

AUG 9 2023

SCOTT SCHWAB
SECRETARY OF STATE

Proposed

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

A public hearing will be conducted at 10:00 a.m. on November 2, 2023, in the 1st floor meeting room 124 of the Kansas Department of Agriculture, 1320 Research Park Dr., Manhattan, Kansas, to consider the adoption of a proposed regulation. The public hearing will be conducted in person and via video conferencing system. Members of the public who wish to attend the public hearing virtually must pre-register at <https://kansasag.zoom.us/meeting/register/tZYodOuprzkjHdc6WknFVu1FEj7VG-CruohA>. After registering, you will receive a confirmation email containing information about joining the meeting.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments regarding the proposed regulation. All interested parties may submit written comments prior to the hearing by mail or email to Kansas Department of Agriculture, Attn: Ronda Hutton, 1320 Research Park Dr., Manhattan, Kansas 66502, or ronda.hutton@ks.gov. Comments may also be made via the Kansas Department of Agriculture's website at <https://www.agriculture.ks.gov/document-services/public-comment>.

All interested parties will also be given a reasonable opportunity to orally present their views regarding the adoption of the proposed regulation during the hearing. 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. This regulation is proposed for adoption on a permanent basis. A summary of the proposed regulation and the economic impact follows:

The Kansas Department of Agriculture (KDA) is proposing revisions to K.A.R. 4-7-716 to update references to the current Grade A Pasteurized Milk Ordinance, the current Methods of Making Sanitation Ratings of Milk Shippers, the current Procedures Governing the Cooperative State Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, and the current Evaluation of Milk Laboratories documents. These Food and Drug Administration documents are the standards that are adopted and used by state departments of agriculture dairy programs to ensure public health compliance in the production, transportation and processing of milk and dairy products. While these regulations are not mandated by the federal government, they are necessary if the state wishes to ship milk interstate under state inspection and K.S.A. 65-775 requires that the Secretary promulgate regulations that conform, insofar as possible, with the pasteurized milk ordinance, and the policies adopted by the interstate milk shippers conference. The updates to these adoptions by reference do not change the scope or intent of the current regulation and simply reflect changes to dairy industry practices, technology, and science.

The proposed regulation is not mandated by the federal government, and the adopted standards do not exceed any requirements of the federal government. The Food and Drug Administration documents adopted by reference are the standards that are adopted by every state dairy program to ensure public health compliance. If the most current versions of these documents are not adopted into the state Dairy Law, it may impose an embargo on Kansas products.

The proposed regulation does not significantly change the existing requirements imposed on the Kansas dairy industry. KDA does not anticipate that the proposed regulation will

significantly enhance or restrict business activity or growth in Kansas or present significant implementation and compliance costs to any of the state's businesses, sectors, public utility ratepayers, individuals, or local governments. The proposed regulation will have no effect or a very minimal effect on the state economy as a whole. The benefits of the proposed regulation significantly outweigh the costs because the proposed updates allow Kansas to be consistent with other states' regulations, meet FDA requirements, and allow for interstate movement of Kansas produced or processed milk.

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

KDA also consulted with the regulated public by submitting letters to all license holders and stakeholders, including the Kansas Livestock Association, the Kansas Dairy Association, and the Kansas Farm Bureau describing the proposed changes to the Kansas Dairy Law.

Any individual with a disability may request accommodations to participate in the public hearing and may request the proposed regulation and the economic impact statement in an accessible format. Requests for accommodations should be made at least five working days in advance of the hearing by contacting Ronda Hutton, via telephone at (785) 564-6715 or via fax at (785) 564-6777. Handicapped parking is located on the west side of the building at 1320 Research Park Drive, Manhattan, and is accessible to individuals with disabilities.

Copies of the regulation, the updated Kansas Food Code, and the economic impact statement may be obtained by contacting the KDA via mail at Kansas Department of Agriculture, Attn: Ronda Hutton, 1320 Research Park Drive, Manhattan, KS 66502, via telephone at (785) 564-6715, or via the Department's website at agriculture.ks.gov.

