Proposed

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

A public hearing will be conducted at 1:00 p.m. on January 8, 2026, 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/84210746921?pwd=0kkmZj0XpvLHwTuOIJ9lXDkGd3bdua.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 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.

The Kansas Department of Agriculture, Division of Water Resources (KDA-DWR) is proposing the amendment or revocation of regulations related to the implementation of the Kansas Water Appropriation Act, K.S.A. 82a-701, *et seq.* (KWAA). The regulations relate to requirements for water flowmeters and civil penalties for violations of those requirements.

A summary of K.A.R. 5-1-4, 5-1-5, 5-1-6, 5-1-7, 5-1-8, 5-1-9, 5-1-10, 5-1-11, 5-1-12, and 5-14-10 follows:

K.A.R. 5-1-4 sets forth specifications for water flowmeters. The substantive amendments to this regulation are aimed at ensuring the accuracy of water flowmeters. The most significant proposed amendment requires that all required water flowmeters that are installed or repaired after the effective date of the regulation be equipped with an anti-reversing totalizer or other mechanism that will prevent reverse flow from altering the forward totalizer reading of the water flowmeter and be sealed in such a way that the meter cannot be tampered with without such tampering being evident. Essentially, this requires that all water flowmeters that are installed going forward be equipped with a mechanism that will prevent a water user from being able to alter the water flowmeter's reading by reversing the meter or otherwise altering the meter's reading. Meters with a nominal pipe diameter of less than four inches are exempted from this requirement.

K.A.R. 5-1-5 permits the Chief Engineer to grant variances from the requirements contained in K.A.R. 5-1-4. It is proposed for revocation because it is redundant to the Chief Engineer's statutory authority to waive any DWR regulation upon a finding that doing so will not result in the impairment of existing water rights or harm the public interest.

K.A.R. 5-1-6 sets water flowmeter installation specifications. The requirements of this regulation are similar to those of K.A.R. 5-1-4 but are more specifically focused on the installation of water flowmeters. Similar to the amendments proposed to K.A.R. 5-1-4, the substantive proposed amendments to this regulation are aimed at ensuring the accurate measurement of diversions and preventing meter reversal or tampering, including explicitly aligning the requirements of this regulation with those of K.A.R. 5-1-4 and 5-1-9. Like K.A.R. 5-1-4, this regulation also distinguishes between water flowmeters installed before and after the effective date of the regulation.

K.A.R. 5-1-7 sets requirements for when a water flowmeter is required to be installed. The substantive proposed amendments to this regulation would align the requirements of this regulation with those in K.A.R. 5-1-4 and would streamline the existing exceptions that establish situations in which a water flowmeter is not currently required following the approval of a change in place of use, point of diversion, or type of use for a nondomestic water right in order to ensure diversions continue to be accurately measured following any such change.

K.A.R. 5-1-8 sets requirements for water flowmeter maintenance. The proposed amendments would add new requirements for regular inspection of water flowmeters and the maintenance of logs of such inspection. The regulation provides that logs showing a water flowmeter was operating in compliance prior to the initiation of any investigation related to the water right may be considered a prompt cessation of any alleged violation of the KWAA related to the malfunction of a water flowmeter, and DWR regulations provide that prompt cessation of a violation is grounds for the mitigation of imposed penalties. This regulation also establishes requirements for reporting the failure of a water flowmeter and certain kinds of maintenance of a water flowmeter to the Chief Engineer.

K.A.R. 5-1-9 establishes criteria for when a water flowmeter is considered out of compliance. The proposed amendments are primarily aimed at aligning this regulation with the proposed amendments to K.A.R. 5-1-4 and K.A.R. 5-1-6 to clarify that a water flowmeter is out of compliance if the requirements of those regulations are not met.

K.A.R. 5-1-10 specifies the duties of a water right owner when a water flowmeter is out of compliance. The proposed amendments would require that the owner of a noncompliant water flowmeter provide documentation to the Chief Engineer showing any removal and replacement of a required water flowmeter seal and invoices reflecting the purchase of a new water flowmeter or work done to repair a water flowmeter within 30 days of such purchase or work being done.

K.A.R. 5-1-11 provides that water flowmeter rate tests may be conducted by a nonagency person if certain requirements are met. The most substantive proposed amendment to this regulation requires that a water right owner who utilizes a nonagency person to perform a rate test certify to the Chief Engineer that the rate test was conducted and that it is accurate to the best of the nonagency person's knowledge.

K.A.R. 5-1-12 sets requirements for water flowmeter manufacturers who wish to have a water flowmeter model added to the Chief Engineer's list of certified water flowmeters. The proposed amendments add a requirement that the manufacturer certify that the water flowmeter is equipped with

an anti-reverse totalizer, consistent with the proposed amendments to K.A.R. 5-1-4 and K.A.R. 5-1-6, and otherwise seek to streamline the regulation by striking specific requirements that repeat the requirements of K.A.R. 5-1-4 and K.A.R. 5-1-6 and replacing them with a single requirement that the manufacturer certify that the water flowmeter complies with those regulations.

K.A.R. 5-14-10 provides for civil penalties for violations of the KWAA other than overpumping a water right's authorized quantity of water. The proposed amendments to this regulation would make violations of K.A.R. 5-1-4 and K.A.R. 5-1-6 subject to civil penalties as provided for in the regulation.

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. 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. The proposed regulations are consistent with the doctrine of prior appropriation, which is embodied in the KWAA and is the water law doctrine used by other Western states.

DWR does not expect the proposed regulations to enhance or restrict business activities and growth. Water right owners who are granted new water rights that require the installation of a water flowmeter or who repair or replace required water flowmeters after the effective date of these regulations will incur implementation and compliance costs related to these regulations. Water right owners could be individuals, business entities, or municipalities. These costs will apply the same to all types of owners.

A detailed quantification of implementation and compliance costs is as follows:

As to the anti-reverse gear requirements of K.A.R. 5-1-4, DWR records reflect that approximately 300 permits for new water rights are granted every year. Information obtained from McCrometer, Inc., a well-established meter manufacturer, indicates that the difference in cost between a new water flowmeter without an anti-reverse totalizer and one with an anti-reverse totalizer is between $66 and $72, for an average increase in cost of $69. DWR estimates that about half of water flowmeters installed in Kansas are manufactured by companies that no longer offer meters without anti-reverse mechanisms, i.e, about half of water users installing new meters would have paid the additional $69 per meter even without these regulation updates. Accordingly, DWR estimates that approximately 150 water users per year will incur an additional $69 cost for the installation of new meters as a result of the regulations, for a total cost of $10,350.

The requirement contained in K.A.R. 5-1-6 that flanged water flowmeters installed after the effective date of the regulation be installed with a sufficient number of cross-drilled flange bolts will likely also impose some additional costs. DWR estimates that 40% of water flowmeters are flanged flowmeters and that this requirement will increase costs by approximately an additional $30 per water flowmeter. Accordingly, about 120 new meters per year (40 percent of the 300 new meters installed in a year) will require additional cross-drilled flange bolts at the additional cost of $30 per meter, for a

total additional cost of $3,600 per year.

DWR records reflect that there are currently approximately 35,000 required water flowmeters installed in Kansas and that about 10% of those are repaired or replaced each year. Accordingly, approximately 3,500 water flowmeters are repaired or replaced each year. If half of the meters replaced would have been installed with anti-reverse mechanisms even without these regulation amendments as set out above, about 1,750 water users will incur an increased cost of $69 per year each to replace water flowmeters as a result of these regulations, for a total cost of $120,750. Approximately 1,400 water users (40 percent of the 3,500 meters repaired or replaced each year) will incur additional increased costs of $30 per meter related to the cross-drilled flange bolt requirement, for a total increase in costs of $42,000.

The annual implementation and compliance costs associated with K.A.R. 5-1-4 will be approximately **$131,100**. The annual implementation and compliance costs associated with K.A.R. 5-1-6 will be approximately **$45,600**. These costs will not affect the state economy as a whole or cause any changes in aggregate state revenues and expenditures for the current or next fiscal year. Some water rights subject to those costs will be owned by individuals, and some will be owned by larger agricultural operations that may be corporate entities and employ a varying number of people.

