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APR 26 2019

Division of the Budget

Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the Budget

Kansas Department of Agriculture
Agency

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Agency Contact

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5-21-7
K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to: Division of the Budget
900 SW Jackson, Room 504-N
Topeka, KS 66612

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

K.A.R. 5-21-7 was adopted by the Chief Engineer of the Divisions of Water Resources, Kansas Department of Agriculture at the request of the Western Kansas Groundwater Management District No. 1 ("GMD1") in 2003. The regulation adopted rules applicable only in GMD1 which governed applications for a change in use made of water from irrigation to any other type of beneficial use based on past use. In 2017, the Chief Engineer updated K.A.R. 5-5-9, which is the statewide rule applicable to change in use made from irrigation to other uses. The GMD1 Board of Directors has requested their specific rule be repealed so that the new statewide rule may be applied within GMD1. K.A.R. 5-5-9 adopts irrigation return flows for each county for which changes in use from irrigation can be based, rather than using the past use and the alternative maximum caps previously adopted by GMD1.

II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. ***(If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)***

This regulation is not mandated by the federal government.

III. Agency analysis specifically addressing following:

A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

This regulation will likely enhance business activities and growth by increasing the predictability of water right quantities when the type of use is changed from irrigation to other uses, including changes to livestock use. GMD1 has approximately 25 medium to large livestock facilities as well as numerous smaller operations within the District's boundaries. One could argue they are the main economic driver in the area, providing local grain markets for irrigation and dryland farmers. Because K.A.R. 5-21-7 was based on the previous 10-year historical use, it was rendering inactive or little used irrigation water rights almost worthless and was preventing livestock facilities from expanding, and municipalities from securing water for the future. Since the District is closed to new appropriations the only way to secure water is the purchase of existing water rights. The board did not want 5-21-7 to be the cause for livestock facilities moving out of the area and harming the local economy.

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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 and regulation and on the state economy as a whole;

There are no additional economic effects by changing the calculation method for consumptive use.

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

All entities that own or purchase irrigation water rights, including farmers, ranchers, and any other water right owners that wish to change them from irrigation to other types of use.

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

The changes will create a simplified and predictable method for converting water rights from irrigation use to other types of use, which in turn will allow greater utilization of remaining resources within the district for entities that require additional water to grow. Without this change, future growth could be hampered because of the inability to secure additional water for new purposes or expanded purposes and additional unnecessary use of the depleted aquifer could occur in order to increase the 10-year average use calculation used by the existing regulation.

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 rule change itself will minimize impact. Other methods were considered but ultimately not adopted because they did not prevent the total quantity of water consumed from increasing.

F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

$0

Do the above total implementation and compliance costs exceed $3.0 million over any two-year period?

YES ☐ NO ☒

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

There are no actions mandated by updating this regulation. Only those persons wishing to change the type of use of a water right are subject to the regulation. This regulation changes the formula used, so that a predictable outcome from a change in consumptive use can be achieved without additional costs.

Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed $3.0

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million over any two-year period 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.

YES ☐ NO ☒

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.**

All of these groups were provided copies of the proposed regulations and no comments were provided to the agency. It is not anticipated that this regulation will impose any function or responsibilities upon cities, counties, or school districts.

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

The agency did extensive outreach prior to the passage of K.A.R. 5-5-9 (Attachment A), and the GMD1 conducted their own process through public board meetings. GMD1 began discussions at their April 2016 board meeting and the topic was discussed at virtually every meeting through September 2017. The board was presented with numerous comments for requests in the change from irrigators, livestock facilities, and municipalities.

I. **For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).**

None

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ATTACHMENT A

KANSAS DEPARTMENT OF AGRICULTURE
Outreach Plan
K.A.R. 5-5-9, 5-5-10 Amended

An action item in the *Long-Term Vision for the Future of Water Supply in Kansas* calls upon the Kansas Department of Agriculture to evaluate current consumptive use regulations to ensure they are being applied properly. In 2016, the Department also met with more than 200 representatives of the agriculture industry to develop a growth strategy for agriculture in the state. Feedback received during the development of the Vision and the growth strategy indicate that current consumptive use regulations are cumbersome and unnecessarily punitive to the livestock industry. Based on the feedback received over more than two years of outreach, KDA proposes amendments to K.A.R. 5-5-9 and 5-5-10, amendments that reflect a simple, science-based methodology for converting from irrigation to stockwatering or any other beneficial use without increasing the net consumptive use.

To gain feedback and ideas for the proposed amendments, KDA attended and discussed the consumptive use regulations at board meetings of each of the Groundwater Management Districts, Kansas Livestock Association, Kansas Farm Bureau, Kansas Water Congress, Kansas Water Authority, Regional Advisory Committees, and other stakeholder organizations. In addition, KDA met individually with several dairy and livestock facilities to review the proposal. To conclude the outreach, KDA held a webinar on January 5, 2017 with multiple attendees from the organizations listed above attending.

The amendments proposed reflect the final proposal which was modified several times over the past two years in an attempt to address as much feedback as possible. The initial proposal was to remove the consumptive use factor entirely. While this proposal was simple, it did not ensure that an increase in the net consumptive use would not occur during a change. The second proposal was to establish a single-statewide consumptive use factor with 10% being the initial proposal. This proposal went further to address the no net increase in consumptive use issue, but concern was expressed that this approach did not recognize regional differences in return flows. With that feedback KDA developed a map with county-level consumptive use factors based on return flow methodology employed with the Northwest Kansas (Republican River Compact) model. This proposal achieved the simple, science based approach stakeholders requested. The GMDs suggested the data could be refined by using local models where available. The final map proposed for incorporation and reference in K.A.R. 5-5-9 and 5-5-10 is based on return flow data for the counties within GMDs 1, 3, 4 and 5. At the point of the submission of these regulation changes the model for GMD 2 was not complete. For counties in eastern Kansas with no model developed but with reported irrigation use, the Northwest Kansas model was used to develop the county-level consumptive use factor. A state-wide average factor was calculated using the Northwest Kansas model for counties with no reported irrigation use.

Some feedback suggested that recent historical use not authorized quantity should be used to apply the consumptive use calculation. KDA did not feel that this approach would result in the simple and transparent consumptive use calculation. We do acknowledge that in very limited situations the method set forth may be unrealistic for the local groundwater conditions and may be at risk of causing impairment. For that reason, we've included an amendment to 5-5-9 that would allow the GMDs to provide a more site-specific consumptive use analysis as a recommendation to the chief engineer.

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The following proposed amendments to K.A.R. 5-5-9 and 5-5-10 represent more than two years of active and robust outreach with a variety of stakeholders. KDA feels that the proposed amendments addresses most of the feedback received and provides a simple, science-based approach for calculating consumptive use.

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