Proposed

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

A public hearing will be conducted at 10:00 a.m. on October 27, 2025, in room 124 of the Kansas Department of Agriculture, 1320 Research Park Dr., Manhattan, Kansas, to consider the adoption of proposed regulations. 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/j/81598721238?pwd=iyDhQXsQctaqlCe6v81437wfJNcHEm.1&jst=1.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Secretary of Agriculture, 1320 Research Park Dr., Manhattan, Kansas, 66502, or by e-mail to ronda.hutton@ks.gov. All interested parties will be given a reasonable opportunity to present their views orally on the adoption of the proposed regulations during the hearing. To give all parties an opportunity to present their views, it may be necessary to request each participant limit any oral presentation to five minutes. These regulations are proposed for adoption on a permanent basis.

A summary of K.A.R. 5-4-1, K.A.R. 5-4-1a and K.A.R. 5-4-1b follows:

The Kansas Department of Agriculture, Division of Water Resources (KDA-DWR) is proposing the revocation of two regulations and the adoption of one new regulation related to the implementation of the Kansas Water Appropriation Act, K.S.A. 82a-701, *et seq*. (KWAA). The regulations relate specifically to claims of water rights impairment. Water rights are real property rights pursuant to the KWAA.

K.A.R. 5-4-1 previously governed claims of impairment and is proposed for revocation. A streamlined version of its requirements is proposed to be adopted in new regulation K.A.R. 5-4-1b.

K.A.R. 5-4-1a currently applies to impairments caused by what the regulation refers to as a "regional lowering of the water table" and also is proposed for revocation because a regional lowering of the water table that does not include one single well interfering with the pumping of one other single well is not impairment. A regional lowering of the water table alone cannot cause impairment. The KWAA provides that the exercise of junior water rights is permitted to cause a reasonable raising or lowering of the water table so long as the exercise of a junior right does not interfere with the exercise of a senior right. All situations that constitute impairment can be adequately dealt with pursuant to K.A.R. 5-4-1b in conjunction with the KWAA's impairment statutes.

K.A.R. 5-4-1b will remove the requirement that a senior water right holder submit a

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"request to secure water" to KDA-DWR after the agency has already determined that the senior right is being impaired and remove the requirement that KDA-DWR solicit recommendations from the area groundwater management district regarding the resolution of the impairment. This proposed amendment is intended to closely align the agency's regulations with the clear intent of the KWAA that it is the Chief Engineer of KDA-DWR who is vested with the authority and responsibility to take action to remedy an impairment and to determine the way that should be done. K.A.R. 5-4-1b would also provide that a water right owner who complains of impairment only must provide certain additional information to the chief engineer upon request and would remove notice requirements that are redundant to those already contained in K.S.A. 82a-717a.

A summary of K.A.R. 5-19-1 and K.A.R. 5-19-2 follows:

The Kansas Department of Agriculture, Division of Water Resources (KDA-DWR) is proposing amendments to two existing regulations related to the implementation of the Kansas Water Appropriation Act, K.S.A. 82a-701, *et seq*. (KWAA). The regulations relate specifically to water quantity allocations within a Local Enhanced Management area or "LEMA." LEMAs are an existing statutorily authorized local-level conservation tool that allows a groundwater management district to bring forward a plan to the Chief Engineer of KDA-DWR that is intended to reduce water use within the LEMA, thereby extending the useful life of the groundwater resources in those areas.

These regulations are intended to reflect recent updates to the LEMA statute that will authorize LEMA plans to provide for multi-year quantity allocations that allow a water right to divert water more than its authorized annual quantity in a given year so long as the diversions do not exceed the total assigned quantity allocation over the LEMA term. The regulations refer to these multi-year allocations as "fixed allocations" and establish requirements pertaining to them. This change will allow water right owners within a LEMA to use more water in years when doing so may be necessary due to weather or other factors while using less water when it is not needed and still retaining the unused quantity for future use. This will provide greater water use flexibility for irrigation water right owners within a LEMA while promoting water conservation.