Businesses that acquire new water rights for which a water flowmeter is required to be installed or repair or replace existing required water flowmeters after the effective date of these regulations will be directly affected by the proposed regulations. Water rights may be owned by individuals, businesses, or municipalities. This economic impact statement calculates the estimated total economic impact of these regulations to all water right owners but does not distinguish between costs related to water rights owned by individuals and those owned by business entities, as many water rights are owned by agricultural producers in the name of an incorporated entity. The regulations treat all types of ownership and all types of water use the same consistent with the requirements of the KWAA.

These regulations, including the provisions that will impose costs on the regulated public, will help ensure accurate measurement of diversions of water and apply only to water flowmeters installed or repaired after the effective date of the proposed regulations and provide an exemption for water flowmeters with a pipe diameter less than four inches. This is important for ensuring the lawful use of an increasingly scarce resource as well as for ensuring that no one user gains an unfair advantage over others.

The agency reached out to the League of Kansas Municipalities, the Kansas Association of Counties, and the Kansas Association of School Boards regarding the potential economic impact of the proposed regulations and none of those entities indicated any economic impact to their organization as a result of these regulations.

Any individual with a disability may request accommodations to participate in the public hearing and may request the proposed regulations and 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 at (785) 564-6715 or fax (785) 564-6777.

Copies of the proposed regulations and economic impact statement may be obtained by contacting the Department of Agriculture, Ronda M. Hutton, 1320 Research Park Dr., 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

K.A.R. 5-1-4. Water flowmeter specifications. (a) Each water flowmeter required by the chief engineer~~, or required pursuant to a regulation adopted by the chief engineer,~~ on or after the effective date of this regulation shall meet the following minimum requirements:

(1) ~~(A) The water flowmeter has been~~ Be certified by the manufacturer to register neither less than 98 percent nor more than 102 percent of the actual volume of water passing the water flowmeter when installed according to the manufacturer's instructions~~. This requirement shall be met~~ and to be reasonably likely to meet the requirements specified in K.A.R. 5-1-9(a)(1) throughout the water flowmeter's normal operating range without further adjustment or calibration~~.~~;

~~(B)~~ (2) be certified by the manufacturer ~~has certified to the chief engineer that it has~~ to have undergone an effective quality assurance program~~, including~~ that includes, at a minimum, wet testing of a random sample of production line water flowmeters with water flowmeter test equipment that has been tested annually and found to be accurate by standards that conform to the specifications, tolerances, and other technical requirements for weights, measures and weighing, and measuring devices established by the national institute of standards and technology or the international bureau of weights and measures~~. The minimum number of samples to be tested shall be determined using a confidence interval of 90 percent, an expected compliance of 95 percent, and an acceptable error of two percent. The minimum number of samples of each model that shall be tested shall be calculated by multiplying 1,300 times the annual production of that model of water flowmeter divided by Q. Q equals four times the annual production of that water flowmeter plus 1,300.~~;

~~(C) The manufacturer has certified that the water flowmeter test equipment described in paragraph (a)(1)(B) has been tested annually and found accurate by standards traceable to the~~

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~~national institute of standards and technology (NIST). Documentation of the testing required in paragraphs (a)(1)(A) and (B) shall be maintained by the manufacturer for a period of at least five years and shall be made available to the chief engineer upon request during normal business hours.~~

~~(2) The water flowmeter shall be designed and constructed so that it will meet the following criteria:~~

~~(A) Maintain the accuracy required by the chief engineer in paragraph (a)(1)(A) through (C) and K.A.R. 5-1-9(a)(1);~~

~~(B) be protected by the following:~~

~~(i) A seal installed by the manufacturer or an authorized representative of the manufacturer; or~~

~~(ii) a way that makes it impossible to alter the totalizer reading without breaking the seal or obtaining the authorization of the manufacturer, an authorized representative of the manufacturer, or the chief engineer;~~

~~(C)~~ (3) clearly indicate the model number and serial number of the water flowmeter and the direction of water flow in a manner that is legible and permanent for the expected operational life of the water flowmeter;

~~(D) clearly indicate the serial number of the water flowmeter;~~

~~(E)~~ (4) ~~have~~ be equipped with a weatherproof register that is sealed from all water sources;

~~(F)~~ (5) ~~have~~ be equipped with a register that is readable at all times, whether the system is operating or not;

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~~(G)~~ (6) be able to be sealed by an authorized representative of the chief engineer to prevent unauthorized manipulation of, tampering with, or removal of the water flowmeter;

~~(H)~~ (7) be equipped with ~~a~~ an identifiable manufacturer-approved measuring chamber through which all water flows.; ~~Except for positive displacement water flowmeters, full-bore electromagnetic water flowmeters, and multijet water flowmeters, flow-straightening vanes shall be installed at the upstream throat of the water flowmeter chamber. The flow-straightening vanes shall meet either of the following criteria:~~

~~(i) Be designed and installed by the manufacturer, or an authorized representative of the manufacturer; or~~

~~(ii) consist of at least three vanes that are longer, when placed parallel to the length of the pipe, than the inside diameter of the pipe, are equally spaced radially on the inner periphery of the pipe, and are wider in diametrical distance than one-fourth of the inside diameter of the pipe;~~

~~(I) be equipped with an inspection port if the straightening vanes are not designed, constructed, and installed by the manufacturer or an authorized representative of the manufacturer. The port shall be of sufficient size and placement to allow determination of the following:~~

~~(i) The proper installation of the flow-straightening vanes; and~~

~~(ii) the inside diameter of the pipe in which the water flowmeter sensor is installed;~~

~~(J)~~ (8) ~~remain operable without need for recalibration~~ be calibrated at the factory and be reasonably likely to maintain ~~accuracy~~ accurate calibration throughout the ~~operating~~ operational life of the water flowmeter; and

~~(K)~~ (9) ~~have~~ be equipped with a totalizer that meets the following criteria:

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~~(i)~~ (A) Is continuously updated to read directly ~~only~~ in acre-feet, acre-inches, or gallons;

~~(ii)~~ (B) has sufficient capacity, without cycling past zero more than once each year, to record the annual quantity authorized by the water right or the quantity of water actually diverted in any one calendar year, whichever is greater;

~~(iii)~~ (C) reads in units small enough to ~~discriminate~~ determine the annual water use to within the nearest 0.1 percent of the total annual permitted quantity of water;

~~(iv)~~ (D) has a dial or counter that can be timed ~~with a stopwatch over~~ for not more than a 10-minute period to accurately determine the rate of flow under normal operating conditions; and

~~(v)~~ (E) has a nonvolatile memory.

(b) All water flowmeters required by the chief engineer on or after the effective date of this regulation, except positive displacement water flowmeters, full-bore electromagnetic water flowmeters, single-jet water flowmeters, multi-jet water flowmeters, and fluidic oscillator water flowmeters, shall be equipped with flow-straightening vanes that are designed or approved by the manufacturer and installed at the upstream throat of the water flowmeter chamber.

(c) All water flowmeters required by the chief engineer that are installed or repaired after the effective date of this regulation and have a nominal pipe diameter of four inches or greater shall be equipped with an anti-reversing totalizer or other mechanism that will prevent reverse flow from altering the forward totalizer reading of the water flowmeter.

~~(3) Each water flowmeter that is required to be installed by the chief engineer, or that was required to be installed as a condition of either an approval of application or an order of the chief engineer, or pursuant to a regulation adopted by the chief engineer before the effective date of this regulation, shall meet the following minimum specifications:~~

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(d) Each battery-operated water flowmeter required by the chief engineer on or after the effective date of this regulation shall be equipped with a battery system that is of sufficient capacity to operate the water flowmeter for a minimum of two years in reasonably expected seasonal conditions in Kansas conditions.

(e) Each turbine water flowmeter required by the chief engineer on or after the effective date of this regulation, including each propeller water flowmeter, shall be equipped with a sensor that has a diameter that is no less than one-half the inside diameter of the water flowmeter's measuring chamber.

