

Kansas Administrative Regulations Economic Impact Statement (EIS)

Kansas Department of Health & Environment
Agency

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Agency Contact

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Contact Phone Number

28-14-2
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).

K.A.R. 28-14-2, schedule of fees, as proposed would update the pricing and language of 48 billable tests performed by the Kansas Health & Environmental Laboratories (KHEL) for public water supplies across the State. In addition, it would add nine new tests to the schedule and remove five obsolete tests.

The schedule is broken down into four sections: Inorganic chemical analyses, Organic chemical analyses, Microbiological analyses, and Radiochemical analyses. Most tests in the schedule are receiving an increase in price due to steady increases in reagent and equipment costs since the last time this regulation was updated. Inflation over the last year has exacerbated this issue. The price increases are needed to keep KHEL from losing money on the work performed for 973 public water facilities (public water supplies or discharge facilities), 4 tribal nations, and Wolf Creek Nuclear Power Plant. One test is seeing a decrease in cost.

The majority of the new additions in this schedule are for microbiology analyses including the testing of microcystins which are caused by harmful algal blooms across the States open water bodies. KHEL has also added pricing for the poly and perfluoroalkyl substances (PFAS), the so-called “forever chemicals.” KHEL is increasingly being asked to test for these compounds, but currently has no mechanism to charge their clients for this testing.

KHEL utilizes fees from these services as part of its operating budget so updating them to reflect current supply and staffing costs is essential. It has been more than eight years since this regulation has been updated and the cost to perform testing has only increased during that time. Updating this regulation will ensure that KHEL has the funds necessary to perform the testing requested by its clients.

The regulation, as proposed, would leave the current fee structure in place until six months after the new regulation adoption to allow our clients to budget for the changes.

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.)*

Pursuant to 42 U.S.C. §300f *et seq.*, 33 U.S.C. 1251 *et seq.*, U.S. public law 92-500, as amended by public law 92-217, public law 95-576, public law 96-483, and public law 97-117, K.S.A. 65-161 *et seq.*, 65-171d, 65-3001 *et seq.* or 65-3430 *et seq.* or 65-3452a *et seq.* or 65-34,105 *et seq.*, environmental testing is required for drinking water, wastewater, and hazardous waste. The requirements for testing drinking water and wastewater are described in 40 CFR Parts 141 and 136, respectively.

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KHEL's current business model relies on charging its customers for the environmental testing it performs. This approach is identical to Colorado, Nebraska, and Oklahoma who all charge their clientele for environmental testing to support their laboratory. Missouri charges small fees for a handful of tests, but they require all PWS's in the State to pay an annual fee for laboratory services. This fee generates a total of approximately 4.9 million dollars for Missouri's water laboratory. While Kansas has the same model as Colorado, Nebraska, and Oklahoma, KHEL currently charges less than any of these States for nearly every single environmental test offered by KHEL.

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;

KHEL's client base for environmental testing are public water facilities, tribal nations, and Wolf Creek Nuclear Power Plant. There is the potential for public water facilities to pass off the increased costs to the public. This concern was addressed when reaching out to KHEL stakeholders to discover how their budgets would be impacted by these potential changes. KHEL does not predict that these proposed rates will have any impact on business activities across the State. Please see section III, H of this document for more details.

It should be noted that facilities are not required to use KHEL for their compliance testing needs. If they are able to obtain a better service elsewhere, there is nothing that precludes them from pursuing that service.

- 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;

There will be no implementation costs for this regulation because this is an update and not a new regulation proposal. KHEL only has a handful of very small commercial clients. These regulations will have a potential effect on the client base that KHEL currently serves: the public water supplies (and potentially their payers), 4 tribal nations, and Wolf Creek Nuclear Power Plant.

The proposed rate changes would create changes ranging from a decrease of \$1 per test up to an increase of \$50 per test depending on the analysis requested. These rate changes in dollar figures correlate to a change of 16% decrease to 108% increase. The largest percent increase comes from microbiology testing (i.e. *E. coli*) which is adjusting from \$12 per test to either \$20 per test or \$25 per test depending on if the client wants qualitative results (i.e. Is it there?) or quantitative results (i.e. How much is there?). The material cost for this test has increased significantly over the years which is the main driving force behind the large increase in pricing. For context, the State of Colorado currently charges \$20 and \$22 for the qualitative and quantitative tests, respectively, while Oklahoma charges \$27.50 for either test.