K.A.R. 5-19-1 is the regulation that sets out definitions for the implementation of the LEMA statute. The proposed amendment to this regulation will add a definition of "fixed allocation."

K.A.R. 5-19-2 sets out the substantive regulatory requirements governing LEMA plans. The proposed amendment to the regulation adds requirements pertaining to LEMA plans that provide fixed allocations. It provides that the fixed allocation requirements set out in the regulation apply only to LEMAs with initial terms beginning after the effective date of the regulation. It also provides that historical water use under an individual water right shall not be used to establish fixed allocations and that fixed allocations shall instead be based on the overall goal of the LEMA in conjunction with one of several other factors listed in the regulation.

Economic Impact Statement:

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The proposed regulations are not mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program and do not exceed any requirements of federal law.

The proposed regulations will not enhance or restrict business activities and growth or impose any costs on business and economic development, local government, or individuals. In addition, they will not cause any changes in aggregate state revenues and expenditures for the current or next fiscal year. LEMAs are voluntarily requested by the boards of directors of groundwater management districts, and the use of fixed allocations are within a LEMA plan.

There are no implementation and compliance costs associated with K.A.R. 5-4-1, 5-4-1a, and 5-4-1b. The proposed regulations remove many onerous requirements previously imposed on the owners of impaired or allegedly impaired senior water rights and place more of that responsibility solely on the agency. The proposed regulations will substantially improve the ability to protect real property rights. Existing law already provides that impairing junior water rights are to be regulated in accordance with the determination of the Chief Engineer.

K.A.R. 5-19-1 and 5-19-2 do not impose implementation and compliance costs, as LEMAs are never required and the use of fixed allocations within a LEMA is also not required.

Businesses that own water rights within an area where a new LEMA that allows for fixed allocations is established would be directly affected, but the regulations themselves do not impose any mandatory costs on such businesses and will not automatically benefit them absent voluntary action by local groundwater management districts.

The main benefit of the proposed regulations is increased flexibility provided to groundwater management districts in crafting LEMA plans and to agricultural producers in managing their water use within a LEMA. The regulations have no true costs, as they simply provide voluntary water management tools.

The proposed regulations will not impose any immediate or long-range economic impact on individuals, small employers, or the general public.

Although there will be no direct impact on cities, counties or school districts, the Kansas Association of Counties, Kansas Association of School Boards, and League of Kansas Municipalities were each provided a copy of the regulations and asked to assess the economic impact of the proposed regulations on those entities. All of these entities either did not respond or stated that they would incur no impact.

In developing the proposed regulations, the agency consulted with the Kansas Livestock Association, Kansas Farm Bureau, the Kansas Agribusiness Retailers Association, Kansas Corn Growers, the Kansas Rural Water Association, Kansas Municipal Utilities, the Kansas Water Office, and the five Kansas groundwater management districts.

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

Copies of the proposed regulations and economic impact statements may be obtained by contacting the Department of Agriculture, Ronda M. Hutton, 1320 Research Park Drive, Manhattan, KS 66502 or (785) 564-6715 or by accessing the department's web site at agriculture.ks.gov. Comments may also be made through our web site at the following link: https://www.agriculture.ks.gov/public-resources/public-comments.

Earl Lewis
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture

Proposed

K.A.R. 5-4-1. (Authorized by and implementing K.S.A. 82a-706a; modified, L. 1978, ch. 460, May 1, 1978; amended Oct. 29, 2010; revoked P-______________.)

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K.A.R. 5-4-1a. (Authorized by and implementing K.S.A. 82a-706a; effective Oct. 29, 2010; revoked P-_________________.)

Proposed

K.A.R. 5-4-1b. Impairment complaints; regulation of impairing rights. (a) Each complaint that a prior right to the use of water is being impaired shall be made to the chief engineer or an authorized representative of the chief engineer in writing.