(f) Each saddle water flowmeter and each insertion water flowmeter shall clearly indicate, in a manner that is durable for the expected operational life of the water flowmeter, the inside diameter that the water flowmeter is calibrated for.

(g) Each water flowmeter required by the chief engineer on or after the effective date of this regulation shall be manufactured or sealed in such a way that, if prior authorization is not obtained from the manufacturer, an authorized representative of the manufacturer, or the chief engineer, the water flowmeter's totalizer reading and calibration cannot be altered, and the water flowmeter's totalizer cannot be prevented from registering flow, without any tampering or alteration being evident.

(h) Each water flowmeter that was required by the chief engineer to be installed before the effective date of this regulation, either as a condition of an approval of an application or by an order of the chief engineer or a regulation adopted by the chief engineer, shall meet the following minimum specifications:

~~(A)~~ (1) ~~Each water flowmeter shall be~~ Be of the proper size, pressure rating, and style, and ~~shall~~ have a normal operating range sufficient to accurately measure the water flow passing through the water flowmeter under normal operating conditions.; and

~~(B)~~ (2) ~~Each water flowmeter shall~~ meet the ~~accuracy~~ requirements ~~of~~ specified in K.A.R. 5-1-9(a)(1). ~~If the water flowmeter does not meet the accuracy requirements of K.A.R. 5-1-9(a)(1), then the water flowmeter shall meet either of the following criteria:~~

~~(i) Be repaired so that it meets the accuracy requirements of K.A.R. 5-1-9(a)(1)~~; or

~~(ii)~~ (3) be replaced with a water flowmeter ~~meeting all of the requirements of~~ that meets the requirements specified in ~~K.A.R. 5-1-4~~ this regulation and is installed in ~~a manner that meets~~ accordance with the requirements of K.A.R. 5-1-6.

~~(b)~~ (i) A water flowmeter installed in the diversion works or a distribution system for a water right authorized for municipal use shall not be subject to the requirements ~~of paragraph (a)(2)(B)~~ specified in subsection (g) if an accurate record of water use can be determined by readings from at least one alternate water flowmeter in the same diversion works or distribution system.

(j) The quality assurance program specified in subsection (a)(2) shall include, at a minimum, wet testing a random sample of production line water flowmeters. The minimum number of samples required to be tested shall be determined using a confidence interval of 90 percent, an expected compliance rate of 95 percent, and an acceptable error rate of two percent. The minimum number of samples of each model of water flowmeter required to be tested shall be calculated by multiplying 1,300 times the expected annual average production of that model

of water flowmeter divided by the amount that equals four times the annual production of that model of water flowmeter plus 1,300.

(k) Documentation of the testing required in paragraphs (a)(1) and (2) shall be maintained by the manufacturer of the water flowmeter for a period of at least five years and shall be made available to the chief engineer during normal business hours upon request. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 82a-706c; effective Sept. 22, 2000; amended Oct. 24, 2003; amended May 21, 2010; amended P-_____.)

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K.A.R. 5-1-5. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706c; effective Sept. 22, 2000; revoked P-_____.)

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K.A.R. 5-1-6. Water flowmeter installation specifications. (a) Each water flowmeter required by the chief engineer ~~to be installed or required pursuant to a regulation adopted by the chief engineer,~~ on or after the effective date of ~~these regulations~~ this regulation shall meet the following minimum water flowmeter installation specifications:

(1) ~~Each water flowmeter shall~~ Be installed ~~in a manner that meets the following criteria:~~ so that the requirements specified in K.A.R. 5-1-4(a) and K.A.R. 5-1-9(a)(1) are reasonably likely to be met throughout the water flowmeter's expected operational life without further adjustment or calibration;

~~(A)~~ (2) be installed in a manner that meets or exceeds the instructions of the manufacturer; ~~and~~

~~(B)~~ (3) except for ~~a~~ single jet water flowmeters, multi-jet water flowmeters, fluidic oscillator water flowmeters, and ~~a~~ positive displacement water ~~flowmeter~~ flowmeters, ~~is~~ be installed so that there are at least five pipe diameters of straight pipe upstream and at least two pipe diameters of straight pipe downstream of the sensor portion of the water flowmeter, or as many pipe diameters upstream and downstream of the water flowmeter as is required by ~~regardless of~~ the manufacturer's installation specifications, whichever is greater~~.~~;

~~(2)~~ (4) ~~Each water flowmeter shall~~ be sized and installed so that full pipe flow will be maintained through the water flowmeter and so that water velocity in the measuring chamber will be within the normal operating range of the water flowmeter at all times while water is being diverted~~.~~;

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~~(3)~~ (5) if a water ~~flowmeter is located downstream of a water~~ storage device is utilized, ~~there shall be at least seven diameters of straight pipe~~ be installed upstream ~~of~~ from the water storage device ~~where a water flowmeter may be installed for a field test by the chief engineer.~~;

~~(4)~~ (6) ~~Each water flowmeter shall~~ be installed to ~~at a location at which the flowmeter measures~~ measure all water diverted from the source of supply and ~~does~~ not to measure ~~water or~~ other discharge, including tailwater and sewage effluent, and be installed to ensure that each beneficial use of water is measured by a separate water flowmeter~~.~~;

(7) be installed in such a way that, if prior authorization is not obtained from the manufacturer, an authorized representative of the manufacturer, or the chief engineer, the water flowmeter's totalizer reading and calibration cannot be altered, and the water flowmeter's totalizer cannot be prevented from registering flow, without any tampering or alteration being evident;

(8) be installed to meet any other specifications that the chief engineer determines are necessary based on field conditions.

(b) In addition to the requirements specified in subsection (a), each flanged water flowmeter required to be installed on or after the effective date of this regulation shall be installed with a minimum number of cross-drilled flange bolts sufficient to allow the water flowmeter to be sealed to the pipe.

(c) In addition to the requirements specified in subsection (a), electromagnetic water flowmeters and ultrasonic water flowmeters shall not be installed downstream of a chemical injection port.

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~~(b)~~ (d) Each water flowmeter that ~~is~~ was required by the chief engineer to be installed~~, or that was required to be installed as a condition of either an approval of application or an order of the chief engineer, or pursuant to a regulation adopted by the chief engineer,~~ before the effective date of ~~these regulations~~ this regulation, either as a condition of approval of an application by an order of the chief engineer, or by a regulation adopted by the chief engineer, shall meet the following minimum installation specifications:

(1) ~~Each water flowmeter shall~~ Be installed in a manner that meets or exceeds the ~~instructions~~ installation requirements of the manufacturer and, except for ~~a~~ single jet water flowmeters, multi-jet water flowmeters, and ~~a~~ positive displacement water ~~flowmeter~~ flowmeters, ~~shall~~ be installed so that there are at least five pipe diameters of straight pipe upstream and at least two pipe diameters of straight pipe downstream of the sensor portion of the water flowmeter~~;~~ or as many pipe diameters upstream and downstream of the water flowmeter as is required by ~~regardless of~~ the manufacturer's installation specifications, whichever is greater~~.~~;

(2) ~~Each water flowmeter shall~~ be sized and installed so that full pipe flow will be maintained through the water flowmeter and so that water velocity in the measuring chamber will be within the normal operating range of the water flowmeter at all times while the water is being diverted~~.~~; and

(3) ~~Each water flowmeter shall be installed at a location at which the flowmeter measures all water diverted from the source of supply and does~~ be installed to measure all water diverted from the source of supply and not to measure ~~water or~~ other discharge, including tailwater and sewage effluent, and be installed so as to ensure that each beneficial use of water is measured by a separate water flowmeter.

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(e) In addition to the requirements specified in subsection (d), electromagnetic water flowmeters and ultrasonic water flowmeters required by the chief engineer to be installed before the effective date of this regulation, either as a condition of approval of an application, by an order of the chief engineer, or by a regulation adopted by the chief engineer, shall not be installed downstream of a chemical injection port. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 82a-706c; effective Sept. 22, 2000; amended Oct. 24, 2003; amended P-_____.)

