Proposed

STATE OF KANSAS

Department of Health and Environment

Notice of Public Hearing on Proposed Administrative Regulations

The Kansas Department of Health and Environment (KDHE), Division of Environment, Bureau of Air, will conduct a public hearing at 10:00 a.m. Thursday, November 3, 2022, in Room 530, Curtis State Office Building, 1000 SW Jackson, Topeka, Kansas, to consider the adoption of proposed amended air quality regulation K.A.R. 28-19-517 regarding Class I operating permits, annual emissions inventory, and fees; the adoption of amended air quality regulation K.A.R. 28-19-546 regarding Class II operating permits, annual emission inventory, and fees; and the adoption of amended air quality regulation K.A.R. 28-19-564 regarding Class II operating permits, permits-by-rule, and sources with actual emissions less than 50 percent of major source thresholds. Upon adoption of these regulations, KDHE will submit the Class II operating permit regulations to the U.S. Environmental Protection Agency (USEPA) for approval into the State Implementation Plan (SIP) and the Class I operating permit regulation as a revision to the approved State of Kansas Part 70 Operating Permit Program.

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

Summary of Regulations:

K.A.R. 28-19-517. Class I operating permits; annual emissions inventory and fees.

KDHE is proposing revisions to K.A.R. 28-19-517 Class I source annual emissions inventory and fee requirements. The proposed amendments will require all Class I sources to utilize the KDHE electronic emissions inventory submission system. Effective upon promulgation of these amendments, KDHE will no longer accept paper submissions for annual inventory and the associated paper submittal fees will be eliminated.

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KDHE is proposing to increase the emissions fee schedule from the existing $1,000 base fee or $53.00 per ton of emissions to the sum of an annual facility fee of $1,000 for all sources, $56.00 per ton of criteria emissions fee, and $80.00 per ton of hazardous air pollutant (HAP) fee. The proposed fee changes will become effective January 1, 2025.

K.A.R. 28-19-546. Class II operating permits; annual emission inventory and fees.

KDHE is proposing to amend K.A.R. 28-19-546 to establish a Class II fee schedule and clarify inventory submission requirements on which the fees are based. Proposed amendments include language outlining procedures for submitting annual emissions inventory electronically, currently implemented using the KDHE electronic emissions inventory submission system, and annual emission fees beginning in calendar year 2025 of $56.00 per ton of criteria emissions and $80.00 per ton of hazardous air pollutant emissions. Additional provisions are being proposed to establish late fee and refund requirements for both inventory and fees.

K.A.R. 28-19-564. Class II operating permits; permits-by-rule; sources with actual emissions less than 50 percent of major source thresholds.

KDHE is proposing to amend K.A.R. 28-19-564 paragraph (e) to require all permits-by-rule Class II sources and those with actual emissions less than 50 percent of major source thresholds to submit annual emissions inventory and fees by April 1 of each year (currently February 15) as required by the proposed K.A.R. 28-19-546.

Economic Impact:

The proposed amendments impose no additional costs to the implementing agency, other governmental agencies, units or the general public.

Cost to the regulated community: Class I sources required to submit an annual emissions inventory pursuant to K.A.R. 28-19-517 will incur a cost in emission fees ranging from $1,000 to

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$56 - $80 per ton of emissions beginning in calendar year 2025. KDHE projects an increase in annual cost to the regulated community from the proposed fees beginning in 2025 compared to 2021 to be approximately $171,000 for the facility fee, $117,564 for criteria emissions fee and $222,013 for HAP emissions fee. KDHE estimates the total costs that are reasonably expected to be incurred by the regulated community to be approximately $510,577 in 2025.

Class II sources required to submit an annual emissions inventory pursuant to K.A.R. 28-19-546 and 28-19-564 will incur a cost in emission fees ranging from $1,000 to $56 - $80 per ton of emissions beginning in calendar year 2025. KDHE projects an increase in annual cost to the regulated community from the proposed fees beginning in 2025 to be approximately $572,497 for criteria emissions fee and $43,730 for HAP emissions fee. KDHE estimates the total costs that are reasonably expected to be incurred by the regulated community to be approximately $616,227 in 2025.

A detailed economic impact is provided in the economic impact statement for K.A.R. 28-19-517 and in the economic impact statement for K.A.R. 28-19-546 and 28-19-564 that are available from the designated KDHE contact staff person or at the KDHE Bureau of Air public notice 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 regulations. All interested individuals are encouraged to submit written comments prior to 5:00 p.m. on the day of the hearing to Douglas Watson, Air Monitoring and Planning Section, Kansas Department of Health and Environment, Bureau of Air, 1000 S.W. Jackson, Suite 310, Topeka, KS 66612-1366, by email to kdhe.boaregsipcomments@ks.gov, or by fax to (785) 559-4256.

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During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulations 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 regulations and the corresponding economic impact statements and environmental benefit statements may be obtained from the KDHE Bureau of Air public notice website at https://www.kdhe.ks.gov/413/Public-Notices or by emailing a request to kdhe.boaregsipcomments@ks.gov, by contacting Douglas Watson at (785) 296-0910 or by fax to (785) 559-4256. Questions pertaining to the proposed regulations should be emailed to kdhe.boaregsipcomments@ks.gov or directed to Douglas Watson at (785) 296-0910.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and the economic impact statements and environmental benefit statements 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 Douglas Watson at (785) 296-0910 or emailing kdhe.boaregsipcomments@ks.gov.

Any updated information on how to participate in the public hearing will be provided on the KDHE Bureau of Air public notice website specified in this notice of hearing.

Janet Stanek

Secretary

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28-19-517. Class I operating permits; annual emissions inventory and fees. The owner or operator of each stationary source that is required to apply for a class I operating permit shall comply with this regulation.

(a) Annual emissions inventory.

(1) Each owner or operator shall electronically submit to the department an annual emissions inventory for each stationary source for the year preceding the calendar year in which the source is required to apply for an operating permit and each year thereafter.

(2) Each annual emissions inventory shall be submitted for any regulated pollutant deemed necessary by the secretary from each emission unit, as defined in K.A.R. 28-19-200, and shall include the following:

(A) All operating information;

(B) actual emissions, including fugitive emissions, calculated pursuant to K.A.R. 28-19-210;

(C) any quantity of emissions regardless of operating hours, including sources that did not operate; and

(D) emissions from each source only while operating in Kansas, if the source operates both in Kansas and out of state.

(b) Annual emissions ~~fee~~ fees.

~~(1)~~ Each owner or operator shall ~~submit~~ pay to the department ~~an~~ annual emissions ~~fee~~ fees calculated by the department based on information provided in the annual emissions inventory ~~determined under subsection (a).~~ as follows:

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(1) For calendar years 2022, 2023, and 2024, the annual emissions fees shall be the greater of the following:

(A) $1,000.00; or

(B) $53.00 per ton of emissions multiplied by the total number of tons of emissions, with a maximum of 4,000 tons of each of the following pollutants rounded to the nearest ton:

(i) Sulfur dioxide;

(ii) nitrogen oxides;

(iii) PM10;

(iv) volatile organic compounds (VOCs); and

(v) hazardous air pollutants (HAPs), excluding HAPs already accounted for as VOCs or PM10.

(2) ~~Each owner or operator shall make annual emissions fee payments by check, bank draft, credit card, or money order payable to the Kansas department of health and environment~~ For calendar year 2025 and for each subsequent calendar year, the annual emissions fees shall be the sum of the facility fee, the hazardous air pollutant (HAP) emissions fee, and the criteria emissions fee as follows:

(A) The facility fee shall be $1,000.00.

(B) The HAP emissions fee shall be $80.00 per ton of emissions multiplied by the total number of tons of HAP emissions rounded to the nearest ton.

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(C) The criteria emissions fee shall be $56.00 per ton of emissions multiplied by the total number of tons of emissions, with a maximum of 4,000 tons of each of the following pollutants rounded to the nearest ton:

(i) Sulfur dioxide;

(ii) nitrogen oxides;

(iii) PM10, excluding PM10 emissions already accounted for as HAP emissions in paragraph (b)(2)(B); and

(iv) volatile organic compounds (VOCs), excluding VOC emissions already accounted for as HAP emissions in paragraph (b)(2)(B).

(c) Submittal.

(1) Each annual emissions inventory ~~determined under subsection (a) and each annual emissions fee determined under subsection (b) shall be submitted on forms provided by the department, using either of the following:~~

~~(A) An electronic inventory submission; or~~

~~(B) a paper inventory submission, including a fee of $250.00 for each paper inventory submittal and $10.00 for each single-sided page.~~

~~(2) Each submission~~ shall be signed by a responsible official, as defined in K.A.R. 28-19-200, and shall be due on or before April 1 of each year or, if April 1 is a Saturday or Sunday, on or before the next business day following April 1.

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(2) Each payment for the annual emissions fees shall be payable to the Kansas department of health and environment by check, bank draft, credit card, or money order. Each payment shall be due on or before April 1 of each year or, if April 1 is a Saturday or Sunday, on or before the next business day following April 1.

(3) If there is a change in the owner or operator of the stationary source, the owner or operator at the time the submission is due shall be responsible for submitting the annual emissions inventory and ~~fee payment~~ annual emissions fees. For purposes of determining the annual emissions inventory required by subsection (a) for any period in which there was any other owner or operator of the stationary source, the owner or operator may assume current operating and emission information if the owner or operator is unable to obtain actual information from any previous owner or operator.

(d) Late fee and refund.

(1) Each owner or operator who fails to submit the annual emissions inventory and pay the annual emissions ~~fee~~ fees by the due date specified in subsection (c) shall pay a late fee. The late fee shall be $200.00 per day or 0.10 percent of the annual emissions ~~fee~~ fees per day, whichever is greater.

(2) Any overpayment of $100.00 or more made by the owner or operator of a stationary source may be refunded. Overpayments in any amount less than $100.00 shall not be refunded. (Authorized by K.S.A. ~~2017 Supp.~~ 65-3005 and 65-3024; implementing K.S.A. 65-3007 and K.S.A. ~~2017 Supp.~~ 65-3024; effective Jan. 23, 1995; amended Feb. 20, 1998; amended Sept. 23, 2005; amended Nov. 5, 2010; amended Jan. 5, 2018; amended P-________________________.)

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28-19-546. Class II operating permits; annual emission inventory and fees. ~~Except as may be otherwise specifically required, each~~ The owner or operator of ~~a~~ each stationary source that is required ~~by these regulations~~ to apply for a class II operating permit shall~~, on or before April 1 of each year, submit to the department all operating information and any other relevant information deemed necessary by the secretary to estimate the actual air emissions from the stationary source for the preceding year. If April 1 falls on a Saturday, Sunday, or holiday, then the submissions shall be due on or before the next business day following April 1. The timeliness of the submissions shall be determined by the postmark if submitted by mail. This information shall be submitted on forms provided by the department or approved by the secretary~~ comply with this regulation.

(a) Annual emissions inventory.

(1) Each owner or operator shall electronically submit to the department an annual emissions inventory for each stationary source for the year preceding the calendar year in which the owner or operator is required to apply for an operating permit and each year thereafter.

(2) Each annual emissions inventory shall be submitted for any regulated pollutant deemed necessary by the secretary from each emission unit, as defined in K.A.R. 28-19-200, and shall include the following:

(A) All operating information;

(B) actual emissions, including fugitive emissions, calculated pursuant to K.A.R. 28-19-210;

(C) any quantity of emissions regardless of operating hours, including sources that did not operate; and

(D) emissions from each source only while operating in Kansas, if the source operates both in Kansas and out of state.

(b) Annual emissions fees.

(1) Each owner or operator shall pay to the department annual emissions fees calculated by the department based on information provided in the annual emissions inventory.

(2) For calendar year 2025 and for each subsequent calendar year, the annual emissions fees shall be the sum of the hazardous air pollutant (HAP) emissions fee and the criteria emissions fee as follows:

(A) The HAP emissions fee shall be $80.00 per ton of emissions multiplied by the total number of tons of HAP emissions rounded to the nearest ton.

(B) The criteria emissions fee shall be $56.00 per ton of emissions multiplied by the total number of tons of emissions, with a maximum of 4,000 tons of each of the following pollutants rounded to the nearest ton:

(i) Sulfur dioxide;

(ii) nitrogen oxides;

(iii) PM10, excluding PM10 emissions already accounted for as HAP emissions in paragraph (b)(2)(A); and

(iv) volatile organic compounds (VOCs), excluding VOC emissions already accounted for as HAP emissions in paragraph (b)(2)(A).

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(c) Submittal.

(1) Each annual emissions inventory shall be signed by a responsible official, as defined in K.A.R. 28-19-200, and shall be due on or before April 1 of each year or, if April 1 is a Saturday or Sunday, on or before the next business day following April 1.

(2) Each payment for annual emissions fees shall be payable to the Kansas department of health and environment by check, bank draft, credit card, or money order. Each payment shall be due on or before April 1 of each year or, if April 1 is a Saturday or Sunday, on or before the next business day following April 1.

(3) If there is a change in the owner or operator of the stationary source, the owner or operator at the time the submission is due shall be responsible for submitting the annual emissions inventory and annual emissions fees. For purposes of determining the annual emissions inventory required by subsection (a) for any period in which there was any other owner or operator of the stationary source, the owner or operator may assume current operating and emission information if the owner or operator is unable to obtain actual information from any previous owner or operator.

(d) Late fee and refund.

(1) Each owner or operator who fails to submit the annual emissions inventory and pay the annual emissions fees by the due date specified in subsection (c) shall pay a late fee. The late fee shall be $200.00 per day or 0.10 percent of the annual emissions fees per day, whichever is greater.