(b) If the source of supply of the water right claimed to be impaired is groundwater, the complainant shall, upon request of the chief engineer, provide to the chief engineer a written report completed within 180 days preceding the date of the complaint that meets the following requirements:

(1) Is prepared by a licensed well driller, professional engineer, or professional geologist or an individual who the chief engineer determines is qualified to prepare the report;

(2) describes the construction and components of the water right's well;

(3) includes a well log or similar data that shows the depth and extent of the well construction; and

(4) includes testing and inspection data that shows the depth of the pump in the well column and the extent to which the pump, power unit, well casing, and screen are in good working condition.

(c) Following receipt by the chief engineer or an authorized representative of the chief engineer of any report required pursuant to this regulation, a complaint of impairment shall be considered submitted for purposes of K.S.A. 82a-717a.

(d) Following a determination of impairment or a substantial likelihood of impairment by the chief engineer, each impairing or allegedly impairing water right shall be subject to temporary or final order issued in accordance with K.S.A. 82a-717a, and amendments thereto, that contains the chief engineer's determination regarding how to administer each impairing or

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allegedly impairing water right. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706, K.S.A. 82a-706a, K.S.A. 82a-706b, and K.S.A. 82a-717a; effective P-____________________.)

Proposed

K.A.R. 5-19-1. Definitions. Each of the following terms, as used in this article of the division's regulations, shall have the meaning specified in this regulation:

(a) "Fixed allocation" means the quantity of water that is proposed to be authorized to be diverted by a water right or group of water rights over the multi-year term of a LEMA plan that is formally submitted to the chief engineer by a GMD board of directors.

~~(a)~~ (b) "GMD" means a groundwater management district established pursuant to K.S.A. 82a-1020 et seq., and amendments thereto.

~~(b)~~ (c) "LEMA" means a local enhanced management area pursuant to K.S.A. 82a-1041, and amendments thereto.

~~(c)~~ (d) "LEMA plan" means the document adopted by a groundwater management district that specifies the basis for the designation and operation of a local enhanced management area.

~~(d)~~ (e) "Presiding officer" means either the chief engineer or a hearing officer appointed for the purpose of conducting public hearings regarding a local enhanced management area pursuant to K.S.A. 82a-1041, and amendments thereto. (Authorized by K.S.A. 2024 Supp. 82a-1041; implementing K.S.A. 74-510a and K.S.A. 2024 Supp. 82a-1041; effective Dec. 27, 2021; amended P-________________.)

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K.A.R. 5-19-2. Fixed allocations in a LEMA; LEMA plans. (a) Before a GMD's board of directors recommends formal approval of a LEMA plan and submission of the plan to the chief engineer for review, the GMD's board of directors or staff may request the division to assist in the development of the LEMA plan or to informally review the LEMA plan.

(b) A fixed allocation may allow water use in a given calendar year to exceed a water right's annual authorized quantity, but a fixed allocation assigned to a group of water rights shall not permit annual diversions by any water right in the group to exceed the water right's authorized annual quantity multiplied by the number of years in the proposed LEMA term.

(c) Each requirement pertaining to fixed allocations set forth in this regulation shall apply only to LEMAs with initial terms beginning after the effective date of this regulation.

(d) Unless otherwise provided in statute, a fixed allocation shall not be based on the historical water use of an individual water right or a group of water rights. Each fixed allocation shall be based on the overall goal of the LEMA and either:

(1) The authorized annual quantity of each water right or group of water rights;

(2) the number of acres historically irrigated under each water right or group of water rights; or

(3) a percentage of the current reasonable use of each water right or group of water rights.

(e) For irrigation water rights that overlap in place of use with other water rights, each fixed allocation shall be limited among the overlapping rights based on the number of acres historically irrigated and shared by the water rights.

(f) A fixed allocation may consider water right priority and impact to the shared water resource.