K.A.R. 5-1-7. Requirement to install a water flowmeter or other suitable water-measuring device. (a) ~~All~~ Each nondomestic, non-temporary ~~wells~~ well and pump ~~sites~~ site operated under the authority of an approval of application issued on or after the effective date of this regulation shall be equipped with a water flowmeter that meets or exceeds the ~~specifications of the chief engineer effective~~ requirements specified in K.A.R. 5-1-4 at the time the application is approved by the chief engineer.

(b)(1) ~~All~~ Each nondomestic, non-temporary gravity ~~diversions~~ diversion of water, including each diversion that utilizes an irrigation ~~ditches~~ ditch, that is operating under the authority of an approval of application issued on or after the effective date of this regulation shall be equipped with a continuous recording gauge~~,~~ or other suitable water-measuring device, which shall be located at or near the headgate. Before installation of the continuous recording gauge or other water-measuring device, the water right owner shall submit plans and specifications for the proposed gauge~~,~~ or other suitable water-measuring device~~,~~ to the chief engineer and shall receive approval in writing from the chief engineer before installing the gauge or other suitable water-measuring device.

(2) ~~The~~ Each continuous recording gauge or other suitable water-measuring device required pursuant to subsection (b)(1) shall meet the following criteria:

(A) Register not less than 94~~%~~ percent and not more than 106~~%~~ percent of the actual volume of water passing the device under normal operating conditions when compared to a field test ~~made by, or~~ conducted or approved by~~,~~ the chief engineer;

(B) be installed in accordance with the installation requirements of the chief engineer; and

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(C) be maintained in a satisfactory operating condition any time water can reasonably be expected to be diverted.

(c) ~~An~~ Each water right owner who receives approval of ~~a nondomestic~~ an application for a change in the place of use, ~~the~~ point of diversion, or ~~the~~ use made of ~~the~~ water of a nondomestic water right~~, or any combination of these,~~ shall ~~require the owner of the water right to~~ install a water flowmeter on all points of diversion authorized by the ~~water right or~~ approval of application, unless any of the following conditions ~~is~~ are met:

~~(1) The applicant demonstrates to the chief engineer that the application to change the place of use meets the requirements of K.A.R. 5-5-11(e).~~

~~(2) The applicant demonstrates to the chief engineer both of the following:~~

~~(A) Installation of a water flowmeter meeting these specifications is not physically feasible.~~

~~(B) The applicant agrees to implement a reasonable, objective alternative of measuring the quantity of water diverted that is acceptable to the chief engineer.~~

~~(3)~~ (1) The water diverted pursuant to the approval of the application is being diverted from multiple points of diversion authorized by one water right that does not limit the maximum annual quantity and maximum rate of diversion by point of diversion, and all of the water diverted flows to a common point where a water flowmeter meeting the requirements of K.A.R. 5-1-4 and K.A.R. 5-1-6 measures all of the water pumped from all of the points of diversion authorized by that water right~~.~~;

~~(4)~~ (2) an application for a change in point of diversion ~~only~~ is filed to change the point of diversion of only one well, when more than one well is authorized by the approval of

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application or water right that authorizes the well for which a change in point of diversion is sought. ~~In this case, only the well that is being relocated shall be required to have a water flowmeter.~~

~~(5) The water is being diverted from multiple points of diversion, and all of the following conditions are met:~~

~~(A) All points of diversion deliver water to only one distribution system.~~

~~(B) Each point of diversion can reasonably be expected to operate simultaneously and for the same total amount of time each calendar year.~~

~~(C) Each individual point of diversion has a tested diversion rate of less than 400 gallons per minute.~~

~~(D) A water flowmeter is installed that will measure 100 percent of the water pumped from all points of diversion.~~

~~(E) If the flow rate has not been tested within the last five years by the chief engineer or a person approved by the chief engineer, the owner shall have each point of diversion tested by a person approved by the chief engineer pursuant to K.A.R. 5-1-11. If the chief engineer becomes aware of information that the tested rates could no longer be correct, the chief engineer, or someone approved by the chief engineer pursuant to K.A.R. 5-1-11, may retest the rate of diversion produced by each point of diversion and those flow rates shall subsequently be used to determine the quantity diverted by each point of diversion.~~

~~(F) The owner has signed a consent agreement with the chief engineer that includes the following:~~

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~~(i) A determination of the percentage of flow that will be attributed to each point of diversion if future administration becomes necessary; and~~

~~(ii) an agreement that the chief engineer may require a water flowmeter for each point of diversion if the chief engineer determines there are issues concerning impairment, violations of the conditions of the permit or water right, or a violation of the Kansas water appropriation act and its regulations.~~

~~(G) All uses of water are authorized by either a vested water right or a water right that has been certified pursuant to K.S.A. 82a-714, and amendments thereto.~~

(d) If a water right meets the exception specified in subsection (c)(2), the owner of the water right shall be required to install a water flowmeter only for the well that is being relocated.

~~(d)~~ (e) Except as set forth in subsection (c), if installation of a water flowmeter is a condition of an approval of an application for a change ~~requires the installation of a water flowmeter, the requirement to~~ in place of use, point of diversion, or use made of water, the water right owner who filed the application shall also install a water flowmeter ~~shall also be placed~~ on all other water rights ~~and approvals authorizing diversion of~~ authorized to divert water ~~from~~ using the same point of diversion as the water right for which the change in place of use, point of diversion, or use made of water was sought.

~~(e)~~ (f) If any water right or approval of application has a condition requiring development, adoption, and implementation of a water conservation plan pursuant to K.S.A. 82a-733 and amendments thereto, a water flowmeter or suitable water-measuring device shall be installed on each authorized point of diversion in compliance with these regulations.

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~~(f)~~ (g) ~~The owner of a~~ Each water right owner, including ~~a~~ each domestic water right owner, ~~or an approval of application~~ and each owner of a water appropriation permit, shall ~~also be required by the chief engineer to~~ install and maintain a water flowmeter or other suitable water-measurement device that meets the requirements ~~of these regulations~~ specified in K.A.R. 5-1-4 and K.A.R. 5-1-6 on each authorized point of diversion if ~~it~~ doing so is necessary for the chief engineer to effectively administer water rights in order to prevent impairment, to protect minimum desirable stream flows, to conserve water, to determine the extent of actual water use, or to otherwise carry out the duties of the chief engineer as set forth in the Kansas water appropriation act, K.S.A. 82a-701 et seq., and amendments thereto, and rules and regulations adopted pursuant thereto.

~~(g)~~ (h) Except as set forth in subsection (c), if a water flowmeter is required by the chief engineer, each point of diversion authorized by a water right or by the approval of an application to appropriate water for beneficial use ~~or water right~~ shall ~~be required to~~ have a separate ~~meter~~ flowmeter. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706c; effective Sept. 22, 2000; amended Oct. 31, 2008; amended P-_____.)

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K.A.R. 5-1-8. Water flowmeter maintenance. (a) ~~If a~~ Each water right owner who is required by the chief engineer to install a water flowmeter~~, the water right owner~~ shall maintain the water flowmeter in compliance, as defined by K.A.R. 5-1-1, whenever diversion of water can reasonably be expected to occur. ~~If at any time the required water flowmeter fails to function properly, the owner shall promptly initiate action to repair or replace the meter, or to correct any problems with the installation.~~

(b) Each water flowmeter required to have a seal shall remain sealed at all times, except when the seal is removed by the manufacturer's authorized representative or with the permission of the chief engineer.

(c) Each water right owner shall regularly inspect each water flowmeter operated by that owner during any period when water is diverted or can reasonably be expected to be diverted, to ensure that the water flowmeter is functioning properly. Each water right owner shall maintain a log of the inspections verifying that the water flowmeter was operating in compliance at the time of each inspection, which shall be provided to the chief engineer upon request.

(d) An owner of any water right may, during the course of any investigation regarding a water right, provide to the chief engineer documentation related to the water right owner's regular inspection of the water right at issue. Documentation that verifies that the water right at issue was inspected and found to be operating in compliance prior to the initiation of the chief engineer's investigation may be considered prompt cessation of a violation pursuant to K.A.R. 5-14-10 and K.A.R. 5-14-12.