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(2) Any overpayment of $100.00 or more made by the owner or operator of a stationary source may be refunded. Overpayments in any amount less than $100.00 shall not be refunded. (Authorized by K.S.A. 65-3005 and 65-3024; implementing K.S.A. 65-3007 and 65-3024; effective Jan. 23, 1995; amended Feb. 20, 1998; amended Sept. 23, 2005; amended P-____________________.)

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28-19-564. Class II operating permits; permits-by-rule; sources with actual emissions less than 50 percent of major source thresholds. (a) Any stationary source, or group of stationary sources, that would be classified as a major source based on ~~its~~ the potential-to-emit may operate according to this regulation in lieu of obtaining an individual class I or class II operating permit, if the source is operated in compliance with subsections (d), (e), (f), and (g) ~~of this regulation,~~ and with either subsection (b) or subsection (c) ~~of this regulation~~. Sources that are required to obtain a class I or class II operating permit based on criteria other than potential-to-emit shall not be eligible to operate under this regulation.

(b) Any stationary source or group of stationary sources that has actual emissions not exceeding 25 percent of the major source threshold, as defined in K.A.R. 28-19-200, may operate according to this subsection, if the source meets all of the following conditions:

(1) The stationary source is not otherwise required to obtain a class I operating permit.

(2) The owner or operator of the stationary source notifies the department, in writing, that it elects to operate the source under this regulation.

(3) The actual emissions of each regulated pollutant, for every consecutive 12-month period during which the stationary source is operated under this regulation, do not exceed 25 percent of the major source threshold.

(4) The owner or operator of the stationary source maintains records, as specified in subsection (h) ~~of this regulation~~, that demonstrate compliance with the 25 percent actual emissions limitation.

(5) The owner or operator updates the records required by paragraph (b)(4) ~~of this~~

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~~regulation~~ at least monthly and maintains the records on-site for at least two years from the date of record.

(c) Any stationary source or group of stationary sources with actual emissions not exceeding 50 percent of the major source threshold, as defined in K.A.R. 28-19-200, may operate according to this subsection if the source meets all of the following conditions:

(1) The stationary source is not otherwise required to obtain a class I operating permit.

(2) The owner or operator of the stationary source has submitted to the department an application to operate under the terms of this regulation~~, with~~ and the appropriate fee~~, as defined~~ specified in K.A.R. 28-19-545.

(3) The owner or operator of the stationary source has received notice from the secretary that the application submitted for the source has been approved.

(4) The actual emissions from the stationary source, for every consecutive 12-month period during which the stationary source is operated under this regulation, do not exceed 50 percent of the major source threshold.

(5) The owner or operator of the stationary source maintains records, as specified in subsection (h) ~~of this regulation~~, that demonstrate compliance with the 50 percent actual emissions limitation.

(6) The owner or operator updates the records required by paragraph (c)(5) ~~of this regulation~~ at least monthly and maintains the records on-site for at least two years.

(d)(1) If at any time a stationary source operating according to this regulation exceeds the applicable emissions level of either paragraph (b)(3) or paragraph (c)(4) ~~of this regulation, whichever is applicable to the source based on its election to operate according to this regulation~~, the owner or operator shall notify the secretary in writing.

(2) The owner or operator shall mail, electronically submit, or deliver the notice to the secretary on the first working day after the discovery of the failure to comply.

(3) Within 60 days of the discovery of a failure to comply with an applicable requirement of this regulation, the owner or operator shall submit to the secretary an interim compliance plan and schedule identifying ~~those~~ the actions being taken by the owner or operator to ensure compliance with applicable requirements until the appropriate class I or class II operating permit is issued according to paragraph (d)(5) ~~of this regulation~~.

(4) Submittal of and compliance with the compliance plan and schedule shall not ~~shield~~ exempt the owner or operator from enforcement action by the department.

(5) The owner or operator shall ~~also~~ file an application for the appropriate class I or class II operating permit within 180 days of discovery of the exceedance of the applicable limits of either paragraph (b)(3) or paragraph (c)(4) ~~of this regulation, whichever is applicable to the source based on its election to operate according to this regulation~~, unless otherwise exempt.

(e) Each owner or operator of a stationary source shall submit to the department, by ~~February 15~~ April 1 of each year, ~~a summary of the monthly records required by paragraph (b)(4) or (c)(5) of this regulation, whichever is applicable, for the previous calendar year in lieu~~

~~of submitting~~ an annual emissions inventory and annual emissions fees for the stationary source as ~~otherwise~~ required by K.A.R. 28-19-546~~(a)~~.

(f) Compliance with this regulation shall not ~~shield~~ exempt the owner or operator from enforcement action for exceeding any applicable restrictions~~,~~ or for any other violations of the Kansas air quality act or the Kansas air quality regulations.

(g) Each owner or operator of a stationary source operated according to this regulation shall continue to ~~be subject to~~ comply with all other applicable requirements of the Kansas air quality act and the Kansas air quality regulations.

(h)(1) The following records specified in this subsection shall be presumed to be sufficient to determine compliance with the recordkeeping requirements of this regulation:

(A) For coating and solvent emission units, the following:

(i) A current list of all coatings, solvents, inks, and adhesives in use, including ~~VOC~~ volatile organic compounds (VOC) and hazardous air pollutant content;

(ii) a description of any equipment used for coating or solvent application, including type, make, and model, and maximum design process rate or throughput;

(iii) a monthly log of the consumption of each coating, ink, adhesive, and solvent, including solvents used in cleanup and surface preparation; and

(iv) purchase orders, invoices, and other documents to support information in the monthly log;

(B) for organic liquid storage units, the following:

(i) A monthly log identifying the liquid stored and monthly throughput; and

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(ii) information on the tank design and specifications, including emissions control equipment;

(C) for combustion emission units, the following:

(i) Information on equipment type, make, and model; maximum design process rate or maximum power input and output; minimum operating temperature for thermal oxidizers; capacity; and all source test information; and

(ii) a monthly log of fuel type, fuel usage, fuel heating value, and percent sulfur for fuel oil and coal;

(D) for any emission control device for which emission reductions are being claimed, the following:

(i) Information on the control device type, including description, make, and model, and emission units served by the control device;

(ii) information on the control device design including, if applicable, the pollutant or pollutants being controlled, control device efficiency and capture efficiency, maximum design or rated capacity, and other design data as appropriate, including any available source test information; and

(iii) a monthly log of hours of operation, including notation of any control equipment breakdowns, upsets, repairs, maintenance, and any other deviations from design parameters; and

(E) for all other emission units, the following:

(i) Information on the process and equipment, including equipment type, description, make, and model;

(ii) maximum design process rate or throughput;

(iii) a monthly log of operating hours and each raw material used and its amount; and

(iv) purchase orders, invoices, or other documents to support the information in the monthly log.

(2) Each owner or operator relying on other documentation to demonstrate compliance with this regulation shall establish that the documentation relied upon demonstrates compliance with the recordkeeping requirements of this regulation.

(i) During the first 12 months of operation under this permit-by-rule, each owner or operator of the processes affected by this permit-by-rule shall operate in a manner that will not exceed any of the applicable permit limitation requirements ~~contained within this regulation~~ at any time during the initial 12-month period.

~~(j) Within six months of EPA's approval of this regulation into the Kansas state implementation plan, any entity operating under the "general class II air emission source air operating permit for facilities that have actual emissions below 50 percent of major source thresholds" shall apply to operate under this regulation or other applicable operating permit.~~ (Authorized by K.S.A. ~~2001 Supp.~~ 65-3005 and 65-3024; implementing K.S.A. ~~2001 Supp.~~ 65-3007, 65-3008, and 65-3024; effective May 15, 1998; amended Oct. 4, 2002; amended P-________________________.)

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Kansas Administrative Regulations
Economic Impact Statement (EIS)

Kansas Department of Health and Environment	Susan Vogel	296-1291
Agency	Agency Contact	Contact Phone Number

28-19-517
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).

The 1990 amendments to the Clean Air Act (CAA) required the U.S. Environmental Protection Agency (USEPA) to promulgate regulations requiring state government permitting authorities to establish air quality operating permit programs under Title V. The USEPA has delegated responsibility for running the Title V program to state and local permitting authorities and established standards for those programs under regulations promulgated at 40 C.F.R. part 70. One of the requirements of permit programs is a provision that permitting authorities collect annual fees under a fee schedule that results in the collection and retention of revenues sufficient to cover all reasonable indirect and direct costs of developing and administering the approved operating permit program.

K.S.A. 65-3024 establishes the Air Quality Fee Fund (AQFF) and authorizes the Secretary of the Kansas Department of Health and Environment (KDHE) to establish an emissions fee program to administer the Kansas Air Quality Act (KAQA). As such, the Secretary is required to adopt regulations fixing such fees and to periodically increase or decrease such fees, as needed to administer the KAQA.

In recent years, KDHE has experienced shortfalls in the Title V or Class I fee revenues due to emission reductions at major facilities. Although emissions and revenues are declining annually, there remains an abundance of air quality work required to effectively administer the Air Quality Program in Kansas, including permitting, compliance and enforcement, monitoring and planning. Permitting, compliance and planning activities continues to expand with revisions of existing federal regulations and the addition of new standards including National Emissions Standards for Hazardous Air Pollutants, Maximum Achievable Control Technology Standards, Emission Guidelines for New Sources, New Source Performance Standards, New Source Review and Prevention of Significant Deterioration.

KDHE reviews the projected revenues from the fee schedule and proposes appropriate adjustments to meet program requirements. Periodically, adjustments are needed and implemented, including some decreases. Currently, a fee increase is needed to offset the combined effects of the reduction over time for emissions upon which fees are paid and maintaining the unfunded mercury deposition monitoring program. The implementation of the mercury deposition monitoring network, established by K.S.A. 75-5673 on April 26, 2007, committed air quality fee funds of approximately $228,000 for year one and $140,000 each year after for mercury monitoring. The average cost to run the mercury monitoring program for the last three calendar years of 2019 through 2021 is approximately $88,500 annually.

The purpose of this proposed regulatory action is to restructure and update the Kansas Class I Operating Permit Program fee schedule for calendar year 2025 and beyond to bring in adequate revenue to support the Class I Operating Permit Program. KDHE is also proposing to establish a fee schedule for the Class II Federally Enforceable State Operating Permit (FESOP) Program in a corresponding regulatory action that influences this impact analysis.

KDHE is proposing to update the Class I annual emissions fee schedule by amending Kansas Administrative Regulations (K.A.R.) K.A.R. 28-19-517. Currently K.A.R. 28-19-517 is the primary implementing regulation for the emissions fee program established at K.S.A. 65-3024. The original regulation K.A.R. 28-19-202 was initially effective November 22, 1993 and established an annual emissions fee of $18.00 per ton of emissions. The presumptive fee in the federal CAA was $25.00 per ton of emissions, to be adjusted annually for inflation; however, states were provided the flexibility to demonstrate that they could adequately implement their programs with a lesser fee. Effective January 5, 2018, the last amendments to K.A.R. 28-

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19-517 established a minimum fee of $1000 and increased the emissions fee from $37.00 per ton to $53.00 per ton for calendar year 2018 and subsequent years.

KDHE is proposing to amend K.A.R.28-19-517(a) annual emissions inventory and (c) submittal language to require all Class I sources to utilize the KDHE electronic emissions inventory submission system. Effective upon promulgation of these amendments, KDHE will no longer accept paper submissions for annual inventory and the associated paper submittal fees will be eliminated.

KDHE is proposing to amend K.A.R. 28-19-517(b) annual emission fee language to maintain the existing fee schedule of $1,000 base fee or $53 per ton criteria emissions fee for calendar year 2022, 2023 and 2024 and to establish a new fee schedule for calendar year 2025 and each subsequent year to be the sum of the facility fee, the hazardous air pollutant (HAP) emissions fee, and the criteria emissions fee.

Specifically, the proposed revisions to K.A.R. 28-19-517(b)(2)(A) maintains the minimum $1,000 facility fee (base fee of existing fee schedule) but applies it in addition to the revised criteria emissions fee and new hazardous air pollutant (HAP) fee; all applied in calendar year 2025 and beyond.

The proposed revision to K.A.R. 28-19-517(b)(2)(B) establishes an annual hazardous air pollutant (HAP) fee of $80.00 per ton of total HAP emissions for calendar year 2025 and beyond. Multiple states have implemented an increased rate for HAPs due to their lower thresholds which are based on their toxic health effects. This amendment impacts 171 Class I sources in the state and accounts for 2,849 tons of HAPs reported in the 2020 Emission Inventory, collected April 2021. Sources that are charged the HAP fee for HAP emissions that are also considered Volatile Organic Compounds (VOCs) or Particulate Matter (PM) emissions would be charged only for the HAPs.

The proposed K.A.R. 28-19-517(b)(2)(C) amends the existing criteria emissions fee from $53.00 (effective through calendar year 2024) to $56.00 per ton of criteria emissions for calendar year 2025 and beyond.

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.)*

The 1990 amendments to the Clean Air Act (CAA) required the U.S. Environmental Protection Agency (USEPA) to promulgate regulations requiring state government permitting authorities to establish air quality operating permit programs under Title V. The USEPA has delegated responsibility for running the Title V program to state and local permitting authorities and established standards for those programs under regulations promulgated at 40 C.F.R. part 70. One of the requirements of permit programs is a provision that permitting authorities collect annual fees under a fee schedule that results in the collection and retention of revenues sufficient to cover all reasonable indirect and direct costs of developing and administering the Title V program.

To obtain and retain approval by the USEPA to be the permitting authority in Kansas, KDHE must demonstrate the adequacy of the fee schedule. A specific fee schedule is not federally prescribed, but the USEPA annually publishes their calculated Part 70 presumptive minimum fee. This is, as stated, a minimum fee which if applied demonstrates adequacy of the program as determined by USEPA.