~~(b)~~ (g) In addition to the requirements for LEMA plans specified in K.S.A. 82a-1041 and amendments thereto, each GMD that recommends approval of a LEMA plan and formally submits the LEMA plan to the chief engineer shall ensure that the LEMA plan includes the following:

(1) Each condition specified in K.S.A. 82a-1036(a) through (d), and amendments thereto, that the LEMA plan is intended to address;

(2) a statement of each goal that the LEMA plan is intended to achieve;

(3) documentation that quantifies how any corrective controls that establish allocations, including multi-year allocations that allow use in excess of a water right's annual authorized quantity in a given calendar year, ~~cuts~~ reductions, or limitations to water use would affect ~~each individual water right within the proposed boundaries~~ existing water rights;

(4) an appropriate appeals procedure for water right owners based on the corrective controls implemented;

(5) an executive summary of the proposed goals and corrective controls;

(6) documentation, evidence, or other information indicating that the proposed corrective controls will meet each stated goal of the proposed LEMA plan;

(7) a description of how the boundary of the proposed LEMA was determined;

(8) a description of how due consideration was given to water users who already have implemented reductions in water use resulting in voluntary conservation measures if the corrective controls result in any allocations, reductions, or limitations of water rights that are based on past use. If applicable, the description shall include the following:

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(A) An explanation of the criteria or methods used to address voluntary water management or conservation that reduced water usage; and

(B) a requirement that any owner or holder of a water right provide documentation of any voluntary conservation that resulted in the use of less water;

(9) if applicable to the LEMA plan, specification of how past reductions in water use resulting in voluntary conservation will be considered in any appeal process provided; and

(10) if a stated goal of the LEMA plan is to address an impairment or there are known cases of ~~direct~~ impairment within the LEMA, an explanation of how each impairment is legally addressed.

~~(c)~~ (h) A separate memorandum containing a summary of the public outreach conducted by the GMD before recommending the LEMA plan for approval shall be submitted simultaneously with the LEMA plan and shall include a description of any changes made to the LEMA plan due to any public comments.

~~(d)~~ (i) If the stated goal of a LEMA plan is to improve water quality, the GMD's board of directors or staff may consult with the chief engineer before formal submission of the proposed LEMA plan to determine which requirements in subsections (b) and (c) are applicable and to determine any other information necessary in order for the chief engineer to perform a review of the LEMA plan. (Authorized by and implementing K.S.A. 2024 Supp. 82a-1041; effective Dec. 27, 2021, amended P-____________.)

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Kansas Administrative Regulations
Economic Impact Statement (EIS)

Kansas Department of Agriculture — Agency
Ronda Hutton – KDA Legal — Agency Contact
(785) 564-6715 — Contact Phone Number

K.A.R. 5-4-1, 5-4-1a, and 5-4-1b. — K.A.R. Number(s)

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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 or more in implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governmental units and individuals as a result of the proposed rule and regulation over the initial five-year period following adoption of such rule(s) and regulation(s) (as calculated in Section III, F)?

- ☐ Yes — If "Yes," then the agency shall not adopt the rule(s) and regulation(s) until the rule(s) and regulation(s) has been ratified by the Legislature with a bill, unless the proposed rule(s) and regulation(s) are: 1) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program, as described in K.S.A. 77-416(b)(1)(B), and amendments thereto; 2) temporary rule(s) and regulation(s) adopted pursuant to K.S.A. 77-722, and amendments thereto; or 3) rules and regulations adopted pursuant to K.S.A. 2-3710 (Kansas Agricultural Remediation Board). Continue to fill out the remaining EIS form to be included with the regulation packet in the review process to the Department of Administration and the Attorney General. The submitted EIS will be independently analyzed by the Division of the Budget for 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. The submitted EIS will be analyzed by the Division of the Budget for approval.

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Section I

Analysis, brief description, and cost and benefit quantification of the proposed rule(s) and regulation(s). If the approach chosen by the Kansas agency to address the policy issue is different from that utilized by agencies of contiguous states or of the federal government, the economic impact statement shall include an explanation of why the Kansas agency's rule and regulation differs.