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The proposed rate changes were applied to a year’s worth of KHEL data to see what the direct impact would be for KHEL’s clients on an annual basis. The table below represents some of that work. These facilities were chosen because they are inclusive of one of KHEL’s largest environmental clients, some medium sized clients (in terms of testing volume), and some of the smaller clients. It also includes one of the largest percent increases of any of client which jumps from \$36 per year to \$60 per year.

KHEL Client Name	Total Samples	Annual Cost	Annual Cost at Proposed Fees
Hays, City of	319	\$7417	\$9802
Wichita, City of	130	\$8983	\$12134
Manhattan, City of	862	\$20492	\$28620
Lawrence, City of	28	\$708	\$908
Water District No.1 of Johnson County	73	\$2294	\$2908
Silver Creek Farm Water District	3	\$36	\$60
Golden Shore Water Association	6	\$70	\$112
The Farm at Elberly	2	\$20	\$24

Overall, the proposed rate changes would turn into a 16-70% increase for KHEL’s clients depending on the types of services requested. However, these increases seem like they will have minimal impact on the large majority of KHEL clients based off input received from the stakeholder outreach described in section III, H.

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

Facilities impacted would be the public water facilities, tribal nations, and Wolf Creek Nuclear Power Plant.

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

The largest benefit to the proposed rule is keeping KHEL solvent so they can continue to serve all the facilities that rely on them for their services. Almost all Kansans obtain their drinking water from a public water system and many systems discharge into the natural environment. These systems are required to test their water for multiple chemicals and organisms that are harmful to human health and the environment. Having KHEL available as an option to serve these communities is vital to protecting the health of Kansans. KHEL offers tremendous service and serves communities for all their regular needs and at the times when they need it the most. For example, KHEL does not charge any facility an emergency or weekend fee if testing needs to be performed over the weekend to get their system off a boil water advisory due to the potential of *E. coli* being found in their drinking water.

Without KHEL’s work all systems would be forced to fulfill their testing requirements themselves or find a third party to do it for them. This would be a huge economic burden to these facilities because bringing testing in-house has a huge up-front cost and the price of

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testing through a third party is generally higher than KHEL even with the proposed increases. KHEL offers their customers excellent service at an affordable price. KHEL also prides itself on providing results in a timely fashion and holding themselves to a high standard.

- 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;

During the KHEL cost analysis all staff were careful to include only what it takes to run the test; nothing more. KHEL exists to serve the public and should not profit from any fees collected for service. The cost analysis was reviewed multiple times to make sure the correct amount of supplies was inputted for each testing methodology and the correct amount of staff time.

In addition, KHEL reached out to all of their clients with the proposed price increases to understand how it would impact them and help guide us as to whether or not this would hinder economic development. When given the option to submit any comments they wanted, not a single respondent stated that it would slow down business or economic growth. More details can be found in section III, H of this document.

- 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 – \$682,660

Costs to Members of the Public – \$109,289

Total Annual Costs – \$791,949

(sum of above amounts)

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

Prior to analyzing any data, KHEL performed a price audit to make sure that all pricing codes in the laboratory's database were true and accurate. Testing data was obtained from KHEL's laboratory information management system (LIMS) for one entire calendar year. That data set contained all samples ran for the year, client name and ID, test name and ID, as well as the day KHEL received and the results reported. The annual volume was analyzed along with the pricing list that also exists in the database. A new pricing list was then created that contained all the proposed testing charges.

The total price was calculated for all clients for both the current and the proposed testing rates. The difference between those two totals came to \$791,949. This data set also allowed for summing the testing cost of each individual client. This allowed for a direct before and after comparison of all clients as well as breaking them apart individually.

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To determine how much of the cost would be passed onto the public, KHEL utilized stakeholder engagement to arrive at the above number. Out of the 186 clients that responded to the request for input, only three of them mentioned that they would pass these costs along to their customers. However, 13.8% said that the proposed rates would have an impact on their facility. Using this number as a guide, roughly 13.8% of all costs would be forwarded to the public which equates to \$109,289 of the total charges. More details can be found in Section III, subsection H.

- 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.

The proposed fee changes indicated above would increase the fees collected by \$791,949 which is deposited into KHEL's operating fund. This impact is expected to remain constant for both this fiscal year and 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.

There will be no impact to small employers outside of any public water systems that may be defined as a small employer. For those entities, some costs from the public water supplies may be passed onto their customers. KHEL calculates that \$109,289 of this total will be passed onto the general public based on the stakeholder feedback.