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The part 70 presumptive minimum fee rate ($/ton) effective for the 12-month period of September 1, 2021 through August 31, 2022 is $54.37. This fee rate represents an increase of 2.99772% (or $1.58) from the fee rate in effect for the prior 12-month period ($52.79). This increase is based on a calculation of the average monthly change in the Consumer Price Index (All Urban Consumers) for the 12-month period of September 2020 through August 2021 as reported by the U.S. Bureau of Labor Statistics. Additionally, the implementing federal regulations require a greenhouse gas cost adjustment.

Insufficient fee revenues for Title V programs is a national issue. A 2014 USEPA Office of Inspector General (OIG) Report[1] focused specifically on revenues to operate state Title V Operating Permit Programs. The OIG found that states' permitting revenues have been declining in recent years and that state operating expenses often exceeded Title V revenues. Among nine of the largest state and local permitting authorities that oversee 45% of the nation's active Title V permits, there was a $69 million shortfall out of $672 million in expenses incurred between 2008 and 2012. Further, the OIG criticized USEPA for insufficient oversight of state permit fee schedules and attributed the problem to several factors: a lack of a national oversight strategy, outdated (1993) guidance on fee collection, a lack of accounting expertise among USEPA staff, and an unwillingness by some regions to pursue formal corrective actions against states. The report found, "The agency's weaknesses in identifying and obtaining corrective actions for Title V revenue sufficiency and accounting practices, coupled with declining resources for some permitting authorities, jeopardizes state and local Title V program implementation." The OIG recommended a series of steps to improve the program, all of which USEPA accepted.

In response to the USEPA OIG 2014 Report, regarding the importance of enhanced USEPA oversight of state, local, and tribal fee practices under Title V of the Act, the USEPA issued a March 27, 2018 guidance[2] titled "Program and Fee Evaluation Strategy Guidance for 40 CFR Part 70."

In 2020, the USEPA Region 7 conducted a comprehensive review of KDHE's air permitting programs as part of their efforts to fulfill the USEPA's oversight responsibility to ensure adequate implementation of the Clean Air Act. KDHE's use of Title V operating permit fees was reviewed as part of the assessment.

The permit fee review was initiated by a letter to the department dated March 4, 2020, requesting KDHE fill out Attachment C from the March 27, 2018 guidance "Program and Fee Evaluation Strategy and Guidance for 40 C.F.R. Part 70." The USEPA concluded that the department runs adequate construction and operating permit programs and found that all projects reviewed completed the proper level of permitting with only two major issues, the spending Title V fees on non-Title V activities being one. Specifically, the USEPA observed that KDHE does appear to collect adequate funds to operate the Title V program. However, Title V funds are being used to fund other non-Title V air program activities.

Starting on page 7 under section C Categorized Comments, item number 4.a. discusses the USEPA Region 7's findings related to the use of Title V fees in Kansas as follows, please see the attached Program Review Report for additional details:

> KDHE's Title V program is largely funded by annual emission fees. Currently, Title V sources pay the greater of a base fee of $1,000 or $53 per ton of actual "feeable" emissions. Feeable emissions are the total number of tons, rounded to the nearest ton, of each of the following pollutants combined: sulfur dioxide, nitrogen oxides, particulate matter sized 10 microns and less, volatile organic compounds, and

[1] https://www.epa.gov/sites/default/files/2015-09/documents/20141020-15-p-0006.pdf
[2] https://www.epa.gov/sites/default/files/2018-03/documents/fee_eval_2018.pdf

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hazardous air pollutants. Additionally, Title V fees are assessed for initial, renewal, and significant modification applications. Initial and renewal application fees are $3,000 and significant modification application fees are $1,500. The EPA approved these Title V fees in a February 27, 2019 Federal Register notice, with a March 29, 2019 effective date. Fee revenue is tracked using KEIMS.

The Kansas fiscal year runs from July 1 to June 30. The EPA's presumptive Title V fee for the majority of Kansas's 2019 fiscal year was $51.06 per ton. It was effective from September 1, 2018 to August 31, 2019. 40 CFR §70.9(b)(2)(v) requires a greenhouse gas cost adjustment. The KDHE calculated this cost adjustment to be $22,350. During the Kansas 2019 fiscal year, total emissions for the presumptive fee calculation were 73,863 tons. Therefore, the presumptive minimum fee collection amount is calculated to be $3,793,794.78 (73,863 tons*$51.06/ton+$22,350). Kansas actually collected $4,240,754.35. Therefore, Kansas collected an amount greater than or equal to the presumptive fee required by the EPA and is presumed to have adequate fees to fund the Title V program.

However, Kansas does not currently have adequate resources to fund its non-Title V portion of the air program. In the 2019 fiscal year, Kansas used $1,259,419.93 of Title V fees collected to help cover the cost of the non-Title V program. Deducting the $1,259,419.93, which Kansas characterized as Fee Revenues Transferred Out, from the Title V program revenue of $4,240,754.35, results in a remaining balance of $2,981,334.42, to fund the Title V program, and this amount is less than the EPA's presumptive fee amount.

Additionally, under the current scenario, the amount of Title V funds spent is not sustainable. In the 2019 fiscal year, Kansas spent $3,693,769.69 to fund the Title V program. These expenses should have resulted in a $546,984.66 surplus in the Title V fund at the end of the year, yet instead, $1,259,419.93 was also spent on non-Title V activities creating a $712,435.27 deficit. USEPA recommends that the KDHE find other sources of revenue to fund their non-Title V activities.

The KDHE recognizes the issues caused by not collecting adequate non-Title V fees. In addition to application fees, the KDHE plans to establish annual emission fee requirements for sources operating under the approved Federally Enforceable State Operating Permit (FESOP) program and all true minor and/or area source permitting programs that are not required to obtain a Title V operating permit.

The USEPA also understands that for several years Kansas has allocated 30 percent of the Title V emission fees to fund the non-Title V program. This practice is inconsistent with the requirement in 40 CFR §70.9(a) to "ensure that any fee required by this section will be used solely for permit program costs."

Additionally, the USEPA OIG recently conducted an evaluation to determine the extent to which the USEPA has conducted evaluations of state and local Title V programs and identified insufficient collection or misuse of Title V fees in a new USEPA OIG Report[3] released January 12, 2022 and titled "EPA's Title V Program Needs to Address Ongoing Fee Issues and Improve Oversight."

[3] https://www.epa.gov/system/files/documents/2022-01/_epaoig_20220112-22-e-0017.pdf

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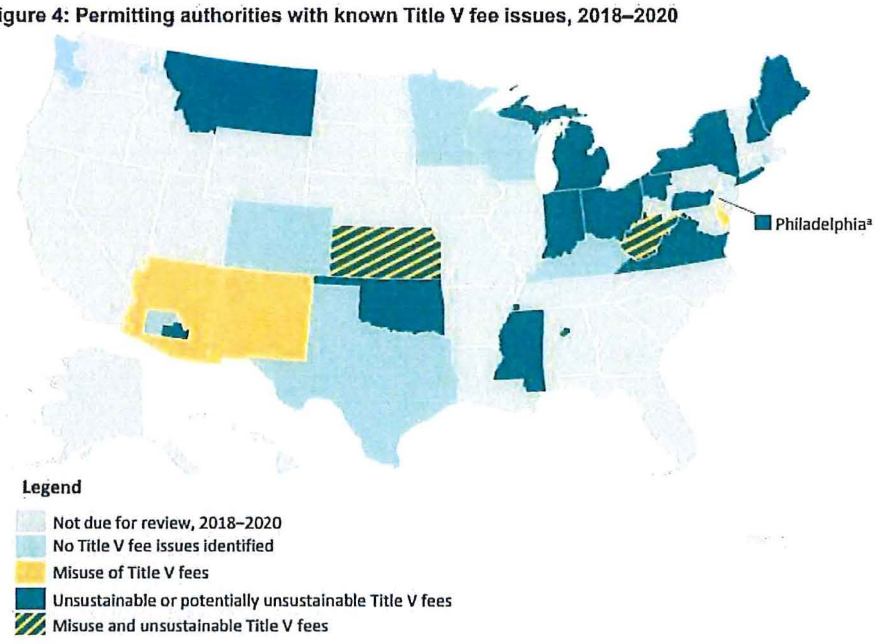
The report reiterates the Clean Air Act requirement for Title V permitting authorities to collect fees from Title V sources sufficient to fund all reasonable Title V program costs and such fees cannot be used to pay for non-Title V activities. To ensure these programs are implemented correctly, USEPA regions conducted Title V evaluations to determine whether permitting authorities are complying with applicable statutory and regulatory requirements. The OIG interviewed USEPA staff and managers and reviewed reports for 31 USEPA Title V fee and program evaluations conducted from 2018 through 2020 to assess the extent of their fee oversight activities. The USEPA noted concerns about the decline of Title V program revenue and the use of non-Title V revenue to fund Title V programs. Nine (or 90 percent) of the ten USEPA regions cited declining revenues as a key challenge that permitting authorities were facing.

The 2022 OIG Report includes the following information regarding the 2020 Region 7 Review of the use of Title V fees in Kansas starting on page 10:

> In Region 7, Kansas used its Title V fees to fund non-Title V activities. During the Title V evaluation of the Kansas Title V program, Region 7 staff determined that, in the long run, Kansas's Title V revenue stream was not sufficient to fund its Title V program and recommended that Kansas comply with the requirement to fund only Title V activities with Title V funds, in accordance with 40 C.F.R. part 70. In the Title V evaluation report, Region 7 did not establish a timeline for achieving compliance with this requirement or for restoring misspent funds to the Title V program.
>
> Figure 4 provides an overview of the Title V fee issues identified in the 31 Title V evaluations conducted from 2018 through 2020. We discovered misuse of funds in approximately 16 percent of the Title V programs that we reviewed, which indicates that permitting authorities may not be aware of Title V fee requirements and that training may be insufficient. Based on our review of the reports for these 31 Title V evaluations, we identified more than 42 percent of the permitting authorities as having significant staff turnover, including the loss of experienced staff. The Office of Air Quality Planning and Standards stated that the EPA could provide better training to help permitting authorities address the loss of institutional knowledge. States have also expressed interest in the EPA providing training. Providing regular and frequent training about Title V fee requirements to permitting authority staff and leaders could help prevent the misuse of Title V funds.
>
> **Figure 4: Permitting authorities with known Title V fee issues, 2018–2020**



Source: OIG analysis of EPA Title V program and fee evaluation reports and EPA correspondence. (EPA OIG image)

[a] Philadelphia is labeled because it is the only permitting authority with identified Title V fee issues not otherwise visible.

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All agencies of contiguous states implement fee schedules for Title V sources, KDHE evaluated data collected through a 2018 National Association of Clean Air Agencies (NACAA) survey of state Title V operating permit programs and developed and employed a survey specific to collect data for all other funding utilized by air quality programs of the surrounding states to provide a comprehensive overview of surrounding state fee schedules and revenues.

State fee schedules have historically included annual emissions fees and permit fees. Due to the issues associated with declining tonnage, states have begun implementing a variety of other fees to offset these deficits in revenue including source category fees, maintenance fees, electric generating unit fees, applicable standard fees, and dollar per hour permitting fees. To simplify the overview of state programs for comparison the summaries for these types of fees are divided into the resulting revenue(s) collected.

The following table presents the other regional and contiguous states 2019 State Fiscal Year Title V revenue sources and provides comparisons of Title V program revenue to the overall Air Quality Program revenue, along with the corresponding deficit or surplus of program revenue compared to budget need. Kansas is the only state which retains fines as funding, which per USEPA's guidance cannot be used to determine adequacy of part 70 fee schedule. Additional tables provided are for program size comparison, including staffing full time employees and types and quantity of sources regulated by other regional and contiguous states for SFY 2019.

State Fiscal Year (SFY) 2019 Title V Funding	Kansas	Colorado	Iowa	Missouri	Nebraska	Oklahoma
SFY 2019 Title V Emission Fees	$4,007,504	$3,551,124	$6,876,828	$6,169,374	$2,942,660	$5,732,472
SFY 2019 Title V Permit Fees	$233,650	$999,865	$612,000	$70,000	$0	$479,350
SFY 2019 Title V Fines	$267,750	N/A	N/A	N/A	N/A	N/A
SFY 2019 Total Title V Revenue	*$4,508,904*	*$4,550,989*	*$7,488,828*	*$6,239,374*	*$2,942,660*	*$6,211,822*
SFY 2019 Total Title V Budget	*$5,846,161*	*$4,802,092*	*$7,908,185*	*$5,815,808*	*$3,604,372*	*$6,006,220*
Deficit/Surplus	($1,337,257)	($251,103)	($419,357)	$423,566	($661,712)	$205,602
Sum of Overall Air Quality Program Revenue	*$6,552,861*	*$14,616,604*	*$11,890,391*	*$10,079,036*	*$5,032,585*	*$11,582,933*
Sum of Overall Air Quality Budget	*$7,453,495*	*$15,807,796*	*$12,251,892*	*$10,447,487*	*$5,584,607*	*$10,406,293*
Percent Title V of Total Program Revenue	*69%*	*31%*	*63%*	*62%*	*58%*	*54%*
Percent Title V of Total Program Budget	*78%*	*30%*	*65%*	*56%*	*65%*	*58%*

Title V Full Time Employees (FTE)	Kansas	Colorado	Iowa	Missouri	Nebraska	Oklahoma
Compliance	2.89		3.75	13	8	7
Inspectors	3.18		6	6		5
Monitoring	2.44		2	5	2	8
Planning/Regulations	2.45		4	15	2	7
Permits	14.4	13	7	21	6	11
Inventory	1.5		2	9	1	3
Administrative	1.6		3.5	7.5	2	4
Management	3.42		4.25	7	5	10
Total Title V Full Time Employees	*31.88*	*13*	*32.5*	*83.5*	*26*	*55*
Percent of Total Program FTE	*52%*	*11%*	*55%*	*89%*	*100%*	*52%*

**Oklahoma Title V FTE estimated based on percentage of Title V funding of total program funding.*

Type of Sources	Kansas	Colorado	Iowa	Missouri	Nebraska	Oklahoma

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Title V	279	210	275	246	85	335
FESOP - Synthetic Minor	729	1,234	*6,225	177	90	2,834
True Minor	5,690	14,000		1,762	31	6,923
Total Sources	***6,698***	***15,444***	***6,500***	***2,185***	***206***	***10,092***
Percent Title V Sources of Total Program	***4%***	***1%***	***4%***	***11%***	***41%***	***3%***

***Iowa combines Synthetic and True Minor Sources**

KDHE trusts that the proposed emission fees remain competitive with those of the other regional and contiguous states and should not weigh against business development in Kansas. The following table compares the most currently known dollar per ton emissions fee and Part 70 and 71 presumptive fees for the other regional and contiguous states along with the corresponding "feeable" tonnage data from the SFY2019 survey. Also included is whether an annual index is applied to adjust the fee for inflation. Two of the surveyed states invoice their regulated sources based on the program needs and the tonnage available to assess fees.

