Proposed

State of Kansas

Department of Health and Environment

Notice of Hearing on Proposed Administrative Regulations

The Kansas Department of Health and Environment (KDHE), Division of Environment, Bureau of Water, will conduct a public hearing at 10:00 a.m. Thursday, March 21, 2024, in the Azure Conference Room, fourth floor, Curtis State Office Building, 1000 SW Jackson, Topeka, Kansas, to consider the adoption of proposed amended water pollution control regulations K.A.R. 28-16-113 and 28-16-114, regarding the water pollution control revolving fund.

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

Summary of Regulations:

K.A.R. 28-16-113. Interest rate. Revises language to calculate loan interest rates as specified in the annual intended use plan; revises language to allow the loan interest rate calculation to vary according to the length of the loan repayment period.

K.A.R. 28-16-114. Repayment of loans. Deletes the requirement that loan repayments shall begin within two years of the first loan disbursement; revises language to allow municipalities to choose loan repayment terms for up to 30 years.

Economic Impact:

Cost to the agency: The proposed regulations will not result in increased costs to the agency.

Cost to the public and regulated community: There will be no costs related to the proposed regulations that are reasonably expected to be incurred by businesses, local governments, public utility ratepayers, or members of the public. The water pollution control revolving fund is a voluntary financing program for municipalities.

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Costs to other governmental agencies or units: There will be no costs related to the proposed regulations that are reasonably expected to be incurred by other governmental agencies or units because they are not eligible to use the water pollution control revolving fund.

A detailed economic impact is provided in the economic impact statement that is available from the designated KDHE contact staff person or at the Kansas State Revolving Fund website, as listed below.

The time period between the publication of this notice and the scheduled hearing constitutes a 60-day public comment period for the purpose of receiving written public comments on the proposed regulations. All interested parties may submit written comments prior to 5:00 p.m. on the day of the hearing to William Carr, Kansas Department of Health and Environment, Bureau of Water, Curtis State Office Bldg., 1000 SW Jackson, Suite 420, Topeka, KS 66612 or by email to William.J.Carr@ks.gov. Interested parties are encouraged to participate in the public hearing by submitting written comments.

During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulations as well as an opportunity to submit their written comments. It is requested that each individual giving oral comments also provide a written copy of the comments for the record. In order to give each individual an opportunity to present their views, it may be necessary for the hearing officer to request that each presenter limit an oral presentation to an appropriate time frame.

Complete copies of the proposed regulations and the corresponding economic impact statement and environmental benefit statement may be obtained from the Kansas State Revolving Fund website at https://www.kdhe.ks.gov/518/Loan-Fund-Public-Hearings-Supporting-Doc or

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by contacting William Carr at William.J.Carr@ks.gov, 785-296-0735. Questions pertaining to the proposed regulations should be directed to William Carr at the contact information above.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations, the economic impact statement, and the environmental benefit 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 William Carr.

Janet Stanek
Secretary
Department of Health and Environment

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28-16-113. Interest rate. Each loan shall ~~bear~~ accrue interest for the entire life of the loan at a rate set by the secretary. ~~The secretary may also set fees for servicing the loans. The interest rate together with the servicing fee shall be an amount equal to sixty percent of the previous three months' average "bond buyers 20 bond index" as published on the first Monday of each week of the preceding three months~~The interest rate shall be calculated as a percentage, as specified in the intended use plan established pursuant to K.S.A. 65-3325 and amendments thereto, of three months' average of the bond buyer's weekly 20-bond GO (general obligation) index. The loan interest rate as calculated shall include any loan servicing fee as set by the secretary and may vary depending on the loan repayment period provided for in the loan agreement. (Authorized by K.S.A. ~~1988 Supp.~~ 65-3323; implementing K.S.A. ~~1988~~ 2023 Supp. 65-3326; effective May 29, 1989; amended P-______________________.)

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28-16-114. Repayment of loans. (a) All principal and interest shall be repaid in accordance with the terms and conditions of the executed loan agreement. Principal and interest payments shall begin ~~not later than two years after receipt of the first loan installment and in~~ no ~~case~~ later than one year following the completion of the project. Repayment of the loan shall not exceed a ~~20~~ 30-year repayment period as agreed upon in the loan agreement. ~~Project completion is defined as~~ For the purposes of this regulation, project completion shall mean the initiation of operation or capability to initiate operation.