The Kansas Department of Agriculture, Division of Water Resources (KDA-DWR) is proposing the revocation of two regulations and the adoption of one new regulation related to the implementation of the Kansas Water Appropriation Act, K.S.A. 82a-701, *et seq.* (KWAA). The regulations relate specifically to claims of water rights impairment. Water rights are real property rights pursuant to the KWAA. A summary of the proposed regulations is as follows:

K.A.R. 5-4-1 previously governed claims of impairment. That regulation is proposed for revocation, and a streamlined version of its requirements are proposed to be adopted in new regulation K.A.R. 5-4-1b. Most substantively, K.A.R. 5-4-1b will remove the requirement that a senior water right holder submit a "request to secure water" to KDA-DWR after the agency has already determined that the senior right is being impaired and remove the requirement that KDA-DWR solicit recommendations from the area groundwater management district regarding the resolution of the impairment. This proposed amendment is intended to more closely align the agency's regulations with the clear intent of the KWAA that it is the Chief Engineer of KDA-DWR who is vested with the authority and responsibility to take action to remedy an impairment and to determine the manner in which that should be done. K.A.R. 5-4-1b would also provide that a water right owner who complains of impairment only has to provide certain additional information to the chief engineer upon request and would remove notice requirements that are redundant to those already contained in K.S.A. 82a-717a.

K.A.R. 5-4-1a currently applies to impairments caused by what the regulation refers to as a "regional lowering of the water table." That regulation is proposed for revocation because, in reality, a regional lowering of the water table that does not include one single well interfering with the pumping of one other single well is not impairment. In other words, a regional lowering of the water table alone cannot cause impairment. The KWAA explicitly provides that the exercise of junior water rights is permitted to cause a reasonable raising or lowering of the water table so long as the exercise of a junior right does not interfere with the exercise of a senior right. All situations that actually constitute impairment can be adequately dealt with pursuant to K.A.R. 5-4-1b in conjunction with the KWAA's impairment statutes. Additionally, the Legislature has explicitly provided for other tools to manage groundwater resources in areas where groundwater levels have declined excessively but there is no direct right-to-right impairment, including Intensive Groundwater Use Control Areas, Local Enhanced Management Areas, and Water Conservation Areas.

The proposed rules and regulations do not exceed and cannot be said to differ from the requirements of federal law. Federal law is not applicable in this area, as the states generally have primacy in matters related to water within their boundaries, and the KWAA gives the Chief Engineer of KDA-DWR the authority to regulate water use in Kansas and specifically vests the Chief Engineer with the authority to determine the existence of and determine how to remedy water rights impairments. These proposed regulations are all consistent with the doctrine of prior appropriation, which is embodied in the KWAA and is the water law doctrine used by other Western states.

Section II

Explain whether the proposed rule and regulation is mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program and whether the proposed rules and regulations exceed the requirements of applicable federal law.

The proposed rules and regulations are not mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program and do not exceed any requirements of federal law.

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;

DWR does not expect the rules and regulations to 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 will be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

There are no implementation and compliance costs associated with these proposed rules and regulations. These regulations remove many onerous requirements previously imposed on the owners of impaired or allegedly impaired senior water rights and place more of that responsibility solely on the agency. As such, the regulations will substantially improve the ability to protect real property rights. Additionally, existing law already provides that impairing junior water rights are to be regulated in accordance with the determination of the Chief Engineer. These regulations do not change that.

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

No businesses will be directly affected by the proposed rules and regulations.

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

The regulations will benefit the protection of real property rights, as referenced above, and do not impose any costs.

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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;

The regulations do not impose any costs on business and economic development, local government, or individuals.

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 individuals. *Note: Do not account for any actual or estimated cost savings that may be realized. Implementation and compliance costs determined shall be those additional costs reasonably expected to be incurred and shall be separately identified for the affected businesses, local governmental units, and individuals.*

Costs to Affected Businesses – $0

Costs to Local Governmental Units – $0

Costs to Individuals – $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.

An explanation of why the regulations do not impose any implementation and compliance costs is set forth in Section I above.