Emission Fee Schedule	Proposed Kansas	Current Kansas	Colorado*	Iowa**	Missouri	Nebraska**	Oklahoma**	Part 70 Presumptive Fee	Part 71 (USEPA Title V)
HAP Emissions Fee ($/ton)	$80.00	$53.00	$239.00	$70.00	$53.00	$65.00	$42.50	$54.37	$56.23
Criteria Emissions Fee ($/ton)	$56.00	$53.00	$36.00	$70.00	$53.00	$65.00	$42.50	$54.37	$56.23
CPI or Annual Increase Applied	No	No	No	No	No	No	Yes	Yes	Yes
Invoiced/adjusted for program need	No	No	No	Yes	No	Yes	No	No	No
Feeable HAP Tons	3,023	3,023	6,006	-	1,401	-	-	-	-
Feeable Criteria Tons	72,284	72,284	162,663	103,260	124,080	37,726	135,466	-	-
Total Feeable Tons	*75,307*	*75,307*	*168,669*	*103,260*	*125,481*	*37,726*	*135,466*	-	-

**Colorado includes emissions from all source types*
***States that have the same fee for HAP and Criteria Emissions only reported Criteria Tons for fee assessment.*

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;

The proposed amendment provides financial support for continuation of the Department's overall air quality program, specifically the 40 C.F.R. Part 70 approved Class I operating permit program and ensures continued protection of the public health and welfare of the approximate 2.93 million residents and the environment of Kansas. This financial support is also necessary to ensure the timely review of air quality permits for the regulated community, which will provide the certainty business need to expand and locate in Kansas.

Additionally, the proposed amendments are necessary to demonstrate adequacy of the program to retain primacy for all compliance and enforcement activities in Kansas. This is of great benefit for the regulated community to be able to work with the state to achieve compliance as opposed to the USEPA.

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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;

The following table describes the average annual impact estimated for sources in Kansas by the North American Industrial Classification System (NAICS) Subsector. The average impact estimated per NAICS ranges from ($700) up to $5,492 with an average impact per source being $893. The maximum impact for an individual source is $45,004 due largely to the proposed HAP Emissions Fee.

NAICS Subsector	Average Annual Impact
211 - Oil and Gas Extraction	$714
212 - Mining (except Oil and Gas)	($700)
221 - Utilities	($547)
237 - Heavy and Civil Engineering Construction	($459)
238 - Specialty Trade Contractors	$-
311 - Food Manufacturing	$3,266
312 - Beverage and Tobacco Product Manufacturing	$1,198
322 - Paper Manufacturing	$881
323 - Printing and Related Support Activities	($273)
324 - Petroleum and Coal Products Manufacturing	$1,319
325 - Chemical Manufacturing	$2,317
326 - Plastics and Rubber Products Manufacturing	$5,492
327 - Nonmetallic Mineral Product Manufacturing	($108)
331 - Primary Metal Manufacturing	$880
332 - Fabricated Metal Product Manufacturing	$672
333 - Machinery Manufacturing	$97
336 - Transportation Equipment Manufacturing	$2,274
337 - Furniture and Related Product Manufacturing	$2,458
424 - Merchant Wholesalers, Nondurable Goods	$1,057
486 - Pipeline Transportation	$632
561 - Administrative and Support Services	$-
562 - Waste Management and Remediation Services	$361
611 - Educational Services	$1,028
924 - Administration of Environmental Quality Programs	($60)
928 - National Security and International Affairs	$1,120
Average Impact per Business	***$893***

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

There are currently 260 Class I sources in Kansas that would be directly affected by the proposed regulatory amendments. The following table distinguishes the number of sources impacted per North American Industrial Classification System (NAICS) Subsector. The industry with the largest number of sources affected is pipeline transportation having 79 sources impacted.

NAICS Subsector	Number of Businesses
211 - Oil and Gas Extraction	18
212 - Mining (except Oil and Gas)	1
221 - Utilities	36
237 - Heavy and Civil Engineering Construction	3
238 - Specialty Trade Contractors	6
311 - Food Manufacturing	10
312 - Beverage and Tobacco Product Manufacturing	1
322 - Paper Manufacturing	3
323 - Printing and Related Support Activities	5
324 - Petroleum and Coal Products Manufacturing	3
325 - Chemical Manufacturing	13
326 - Plastics and Rubber Products Manufacturing	11
327 - Nonmetallic Mineral Product Manufacturing	9
331 - Primary Metal Manufacturing	4
332 - Fabricated Metal Product Manufacturing	8
333 - Machinery Manufacturing	7
336 - Transportation Equipment Manufacturing	13
337 - Furniture and Related Product Manufacturing	4
424 - Merchant Wholesalers, Nondurable Goods	5
486 - Pipeline Transportation	79
561 - Administrative and Support Services	1
562 - Waste Management and Remediation Services	17
611 - Educational Services	1
924 - Administration of Environmental Quality Programs	1
928 - National Security and International Affairs	1
Total Number of Businesses	***260***

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

The benefit of the State of Kansas and KDHE retaining the approval to be the permitting authority in Kansas cannot be specifically measured. The approval allows the state to maintain primacy for compliance and enforcement activities for delegated federal standards. Currently there are approximately 7,000 sources complying with federal standards operating in Kansas. The federal penalties are estimated to be at least 60% higher per action taken and USEPA frequently considers the overall economic benefit the company profited by operating out of compliance when determining penalties. Standard federal penalties are assessed up to $25,000 per day per violation as compared to the maximum daily state penalty of $10,000 per day per violation. In addition, KDHE often encourages Supplemental Environmental Projects, in lieu of penalties, to promote the continued protection of the public health and welfare of the residents and the environment of Kansas.

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It is unknown the cost the federal government would need to collect from the regulated community to adequately cover the cost to administer the program. KDHE estimates that to cover just the federal salaries and benefits for replacing current state personnel the USEPA would need to collect an additional $1,366,057 to administer the program.

By addressing the Air Quality Fee Fund deficit, the Department will be able to continue to serve the regulated community and protect the quality of air in the State. Failure to adjust the Air Quality program fee structure to adequately cover program costs will cause significant staff reductions. Reduced staff will cause delays in processing and issuing construction and operating permit applications. This may result in delays for industry to implement new or improved processes and loss of revenue to industry, loss of jobs for the community and loss of tax revenue for the State. Further, fewer staff to conduct inspections, respond to complaints and pursue enforcement actions will result in less oversight of industry compliance or noncompliance. This will result in reduced protection of the environment and public health and welfare of the citizens of Kansas.

Decreased revenues will also impact the Kansas ambient air monitoring network, which provides the data to substantiate the State's progress in attaining and maintaining the National Ambient Air Quality Standards (NAAQS) established by the USEPA. Decreased revenues could also impact the federally required Title V funded Small Business Stationary Source Technical and Environmental Compliance Assistance Program by reducing the amounts of grants and number of services available to small businesses. This could potentially lead to fewer viable small businesses and slow the economic recovery by reducing the number of available jobs.

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;

Since the inception of the Title V Operating permit program in Kansas in 1993, KDHE has consistently maintained minimum cost to the regulated community. Up until 2018, KDHE has applied a dollar per ton emissions fee ranging between 15.6% up to 61.6% below the Part 70 federally prescribed fee.

Emissions Year	Kansas Emissions Fee ($ per Ton)	40 C.F.R. Part 70	Percent Difference
1993	$18.00	$28.43	-36.7%
1994	$20.00	$29.30	-31.7%
1995	$15.00	$30.07	-50.1%
1996	$15.00	$30.93	-51.5%
1997	$13.00	$31.78	-59.1%
1998	$13.00	$32.65	-60.2%
1999	$13.00	$33.21	-60.9%
2000	$13.00	$33.82	-61.6%
2001	$20.00	$34.87	-42.6%
2002	$20.00	$36.03	-44.5%
2003	$25.00	$36.60	-31.7%
2004	$25.00	$37.43	-33.2%
2005	$25.00	$38.29	-34.7%
2006	$25.00	$39.48	-36.7%

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2007	$25.00	$41.02	-39.1%
2008	$25.00	$41.96	-40.4%
2009	$25.00	$43.75	-42.9%
2010	$37.00	$43.83	-15.6%
2011	$37.00	$44.88	-17.6%
2012	$37.00	$45.55	-18.8%
2013	$37.00	$46.73	-20.8%
2014	$37.00	$47.52	-22.1%
2015	$37.00	$48.27	-23.3%
2016	$37.00	$48.49	-23.7%
2017	$37.00	$48.88	-24.3%
2018	$53.00	$49.85	6.3%
2019	$53.00	$51.06	3.8%
2020	$53.00	$52.03	1.9%
2021	$53.00	$52.79	0.4%
2022	$53.00	$54.37	-2.5%

In addition, up until emissions year 2010, KDHE only assessed fees on individual pollutant emissions above 100 tons, thereby not collecting fees from sources who voluntarily took federally enforceable state operating permit restrictions to below major source thresholds (Class II sources of FESOP Program), or typically to under 100 tons per pollutant. Amendments made to the fee schedule language in 2010 lowered the threshold of emissions assessed for fees to 1 ton of emissions but also amended language that was interpreted to only apply to sources required to obtain a Class I operating permit and "inadvertently" continued to exclude Class II sources from paying emission fees.

The following graphic illustrates the historic trends for all States and local Title V emission fees in EPA Region 7 and clearly demonstrates KDHE's consistent and ongoing effort to charge minimal fees as necessary to collect sufficient revenue to administer the program.

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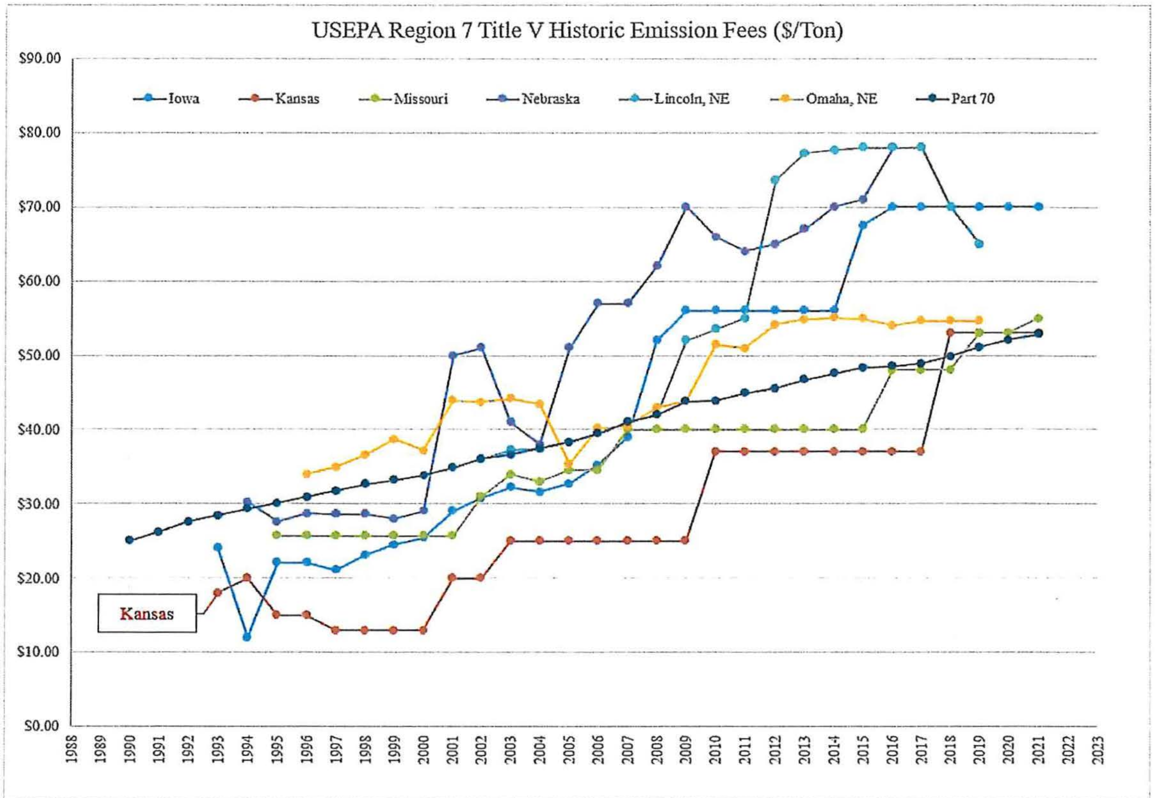

F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public. *Note: Do not account for any actual or estimated cost savings that may be realized.*

Costs to Affected Businesses – $510,577

Costs to Local Governmental Units – $0

Costs to Members of the Public – $0

Total Annual Costs – $510,577
(sum of above amounts)

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

KDHE's Bureau of Air (BOA) maintains the Kansas Environmental Information Management System (KEIMS) and State and Local Emissions Inventory System (SLEIS) developed by Windsor Solutions, to collect and store actual compliance, permitting, and emissions inventory data along with associated fees. This data was utilized to determine past actuals and to estimate future projections of emissions and fees. Future projections are based upon an analysis of total emissions from all individual facilities during the period of 2000 – 2020 and calculating a trend in criteria pollutant and Hazardous Air Pollutant (HAP) emissions for each facility based upon their NAICS subsector. Known facility closures and emissions reductions due to the installation of controls were also included in the projections. All projected emissions were than multiplied by their respective per ton charge to determine individual facility and NAICS subsector impacts.