(b) Prepayment of principal in whole or part may be made in accordance with the terms and conditions of the executed loan agreement. (Authorized by K.S.A. ~~1988 Supp.~~ 65-3323; implementing K.S.A. ~~1988 Supp.~~ 65-3322 and K.S.A. 2023 Supp. 65-3326; effective May 29, 1989; amended P-__________________________.)

APPROVED
OCT 31 2023
DEPT. OF ADMINISTRATION

APPROVED
DEC 12 2023
ATTORNEY GENERAL

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Kansas Administrative Regulations
Economic Impact Statement (EIS)

Kansas Department of Health and Environment
Agency

Susan Vogel
Agency Contact

785 296-1291
Contact Phone Number

28-16-113; 28-16-114
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).

These proposed regulations allow loans made from the water pollution control revolving fund to have a repayment term up to 30 years. K.S.A. 65-3326 was recently amended to increase the maximum loan repayment term from 20 years to 30 years to mirror federal changes made to the Clean Water Act on June 10, 2014. These regulations will provide the water pollution control revolving fund the ability to set different interest rates for loans based on the repayment period.

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.)*

These regulation changes are not mandated by the federal government. They do however take advantage of flexibility provided by federal law.

Nebraska has not changed state statutes or regulations to take advantage of the extended loan repayment terms allowed by federal statute. Oklahoma already offers loans to wastewater facilities for up to 30 years. Colorado already offers loans to wastewater facilities for up to 30 years. Missouri already offers loans up to 30 years to wastewater facilities.

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 neither enhance nor restrict business growth. The water pollution control revolving fund can only make loans to municipalities. The only impact to businesses would be through the user rates the municipality establishes. The annual cost of debt service for 30-year loan would be less than the annual debt service for a 20- year loan which is the current regulatory maximum loan repayment length. If sewer user rates had to be increased due to the cost of financing for wastewater infrastructure through the water pollution control revolving fund, the increased user rates would increase less if a 30-year loan were used compared to a 20-year loan.

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

The economic effect to municipalities obtaining a 30-year loan would be positive compared to effect of obtaining a 20- year loan. The annual debt service cost of a 30-year loan will be less than the annual debt service cost of a 20-year loan. Municipalities establish utility rates based on many factors. Assuming the annual cost of debt service is one of those factors, the need to increase rates would be lower with a 30-year loan than it would be for a 20-year loan.

Although the annual debt service cost for a 30-year loan is lower than it would be for a 20-year loan, the overall debt service cost measured for the life of the 30-year loan would be greater than a 20-year loan.

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

No businesses would be directly affected by the proposed regulation.

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

The benefit of these proposed regulations is the reduction in annual debt service costs for municipalities that borrow from the water pollution control revolving fund using the extended loan terms.

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 proposed regulation change itself reduces annual debt service costs for municipalities that borrow funds at 30 years compared to 20 years.

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)

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

Loan repayment schedule spreadsheets were created that assumed a $12,000,000 loan amount for a 20-year loan at 2.18% (the July 2023 interest rate for the program which is 60% of market rate) and a 30-year loan at 2.54% (70% of the market rate). Annual debt service costs were compared for the annual implementation cost estimate. The comparison between annual debt service costs of a 20-year loan and a 30-year loan show that 30-year loans provide an annual $169,501.76 cost savings to municipalities for every $12,000,000 borrowed (or $14,125 for every $1,000,000 borrowed), however cost savings are not to be accounted in the amounts listed above, so amounts are listed as $0. The repayment schedules for these loans and a comparison table are attached.

☐ 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.

KDHE only anticipates a single 30-year loan to be executed during this current fiscal year with disbursements totaling less than $12,000,000. This would increase state interest revenues by $43,200 during the current fiscal year. Assuming another $12,000,000 is disbursed to a 30-year loan in the next fiscal year, the state interest revenues would increase to $86,400. This calculation is included in the attached spreadsheet. To be more general, state revenues would increase by $3,600 for every $1,000,000 in disbursements made.

