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Proposed

**State of Kansas**  
**Kansas Bureau of Investigation**

**Notice of Public Hearing on Proposed Administrative Regulations**

October 27, 2022

A public hearing will be conducted on Tuesday, January 10, 2023, at 9:00 a.m. in the Headquarters Main Conference Room at the Kansas Bureau of Investigation (KBI), 1620 SW Tyler, Topeka, Kansas, to consider the adoption of proposed rules and regulations of the Kansas Bureau of Investigation (KBI), on a permanent basis.

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

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Kelly McPherron at 785-296-8200, (or TYY 1-800-766-3777). Handicapped parking is located on the south end of the KBI building, off of Tyler Street.

Summaries of the proposed regulations and their economic impact follow. (Note: Statements indicating that a regulation is "not anticipated to have any economic impact" are intended to indicate that no economic impact on the KBI, other state agencies, state employees, or the general public has been identified.)

Copies of the proposed regulations and the Economic Impact Statement for the proposed regulations can be requested from [Kelly.McPherron@kbi.ks.gov](mailto:Kelly.McPherron@kbi.ks.gov), or by writing to Kansas Bureau of Investigation, 1620 SW Tyler, Topeka, KS 66612 (attn: Kelly McPherron).

**K.A.R. 10-25-1 – Definitions.** This is a new regulation that defines the following terms: "Agency"; "Director"; "KBI"; "Preliminary oral fluid screening test"; "Preliminary oral fluid screening test device"; and "Preliminary oral fluid screening test device operator." These definitions serve to assist in understanding the terms as they are used in K.A.R. 10-25-2.

**K.A.R. 10-25-2 – Preliminary oral fluid screening test devices.** This is a new regulation that identifies a preliminary oral fluid screening test device approved by the director of the KBI.

The proposed new regulations are not anticipated to have any economic impact.

Article 25. Testing Oral Fluid for Law Enforcement Purposes

**10-25-1. Definitions.** As used in this article of the KBI's regulations, each of the following terms shall have the meaning specified in this regulation:

(a) "Agency" means any law enforcement agency under whose authority preliminary oral fluid screening tests are performed.

(b) "Director" means director of the KBI.

(c) "KBI" means Kansas bureau of investigation.

(d) "Preliminary oral fluid screening test" means a test to determine the presence or absence of drugs in the oral fluid of a person for the purpose of assisting law enforcement officers in determining whether an arrest should be made and whether to request the tests authorized in K.S.A. 8-1001, and amendments thereto.

(e) "Preliminary oral fluid screening test device" and "device" mean an instrument designed to perform a preliminary oral fluid screening test.

(f) "Preliminary oral fluid screening test device operator" means the employee at an agency who is responsible for administering preliminary oral fluid screening tests. (Authorized by and implementing K.S.A. 75-712h, as amended by L. 2022, ch. 80, sec. 23; effective P-\_\_\_\_\_.)

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**10-25-2. Preliminary oral fluid screening test devices.** (a) Each preliminary oral fluid screening test conducted shall be performed on a device approved by the director.

(b) The device approved for use shall be the Abbott SoToxa™ model.

(c) Each agency shall be responsible for the training of preliminary oral fluid screening test device operators. All training shall follow the operational instructions supplied by the manufacturer for the device in use. (Authorized by and implementing K.S.A. 75-712h, as amended by L. 2022, ch. 80, sec. 23; effective P-\_\_\_\_\_.)

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## Kansas Administrative Regulations Economic Impact Statement (EIS)

Kansas Bureau of Investigation  
Agency

Kelly McPherron  
Agency Contact

785-296-3150  
Contact Phone Number

10-25-1 and 10-25-2  
K.A.R. Number(s)

☒ Permanent    ☐ Temporary

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

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

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## Section I

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

The proposed regulations are authorized by K.S.A. 75-712h, and will include a list of preliminary screening devices approved for testing oral fluid for the presence of drugs, as well as establish the criteria the KBI uses in approving such devices. These devices may be purchased and used by law enforcement agencies as aids in determining probable cause to arrest and grounds for requiring testing pursuant to K.S.A. 8-1001.

## Section II

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

Not applicable.

## Section III

Agency analysis specifically addressing the following:

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

These regulations will not enhance or restrict business activities and growth.

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

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

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

These regulations will not affect businesses.

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

Benefits of the proposed regulations include providing law enforcement agencies with a list of approved preliminary screening devices for testing oral fluid for the presence of drugs. Any costs would result from an agency's decision to purchase screening devices approved by the KBI Director. The new regulations do not require any agency to purchase such devices and the regulations themselves would not result in any costs being incurred by an agency.

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- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

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

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

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

Costs to Affected Businesses – \$0

Costs to Local Governmental Units – \$0

Costs to Members of the Public – \$0

**Total Annual Costs – \$0**

(sum of above amounts)

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

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

- ☐ Yes      If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.
- ☐ No
- ☒ Not Applicable

If applicable, click here to enter public hearing information.

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

Not applicable, as implementation of these regulations will not change aggregate state revenues and expenditures.

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

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

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will

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increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

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

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

The KBI has not consulted with or solicited information from other entities or agencies because the KBI does not anticipate any effects on such entities or agencies. The proposed regulations do not require agencies to purchase any screening devices; rather, the proposed regulations simply provide a list of devices approved by the KBI Director and explain the criteria in approving such devices for law enforcement use.

#### Section IV

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

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

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

Click here to enter agency response.

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

Click here to enter agency response.

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

Click here to enter agency response.

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

Click here to enter agency response.

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