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From emission year 2000 to 2020 there were a total of 105,061 tons of actual emissions reductions realized from Class I sources. KDHE estimates additional projected emission reductions of approximately 12,456 tons from emissions year 2021 through 2030. Known facility closures and emissions reductions due to the installation of controls were considered. From 2000 – 2020 there was an average emission decrease of 4.3%, for future projections a conservative average of 2.0% per year decrease was applied. These reductions in emissions levels, while a good measure of the successful impact of the Kansas Air Quality program in meeting its goals of protecting human health and environment, also mean there are fewer tons of air pollutants emitted upon which fees are paid.

Actual (2000 - 2020) Projected (2021 - 2030)				
Emissions Year	**Total Emissions**	**Percent Change in Emissions**	**Emission Reductions**	**Cumulative Reductions**
2000	169,677			
2001	168,490	-0.6%	(1,034)	(1,034)
2002	162,809	-3.4%	(5,947)	(6,981)
2003	164,421	1.2%	2,079	(4,902)
2004	160,663	-2.2%	(3,755)	(8,657)
2005	166,198	3.1%	5,160	(3,497)
2006	151,946	-8.4%	(14,361)	(17,858)
2007	149,718	-1.8%	(2,792)	(20,650)
2008	136,528	-8.7%	(13,395)	(34,045)
2009	127,519	-6.9%	(9,684)	(43,729)
2010	129,274	1.5%	1,994	(41,735)
2011	125,200	-3.0%	(3,937)	(45,672)
2012	107,903	-13.3%	(17,201)	(62,873)
2013	105,201	-2.5%	(2,768)	(65,641)
2014	101,165	-3.8%	(4,100)	(69,741)
2015	83,785	-17.2%	(17,972)	(87,713)
2016	71,517	-14.2%	(12,341)	(100,054)
2017	67,254	-5.6%	(4,196)	(104,250)
2018	73,863	10.0%	7,002	(97,248)
2019	69,284	-6.2%	(4,764)	(102,012)
2020	66,583	-4.2%	(3,049)	(105,061)
2021	65,251	-2.0%	(1,361)	(106,422)
2022	63,946	-2.0%	(1,333)	(107,755)
2023	62,667	-2.0%	(1,308)	(109,063)
2024	61,414	-2.0%	(1,281)	(110,344)
2025	60,186	-2.0%	(1,256)	(111,600)
2026	58,982	-2.0%	(1,231)	(112,831)
2027	57,802	-2.0%	(1,207)	(114,038)
2028	56,646	-2.0%	(1,183)	(115,221)
2029	55,513	-2.0%	(1,160)	(116,381)
2030	54,403	-2.0%	(1,136)	(117,517)

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Total annual costs were determined utilizing the projected emissions and the proposed changes in Facility Fee, Criteria Emissions Fee, and HAP Emissions Fee that will apply beginning in calendar year 2025. The table below shows the estimated proposed individual fees cost compared to the latest complete state fiscal year (SFY2021), and a running two-year total cost. The facility fee is the change in revenue projected for the $1000 applied to an additional 171 sources from the current minimum fee assessed for all other Class I sources. The Criteria Emissions Fee projected revenue is based on the change from the current $53 per ton to the proposed $56 per ton for criteria emissions only. The HAP Emissions Fee projected revenue is based on the change from the existing $53 per ton to the proposed $80 per ton for HAP emissions. All annual impacts are based on a comparison to the latest complete state fiscal year (SFY2021) fees collected using the existing fee schedule.

HB2087 requires state agencies to include in the economic impact statement for a proposed rulemaking a determination of whether costs would be more than $1.0 million over any two-year period from the effective date of the bill (effective April 28, 2022) through June 30, 2024, or exceed $3.0 million over any two-year period on and after July 1, 2024.

KDHE, Bureau of Air has determined that the total implementation and compliance costs of the proposed amendments do not exceed $1.0 million for any two-year period through December 31, 2024 and do not exceed $3.0 million over any two-year period on and after July 1, 2024 as presented in the following table for State Fiscal Year (SFY) 2025 - 2029.

SFY:	2025	2026	2027	2028	2029
Facility Fee	$171,000	$171,000	$171,000	$171,000	$171,000
Criteria Emissions Fee	$117,564	$50,249	($15,706)	($80,326)	($143,640)
HAP Emissions Fee	$222,013	$219,793	$217,595	$215,419	$213,265
Total Annual Cost	$510,577	$441,041	$372,889	$306,093	$240,625
Total 2-Year Cost		$951,618	$813,931	$678,982	$546,718

☐ Yes

☐ No

☒ Not Applicable

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.

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.

There are no changes in state revenues or expenditures related to the proposed amendments for either the current or next fiscal year. The implementation date proposed is January 1, 2025 or State Fiscal Year (SFY) 2025.

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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.

The Class I Operating Permit fee schedule became effective November 22, 1993 and has been periodically adjusted for inflation and to offset the reduction over time of emissions upon which fees are paid. The proposed changes to the fee schedule do not have an immediate or long-range economic impact on any individual(s) or the general public. Class I sources are generally considered to be the largest industries (or employers) in Kansas with the largest quantity of emissions. The data collected and used to estimate the impacts of this rulemaking, as described above under the detailed statement of data and methodology, does not include information related to or that can be used to accurately predict or categorize the size of the employer, therefore no dollar estimate can be given for small employers beyond those assessed per source category presented in Section III, Subsection B for average impacts and C for number of sources.

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

The proposed regulation will impact those local units of government including cities, counties and unified school districts that are required to obtain a Class I operating permit and report actual emissions. The impact per source will be dependent on the type of source category it is designated as and the quantity of hazardous air pollutant (HAP) and criteria pollutant emissions emitted. KDHE estimates impacts to 26 Class I sources, with impacts ranging from approximately ($5,765) to $922 annually. On August 12, 2019, KDHE met with Kansas Municipal Utilities Organization to discuss the proposed impacts to all represented classes of sources.

When a notice of hearing for this set of regulations is published in the Kansas Register, standard agency procedure is followed and the three organizations are contacted electronically for comment with attached copies of the regulations, economic impact statement, environmental benefit statement for environmental regulations, and published notice of hearing.

H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

The agency held several stakeholder meetings to discuss options and receive input from the regulated community prior to proposing fee schedule amendments in November of 2019. The declining emission fees have been a consistent and ongoing topic at the annual Clean Air Act Advisory Group which is held annually during the Environmental Conference. In addition to the meetings and conference call listed in the following table, KDHE provided, upon request, source specific consultation and impact estimates.

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Date	Location	Stakeholder Group	Attendance Including KDHE
7/11/2019	Salina, KS Highway Patrol Training Center	All Impacted Sources	23
7/26/2019	Topeka, Curtis State Office Building	Electric Generating Units	11
8/12/2019	Topeka, Curtis State Office Building	Kansas Municipal Utilities Organization	9
8/13/2019	Manhattan, Hilton Garden Inn	Clean Air Act Advisory Group All Impacted Sources	73
8/30/2019	Conference Call	Kansas Electrical Cooperatives Representatives	6
9/5/2019	Topeka, Curtis State Office Building	Kansas Aggregate Producers Association; Kansas Ready Mix Concrete Association; Kansas Contractors Association; and Kansas Asphalt Pavement Association	7

The proposed 2019 amendments were held by a reviewing agency in 2020 due to legislative concerns and in the 2020 Legislative Session, Senate Bill 66 (SB66) was enacted containing a proviso halting all fee regulatory actions. SB66 further directed KDHE to collaborate and work with affected stakeholders to develop a fee schedule for the purpose of proposing such fee schedule in legislation during the legislative session beginning January 11, 2021.

In response, the KDHE Bureau of Air (BOA) developed the 2021 Fee Schedule Plan outlining the BOA's intent to engage, collaborate and work with affected stakeholders, including industry representatives, to develop an equitable, stable and sustainable fee schedule that is adequate to cover the cost of administering and implementing the Kansas Air Quality Program.

The BOA conducted the following five additional meetings and presented the results of the stakeholder process at a March 24, 2021 House Agriculture and Natural Resource Budget Committee Meeting. The results of this stakeholder process are being implemented through the proposed regulatory action and another corresponding proposed Class II fee schedule regulatory action.

Date	Location	Stakeholder Group	Attendance Including KDHE
9/3/2020	Topeka, Curtis State Office Building and Online Teams Meeting	2021 Fee Plan Stakeholder Group	25
9/22/2020	Online Teams Meeting	2021 Fee Plan Stakeholder Group	20
10/29/2020	Online Teams Meeting	2021 Fee Plan Stakeholder Group	20
2/23/21	Online Teams Meeting	2021 Fee Plan Stakeholder Group	20
5/5/21	Online Teams Meeting	2021 Fee Plan Stakeholder Group	19

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.

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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 proposed amendments impose no new capital costs to the implementing agency, the public or the regulated community. The amendments may result in an increase in annual operating costs for all parties subject to the regulations compared to the existing fees as described above in Section III, Subsection F.

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.

The proposed regulatory action will impose no new costs or paperwork burdens of implementing and enforcing upon the state agencies, other governmental agencies or other persons.

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 amendments to the Class I Operating Permit fee schedule are not adopted, the agency will not receive adequate revenue into the Air Quality Fee Fund to support the air quality program overall. Federal approval of the Class I Operating Permit Program is contingent upon the adequacy of the fee schedule, including a demonstration that the fee schedule will result in the collection and retention of fees sufficient to support the functions of the state agency that implements the permitting program.

A comparison of the revenue and expenditures for the Air Quality Fee Fund for SFY2020 though SFY2030 is provided below including the projected deficits with and without the proposed rulemaking. The proposed increase in emissions fees will aid in offsetting the effect of declining emissions and derived revenue for the Class I Operating Program and the Kansas Air Quality Fee Fund overall.

Emissions Fees are projected utilizing known facility changes and otherwise a conservative estimate of annual decline in emissions. Permit fees are estimated using the prior five-year average (SFY2017-2021) which ranged from $130,659 to $626,050. Expenditures for SFY2022 through SFY2025 include supporting the Class II FESOP Program. This support will cease beginning SFY2026 when the corresponding regulatory action to establish Class II Program fee schedule is established allowing for a substantial decrease in expected expenditures for the Title V (Class I) program. Expenditures are also conservative, estimated at approximately 90% of the budgeted total to account for temporary vacancies and other cost-savings that are common when reviewing historical expenditures.

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Revenue vs. Expenditure Projections without Rulemaking					
SFY	**Emissions Fees**	**Permit Fees**	**Total Revenue**	**Expenditures**	**Deficit**
2022	$3,402,072	$475,000	$3,877,072	$4,751,595	($874,523)
2023	$3,334,338	$475,000	$3,809,338	$4,758,532	($949,194)
2024	$3,267,974	$475,000	$3,742,974	$4,995,213	($1,252,240)
2025	$3,202,950	$475,000	$3,677,950	$5,045,860	($1,367,910)
2026	$3,139,241	$475,000	$3,614,241	$5,097,192	($1,482,950)
2027	$3,076,820	$475,000	$3,551,820	$5,149,219	($1,597,399)
2028	$3,015,662	$475,000	$3,490,662	$5,201,955	($1,711,293)
2029	$2,955,740	$475,000	$3,430,740	$5,255,410	($1,824,670)
2030	$2,897,030	$475,000	$3,372,030	$5,309,596	($1,937,566)

Revenue vs. Expenditure Projections with Rulemaking					
SFY	**Emissions Fees**	**Permit Fees**	**Total Revenue**	**Expenditures**	**Deficit**
2022	$3,402,072	$475,000	$3,877,072	$4,751,595	($874,523)
2023	$3,334,338	$475,000	$3,809,338	$4,758,532	($949,194)
2024	$3,267,974	$475,000	$3,742,974	$4,995,213	($1,252,240)
2025	$3,772,338	$475,000	$4,247,338	$5,045,860	($798,522)
2026	$3,702,802	$475,000	$4,177,802	$3,568,034	$609,768
2027	$3,634,650	$475,000	$4,109,650	$3,604,454	$505,197
2028	$3,567,854	$475,000	$4,042,854	$3,641,368	$401,485
2029	$3,502,386	$475,000	$3,977,386	$3,678,787	$298,599
2030	$3,438,220	$475,000	$3,913,220	$3,716,717	$196,503

Without the proposed fee amendments, the Class I Operating Permit Program (Title V) will continue to operate in a growing deficit resulting in a declining ending balance of the program fee fund, from a projected balance of $880 Thousand in SFY2025 to greater than negative $2.5 Million by SFY2027 due to growing expenditures (inflation) and decreasing revenues (emissions). This results in the ending balance for the Class I Operating Permit Program are presented in the table below.

SFY:	**2022**	**2023**	**2024**	**2025**	**2026**	**2027**
Ending Balance:	$4,969,332	$3,866,412	$2,434,149	$880,588	($793,717)	($2,588,252)

Given that a key provision of Title V is the requirement to establish a financially adequate fee schedule, if the USEPA makes a formal finding that the fee schedule is not adequate to administer the program, they may, among other things, withdraw approval of the program, in whole or in part, and/or promulgate, administer, and enforce a Federal Title V program (codified in 40 C.F.R. Part 71) if the USEPA finds that the state agency has failed to take "significant action to assure adequate administration and enforcement of the program" within 90 days after the issuance of a notice of deficiency (NOD). In this instance, the USEPA is authorized to collect fees to cover their costs of administering the Federal permitting program, which the regulated community would bear the costs associated with USEPA being the permitting authority instead of the state.