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(e) Each water right owner whose required water flowmeter fails to function properly shall report the water flowmeter malfunction and any repair or replacement of a malfunctioning water flowmeter to the chief engineer as required by K.A.R. 5-1-10.

(f) In addition to the requirements specified in subsection (a), each water right owner shall notify the chief engineer within 15 days of conducting any of the following activities:

(1) Performing maintenance on a required water flowmeter;

(2) equipping a water flowmeter with a manufacturer approved measuring chamber; or

(3) modifying any straight pipe required by K.A.R. 5-1-6. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706c; effective Sept. 22, 2000; amended P-_____.)

K.A.R. 5-1-9. Criteria to determine when a water flowmeter is out of compliance. (a) ~~A~~ Each water flowmeter to which any of the following applies shall be considered to be out of compliance ~~if any of the following criteria is met~~:

(1) The water flowmeter registers less than 94 percent or more than 106 percent of the actual volume of water passing the water flowmeter~~. If necessary, this determination may be made by a field test conducted by, or approved by, the chief engineer.~~, as determined by a field test conducted or approved by the chief engineer, if necessary;

(2) ~~The~~ a seal placed on the ~~totalizer~~ water flowmeter by the manufacturer, ~~or~~ the manufacturer's authorized representative, or the chief engineer has been broken~~, or the totalizer value has been reset or altered~~ without the ~~authorization~~ prior approval of the manufacturer, an authorized representative of the manufacturer, or the chief engineer, or has not been re-sealed after being broken~~.~~;

(3) ~~A seal placed on~~ the water ~~flowmeter~~ flowmeter's ~~or~~ totalizer value has been reset or altered without prior approval ~~by~~ from the chief engineer ~~has been broken.~~;

(4) the water flowmeter register is not visible or is unreadable for any reason~~.~~;

(5) there is not full pipe flow through the water flowmeter~~.~~;

(6) the water flowmeter's measuring chamber with flow-straightening vanes ~~have~~ has not been ~~properly designed, manufactured, and~~ installed as specified in K.A.R. 5-1-4~~.~~;

(7) the water flowmeter is not calibrated for the ~~nominal size~~ actual inside diameter of the pipe in which the flowmeter is installed~~.~~;

(8) the water flowmeter is not installed in accordance with the manufacturer's installation specifications~~.~~; ~~However, five diameters of straight pipe above the water flowmeter sensor and~~

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~~two diameters below the water flowmeter sensor shall be the minimum spacing, regardless of the manufacturer's installation specifications.~~

(9) ~~A~~ the water flowmeter is installed at a location ~~at which~~ where the water flowmeter does not measure all of the water diverted from the source of supply or the water flowmeter is measuring other discharge, including tailwater and sewage effluent, or is not installed to ensure that each beneficial use of water is measured by a separate water flowmeter~~.~~;

(10) the water flowmeter is not the proper size or does not have a normal operating range sufficient to accurately measure the water flow passing the water flowmeter under normal operating conditions;

(11) the battery of a battery-operated water flowmeter does not have a sufficient charge to operate the water flowmeter;

(12) the water flowmeter does not clearly indicate the model number and serial number of the water flowmeter and the direction of water flow;

(13) the water flowmeter is a saddle water flowmeter or an insertion water flowmeter and does not clearly indicate the inside diameter of the measuring chamber for which it is calibrated;

(14) the water flowmeter's measuring chamber has been modified in a way that could alter the accuracy of the water flowmeter;

(15) the water flowmeter does not meet the requirements specified in the document titled "certified water flowmeters," as is adopted by reference in K.A.R. 5-1-12; or

(16) the water flowmeter does not meet the requirements specified in K.A.R. 5-1-4 or K.A.R. 5-1-6 or the chief engineer determines, based on the operation or condition of the water

flowmeter, that the water flowmeter is otherwise out of compliance or is imminently likely to become non-compliant.

(b) A water flowmeter installed in the diversion works or a distribution system for a water right authorized for municipal use shall not be subject to the requirements specified in paragraph ~~of paragraphs~~ (a)(2) ~~and (3)~~ if an accurate record of water use can be determined by readings from at least one alternate water flowmeter in the same diversion works or distribution system, except that a seal put in place by the chief engineer shall remain subject to the requirements specified in paragraph (a)(2). (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 82a-706c; effective Sept. 22, 2000; amended Oct. 24, 2003; amended May 21, 2010; amended P-_____.)

Proposed

K.A.R. 5-1-10. Duties of water right owner when a water flowmeter is out of compliance. (a) ~~A~~ Each water right owner~~,~~ whose required water flowmeter is out of compliance ~~or the water right owner's authorized designee,~~ shall promptly notify the chief engineer of the noncompliance, either personally or through the water right owner's designee ~~if any water flowmeter required by the chief engineer is out of compliance~~.

(b) Each water right owner who repairs or replaces an out-of-compliance water flowmeter shall, within 30 days after the date on which the out-of-compliance water flowmeter ~~has been~~ was repaired or replaced, ~~the water right owner or~~ notify the chief engineer, either personally or through the water right owner's ~~authorized~~ designee, of the repair or replacement and shall ~~notify~~ provide to the chief engineer, on a form prescribed by the chief engineer, ~~in writing of~~ the following information:

(1) The date the ~~water flowmeter became out of compliance~~ noncompliance was discovered;

(2) the water flowmeter reading at the time the ~~water flowmeter became out of compliance~~ noncompliance was discovered;

(3) if the water flowmeter was replaced, the following information:

(A) The manufacturer ~~brand,~~ model, size, and serial number of the new water flowmeter;

(B) the multiplier and units in which the new water flowmeter reads;

(C) the reading of the new water flowmeter at the time of installation; and

(D) the location of the new water flowmeter on the diversion works or delivery system;

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(4) if the water flowmeter was repaired, the water flowmeter reading immediately before the repair and the reading of the water flowmeter at the time it was reinstalled or the repair was completed on-site;

(5) the date the repair or replacement was completed; ~~and~~

(6) the amount of water diverted while the water flowmeter was out of compliance.; and

(7) a description of or documentation showing any seal that was removed from the water flowmeter, or a statement or documentation verifying that no seal was present, and a description of or documentation showing the new seal that was attached to the water flowmeter.

(c) In addition to the required information specified in subsection (b), each water right owner whose required water flowmeter is repaired or replaced as a result of noncompliance shall provide to the chief engineer a copy of the invoice and work order related to any repair or documentation of the purchase of a replacement water flowmeter. Each water right owner may also be required to provide the chief engineer with a copy of energy or power records or any other verifiable information that the chief engineer requests to document unmetered water use during the time the water flowmeter was out of compliance.

~~(c)~~ (d) If the water right owner does not maintain a record of diversions of water during the time the water flowmeter is out of compliance and does not supply energy or power records or other verifiable information that is sufficient to reasonably estimate the quantity of water diverted while the water flowmeter was out of compliance, it shall be assumed, for the sole purposes of enforcement of the terms, conditions, and limitations of the approval of application or water right, and priority administration of water rights among water users, that the diversion works were operated continuously at the tested rate of diversion during the entire period the

water flowmeter was out of compliance. If the rate of diversion has not been tested by the chief engineer, then it shall be assumed that the diversion works were operated continuously at the authorized rate of diversion during the entire time the water flowmeter was out of compliance. The assumption ~~set forth~~ specified in this subsection shall not apply to the determination of the annual quantity of water diverted for the purpose of perfecting a water right.

~~(d)~~ (e) If ~~the~~ a water right owner is required by the chief engineer to repair or replace an inoperable water flowmeter, it shall be the duty of the water right owner to ensure that the repaired or replaced water flowmeter ~~is in compliance~~ complies with K.A.R. 5-1-4 and K.A.R. 5-1-6. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706c; effective Sept. 22, 2000; amended P-_____.)