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.

Since the water pollution control revolving fund can only make loans to municipalities, there would be no direct impact to individuals, small employers, or the general public. If the municipality decides to base user rates on the cost of debt service from these loans, individuals, small employers, and the general public who use the wastewater infrastructure would be impacted, but it would be up to the municipality to determine if the impact was positive or negative to these groups.

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

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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 will be followed and the three above-listed organizations will be contacted electronically for comment with an attached copy of the regulations, economic impact statement, environmental benefit statement if an environmental regulation, and published notice of hearing.

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

The City of Dodge City specifically requested the statute change from the legislature. Historically, a few municipalities have expressed the desire to allow 30-year loans through the water pollution control revolving fund. This regulation change will provide flexibility to borrowers by giving them a choice of loan repayment terms. The water pollution control revolving fund is a voluntary financing program.

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.

There are no compliance requirements associated with the proposed regulation. This regulation change will provide flexibility to borrowers by giving them a choice of loan repayment terms. The water pollution control revolving fund is a voluntary financing program.

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 are no implementation or enforcement costs associated with the proposed regulation. This regulation change will provide flexibility to borrowers by giving them a choice of loan repayment terms. The water pollution control revolving fund is a voluntary financing program.

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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).

There are no costs that would accrue if the proposed regulations are not adopted. This regulation change will provide flexibility to borrowers by giving them a choice of loan repayment terms. The water pollution control revolving fund is a voluntary financing program.

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

No costs were estimated for this section.

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	Total Debt Serivce for Life of Loan	Total Debt Serivce for Life of Loan compared to 20 Year Loan
20 Year Loan	$14,869,759.34	$ -
30 Year Loan	$17,219,588.40	$2,349,829.06

	Annual Payments	Annual Payments Compared to 20 Year Loan
20 Year Loan	$743,487.96	$ -
30 Year Loan	$573,986.28	($169,501.68)

	Annual Interest and Service Fees before principal repayments start	Annual Interest and service fee increase if using a 30-year loan
20 Year Loan	$261,600.00	$ -
30 Year Loan	$304,800.00	$43,200.00

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Kansas Department of Health and Environment
Division of Environment
Bureau of Water

Environmental Benefit Statement
pursuant to K.S.A. 77-416

Proposed Amendment of Permanent Regulations

K.A.R. 28-16-113
K.A.R. 28-16-114

August 2023

Proposed

Executive Summary of Proposed Amended Regulations

The statute that sets the maximum prepayment period for loans made by the Kansas Water Pollution Control Revolving Fund was amended to extend the repayment period from 20 years to 30 years (K.S.A 65-3362) effective July 1, 2023.

In order for the Kansas Water Pollution Control Revolving Fund to make these extended loan repayment terms available to municipalities, K.A.R 28-16-114 needs to be amended to remove the maximum 20-year loan repayment period and set conditions for longer term loans to comply with federal laws. Additionally, KAR 28-16-113 is proposed to be amended to allow the Kansas Water Pollution Control Revolving Fund to set different interest rates based on the repayment length of the loans. The ability to set a different rate for 20 and 30-year loans helps to mitigate the risk of inflation that can decrease value of the longer term loan repayments made to the Fund, without penalizing those municipalities that choose a shorter loan repayment term.

Environmental Benefit Statement

1) Need for proposed amendment and environmental benefit likely to accrue.

a. Need.

State statue was amended to allow for loans with a repayment term of 30 years. However, the implementing regulations still only allow for a maximum loan repayment period of 20 years.

b. Environmental benefit.

There will not be an environmental benefit due to these proposed regulation changes. The changes in the regulations effect a voluntary financing program for municipal wastewater infrastructure projects. Any impact or benefit to the environment made by these wastewater infrastructure projects would not change due to the length of the loan repayment term.

2) When applicable, a summary of the research or data indicating the level of risk to the public health or the environment being removed or controlled by the proposed regulations.

This section is not applicable.

3) If specific contaminants are to be controlled by the proposed regulations, a description indicating the level at which the contaminants are considered harmful according to current available research.

This section is not applicable.

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