Additionally, sanctions under CAA Section 179 would be imposed if the state has not corrected the program deficiency within 18 months after USEPA's date of finding of deficiency and issuance of

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the NOD. These mandatory sanctions include withholding of certain federal highway funds and 2 to 1 emission offsets for construction or modification of emission sources. Furthermore, the USEPA may withhold all of part of Federal grant funding awarded under CAA Sections 103 and 105. Moreover, the USEPA is mandated to promulgate, administer, and enforce a whole or partial program within 2 years of the date of finding if the state has not corrected the deficiency within 18 months after the date of such finding. Therefore, implementation of the proposed increased fees and new fees would maintain the state's authority to administer and enforce the permitting program and avoid Federal oversight and mandatory CAA sanctions.

The table, as shown below, lists current and historical annual fee emission rates since 2010, adjusted yearly for inflation, under the Federal Title V (Part 71) program as administered by the USEPA; this fee schedule would be imposed due to a state's inadequate implementation of its permitting program. Additionally, annual fees are increased by a Greenhouse Gas (GHG) fee adjustment equal to a set fee ranging from $520 to $2,236 depending on the GHG related activity initiated by a Part 71 source. It is important to note that the USEPA is required to review Part 71 program costs and fees at least every two years and make any necessary changes to the fee schedule. While the total program costs that would be imposed on the regulated community are unknown, it is presumed that the current fee schedule is the minimum that would be assessed and collected by the USEPA for administering and enforcing such permitting program. However, we are confident that the presumptive fee prescribed by USEPA is not adequate at this time to cover the cost. Without a history of applying the presumptive fee with the associated revenue carryover, there is not adequate tonnage to cover the cost to administer this program at the state or federal level.

Calendar Year	Part 71 Fee Rate
2010	$45.33
2011	$46.00
2012	$47.11
2013	$48.33
2014	$49.15
2015	$49.93
2016	$50.16
2017	$50.56
2018	$51.56
2019	$52.81
2020	$53.81
2021	$54.60
2022	$56.23

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

The same data and methodology as described in Section III, Subsection F was used to estimate the costs.

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Kansas Administrative Regulations
Economic Impact Statement (EIS)

Kansas Department of Health and Environment
Agency

Susan Vogel
Agency Contact

296-1291
Contact Phone Number

28-19-546 and 28-19-564
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).

The 1990 amendments to the Clean Air Act (CAA) required the U.S. Environmental Protection Agency (USEPA) to promulgate regulations requiring state government permitting authorities to establish air quality operating permit programs under Title V. The USEPA has delegated responsibility for running the Title V program to state and local permitting authorities and established standards for those programs under regulations promulgated at 40 C.F.R. part 70.

One of the Title V requirements for approved permit programs is a provision that permitting authorities collect annual fees under a fee schedule that results in the collection and retention of revenues sufficient to cover all reasonable indirect and direct costs of developing and administering the approved operating permit program. The USEPA gave states the option to include their synthetic minor (Class II) sources under the Title V fee schedule and collect fees from those sources to support the cost of the Title V program or the option to develop a State Implementation Plan (SIP) to be funded by the state. Kansas chose to develop a SIP. The Kansas Federally Enforceable State Operating Permit (FESOP) Program, also known as the Class II Operating Permit Program, is part of the USEPA 40 C.F.R. Part 52 approved State Implementation Plan that allows Kansas Title V sources to take voluntary federally enforceable permit restrictions to reduce their potential-to-emit (PTE) to below major source applicability thresholds for Title V. KDHE implements this Non-Title V program through Kansas Administrative Regulation (K.A.R.) 28-19-501, 540 through 564. The Non-Title V program is a federally subsidized program that covers all activities related to administering the air quality program for non-title V sources, including permitting, compliance, inspections, planning, inventory and monitoring activities.

Prior to this proposal, Kansas has not established an emission fee schedule for these sources to support the program costs, but rather relied upon State General Fund (SGF) and Federal Grants to cover program costs. Since State Fiscal Year (SFY) 2009, the SGF allocated to support the Non-Title V Program has reduced from $791,251 to zero in SFY 2022. The following table provides allocated SGF from SFY 2002 to 2022. As SGF reduced, the Bureau began using Class I (Title V) emissions fees to cover the lost revenue, and under previous management established a new "Non-Title V Fees" Subaccount in the Air Quality Fee Fund where 30% of Class I (Title V) fees were deposited to be used to cover other program costs. At the request of the Class II sources, KDHE submitted a request for additional SGF specifically to support the Non-Title V Program for SFY 2021 and beyond but was denied. Additionally, in SFY 2015 permit application fees collected from these sources became available to support this program but are currently not adequate to fully replace lost SGF.

SFY	SGF Allocated to Bureau of Air
2009	$791,251
2010	$461,837
2011	$426,532
2012	$228,359
2013	$210,660
2014	$196,815
2015	$195,541
2016	$85,000
2017	$83,533

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2018	$81,111
2019	$85,137
2020	$89,105
2021	$86,354
2022	$0

In 2020, the USEPA Region 7 conducted a comprehensive review of KDHE's air permitting programs and determined that Kansas does not currently have adequate resources to fund its Non-Title V portion of the air program. Finding in the 2019 fiscal year, Kansas used $1,259,419.93 of Title V fees collected to help cover the cost of the Non-Title V program. Deducting the $1,259,419.93, which Kansas characterized as Fee Revenues Transferred Out, from the Title V program revenue of $4,240,754.35, results in a remaining balance of $2,981,334.42, to fund the Title V program, and this amount is less than the EPA's presumptive fee amount used to determine adequacy of the program. Further, USEPA found this practice to be inconsistent with the requirement in 40 C.F.R. §70.9(a) to ensure that any fee required by that section will be used solely for the Title V permit program costs. Additionally, eligibility for federal funding pursuant to 40 C.F.R. §35.140 – 35.148, as authorized under CAA Section 105, prohibits the use of Title V revenue to meet the cost share or match requirements.

The purpose of this proposed regulatory action is to establish a fee schedule for the Class II Operating Permit Program or FESOP to correct the misuse of funds and eliminate the future burden on the Kansas Class I Operating Permit Program fee schedule to bring in adequate revenue to support the Class II Operating Permit Program. Additionally, all revenue collected as a result to this proposed rulemaking is eligible and necessary to meet the cost share or match obligation for the Federal 105 Grant. Currently the annual match obligation is $852,131.50.

To establish a Class II fee schedule and provide clarification of inventory requirements on which the fees are based, KDHE is proposing to amend K.A.R. 28-19-546 *Class II operating permits; annual emission inventory* and K.A.R. 28-19-564 *Class II operating permits; permits-by-rule; sources with actual emissions less than 50 percent of major source thresholds*.

Specifically, KDHE is proposing to amend K.A.R. 28-19-546 by adding new paragraphs (a) through (d) to align with the Class I annual emissions inventory and fee regulation K.A.R. 28-19-517. New paragraph (a) describes procedures for submitting annual emissions inventory electronically, currently implemented using the Kansas State and Local Emissions Inventory System (SLEIS) which has been the only method of reporting emissions since 2020. New paragraph (b) establishes annual emission fees beginning in calendar year 2025 of $56 per ton of criteria emissions and $80 per ton of Hazardous Air Pollutant (HAP) emissions. New paragraph (c) describes the submittal requirements for both inventory and fees and new paragraph (d) adds late fee and refund language.

KDHE is proposing to amend K.A.R. 28-19-564 paragraph (e) to require all permits-by-rule Class II sources and those with actual emissions less than 50 percent of major source thresholds to submit annual emissions inventory and fees by April 1 of each year (currently February 15) as required by the proposed K.A.R. 28-19-546.

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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.)*

The SIP approved FESOP program does not exceed the requirements of applicable federal law. If these state implementation plan regulations were not in place and approved by the USEPA these sources would be required to comply with the more stringent Class I (Title V) Operating Permit Program requirements. Additionally, for Kansas to maintain the federally approved FESOP Program related to Hazardous Air Pollutants (HAPs) specifically, KDHE is obligated to ensure that all sources regulated by the Clean Air Act (CAA) section 112(l) are covered by meeting the following program approval criteria: (1) contains adequate authority to ensure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for ensuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

Regarding adequate resources, in the FESOP submittal, Kansas requested approval under section 112(l) by providing adequate resources to implement and enforce the program from fees collected under Title V. At the time of the USEPA approval, this mechanism was sufficient and appropriate to provide for adequate resources to implement the program, but the USEPA indicated they would monitor the state's implementation of the program to ensure that adequate resources continue to be available. At the time of the 1995 approval of the FESOP [60 FR 36361] the majority of sources complying with CAA Section 112 requirements were major sources under Title V, since that time the USEPA has promulgated numerous National Emission Standards for Hazardous Air Pollutants (NESHAP) or Maximum Achievable Control Technology (MACT) Standards for these smaller sources in Kansas adding a much larger burden on resources to ensure continued compliance. There are 271 synthetic minor sources subject to at least one MACT or NESHAP standard; 1352 true minor sources are subject to at least one MACT or NESHAP standard.

As described above and extensively in the concurrent Class I fee schedule proposal, the USEPA Region 7 recently conducted a Kansas Permit Program Review which calls into question the legality and adequacy of these Title V fees to continue to provide adequate resources for programs other than Title V such as the Non-Title V FESOP and 112(l). The USEPA did indicate that there is nothing preventing KDHE from continuing to collect fees from Class I (Title V) sources to cover the cost of this program if differentiated and accounted accurately, although the stakeholder process and negotiations with both Class I and II sources resulted in establishing a Class II fee schedule to provide resources for the FESOP program beginning in 2025 through this proposal. Once finalized these updated regulations will be submitted to the USEPA for SIP approval and for approval under 112(l) for sources other than Title V.

All agencies of contiguous states implement fee schedules for Non-Title V sources either through emission fees, permitting application fees, dollar per hour permit processing fees, source category fees and annual operating fees for CAA Section 112 sources. All the listed options were evaluated by KDHE for adequacy, equitability, and ease of implementation. KDHE determined that utilizing the existing structure of annual emissions inventory or reporting requirements for all Class II sources to be the most cost effective and straightforward option to implement. Additionally, based on the historic fee schedule for Class I sources it is also the most equitable of the options and due to the robust and accurate data collection related to emissions inventory, provided the most accurate estimated impacts. Additionally, another option used by states is to cover these sources under Part 70 or Title V and require them to comply with all of the Title V requirements, including initial and renewal permit application fees, annual emission fees, annual inspections and

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semiannual reporting. This option was discussed, but the Class II sources prefer to maintain the approved FESOP to continue to benefit from the reduced permitting burden allowed by the approved FESOP.

KDHE developed and employed a survey specific to collect data for Non-Title V funding utilized by air quality programs of the surrounding states to provide a comprehensive overview of surrounding state fee schedules and revenues for comparison. The following tables present the other regional and contiguous states 2019 State Fiscal Year (SFY) Non-Title V source fee schedule and State General Fund (SGF) revenue along with the types and quantity of sources regulated by each state.

SFY 2019 Non-Title V Source Fees	Kansas*	Colorado**	Iowa	Missouri	Nebraska	Oklahoma
FESOP Emission Fees						$1,589,709
FESOP Permit Fees	$44,500		$1,254,000			$370,550
FESOP Fines	$183,400					
True Minor Emission Fees		$1,749,061		$712,397		$1,445,515
True Minor Permit Fees	$208,723	$4,683,554	$254,619	$296,088		$549,100
State General Funding	$82,731		$1,129,325			
Total Fees Collected	***$519,354***	***$6,432,615***	***$2,637,944***	***$1,008,485***	***$0***	***$3,954,874***

***Kansas SGF allocated to support Asbestos Program.**
*****Colorado includes FESOP fees with True Minor Fees.***

SFY 2019 Type of Sources	Kansas	Colorado	Iowa	Missouri	Nebraska	Oklahoma
Title V	279	210	275	246	85	335
FESOP - Synthetic Minor	729	1,234	*6,225	177	90	2,834
True Minor	5,690	14,000		1,762	31	6,923
Total Sources	***6,698***	***15,444***	***6,500***	***2,185***	***206***	***10,092***
Percent Non-Title V Total Sources	***96%***	***99%***	***96%***	***89%***	***59%***	***97%***

****Iowa combines Synthetic and True Minor Sources***

Kansas is the only state which retains fines as funding. All surrounding states other than Iowa and Nebraska require emission fees to support their Non-Title V programs. Iowa relies upon permit application fees ($385/application) in addition to substantial State General Fund ($1,129,325) to support their Non-Title V program. Kansas did receive SGF in SFY2019, although the money was dedicated to the Asbestos Program and not utilized for Air Program costs directly. At the request of the Class II sources, KDHE submitted a request for additional SGF specifically to support the Non-Title V Program for SFY 2021 and beyond but was denied.

Nebraska has a USEPA approved FESOP similar to the Kansas FESOP or Class II Operating Permit Program. Nebraska did not include any state fiscal data for their Non-Title V Program funding in the survey, and in discussions with Nebraska program staff, KHDE understands that Nebraska currently does not collect emission fees from FESOP or True Minor Sources to support their Non-Title V Program. The Nebraska local Lincoln-Lancaster County Health Department does however have several applicable Air Program Fees, including annual emission fees, that apply to both FESOP ($1550 minimum and $88/ton of emissions) and True Minor sources ($320 minimum and $74/ton of emissions) that are used to support the overall Lincoln-Lancaster Air Quality Program including the Non-Title V Program. For comparison purposes, this local data for Nebraska FESOP sources is provided below in the Emission Fee Schedule table (https://www.lincoln.ne.gov/City/Departments/Health-Department/Fees).