- 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.

When the notice of hearing for these regulations is published in the *Kansas Register*, standard agency procedure was followed and the three organizations were contacted electronically for comment with 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).

KHEL created a user-friendly electronic survey, open to the public, that collected 7 pieces of information from respondents. The data fields collected for this survey were submission date, first name, last name, organization, two questions about the proposed rate changes, and general comments. The two questions asked in the survey were:

- Will the proposed regulation change create a significant fiscal impact for your facility?
 - Respondents could answer Yes, No, or Not Sure
- What estimated percentage of your city's, county's, or company's budget goes to laboratory services?
 - Respondents could answer 0-10%, 10-20%, 20-30%, etc. or Not Sure

Letters were then created and addressed to all KHEL environmental clients. The letters contained information about why KHEL was reaching out to them, and it contained a URL as well as QR code to view and submit the survey. The survey link contained both the current and proposed regulations. These letters were then sent to the fiscal contact on file in KHEL's database for all customers by their normal means of communication. The survey was left open for thirty days.

KHEL received responses from 186 environmental clients (~20% of all clients). From those 186 responses, 26 of them (~14%) stated that these proposed rate increases would have a significant impact on their facility.

67% of respondents said that 0-10% of their facilities budget goes to laboratory services. 22% of respondents said 10-20% of their budget goes to laboratory services. Six respondents said 20-30%, one respondent said 90-100%, and 33 respondents stated that they were not sure how much of their budget goes to laboratory services.

66 facilities left general comments. The majority of the general comments were positive and understanding of the reasoning for rate increases. Three facilities who responded and clearly stated that they would need to pass these costs onto their customers. Multiple respondents asked for a 6-12 month lead time for implementation to give them time to set their city or county budgets.

Based off of the input received from stakeholders, KHEL did not adjust the proposed rates after receiving their responses because the majority of those that replied were not impacted by the change.

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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 total change in costs is estimated to be \$791,949 and will mostly be billed to public water suppliers across the State. The total annual cost to KHEL clients with the proposed fee increase is approximately \$2.4 million with roughly \$1.6 million already being paid by KHEL clients on an annual basis. Per the procedure laid out in Section III, H the majority of respondents from the stakeholder feedback indicated that they would absorb the cost while some of them will pass it along to the public.

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.

There is no initial cost to implement or enforce the proposed rule. This rule already exists and is being updated to reflect the current costs on KHEL to operate. The cost of enforcement is negligible as KHEL has very few clients who do not pay their testing bill on time.

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 regulation is not adopted, then KHEL would either need to pursue additional funds through the State General Fund or stop providing those services that are the largest cost burden to the laboratory. In the latter instance, KHEL clients would be forced to either perform the testing themselves or find a private sector lab that could do the testing for them. Both of these cases would lead to increased cost to the facility. In order to start testing themselves would take a significant amount of capital and investment up front. Moving their testing to the private sector will also be more expensive as the proposed prices are the same or lower than most commercial laboratories. Also, KHEL does not charge additional fees if the facility requires testing on a holiday or weekend as sometimes happen for unexpected and unpredictable reasons.

Either of the above instances would end up costing the facilities, the public, and businesses more money.

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

The methodology used is the same as identified in subsections B and F within section III of this document. Data was obtained from KHEL's database to determine total volumes in charges invoiced to their customers. The new proposed rates were then used to calculate what facilities would be charged if the regulation changes were adopted and the facilities sent in the same volume of tests. The difference in those two numbers came out to \$791,949. That was then used to determine that total amount charged on annual basis by KHEL would be roughly \$2.4 million. The data was picked over and looked at multiple different clients to determine if there were any anomalies or outliers. For example, facilities where the cost would increase astronomically compared to everyone else. Nothing of the sort was found. KHEL then reached out to all their clients to show them the proposed fee changes and obtain their feedback. KHEL did not adjust their fees after receiving this feedback as the majority of responses were positive.

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Kansas Administrative Regulations
Economic Impact Statement
Public Hearing Certification
(To be completed after the public hearing)

Agency: [Click here to start typing](#)

Agency Contact: [Click here to start typing](#)

Phone Number or Email: [Click here to start typing](#)

K.A.R. Number(s): [Click here to start typing](#)

Public Hearing Date: [Select date](#)

Public Hearing Time: [Click here to start typing](#)

Public Hearing Location: [Click here to start typing](#)

Public Hearing Attendance: [Click here to start typing](#)

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