Proposed

K.A.R. 5-1-11. Water flowmeter testing by a nonagency person. ~~If a water right owner desires to have a water flowmeter flow rate test done by a nonagency person for any reason, a person may be approved by the chief engineer to perform a water flowmeter flow rate test if the person demonstrates to the chief engineer both of the following~~ (a) A water right owner may have a water flowmeter flow rate test conducted by a nonagency person for any reason, if the nonagency person verifies, on a form provided by the chief engineer, that the nonagency person meets all of the following criteria:

~~(a)~~ (1) ~~The person has the training, skills, and experience necessary to properly conduct the~~ Is certified by Kansas department of agriculture, division of water resources to perform the water flowmeter flow rate test~~.~~; and

~~(b)~~ (2) ~~The person has~~ possesses the appropriate water flowmeter to ~~do~~ perform the water flowmeter flow rate test, and the water flowmeter has been tested for accuracy ~~with~~ using water flowmeter test equipment that has been tested and found to be accurate using standards ~~traceable to~~ that conform to the specifications, tolerances and other technical requirements for weights, measures and weighing and measuring devices established by the national institute of standards and technology ~~(NIST)~~ or the international bureau of weights and measures within 12 months of the performance of the water flowmeter flow rate test. ~~The equipment shall have been tested and found to be accurate within 12 months of performing the water flowmeter test.~~

(b) Each water right owner who has a water flowmeter flow rate test conducted by a nonagency person pursuant to this regulation shall, within 15 days of the performance of the water flowmeter flow rate test, verify that the water flowmeter flow rate test was performed by providing to the chief engineer a signed statement from the nonagency person who conducted the

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water flowmeter flow rate test. The signed statement shall certify that that person performed the water flowmeter flow rate test, that the water flowmeter flow rate test was accurate to the best of the person's knowledge, and that the documentation submitted to the chief engineer accurately represents the findings of the water flowmeter flow rate test. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706c; effective Sept. 22, 2000; amended P-_____.)

Proposed

K.A.R. 5-1-12. List of water flowmeters certified by the manufacturer to meet the specifications of the chief engineer. (a) ~~A list of all makes and models of water flowmeters that have been certified by the water flowmeter manufacturer to meet the specifications of the chief engineer shall be maintained by the chief engineer. This list shall be made available by the chief engineer to the public upon request.~~ Each manufacturer seeking to have a water flowmeter model approved by the chief engineer and added to the document titled "certified water flowmeters," which is adopted by reference in this regulation, shall provide to the chief engineer, on a form prescribed by the chief engineer, the following information for that water flowmeter model:

~~(b) A water flowmeter shall be placed on the list only if the manufacturer has submitted to the chief engineer all of the following information for each water flowmeter model:~~

(1) The water flowmeter manufacturer's name, address, contact person's name, and telephone number;

(2) the water flowmeter model name or number;

(3) ~~proof that a random sample of water flowmeters of each model has been tested in accordance with the requirements of K.A.R. 5-1-4(a);~~

~~(4)~~ the last date that the water flowmeter test equipment was tested and found to be accurate by standards ~~traceable to~~ that conform to the specifications, tolerances and other technical requirements for weights, measures, and weighing and measuring devices established by the national institute of standards and technology ~~(NIST)~~ or the international bureau of weights and measures;

~~(5) verification that the water flowmeter is designed and constructed so that accuracy will be maintained over the life of the water flowmeter;~~

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~~(6) verification that the water flowmeter serial number and direction of flow are clearly indicated on the water flowmeter;~~

~~(7) verification that the register is weatherproof and sealed from all water sources;~~

~~(8) verification that the totalizer will read only in acre-feet, acre-inches, or gallons;~~

~~(9)~~ (4) verification of the number of active digits in the water flowmeter's totalizer;

~~(10) verification that the memory is nonvolatile;~~

~~(11) verification that the totalizer cannot be reset without breaking the manufacturer's seal or obtaining the authorization of the manufacturer, an authorized representative of the manufacturer, or the chief engineer;~~

~~(12) verification that the water flowmeter and register are constructed in such a manner that they can be sealed by the chief engineer;~~

~~(13)~~ (5) a description of the measuring chamber ~~provided for each water flowmeter model~~;

~~(14)~~ (6) specifications ~~of~~ regarding the flow-straightening vanes installed in the water flowmeter's measuring chamber;

~~(15)~~ (7) the spacing recommendations for each water flowmeter model in terms of pipe diameters of straight pipe required upstream and downstream of the water flowmeter sensor; ~~and~~

~~(16)~~ (8) the normal operating range of the water flowmeter~~.~~;

(9) whether the water flowmeter comes from the manufacturer equipped with an anti-reverse totalizer; and

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(10) verification that the water flowmeter meets all of the applicable requirements specified in K.A.R. 5-1-4 and a description of how each applicable requirement specified in K.A.R. 5-1-4 is met.

~~(c)~~ (b) A brand or model of a water flowmeter shall be removed from the list of water flowmeters specified in subsection (a) of this regulation if it has been demonstrated to the chief engineer that the brand or model of water flowmeter does not reliably and consistently meet the accuracy standards of K.A.R. 5-1-9(a) or if it does not meet the requirements specified in K.A.R. 5-1-4. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 82a-706c; effective Sept. 22, 2000; amended Oct. 24, 2003; amended P-_____.)

Proposed

K.A.R. 5-14-10. Civil penalties for violations other than exceeding the authorized quantity of water. (a) ~~Penalty order.~~ In addition to any other authorized enforcement procedures, if the chief engineer finds that any of the violations specified in K.S.A. 82a-737, and amendments thereto, have occurred, a written order may be issued by the chief engineer pursuant to K.S.A. 82a-737(e), and amendments thereto.

(b) ~~Civil penalties.~~ The following shall apply to each civil penalty issued by the chief engineer pursuant to this regulation:

(1) ~~Any~~ Each civil penalty assessed in any order issued under this regulation ~~may~~ shall be no greater than the civil penalties specified in subsection ~~(m)~~ (n) for each applicable violation~~.~~;

(2) any day on which the violation continues to occur may constitute a separate offense~~.~~;

(3) ~~If an~~ any order ~~is~~ issued~~, the chief engineer~~ pursuant to this regulation may include any and all known violations of this regulation~~,~~ ~~or K.A.R. 5-14-12,~~ K.A.R. 5-1-4, K.A.R. 5-1-6, K.A.R. 5-1-10, or K.A.R. 5-14-12, ~~or both,~~ and may include all penalties pertaining to a given water right ~~in the order. The order~~ and ~~may include~~ violations ~~of this regulation or K.A.R. 5-14-12, or both,~~ applicable to multiple water rights~~.~~, and separate penalties may be assessed for each violation cited in a single order~~.~~; and

~~(2)~~ (4) the monetary penalties and suspension terms specified in subsection ~~(m)~~ (n) may be reduced due to one or more of the following factors:

(A) The absence of any prior penalty assessed under the Kansas water appropriation act, or implementing regulations, during the five calendar years preceding the calendar year in which the most recent violation occurred and if that calendar year is not determinable, then preceding the calendar year in which the order is issued for the most recent violation;

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(B) the absence of intentional noncompliance or gross negligence; or

(C) prompt cessation or correction of the violation upon discovery or notification by the chief engineer or an authorized representative or by personnel from a groundwater management district.

(c) ~~Lower-tier miscellaneous.~~ Any of the following actions or inactions may constitute a lower-tier miscellaneous violation:

(1) Operating and maintaining a water flowmeter or other water-measuring device required by the chief engineer that is out of compliance as specified in K.A.R. 5-1-9 or that does not comply with K.A.R. 5-1-4 or K.A.R. 5-1-6, unless the violation is a meter manipulation;

(2) failure to properly implement a conservation plan required by the chief engineer;

(3) committing a waste of water; and

(4) violating an order of the chief engineer or a term, condition, or limitation of a water right, approval of application, term permit or temporary permit, or any regulation not otherwise specifically listed as a violation in this regulation.