Missouri collects and includes FESOP emission and permit fees under their Title V Fees and does not have a USEPA approved FESOP SIP, therefore only True Minor Permit and Emission Fees are included for Non-Title V program support comparison. Missouri also currently does not accept delegation of some area source NESHAP/MACT requirements under CAA Section 112 applicable to FESOP and True Minor sources

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(https://www.epa.gov/mo/delegation-authority-missouri-new-source-performance-standards-and-national-emission-standards). As discussed above, the Kansas Class II sources prefer to maintain the approved FESOP and KDHE's current policy is to not require True Minor sources to submit annual emissions inventory or pay related fees (https://dnr.mo.gov/air/business-industry/air-emissions/reporting/fee-calculation).

Colorado FESOP fees are not tracked separately from True Minor source fees, so combined totals are presented as True Minor Source Emission and Permit Fees only. Colorado's Non-Title V fee schedule include Air Pollution Emission Notice filing fees, annual emission fees and permit processing fees (https://www.colorado.gov/pacific/cdphe/emissions-and-permitting-fees).

Oklahoma requires annual emission fees and permit fees from FESOP and True Minor sources to support their Non-Title V Program, additionally Oklahoma requires annual operating fees for sources subject to specified CAA Section 112 requirements that may be discounted appropriately in any given year if the Department determines that other revenues, including appropriated state general revenue funds, have increased sufficiently to adequately fund the air program (https://www.deq.ok.gov/air-quality-division/emissions-inventory/emissions-inventory-operating-fees/).

KDHE trusts that the proposed Class II Fee Schedule remains competitive with those of the other regional and contiguous states and should not weigh against business development in Kansas. The following table compares the most currently known dollar per ton emissions fee for the other regional and contiguous states that collect emission fees from FESOP sources along with the corresponding "feeable" tonnage data from the SFY2019 survey. Also included is whether an annual index is applied to adjust the fee for inflation.

Emission Fee Schedule	**Proposed Kansas**	**Colorado***	**Missouri****	**Lincoln-Lancaster*****	**Oklahoma******
HAP Emissions Fee ($/ton)	$80.00	$239.00	$53.00	$88.00	$39.17
Criteria Emissions Fee ($/ton)	$56.00	$36.00	$53.00	$88.00	$39.17
CPI or Annual Increase Applied	No	No	No	Yes	Yes
Feeable HAP Tons	505	6,006	153	585	-
Feeable Criteria Tons	10,156	162,663	12,770	7800	120,853
Total Feeable Tons	***10,661***	***168,669***	***12,923***	***8,385***	***120,853***

**Colorado includes emissions from all source types*
***Missouri FESOP fees are included in Title V Program and are listed only for fee and ton comparison not for Non-Title V Revenue.*
****Lincoln-Lancaster provided Feeable emission estimates for current emissions year.*
**** *Oklahoma provided combined criteria and HAP emissions as $/ton fee is equivalent.*

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;

By establishing a fee schedule for these sources, the Agency is in much better position to retain the approved program in Kansas for these facilities. Currently sources that would otherwise be subject to Title V (Class I Operating Permit) requirements can voluntarily take federally enforceable permit limits issued through our SIP approved FESOP or Class II Operating Permit Program to avoid these more arduous ongoing federally prescribed requirements.

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The proposed amendment provides financial support for continuation of the Department's overall air quality program, specifically the SIP approved Class II operating permit program and CAA 112(l) requirements, ensuring continued protection of the public health and welfare of the approximate 2.93 million residents and the environment of Kansas. This financial support is also necessary to ensure the timely review of air quality permits for the regulated community, which will provide the certainty business need to expand and locate in Kansas.

The proposed amendments are also necessary to demonstrate adequacy of the program to retain primacy for all compliance and enforcement activities in Kansas for all delegated federal standards including those promulgated pursuant to CAA section 112. This is of great benefit for the regulated community to be able to work with the state to achieve compliance as opposed to the USEPA.

Additionally, because these fees will not be considered Title V fees, all resulting revenue can be utilized to meet the match and maintenance of effort obligations for the Federal 105 Grant. KDHE must meet two statutory cost-sharing requirements under the Clean Air Act, to remain eligible for 105 grant funds from the USEPA. The first is to provide forty percent of the overall 105 program costs as a match for the grant. Currently the annual match obligation is $852,131.50. The second is to meet the maintenance of effort (MOE) requirements. The MOE requires that KDHE demonstrate that the level of state funding for the air program cannot be less than any previous year and is equivalent to the current match. The MOE dictates that if 105 funding is cut, the state is still obligated to provide funding for the Non-Title V activities in the state. The bureau currently meets the match and MOE requirements by contributing eligible non-federal funds including, State General Funds, local agency match and penalties/fines paid by facilities in violation of permit requirements.

The Division of Environment obtained confirmation from the USEPA to allow the use of the funds generated from fines for the state's match obligation for the Section 105 grant award. This confirmation is documented in a letter from USEPA to Bureau Air on January 15, 2010. Federal Fiscal Year 2013 was the first-year eligible expenditures using the fines subaccount were used toward the 105 grant match requirement. The fines subaccount experiences significant variability and should not be relied upon to fund the core program or match the 105 grant.

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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;

The following table describes the average annual impact estimated for sources in Kansas by the North American Industrial Classification System (NAICS) Subsector. The average impact estimated per NAICS ranges from $56 to $3,927 with an average impact per source being $823. The maximum impact for an individual source is $14,952 due to their significant emissions tonnage.

NAICS Subsector	Average Annual Impact
115 - Support Activities for Agriculture and Forestry	$1,445
211 - Oil and Gas Extraction	$1,605
212 - Mining (except Oil and Gas)	$443
221 - Utilities	$215
237 - Heavy and Civil Engineering Construction	$28
311 - Food Manufacturing	$1,217
321 - Wood Product Manufacturing	$994
322 - Paper Manufacturing	$1,640
323 - Printing and Related Support Activities	$1,580
324 - Petroleum and Coal Products Manufacturing	$339
325 - Chemical Manufacturing	$3,927
326 - Plastics and Rubber Products Manufacturing	$1,276
327 - Nonmetallic Mineral Product Manufacturing	$277
331 - Primary Metal Manufacturing	$523
332 - Fabricated Metal Product Manufacturing	$633
333 - Machinery Manufacturing	$1,258
335 - Electrical Equipment, Appliance, and Component Mfg.	$847
336 - Transportation Equipment Manufacturing	$1,376
337 - Furniture and Related Product Manufacturing	$3,147
339 - Miscellaneous Manufacturing	$168
423 - Merchant Wholesalers, Durable Goods	$887
424 - Merchant Wholesalers, Nondurable Goods	$547
482 - Rail Transportation	$2,440
486 - Pipeline Transportation	$1,713
488 - Support Activities for Transportation	$2,931
493 - Warehousing and Storage	$132
511 - Publishing Industries (except Internet)	$1,336
522 - Credit Intermediation and Related Activities	$280
524 - Insurance Carriers and Related Activities	$56
541 - Professional, Scientific, and Technical Services	$84
562 - Waste Management and Remediation Services	$504
611 - Educational Services	$963
622 - Hospitals	$666
623 - Nursing and Residential Care Facilities	$280
811 - Repair and Maintenance	$1,269
812 - Personal and Laundry Services	$56
922 - Justice, Public Order, and Safety Activities	$420
928 - National Security and International Affairs	$1,048
Average Impact per Business	**$823**

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

There are currently 754 Class II sources in Kansas that would be directly affected by the proposed regulatory amendments. The following table distinguishes the number of sources impacted per North American Industrial Classification System (NAICS) Subsector. The industry with the largest number of sources affected is the Mining (except Oil and Gas) which consists of primarily rock quarries, having 184 sources impacted.

NAICS Subsector	Number of Businesses
212 - Mining (except Oil and Gas)	184
324 - Petroleum and Coal Products Manufacturing	78
221 - Utilities	69
327 - Nonmetallic Mineral Product Manufacturing	65
424 - Merchant Wholesalers, Nondurable Goods	52
486 - Pipeline Transportation	51
211 - Oil and Gas Extraction	45
311 - Food Manufacturing	39
332 - Fabricated Metal Product Manufacturing	27
325 - Chemical Manufacturing	25
333 - Machinery Manufacturing	20
336 - Transportation Equipment Manufacturing	14
326 - Plastics and Rubber Products Manufacturing	10
622 - Hospitals	9
611 - Educational Services	7
423 - Merchant Wholesalers, Durable Goods	6
115 - Support Activities for Agriculture and Forestry	5
335 - Electrical Equipment, Appliance, and Component Mfg.	5
323 - Printing and Related Support Activities	4
922 - Justice, Public Order, and Safety Activities	4
321 - Wood Product Manufacturing	4
493 - Warehousing and Storage	4
331 - Primary Metal Manufacturing	3
811 - Repair and Maintenance	3
488 - Support Activities for Transportation	3
339 - Miscellaneous Manufacturing	2
237 - Heavy and Civil Engineering Construction	2
337 - Furniture and Related Product Manufacturing	2
541 - Professional, Scientific, and Technical Services	2
928 - National Security and International Affairs	2
562 - Waste Management and Remediation Services	1
322 - Paper Manufacturing	1
511 - Publishing Industries (except Internet)	1
524 - Insurance Carriers and Related Activities	1
522 - Credit Intermediation and Related Activities	1
623 - Nursing and Residential Care Facilities	1
482 - Rail Transportation	1
812 - Personal and Laundry Services	1

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

The major benefit of the State of Kansas and KDHE retaining USEPA approval for the SIP approved FESOP program, is it allows the 754 Class II sources to continue to operate under their existing operating permits and not be subject to the Class I operating permit requirements, including initial and renewal application fees, semiannual reporting and annual inspections. This benefit for the sources comes with extra costs for the agency. Allowing the sources to operate under a Class II increases the workload for permit writers and inspectors to maintain a current picture of operations at the facility that would otherwise be covered in the comprehensive Class I Operating permit. Construction permit documentation for Class II facilities must be tracked separately because the operating permit does not include any information not associated with keeping the facility below Class I thresholds. This can be one or two construction permits or it could be dozens issued over the entire operating period of the facility.

Additionally, the approval allows the state to maintain overall program primacy for compliance and enforcement activities for delegated federal standards. Currently there are approximately 7,000 sources complying with federal standards operating in Kansas. The federal penalties are estimated to be at least 60% higher per action taken and USEPA frequently considers the overall economic benefit the company profited by operating out of compliance when determining penalties. Standard federal penalties are assessed up to $25,000 per day per violation as compared to the maximum daily state penalty of $10,000 per day per violation. In addition, KDHE often encourages Supplemental Environmental Projects, in lieu of penalties, to promote the continued protection of the public health and welfare of the residents and the environment of Kansas.

By addressing the Air Quality Fee Fund deficit, the Department will be able to continue to serve the regulated community and protect the quality of air in the State. Failure to adjust the Air Quality program fee structure to adequately cover program costs will cause significant staff reductions. Reduced staff will cause delays in processing and issuing construction and operating permit applications. This may result in delays for industry to implement new or improved processes and loss of revenue to industry, loss of jobs for the community and loss of tax revenue for the State. Further, fewer staff to conduct inspections, respond to complaints and pursue enforcement actions will result in less oversight of industry compliance or noncompliance. This will result in reduced protection of the environment and public health and welfare of the citizens of Kansas.

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;

Since the inception of the Class II Operating permit program in Kansas in 1995, KDHE has consistently maintained minimum cost to the regulated community impacted by this rulemaking. The establishment of the Class II emissions fees proposed in this regulatory action as becoming effective in calendar year 2025 will be the first time in 30 years these sources will be required to pay annual fees to operate and emit regulated pollutants in Kansas. Prior to the implementation of the Class I and Class II Operating Permit Programs in Kansas every source that operated and emitted air pollution was subject to an annual operating fee.

KDHE has conducted over 10 years of outreach with the regulated community to negotiate this proposed fee schedule to minimize the cost and impacts.

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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 – $623,485

Costs to Local Governmental Units – $0

Costs to Members of the Public – $0

Total Annual Costs – $623,485
(sum of above amounts)

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

KDHE's Bureau of Air (BOA) maintains the Kansas Environmental Information Management System (KEIMS) and State and Local Emissions Inventory System (SLEIS) developed by Windsor Solutions, to collect and store actual compliance, permitting, and emissions inventory data along with associated fees. This data was utilized to determine past actuals and to estimate future projections of emissions and fees. Future projections are based upon an analysis of total emissions from all individual facilities during the period of 2000 – 2020 and calculating a trend in criteria pollutant and Hazardous Air Pollutant (HAP) emissions for each facility based upon their NAICS subsector. All projected emissions were than multiplied by their respective per ton charge to determine individual facility and NAICS subsector impacts. The table below shows the historical (2000-2020) reported emissions from Class II sources, and the projected (2021-2030) emissions from Class II sources.

From emissions year 2000 to 2020 there were a reduction of 5,738 tons of actual emissions from Class II sources, from 16,371 tons to 10,633 tons. At a minimum, there were 8,384 tons of emissions reported from Class II sources in 2013. Since that time emissions have generally undergone a slight increase due to improved reporting. KDHE therefore utilized a conservative 0.25% increase in criteria pollutant emissions from Class II facilities, and a conservative 2.0% increase in hazardous air pollutant emissions from Class II facilities. It is anticipated that while individual facility emissions may decrease with improved efficiencies and control devices that overall emissions from Class II facilities may increase due to classification changes and new facilities.