☐ Yes

☐ No

☒ Not Applicable

If the total implementation and compliance costs exceed $1.0 million or more in implementation and compliance costs over the initial five-year period following adoption of such rule(s) and regulation(s) that are reasonably expected to be incurred by or passed along to businesses, local governmental units and individuals as a result of the proposed rule and regulation, 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.

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.

The proposed rules and regulations will not cause any changes in aggregate state revenues and expenditures for the current or next fiscal year.

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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 rules and regulations will not impose any immediate or long-range 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 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 rules and regulations will not increase or decrease the revenues of cities, counties, or school districts or impose any functions or responsibilities on cities, counties or school districts that will increase their expenditures or fiscal liability.

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

In developing the proposed regulations, the agency consulted with the Kansas Livestock Association, Kansas Farm Bureau, the Kansas Agribusiness Retailers Association, Kansas Corn Growers, the Kansas Rural Water Association, Kansas Municipal Utilities, the Kansas Water Office, and the five Kansas groundwater management districts.

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 individuals or entities who would bear the costs.

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 individuals who will bear the costs.

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C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, the individuals or entities who will bear the costs and who will be affected by the failure to adopt the rule(s) and regulation(s).

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

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Kansas Administrative Regulations
Economic Impact Statement (EIS)

Kansas Department of Agriculture
Agency

Ronda Hutton – KDA Legal
Agency Contact

(785) 564-6715
Contact Phone Number

K.A.R. 5-19-1 and 5-19-2
K.A.R. Number(s)

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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 or more in implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governmental units and individuals as a result of the proposed rule and regulation over the initial five-year period following adoption of such rule(s) and regulation(s) (as calculated in Section III, F)?

☐ Yes If "Yes," then the agency shall not adopt the rule(s) and regulation(s) until the rule(s) and regulation(s) has been ratified by the Legislature with a bill, unless the proposed rule(s) and regulation(s) are: 1) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program, as described in K.S.A. 77-416(b)(1)(B), and amendments thereto; 2) temporary rule(s) and regulation(s) adopted pursuant to K.S.A. 77-722, and amendments thereto; or 3) rules and regulations adopted pursuant to K.S.A. 2-3710 (Kansas Agricultural Remediation Board). Continue to fill out the remaining EIS form to be included with the regulation packet in the review process to the Department of Administration and the Attorney General. The submitted EIS will be independently analyzed by the Division of the Budget for approval.

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Proposed

Section I

Analysis, brief description, and cost and benefit quantification of the proposed rule(s) and regulation(s). If the approach chosen by the Kansas agency to address the policy issue is different from that utilized by agencies of contiguous states or of the federal government, the economic impact statement shall include an explanation of why the Kansas agency's rule and regulation differs.

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The Kansas Department of Agriculture, Division of Water Resources (KDA-DWR) is proposing amendments to two existing regulations related to the implementation of the Kansas Water Appropriation Act, K.S.A. 82a-701, *et seq.* (KWAA). The regulations relate specifically to water quantity allocations within a Local Enhanced Management area or "LEMA." LEMAs are an existing statutorily authorized local-level conservation tool that allow a groundwater management district to bring forward a plan to the Chief Engineer of KDA-DWR that is intended to reduce water use within the LEMA, thereby extending the useful life of the groundwater resources in those areas.

These regulations are intended to reflect recent updates to the LEMA statute that will authorize LEMA plans to provide for multi-year quantity allocations that allow a water right to divert water in excess of its authorized annual quantity in a given year so long as the diversions do not exceed the total assigned quantity allocation over the LEMA term. The regulations refer to these multi-year allocations as "fixed allocations" and establish requirements pertaining to them. This change will allow water right owners within a LEMA to use more water in years when doing so may be necessary due to weather or other factors while using less water when it is not needed and still retaining the unused quantity for future use. This will provide greater water use flexibility for irrigation water right owners within a LEMA while promoting water conservation.

A summary of the proposed regulations is as follows:

K.A.R. 5-19-1 is the regulation that sets out definitions for the implementation of the LEMA statute. The proposed amendment to this regulation will add a definition of "fixed allocation."