Michael M. Beam
Secretary
Kansas Department of Agriculture

RECEIVED

AUG 9 2023

SCOTT SCHWAB
SECRETARY OF STATE

K.A.R. 4-7-716. Adoption by reference. (a) The following documents are hereby adopted by reference:

(1) Except for sections 1 (JJ), 2, 9, 15, 16, 17, and 18; The "grade 'A' pasteurized milk ordinance," 2009 2019 revision, including appendices, as published by the U.S. department of health and human services, public health service, and food and drug administration, except pages i-xvi, pages 400-423, section 1 (G), (V), (GG), (HH), (II), (JJ), (KK), (LL), (NN), (OO), and (SS), sections 2, 9, 15, 16, 17, and 18, appendix Q, and all explanatory public health reasons information. The following C.F.R. sections, as in effect on April 1, 2019, are also adopted by reference:

(A) 21 C.F.R. 11;

(B) 21 C.F.R. 108, except subpart A;

(C) 21 C.F.R. 113, except subpart B;

(D) 21 C.F.R. 117, except subpart E;

(E) 21 C.F.R. 131.3;

(F) 21 C.F.R. 131.170;

(G) 21 C.F.R. 173.310, except subsection (f);

(H) 21 C.F.R. 174, except § 174.6;

(I) 21 C.F.R. 175, except subpart A;

(J) 21 C.F.R. 176, except subpart A;

(K) 21 C.F.R. 177, except subpart A; and

(L) 21 C.F.R. 178, except subpart A;

(2) the "methods of making sanitation ratings of milk shippers and the certifications/

APPROVED

AUG 03 2023

DEPT. OF ADMINISTRATION

APPROVED

AUG 03 2023

ATTORNEY GENERAL

RECEIVED

AUG 9 2023

SCOTT SCHWAB
SECRETARY OF STATE

listings of single-service containers and/or closures for milk and/or milk products manufacturers," including appendices, published by the U.S. department of health and human services, public health service, and food and drug administration, 2009 2019 revision, except pages i-vii, section A (22), section J, and section K;

(3) the ~~2009~~ 2019 revision of the "procedures governing the cooperative state-public health service/food and drug administration program of the national conference on interstate milk shipments," published by the U.S. department of health and human services, public health service, and food and drug administration, including pages 49 through 68 except the appendix, pages i-iii, section I, section III (X) and (BB), section IV (A), section V (J), section VI (C) and (D), section VII, section IX (F), section X, and pages 71-96;

(4) the 17th edition of the "standard methods for the examination of dairy products," dated 2004 and published by the American public health association, except pages iii-xiv, pages 551-570, and any introductory and bibliographical material;

(5) chapter 33 and any chapters, sections, or appendices pertinent to standards, validated methods, quality control features and suitability specifications related to the testing of milk and milk products of volumes I, II, and III of the 17th 21st edition of the "official methods of analysis of AOAC international," volumes I and II, revision 1, including appendices, dated 2002 2019 and published by the association of official analytical chemists AOAC international;

(6) the ~~2007~~ 2019 revision of the "evaluation of milk laboratories," published by the U.S. department of health and human services, public health service, and food and drug administration, except pages i-iii, pages 1-2, pages 35-50, and section 1 (12) on page 4; and

APPROVED

AUG 03 2023

DEPT. OF ADMINISTRATION

APPROVED

AUG 03 2023

ATTORNEY GENERAL

RECEIVED

AUG 9 2023

SCOTT SCHWAB
SECRETARY OF STATE

(7) the April 14, 2020, revision of the "M-a-98," published by the U.S. food and drug administration. Any tests added to subsequent revisions of the M-a-98 are deemed acceptable unless the secretary specifically designates otherwise.

(b) Any documents adopted by reference in the C.F.R. sections adopted by reference in this regulation but not explicitly adopted in this regulation are not adopted by reference.

(c) Any references to documents adopted by reference refer to the versions of those documents adopted by reference in this regulation.