(d) ~~Failure to provide information.~~ Any of the following actions or inactions may constitute a failure to provide information:

(1) Failure to file a required monthly report; ~~and~~

(2) failure to provide information or documentation as required by K.A.R. 5-1-10; and

~~(2)~~ (3) failure to provide complete and accurate water use or other data, information, or records requested by the chief engineer or authorized representative, except the annual water use reports required by K.S.A. 82a-732, and amendments thereto, within the following time frames:

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(A) For information regarding water use during administration of a water right, within 24 hours of the chief engineer's or authorized representative's request; and

(B) for all other information, within 15 days of the request made by the chief engineer or authorized representative or within any other time frame prescribed by the chief engineer or authorized representative when the request is made.

(e) ~~Unauthorized diversion or threat to divert.~~ Any of the following actions may constitute an unauthorized diversion or threat to divert:

(1) A threat to divert water without authorization from the chief engineer;

(2) irrigating an unauthorized place of use;

(3) diverting water at a rate in excess of the authorized rate of diversion;

(4) diverting water from an unauthorized point of diversion of water; and

(5) applying water to an unauthorized type of beneficial use.

(f) ~~Denial of access.~~ It may be a violation for any person to deny access to authorized agents of the chief engineer as required by K.S.A. 82a-706b, and amendments thereto.

(g) ~~Lack of water flowmeter.~~ It may be a violation for any person to fail to timely install, or to remove and fail to replace, a required water flowmeter or other acceptable water-measuring device.

(h) ~~Noncompliance with a substantial order.~~ Any of the following actions may constitute a violation of a substantial order of the chief engineer:

(1) Violating a cease-and-desist order issued by the chief engineer;

(2) violating an order of the chief engineer issued pursuant to K.S.A. 82a-706b, and amendments thereto;

(3) violating any order of the chief engineer issued pursuant to K.S.A. 82a-1038, K.S.A. 82a-1041, or K.S.A. 82a-745, and amendments thereto, or any associated term permit, relating to an intensive groundwater use control area, local enhanced management area, or water conservation area; and

(4) violating a minimum desirable streamflow order issued by the chief engineer pursuant to K.A.R. 5-15-1 through 5-15-3.

(i) ~~Meter manipulation.~~

~~(1)~~ Any of the following actions may constitute meter manipulation:

~~(A)~~ (1) Causing a water flowmeter or other acceptable water-measuring device to show an incorrect or inaccurate reading by any method, including any of the following:

~~(i)~~ (A) Tampering with the meter in any way;

~~(ii)~~ (B) physically altering the meter reading or the propeller;

~~(iii)~~ (C) operating the water flowmeter in reverse orientation or running the water flowmeter in reverse by any means; ~~or~~

~~(iv)~~ (D) altering a water flowmeter from its factory specifications in a manner that causes the meter to underreport actual water use; ~~and~~ or

~~(B)~~ (E) removing a seal placed on a pump, diversion device, or water flowmeter without the written permission of the chief engineer or the chief engineer's authorized representative.

(2) If a penalty is assessed for meter manipulation ~~under~~ pursuant to this regulation and more than one water right is serviced by a single meter, then a single penalty may be assessed for all water rights serviced by that meter.

(j) ~~Falsification.~~ Any of the following actions may constitute falsification:

(1) Providing false water use data, including providing inaccurate information during a perfection period or after a water right has been certified, that underreports or overreports water use; and

(2) falsifying any other required data or information.

(k) ~~Noncompliance with a special condition of change application approval.~~

~~(1)~~ Any of the following actions may constitute a violation of a special condition of a change application approval:

~~(A)~~ (1) Violating any of the terms and conditions of a multiyear allocation; and

~~(B)~~ (2) violating a term or condition limiting the net acres that may be irrigated in any one calendar year pursuant to an approval to allow annual rotation of the authorized place of use for irrigation.

~~(2)~~ (l) The suspension specified in subsection ~~(m)~~ (n) may apply to all or any portion of the annual water use authorized by the water right, any term permit, and any water right upon which a multiyear allocation or rotation was based. Additionally, a subsequent restriction of the authorized place of use to the base acreage at a location specified in the change approval may be applied. After any suspension has expired, the water right may revert to all conditions in effect on the water right before approval of the change application that authorized the multiyear allocation or rotation.

~~(l)~~ (m) ~~Penalties for water rights in a term permit.~~ If falsification or meter manipulation occurs during the term of a multiyear flex account term permit or other term permit during which the base water right is suspended, the chief engineer may revoke the term permit, and the base water right may be suspended for what would have been the remainder of the term permit. In

addition to the suspension, a penalty corresponding to the falsification or meter manipulation violation cited may be imposed. Any additional reduction or suspension may run consecutively with the suspension for what would have been the remainder of the term permit.

~~(m)~~ (n) ~~Penalty table.~~ The following table may specify the maximum civil penalty and the maximum suspension term that may be assessed by the chief engineer for each violation of this regulation:

Violation	**Monetary penalty**	**Maximum number of days monetary penalty applied**	**Suspension of water use**
Lower-tier miscellaneous	$500 per day	20	One year
Failure to provide information	$500 per day, for each day the violation exists	20	One year
Unauthorized diversion or threat to divert	$500 per day	20	One year
Denial of access	$1,000 per day	10	Three years
Lack of water flowmeter	$1,000 per day	10	Three years
Noncompliance with a substantial order	$1,000 per day	10	Five years
Meter manipulation	$1,000 per day	10	Five years
Falsification	$1,000 per instance of falsification	Not applicable	Five years
Noncompliance with a special condition of a change application approval	$1,000 per day	10	Two years

Proposed

~~(n)~~ (o) ~~Owner liability and effect of penalty on water right.~~ Any civil penalty and any temporary reduction or suspension of the quantity of water authorized to be diverted under a water right in Kansas may be enforced against the owner or owners of the water right and shall attach to and transfer with the water right to any subsequent heir, assignee, purchaser, or other subsequent holder of the water right.

~~(o)~~ (p) ~~Appeal.~~ Any person aggrieved by an order of the chief engineer may request a review pursuant to K.S.A. 82a-1901, and amendments thereto, and after exhaustion of administrative remedies, may appeal to the district court in the manner provided by the ~~act for judicial review and civil enforcement of agency actions~~ Kansas judicial review act. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a, K.S.A. ~~2016 Supp.~~ 82a-737, and K.S.A. ~~2016 Supp.~~ 82a-1901; effective Oct. 24, 2003; amended Oct. 31, 2008; amended July 14, 2017; amended P-_____.)

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Proposed

Kansas Administrative Regulations
Economic Impact Statement (EIS)

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

K.A.R. 5-1-4 through 5-1-12; K.A.R. 5-14-10
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 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.

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The Kansas Department of Agriculture, Division of Water Resources (KDA-DWR) is proposing the amendment or revocation of thirteen regulations related to the implementation of the Kansas Water Appropriation Act, K.S.A. 82a-701, *et seq.* (KWAA). The regulations relate to requirements for water flowmeters and civil penalties for violations of those requirements. A summary of the proposed regulations is as follows:

K.A.R. 5-1-4 sets forth specifications for water flowmeters. The substantive amendments to this regulation are aimed at ensuring the accuracy of water flowmeters. The most significant proposed amendment requires that all required water flowmeters that are installed or repaired after the effective date of the regulation be equipped with an anti-reversing totalizer or other mechanism that will prevent reverse flow from altering the forward totalizer reading of the water flowmeter and be sealed in such a way that the meter cannot be tampered with without such tampering being evident. Essentially, this requires that all water flowmeters that are installed going forward be equipped with a mechanism that will prevent a water user from being able to alter the water flowmeter's reading by reversing the meter or otherwise altering the meter's reading. Meters with a nominal pipe diameter of less than four inches are exempted from this requirement.

K.A.R. 5-1-5 permits the Chief Engineer to grant variances from the requirements contained in K.A.R. 5-1-4. It is proposed for revocation because it is redundant to the Chief Engineer's statutory authority to waive any DWR regulation upon a finding that doing so will not result in the impairment of existing water rights or harm the public interest.

