be \$274.35.

**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;**

As set out in the example above, KDA has set the proposed fees at an amount that allows KDAL to cover necessary cost associated with each dairy laboratory analysis, but the proposed fees are not so high that KDAL will profit from dairy laboratory analyses.



- 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 total dollar figure for the annual implementation and compliance cost reasonably expected from the proposed regulation may vary based on the number of dairy laboratory analyses requested by dairy licensees each year. However, based on the most recent data collected during 2020 and 2021, KDA estimates that approximately \$240 in additional cost will be incurred by members of the dairy industry, who may in turn pass those increased costs on to their customers.

**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.**

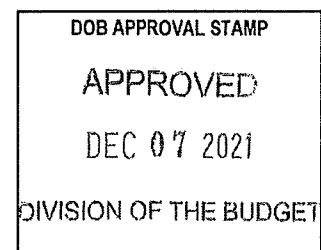
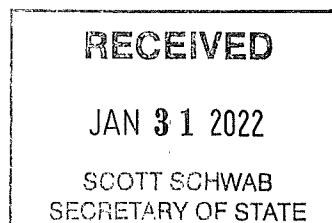
During 2020 and 2021, KDAL performed a total of seven dairy laboratory analyses requested by dairy licensees combined and collected a total of \$35 for those analyses. If the same analyses were performed pursuant to the proposed new fee schedule, KDAL would collect \$275. Thus, the proposed fee increases would result \$240 of additional cost placed on members of the dairy industry during a two-year period.

**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.**

KDA does not anticipate that the proposed regulation will significantly increase or decrease revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase their expenditures or fiscal liability. Letters were sent to the League of Kansas Municipalities, the Kansas Association of School Boards, and the Kansas Association of Counties inquiring as to whether those entities believed the proposed regulation would impose increased costs or responsibilities on their members. No responses were received from those entities.





- 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).**

KDA consulted with and solicited information from all of KDA's dairy manufacturing plant licensees, the Kansas Dairy Association, Kansas Farm Bureau, and the Kansas Livestock Association.

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

The proposed regulation presents no environmental impact.

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