Actual (2000 - 2020) Projected (2021 - 2030)				
Emissions Year	**Total Criteria Emissions**	**Percent Change in Emissions**	**Total HAP Emissions**	**Percent Change in Emissions**
2000	16,371		225	
2001	13,756	-19.01%	413	45.52%
2002	14,775	6.90%	523	21.03%
2003	14,063	-5.06%	710	26.34%
2004	13,945	-0.85%	675	-5.19%
2005	13,637	-2.26%	594	-13.64%
2006	12,700	-7.38%	617	3.73%
2007	11,843	-7.24%	504	-22.42%
2008	11,644	-1.71%	485	-3.92%

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2009	10,633	-9.51%	395	-22.78%
2010	9,521	-11.68%	372	-6.18%
2011	8,886	-7.15%	336	-10.71%
2012	8,631	-2.95%	326	-3.07%
2013	8,384	-2.95%	338	3.55%
2014	8,876	5.54%	349	3.15%
2015	8,464	-4.87%	343	-1.75%
2016	8,830	4.14%	349	1.72%
2017	8,497	-3.92%	371	5.93%
2018	9,042	6.03%	490	24.29%
2019	9,653	6.33%	515	4.85%
2020	10,633	9.22%	505	-1.98%
2021	10,660	0.25%	515	1.96%
2022	10,686	0.25%	525	1.96%
2023	10,713	0.25%	536	1.96%
2024	10,740	0.25%	547	1.96%
2025	10,767	0.25%	558	1.96%
2026	10,793	0.25%	569	1.96%
2027	10,820	0.25%	580	1.96%
2028	10,848	0.25%	592	1.96%
2029	10,875	0.25%	604	1.96%
2030	10,902	0.25%	616	1.96%

Total annual costs were determined utilizing the projected emissions and the proposed Criteria Emissions Fee and HAP Emissions Fee. The table below shows the cost estimates based upon these emissions projections for the applicable state fiscal year and the proposed changes in fees, $56 per ton for criteria emissions and $80 per ton for HAP emissions.

☐ Yes

☐ No

☒ Not Applicable

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.

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.

There are no changes in state revenues or expenditures related to the proposed amendments for either the current or next fiscal year. The implementation date proposed is January 1, 2025 or State Fiscal Year (SFY) 2025.

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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.

The proposed fee schedule does not have an immediate or long-range economic impact on any individual(s) or the general public. Class II sources are Class I (Title V) sources that have utilized the state FESOP program to limit their potential to emit through federally enforceable operating permit restrictions to not have to comply with the more stringent requirements, nonetheless these types of sources are generally considered to be the largest industries (or employers) in Kansas. The data collected and used to estimate the impacts of this rulemaking, as described above under the detailed statement of data and methodology, does not include information related to or that can be used to accurately predict or categorize the size of the employer, therefore no dollar estimate can be given for small employers beyond those assessed per source category presented in Section III, Subsection B for average impacts and C for number of sources. The following presents the total combined annual estimated costs to the 754 Class II sources beginning in SFY 2025 through SFY 2029.

SFY:	2025	2026	2027	2028	2029
Criteria Emissions Fee	$572,497	$573,422	$574,339	$575,249	$576,150
HAP Emissions Fee	$43,730	$44,605	$45,497	$46,407	$47,335
Total Annual Cost	$616,227	$618,027	$619,836	$621,656	$623,485

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

The proposed amendments will impact those local units of government including cities, counties and unified school districts that are required to obtain a Class II operating permit and report actual emissions. The impact per source will be dependent on the type of source category it is designated as, and the quantity of hazardous air pollutant (HAP) and criteria pollutant emissions emitted. KDHE estimates impacts to 49 Class II sources, with impacts ranging from approximately $0 to $3,072 annually. On August 12, 2019, KDHE met with Kansas Municipal Utilities Organization to discuss the proposed impacts to all represented classes of sources.

When a notice of hearing for this set of regulations is published in the *Kansas Register*, standard agency procedure is followed and the three organizations are contacted electronically for comment with attached copies of the regulations, economic impact statement, environmental benefit statement for environmental regulations, 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).

The agency held several stakeholder meetings to discuss options and receive input from the regulated community prior to proposing fee schedule amendments in November of 2019. The declining emission fees have been a consistent and ongoing topic at the annual Clean Air Act Advisory Group which is held annually during the Environmental Conference. In addition to the meetings and conference call listed in the following table, KDHE provided, upon request, source specific consultation and impact estimates.

Date	Location	Stakeholder Group	Attendance Including KDHE
7/11/2019	Salina, KS Highway Patrol Training Center	All Impacted Sources	23
7/26/2019	Topeka, Curtis State Office Building	Electric Generating Units	11
8/12/2019	Topeka, Curtis State Office Building	Kansas Municipal Utilities Organization	9
8/13/2019	Manhattan, Hilton Garden Inn	Clean Air Act Advisory Group All Impacted Sources	73
8/30/2019	Conference Call	Kansas Electrical Cooperatives Representatives	6
9/5/2019	Topeka, Curtis State Office Building	Kansas Aggregate Producers Association; Kansas Ready Mix Concrete Association; Kansas Contractors Association; and Kansas Asphalt Pavement Association	7

The proposed 2019 amendments were held by a reviewing agency in 2020 due to legislative concerns and in the 2020 Legislative Session, Senate Bill 66 (SB66) was enacted containing a proviso halting all fee regulatory actions.

SB66 further directed KDHE to collaborate and work with affected stakeholders to develop a fee schedule for the purpose of proposing such fee schedule in legislation during the legislative session beginning January 11, 2021. In response, the KDHE Bureau of Air (BOA) developed the 2021 Fee Schedule Plan outlining the BOA's intent to engage, collaborate and work with affected stakeholders, including industry representatives, to develop an equitable, stable and sustainable fee schedule that is adequate to cover the cost of administering and implementing the Kansas Air Quality Program.

The BOA conducted the following five additional meetings and presented the results of the stakeholder process at a March 24, 2021 House Agriculture and Natural Resource Budget Committee Meeting. The results of this stakeholder process are being implemented through this proposed regulatory action and a corresponding proposed Class I fee schedule regulatory action.

Additionally, during our stakeholder process and discussions with both the Class I and Class II sources and representatives, they agreed upon this proposed fee schedule acknowledging it is not a long-term solution to address the projected funding issues. Therefore, they have further agreed to form a committee to conduct independent discussions to develop and provide KDHE with a long term, sustainable alternative proposed fee schedule for future rule making.

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Date	Location	Stakeholder Group	Attendance Including KDHE
9/3/2020	Topeka, Curtis State Office Building and Online Teams Meeting	2021 Fee Plan Stakeholder Group	25
9/22/2020	Online Teams Meeting	2021 Fee Plan Stakeholder Group	20
10/29/2020	Online Teams Meeting	2021 Fee Plan Stakeholder Group	20
2/23/21	Online Teams Meeting	2021 Fee Plan Stakeholder Group	20
5/5/21	Online Teams Meeting	2021 Fee Plan Stakeholder Group	19

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.

The proposed amendments impose no new capital costs to the implementing agency, the public or the regulated community. The amendments will result in an increase in annual operating costs for all parties subject to the regulations as described above in Section III, Subsection F.

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.

The proposed regulatory action will impose no new costs or paperwork burdens of implementing and enforcing upon the state agencies, other governmental agencies or other persons.

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).

In a concurrent regulatory action, KDHE is also proposing to amend the Class I (Title V) Operating Permit Program fee schedule, which relies upon this action to correct the misuse of Title V fees for Non-Title V program activities and resulting deficiency of program. Therefore, if the proposed amendments to the Class II Operating Permit fee schedule are not adopted, the agency will not receive adequate revenue into the Air Quality Fee Fund to support the air quality program overall. Federal approval of the Class I Operating Permit Program is contingent upon the adequacy of the fee schedule, including a demonstration that the fee schedule will result in the collection and retention of fees sufficient to support the functions of the state agency that implements the permitting program. A comparison of the revenue and expenditures for the Class II Operating Permit Program portion of the Air Quality Fee Fund for SFY2022 though SFY2030 is provided below including the projected deficits with and without the proposed rulemaking. The proposed fee changes will address a portion of the current misuse of funds identified by USEPA in their routine audit of the air quality permitting program by generating funding for the Class II Operating Permit Program. Emissions Fees are

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projected utilizing known facility changes and otherwise an estimate of future emissions based upon historical trends. Permit fees are estimated using the prior five-year average (SFY2017-2021). Expenditures are conservative, estimated at approximately 90% of the budgeted total to account for temporary vacancies and other cost-savings that are common when reviewing historical expenditures.

Revenue vs. Expenditure Projections without Rulemaking					
SFY	**Emissions Fees**	**Permit Fees**	**Total Revenue**	**Expenditures**	**Deficit**
2022	$0	$111,625	$111,625	$1,515,977	($1,404,352)
2023	$0	$111,625	$111,625	$1,531,081	($1,419,456)
2024	$0	$111,625	$111,625	$1,546,385	($1,434,760)
2025	$0	$111,625	$111,625	$1,561,891	($1,450,266)
2026	$0	$111,625	$111,625	$1,577,602	($1,465,977)
2027	$0	$111,625	$111,625	$1,593,522	($1,481,897)
2028	$0	$111,625	$111,625	$1,609,654	($1,498,029)
2029	$0	$111,625	$111,625	$1,626,001	($1,514,376)
2030	$0	$111,625	$111,625	$1,642,568	($1,530,943)

Revenue vs. Expenditure Projections with Rulemaking					
SFY	**Emissions Fees**	**Permit Fees**	**Total Revenue**	**Expenditures**	**Deficit**
2022	$0	$111,625	$111,625	$1,515,977	($1,404,352)
2023	$0	$111,625	$111,625	$1,531,081	($1,419,456)
2024	$0	$111,625	$111,625	$1,546,385	($1,434,760)
2025	$616,228	$111,625	$727,853	$1,561,891	($834,038)
2026	$618,027	$111,625	$729,652	$1,577,602	($847,950)
2027	$619,836	$111,625	$731,461	$1,593,522	($862,060)
2028	$621,656	$111,625	$733,281	$1,609,654	($876,373)
2029	$623,485	$111,625	$735,110	$1,626,001	($890,892)
2030	$625,324	$111,625	$736,949	$1,642,568	($905,619)

With the proposed fee amendments for the Class II Operating Permit Program and the proposed fee amendments for the Class I Operating Permit Program, the overall Air Quality Fee Fund balance will see a reduction in the ending balance losses within each state fiscal year. The table below shows the anticipated ending balance for each state fiscal year based on both fee amendments being implemented in SFY 2025. Continuing discussions with both the Class I and Class II affected sources and the bureau hope to establish a structure that will secure a continued longer-term solution to the bureau fee structure, including fully funding the Class II Operating Permit Program.

Ending Balance	**SFY2022**	**SFY 2023**	**SFY 2024**	**SFY 2025**	**SFY 2026**	**SFY 2027**
Without Rulemaking:	$5,181,626	$4,248,360	$3,197,717	$2,030,365	$746,934	-$651,985
With Rulemaking:	$5,181,626	$4,248,360	$3,197,717	$3,229,980	$3,142,137	$2,934,885

Given that a key provision of Title V is the requirement to establish a financially adequate fee schedule, if the USEPA makes a formal finding that the fee schedule is not adequate to administer the program, they may, among other things, withdraw approval of the program, in whole or in part, and/or promulgate, administer, and enforce a Federal Title V program (codified in 40 C.F.R. Part 71).

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if the USEPA finds that the state agency has failed to take "significant action to assure adequate administration and enforcement of the program" within 90 days after the issuance of a notice of deficiency (NOD). In this instance, the USEPA is authorized to collect fees to cover their costs of administering the Federal permitting program, which the regulated community would bear the costs associated with USEPA being the permitting authority instead of the state.

Additionally, sanctions under CAA Section 179 would be imposed if the state has not corrected the program deficiency within 18 months after USEPA's date of finding of deficiency and issuance of the NOD. These mandatory sanctions include withholding of certain federal highway funds and 2 to 1 emission offsets for construction or modification of emission sources. Furthermore, the USEPA may withhold all of part of Federal grant funding awarded under CAA Sections 103 and 105, which are granted to support the Non-Title V program. Moreover, the USEPA is mandated to promulgate, administer, and enforce a whole or partial program within 2 years of the date of finding if the state has not corrected the deficiency within 18 months after the date of such finding. Therefore, implementation of the proposed increased fees and new Class II fee schedule would maintain the state's authority to administer and enforce the permitting program and avoid Federal oversight and mandatory CAA sanctions.

The table, as shown below, lists current and historical annual fee emission rates since 2010, adjusted yearly for inflation, under the Federal Title V (Part 71) program as administered by the USEPA; this fee schedule would be imposed due to a state's inadequate implementation of its permitting program for all Kansas Class I and Class II sources. Additionally, annual fees are increased by a Greenhouse Gas (GHG) fee adjustment equal to a set fee ranging from $520 to $2,236 depending on the GHG related activity initiated by a Part 71 source. It is important to note that the USEPA is required to review Part 71 program costs and fees at least every two years and make any necessary changes to the fee schedule. While the total program costs that would be imposed on the regulated community are unknown, it is presumed that the current fee schedule is the minimum that would be assessed and collected by the USEPA for administering and enforcing such permitting program. However, we are confident that the presumptive fee prescribed by USEPA is not adequate at this time to cover the cost. Without a history of applying the presumptive fee with the associated revenue carryover, there is not adequate tonnage to cover the cost to administer this program at the state or federal level.

Calendar Year	Part 71 Fee Rate
2010	$45.33
2011	$46.00
2012	$47.11
2013	$48.33
2014	$49.15
2015	$49.93
2016	$50.16
2017	$50.56
2018	$51.56
2019	$52.81
2020	$53.81
2021	$54.60
2022	$56.23

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

The same data and methodology as described in Section III, Subsection F was used to estimate the costs.

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