K.A.R. 5-19-2 sets out the substantive regulatory requirements governing LEMA plans. The proposed amendment to the regulation adds requirements pertaining to LEMA plans that provide for fixed allocations. It provides that the fixed allocation requirements set out in the regulation apply only to LEMAs with initial terms beginning after the effective date of the regulation. It also provides that historical water use under an individual water right shall not be used to establish fixed allocations and that fixed allocations shall instead be based on the overall goal of the LEMA in conjunction with one of several other factors listed in the regulation.

The proposed rules and regulations do not exceed and cannot be said to differ from the requirements of federal law. Federal law is not applicable in this area, as the states generally have primacy in matters related to water within their boundaries, and the KWAA gives the Chief Engineer of KDA-DWR the authority to regulate water use in Kansas and specifically to approve LEMA plans submitted by a groundwater management district. These proposed regulations are all consistent with the doctrine of prior appropriation, which is embodied in the KWAA and is the water law doctrine used by other Western states, though not all Western states have implemented statutory tools to provide for voluntary management of water resources as Kansas has done with LEMAs.

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Section II

Explain whether the proposed rule and regulation is mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program and whether the proposed rules and regulations exceed the requirements of applicable federal law.

The proposed rules and regulations are not mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program and do not exceed any requirements of federal law.

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 rules and regulations will not enhance or restrict business activities and growth, as they do not impose any mandatory requirements. LEMAs are voluntarily requested by the boards of directors of groundwater management districts, and the use of fixed allocations within a LEMA plan as provided for in the proposed regulations is not required.

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 will be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

The regulations do not impose implementation and compliance costs, as LEMAs are never required and the use of fixed allocations within a LEMA is likewise not required.

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

Businesses that own water rights within an area where a new LEMA that allows for fixed allocations is established would be directly affected, but, again, the regulations themselves do not impose any mandatory costs on such businesses and will not automatically benefit them absent voluntary action by local groundwater management districts.

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

The main benefit of the proposed rules and regulations is increased flexibility provided to groundwater management districts in crafting LEMA plans and to agricultural producers in managing their water use within a LEMA. The regulations have no true costs, as they simply provide for voluntary water management tools.

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;

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The amendments merely provide another voluntary option for the implementation of a water management tool that is in itself voluntary and initiated at the local level.

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 individuals. *Note: Do not account for any actual or estimated cost savings that may be realized. Implementation and compliance costs determined shall be those additional costs reasonably expected to be incurred and shall be separately identified for the affected businesses, local governmental units, and individuals.*

Costs to Affected Businesses – $0

Costs to Local Governmental Units – $0

Costs to Individuals – $0

Total Annual Costs – $0
(sum of above amounts)

An explanation of why the regulations do not impose any implementation and compliance costs is set forth in Section I above.

☐ Yes
☐ No
☒ Not Applicable

If the total implementation and compliance costs exceed $1.0 million or more in implementation and compliance costs over the initial five-year period following adoption of such rule(s) and regulation(s) that are reasonably expected to be incurred by or passed along to businesses, local governmental units and individuals as a result of the proposed rule and regulation, 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.

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.

The proposed rules and regulations will not cause any changes in aggregate state revenues and expenditures for the current or next fiscal year.

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 rules and regulations will not impose any immediate or long-range economic impact on individuals, small employers, or the general public.

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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 rules and regulations will not increase or decrease the revenues of cities, counties, or school districts or impose any functions or responsibilities on cities, counties or school districts that will increase their expenditures or fiscal liability.

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

In developing the proposed regulations, the agency consulted with the Kansas Livestock Association, Kansas Farm Bureau, the Kansas Agribusiness Retailers Association, Kansas Corn Growers, the Kansas Rural Water Association, Kansas Municipal Utilities, the Kansas Water Office, and the five Kansas groundwater management districts.

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 individuals or entities who would bear the costs.

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 individuals who will bear the costs.

C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, the individuals or entities who will bear the costs and who will be affected by the failure to adopt the rule(s) and regulation(s).

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

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