K.A.R. 5-1-6 sets forth water flowmeter installation specifications. The requirements of this regulation are similar to those of K.A.R. 5-1-4 but are more specifically focused on the installation of water flowmeters. Similar to the amendments proposed to K.A.R. 5-1-4, the substantive proposed amendments to this regulation are aimed at ensuring the accurate measurement of diversions and preventing meter reversal or tampering, including explicitly aligning the requirements of this regulation with those of K.A.R. 5-1-4 and 5-1-9. Like K.A.R. 5-1-4, this regulation also distinguishes between water flowmeters installed before and after the effective date of the regulation.

K.A.R. 5-1-7 sets forth requirements for when a water flowmeter is required to be installed. The substantive proposed amendments to this regulation would align the requirements of this regulation with those in K.A.R. 5-1-4 and would streamline the existing exceptions that establish situations in which a water flowmeter is not currently required following the approval of a change in place of use, point of diversion, or type of use for a nondomestic water right in order to ensure diversions continue to be accurately measured following any such change.

K.A.R. 5-1-8 sets forth requirements for water flowmeter maintenance. The proposed amendments would add new requirements for regular inspection of water flowmeters and the maintenance of logs of such inspection. The regulation provides that logs showing a water flowmeter was operating in compliance prior

to the initiation of any investigation related to the water right may be considered a prompt cessation of any alleged violation of the KWAA related to the malfunction of a water flowmeter, and DWR regulations provide that prompt cessation of a violation is grounds for the mitigation of imposed penalties. This regulation also establishes requirements for reporting the failure of a water flowmeter and certain kinds of maintenance of a water flowmeter to the Chief Engineer.

K.A.R. 5-1-9 establishes criteria for when a water flowmeter is considered out of compliance. The proposed amendments are primarily aimed at aligning this regulation with the proposed amendments to K.A.R. 5-1-4 and K.A.R. 5-1-6 in order to clarify that a water flowmeter is out of compliance if the requirements of those regulations are not met.

K.A.R. 5-1-10 specifies the duties of a water right owner when a water flowmeter is out of compliance. The proposed amendments would require that the owner of a noncompliant water flowmeter provide documentation to the Chief Engineer showing any removal and replacement of a required water flowmeter seal and invoices reflecting the purchase of a new water flowmeter or work done to repair a water flowmeter within 30 days of such purchase or work being done.

K.A.R. 5-1-11 provides that water flowmeter rate tests may be conducted by a nonagency person if certain requirements are met. The most substantive proposed amendment to this regulation requires that a water right owner who utilizes a nonagency person to perform a rate test certify to the Chief Engineer that the rate test was conducted and that it is accurate to the best of the nonagency person's knowledge.

K.A.R. 5-1-12 sets forth the requirements for water flowmeter manufacturers who wish to have a water flowmeter model added to the Chief Engineer's list of certified water flowmeters. The proposed amendments add a requirement that the manufacturer certify that the water flowmeter is equipped with an anti-reverse totalizer, consistent with the proposed amendments to K.A.R. 5-1-4 and K.A.R. 5-1-6, and otherwise seek to streamline the regulation by striking specific requirements that repeat the requirements of K.A.R. 5-1-4 and K.A.R. 5-1-6 and replacing them with a single requirement that the manufacturer certify that the water flowmeter complies with those regulations.

K.A.R. 5-14-10 provides for civil penalties for violations of the KWAA other than overpumping a water right's authorized quantity of water. The proposed amendments to this regulation would make violations of K.A.R. 5-1-4 and K.A.R. 5-1-6 subject to civil penalties as provided for 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. 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.

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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;

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;

Water right owners who are granted new water rights that require the installation of a water flowmeter or who repair or replace required water flowmeters after the effective date of these regulations will incur implementation and compliance costs related to these regulations. Water right owners could be individuals, business entities, or municipalities. These costs will apply the same to all types of owners.

A detailed quantification of implementation and compliance costs is as follows:

As to the anti-reverse gear requirements of K.A.R. 5-1-4, DWR records reflect that approximately 300 permits for new water rights are granted every year. Information obtained from McCrometer, Inc., a well-established meter manufacturer, indicates that the difference in cost between a new water flowmeter without an anti-reverse totalizer and one with an anti-reverse totalizer is between $66 and $72, for an average increase in cost of $69. DWR estimates that about half of water flowmeters installed in Kansas are manufactured by companies that no longer offer meters without anti-reverse mechanisms, i.e, about half of water users installing new meters would have paid the additional $69 per meter even without these regulation updates. Accordingly, DWR estimates that approximately 150 water users per year will incur an additional $69 cost for the installation of new meters as a result of the regulations, for a total cost of $10,350.

The requirement contained in K.A.R. 5-1-6 that flanged water flowmeters installed after the effective date of the regulation be installed a sufficient number of cross-drilled flange bolts will likely also impose some additional costs. DWR estimates that 40% of water flowmeters are flanged flowmeters and that this requirement will increase costs by approximately an additional $30 per water flowmeter. Accordingly, about 120 new meters per year (40 percent of the 300 new meters installed in a year) will require additional cross-drilled flange bolts at the additional cost of $30 per meter, for a total additional cost of $3,600 per year.

DWR records reflect that there are currently approximately 35,000 required water flowmeters installed in Kansas and that about 10% of those are repaired or replaced in a given year. Accordingly, approximately 3,500 water flowmeters are repaired or replaced in a given year. Assuming that half of replaced meters would have been installed with anti-reverse mechanisms even without these regulation amendments as set out above, about 1,750 water users will incur an increased cost of $69 per year each to replace water flowmeters as a result of these regulations, for a total cost of $120,750.

Approximately 1,400 water users (40 percent of the 3,500 meters repaired or replaced in a given year) will incur additional increased costs of $30 per meter related to the cross-drilled flange bolt requirement, for a total increase in costs of $42,000.

Accordingly, the annual implementation and compliance costs associated with K.A.R. 5-1-4 will be approximately **$131,100**. The annual implementation and compliance costs associated with K.A.R. 5-1-6 will be approximately **$45,600** per year. These costs will not affect the state economy as a whole.

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

Businesses that acquire new water rights for which a water flowmeter is required to be installed or repair or replace existing required water flowmeters after the effective date of these regulations will be directly affected by the proposed rules and regulations. This economic impact statement calculates the estimated total economic impact of these regulations to all water right owners but does not distinguish between costs related to water rights owned in an individual capacity and those owned by business entities, as many water rights are owned by agricultural producers in the name of an incorporated entity. The regulations treat all types of ownership and all types of water use the same, consistent with the requirements of the KWAA.

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

These regulations as a whole, including the provisions that will impose costs on the regulated public, will help ensure accurate measurement of diversions of water under water rights within the state. This is important for ensuring the lawful use of an increasingly scarce resource as well as for ensuring that no one user gains an unfair advantage over others. DWR feels the benefits of these regulations outweigh the costs as whole.

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 requirements of the proposed regulations that will impose costs on the regulated public apply only to water flowmeters installed or repaired after the effective date of the proposed regulations and provide for an exemption for water flowmeters with a pipe diameter less than four inches.

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 –

Costs to Local Governmental Units –

Costs to Individuals –

Water rights may be owned by individuals, businesses, or municipalities. This economic impact statement does not distinguish between the different types of ownership, as the

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KWAA does not make any distinction on those grounds in this regard.

Total Annual Cost of K.A.R. 5-1-14 – $131,100
Total annual cost of K.A.R. 5-1-6 - $45,600
(sum of above amounts)

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

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

K.A.R. 5-1-4 will impose implementation and compliance costs of approximately $131,100, and K.A.R. 5-1-16 will impose implementation and compliance costs of approximately $45,600, as discussed herein. Some water rights subject to those costs will be owned by individuals, and some will be owned by larger agricultural operations that may be corporate entities and employee a varying number of people.

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.

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The agency reached out to the League of Kansas Municipalities, the Kansas Association of Counties, and the Kansas Association of School Boards regarding the potential economic impact of the proposed rules and regulations and none of those entities indicated any economic impact to their organization as a result of these regulations.

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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