~~(b) Copies of the pertinent portions of the material adopted by reference shall be available from the Kansas department of agriculture.~~ (Authorized by K.S.A. 2009 Supp. 65-772 and K.S.A. 65-775; implementing K.S.A. 65-775; effective May 1, 1980; amended May 1, 1983; amended May 1, 1986; amended Dec. 26, 1988; amended Jan. 14, 1991; amended Oct. 21, 1991; amended July 1, 1992; amended Aug. 22, 1994; amended Dec. 20, 2002; amended Sept. 1, 2006; amended July 9, 2010; amended P-_____.)

APPROVED

AUG 03 2023

DEPT. OF ADMINISTRATION

APPROVED

AUG 03 2023

ATTORNEY GENERAL

RECEIVED

AUG 9 2023

SCOTT SCHWAB
SECRETARY OF STATE

Kansas Administrative Regulations Economic Impact Statement (EIS)

Kansas Department of Agriculture
Agency

Ronda Hutton
Agency Contact

785-564-6715
Contact Phone Number

4-7-716
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.

DOB APPROVAL STAMP (If Required)

RECEIVED

AUG 9 2023

**SCOTT SCHWAB
SECRETARY OF STATE**

Section I

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

The proposal updates the references for the current Grade A Pasteurized Milk Ordinance, the current Methods of Making Sanitation Ratings of Milk Shippers, the current Procedures Governing the Cooperative State Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, and the current Evaluation of Milk Laboratories documents. These Food and Drug Administration documents are the standards that are adopted and used by state departments of agriculture dairy programs to ensure public health compliance in the production, transportation and processing of milk and dairy products. While these regulations are not mandated by the federal government, they are necessary if the state wishes to ship milk interstate under state inspection and K.S.A. 65-775 requires that the Secretary promulgate regulations that conform, insofar as possible, with the pasteurized milk ordinance, and the policies adopted by the interstate milk shippers conference. The updates to these adoptions by reference do not change the scope or intent of the current regulation and simply reflect changes to dairy industry practices, technology, and science.

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 proposed regulations are do not exceed any requirements of the federal government. The Food and Drug Administration documents adopted by reference are the standards that are adopted by every state dairy program to ensure public health compliance. If the most current versions of these documents are not adopted into the state Dairy Law, it may impose embargos on Kansas products for interstate shipment.

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;

No restriction on activities or growth expected.

- 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;

No economic effect would occur on businesses, sectors, public utility ratepayers, individuals, and local governments.

DOB APPROVAL STAMP (If Required)

RECEIVED

AUG 9 2023

SCOTT SCHWAB
SECRETARY OF STATE

- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);
Kansas dairy farms, manufacturing plants, milk transfer stations, truck wash stations, milk haulers.
- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;
Benefits would be updating the industry to the most current versions of reference documents to ensure public health safety and for Kansas to be consistent with other states' regulations, meet FDA requirements and allow for interstate movement of Kansas produced or processed milk.
- 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 costs are expected to be involved with these regulation updates.
- 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.

Industry is already adhering to the most current versions of these documents since it is in their best interest to comply with the most current versions. That said, no costs are expected to be imposed on the dairy industry of Kansas due to these proposed regulation adoptions.

- ☐ 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.

DOB APPROVAL STAMP (if Required)

RECEIVED

AUG 9 2023

SCOTT SCHWAB
SECRETARY OF STATE

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.

No changes are expected in aggregate state revenues and expenditures due to these proposed regulation adoptions.

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 impact is expected with these proposed changes. No estimate is possible, as the industry is already adhering to the most current version of these proposed documents to keep up with national standards.

- 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 agency submitted letters to the League of Kansas Municipalities, Kansas Association of Counties, and the Kansas Association of School boards describing the proposed changes to the Kansas Dairy Law.

- 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 submitted letters to all license holders and stakeholders, including the Kansas Livestock Association, the Kansas Dairy Association, and the Kansas Farm Bureau describing the proposed changes to the Kansas Dairy Law.

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.](#)

DOB APPROVAL STAMP (If Required)

RECEIVED

AUG 9 2023

SCOTT SCHWAB
SECRETARY OF STATE

- 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.](#)

DOB APPROVAL STAMP (If Required)

RECEIVED

AUG 9 2023

**SCOTT SCHWAB
SECRETARY OF STATE**