

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

The Kansas Department of Agriculture will conduct a public hearing at 2:00 p.m. on Monday, November 22, 2021 to consider the adoption of proposed regulations. Due to the public health concerns posed by the COVID-19 pandemic, the hearing proceedings will be conducted virtually via video conferencing system only. Anyone desiring to participate in the public hearing via video conference must pre-register at:

https://kansasag.zoom.us/meeting/register/tZMrcuuspzgoHdTsvy_mjsFzR4wz9BMkEqee

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

K.S.A. 82a-1041 authorizes groundwater management districts to develop local enhanced management areas (LEMA) that address any of the criteria in K.S.A. 82a-1036(a)-(d), which include groundwater declines, waste of water, and the unreasonable deterioration of water quality. K.S.A. 82a-1041(k) directs the Chief Engineer to adopt rules and regulations to effectuate and administer LEMAs. There are currently three LEMAs in place, one of which was renewed for a second five-year term beginning in 2018. All active LEMAs include mandatory reductions in water use to achieve a total savings in water use. While K.S.A. 82a-1041 already requires substantial due process and specific procedural protections for water right owners, including at least two public hearings, these regulations reflect the lessons learned from previous hearing processes and from a district court challenge which upheld a LEMA order. They also generally provide guidance as to the specific information that is most helpful for a hearing process, the specific hearing procedures to be followed, and procedures for later modifying existing LEMAs. A summary of the proposed regulations and their economic impact is as follows:

K.A.R. 5-19-1 – Provides definitions for relevant terms used throughout the regulations.

K.A.R. 5-19-2 – Sets forth the requirements for a LEMA plan and provides that the Kansas Department of Agriculture’s Division of Water Resources may assist in developing a plan or may informally review a plan before it is submitted to the Chief Engineer for formal review.

K.A.R. 5-19-3 – Sets forth the requirements for proceedings conducted for the designation of a LEMA. This regulation provides that the Chief Engineer may preside over a public hearing for such purpose or designate a presiding officer to do so. This regulation sets out the authority and responsibilities of the hearing officer as well as the rights and obligations of the parties to a LEMA proceeding.

K.A.R. 5-19-4 – Provides that the board of directors or staff of a groundwater management district (“GMD”) shall give due consideration to past voluntary reductions in water use that resulted in water conservation when determining water quantity allocations or eligible acres under a LEMA plan, if the plan’s allocations or eligible acres are based on past water use. The regulation further provides that, if a GMD determines that past voluntary reduction in water use has been accomplished through management or conservation practices, an allocation or determination of eligible acres under the LEMA plan, or any average used to calculate the same, may be adjusted based on the amount of water conserved for each year that the conservation measure was in place. Finally, this regulation provides that a GMD, in consultation with the Chief Engineer, develop any methods or criteria for determining reductions in water use that resulted in voluntary conservation as may be suitable to local conditions.

K.A.R. 5-19-5 – Sets forth the requirements for implementing changes to a LEMA plan after a LEMA has been designated, including changes resulting from an informal review of the plan by the GMD board of directors or a formal review by the Chief Engineer.

Economic Impact Statement for K.A.R. 5-19-1 through K.A.R. 5-19-5:

These regulations are not mandated by the federal government. Contiguous states do not have a similar law in place.

The proposed rules and regulations will not enhance or restrict business activities any further than the development of a LEMA already impacts such activities. The regulations provide procedural steps prior to the adoption or amendment of a LEMA and do not further impact business activities. If there is any impact, it is only to expand the due process and information made available to individual water right owners prior to establishment of a LEMA.

The regulations themselves will not have a direct economic impact on any sector, but they will provide predictability and ensure that adequate public outreach and due process is provided to water right owners prior to establishment or modification of a LEMA. While data is still somewhat limited, one study produced by Kansas State University shows that enactment of a LEMA in areas facing groundwater declines resulted in an increase of profits compared to areas just outside the LEMA area. We expect future studies and additional data to continue to be collected. (Monitoring the Impacts of the Sheridan 6 Local Enhanced Management Area, Dr. Bill Golden at https://www.agmanager.info/sites/default/files/pdf/SheridanCounty6_LEMA_2013-2017.pdf.)

Farmers, ranchers, feedlot owners, and any business that owns a water right within a groundwater management district would be directly affected by the proposed rules and regulations.

Additional costs are not anticipated because these regulations largely clarify and codify work that is already being performed. The costs are already carried by the GMDs and Division of Water Resources. These costs are mostly in the form of the additional staff time that is necessary to ensure LEMA plans were developed with adequate public outreach and that the goals, corrective controls, and benefits of the plan are clearly documented at a public hearing that provides adequate due process protections to water right owners.

Per K.S.A. 82a-1041, the Division of Water Resources will cover the costs of all public hearings necessary for the designation of a LEMA, and any proposed LEMA plan must meet specific requirements prior to hearing proceedings being initiated so that resources are not wasted on a plan that is not sufficient.

There will be no annual implementation and compliance costs incurred by or passed along to businesses, local governments, or members of the public.

K.S.A. 82a-1041 was adopted in 2012 and there have been three LEMAs successfully adopted since then, with one LEMA being renewed for a second term with modifications to allow for a simplified process based mostly on existing data. One LEMA proposal submitted to the Chief Engineer was rejected after initial review because of various shortcomings. These regulations do not require any additional costs for either the state or groundwater management districts and mostly place into regulation current standard practice regarding hearings and LEMA plan requirements. Each local district may approach development of a LEMA differently and is free to devote whatever resources they believe necessary during that process. Though such efforts will vary widely, this codification of standard practice is not expected to result in any additional cost.

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

In the summer and fall of 2019, an initial copy of these regulations was shared with various stakeholders, including the Kansas Farm Bureau and the Kansas Livestock Association. Division of Water Resources staff also attended, in-person, a board meeting of each of the five groundwater management districts. Over the last 18 months, multiple in-person meetings and conference calls were conducted with these same stakeholders. In addition, a meeting regarding these regulations was held with the Kansas Water Congress, the Kansas Municipal Utilities, and various individual water users were consulted.

If it were determined that LEMAs could not be created without these rules and regulations, then excessive declines in groundwater levels will likely continue to exhaustion in some areas, thereby substantially decreasing the value of the property and the economic impact on those respective communities, including limited ability to attract new business that requires substantial water amounts to operate.

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

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

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Kansas Department of Agriculture