

**Kansas Department of Health and Environment
Division of Environment**

**PRIMARY DRINKING WATER REGULATIONS
MISCELLANEOUS PROVISIONS
REGULATORY IMPACT STATEMENT**

Pursuant to K.S.A.77-416

PROPOSED NEW REGULATIONS

K.A.R. 28-15a-3;
K.A.R. 28-15a-29;
K.A.R. 28-15a-100 through K.A.R. 28-15a-101;
K.A.R. 28-15a-110 through K.A.R. 28-15a-111.

PROPOSED AMENDED REGULATIONS

K.A.R. 28-15-16;
K.A.R. 28-15-18.

PROPOSED REVOCATED REGULATIONS

K.A.R. 28-15-11;
K.A.R. 28-15-13 through K.A.R. 28-15-14;
K.A.R. 28-15-15a;
K.A.R. 28-15-20 through K.A.R. 28-15-22.

May 12, 2004

**Executive Summary of
Proposed New Regulations,
Proposed Amended Regulations, and
Proposed Revoked Regulations
Necessary to Complete the Set of
Primary Drinking Water Regulations under the
Safe Drinking Water Act**

Legal Authority

The Safe Drinking Water Act (SDWA - P.L.104-182), title XIV of the Public Health Service Act (P.L. 93-523), is the key federal law for protecting public water system customers from harmful contaminants. First enacted in 1974 and substantively amended in 1986 and 1996, the SDWA is administered through regulatory programs that establish standards and treatment requirements for drinking water, control underground injection of wastes that might contaminate water supplies, and protect groundwater. The Environmental Protection Agency (EPA) is the federal agency responsible for administering the provisions of the SDWA.

The 1974 law established the current federal-state arrangement in which states may be delegated primary implementation and enforcement authority for the drinking water program. The Public Water Supply Supervision (PWSS) program and the Drinking Water State Revolving Fund (DWSRF) loan program are the basic federal programs for regulating and financing SDWA requirements to the nations public water systems through state, tribal, and territorial governments. Kansas Statutes Annotated (K.S.A.) 65-171m states in part: “The secretary of health and environment shall adopt rules and regulations for the implementation of this act... The standards established under this section shall be at least as stringent as the national primary drinking water regulations adopted under public law...”

Background

There are a few proposed new regulations which are not specifically a part of any of the 9 new major rule categories currently being adopted by Kansas under the federal Safe Drinking Water Act, but are still part of the National Primary Drinking Water Regulations established under previous rules and/or serve to clarify and enhance some or all of the major rule components. The Department of Health and Environment (KDHE) is proposing to adopt these additional regulations as part of the state’s Primary Drinking Water Regulations to provide uniformity and clarity to other existing regulations which Kansas has not previously adopted.

These remaining regulations (ones which are not duplicated by any other existing Kansas Administrative Regulations but are being proposed for adoption in the new article 15a and numbering format) are addressed in this separate, “catch-all” regulatory impact statement. This statement also

addresses the only two existing Kansas Administrative Regulations which will be amended. They will reflect updated citations referring to the new Article 15a and eliminate duplicate language which will now be covered by the many other new Article 15a regulations. Seven other existing article 15 regulations will be revoked to eliminate duplication with the new updated regulations being adopted by reference.

Proposed new regulations which are not directly associated with the 9 major rule categories now being implemented, but are being incorporated into Article 15a as Primary Drinking Water Regulations for purposes of consistency and uniformity with the National Primary Drinking Water Regulations, and therefore require a separate regulatory impact statement, are as follows:

K.A.R. 28-15a-3. Coverage; conditions for exclusion.

K.A.R. 28-15a-29. Monitoring of consecutive public water supply systems.

K.A.R. 28-15a-100. Requirements for public water supply systems using point of entry devices.

K.A.R. 28-15a-101. Use of bottled water.

K.A.R. 28-15a-110. General requirements for treatment techniques.

K.A.R. 28-15a-111. Treatment techniques for acrylamide and epichlorohydrin.

The Kansas Department of Health and Environment recommends the adoption of these additional regulations as being advisable and necessary to achieve a comprehensive package of regulations which mirror the federal requirements. No new provisions are being added in these proposed new regulations other than are necessary to fulfill the primacy requirements of the Environmental Protection Agency.

When implemented, these proposed regulations will “adopt by reference” the language contained in the concurrent National Primary Drinking Water Regulations, as follows:

Part 141 - National Primary Drinking Water Regulations

Subpart A - General

§ 141.3 Coverage.

Subpart C - Monitoring and Analytical Requirements

§ 141.29 Monitoring of consecutive public water systems.

Subpart J - Use of Non-Centralized Treatment Devices

§ 141.100 Criteria and procedures for public water systems using point-of-entry devices.

§ 141.101 Use of bottled water.

Subpart K- Treatment Techniques

§ 141.110 General requirements.

§ 141.111 Treatment techniques for acrylamide and epichlorohydrin.

Environmental Benefit Statement

1. Need for proposed amendments and environmental benefit likely to accrue.

a. Need

The proposed new rules and the proposed amended rules are needed to complete a comprehensive adoption of primary drinking water regulations in Kansas. They will provide consistency in language and cross-referencing between the Kansas Primary Drinking Water Regulations and the National Primary Drinking Water Regulations which are being adopted by reference. It is necessary to concurrently revoke the existing regulations which are being replaced by the updated regulations being adopted by reference.

All of the changes are needed to continue approval of KDHE's PWSS program and DWSRF loan program by EPA. The SDWA requires state programs to meet federal primacy requirements for administering and enforcing the SDWA, or they must forfeit their PWSS program grants (approximately \$1.1 million to Kansas in FY2004) and DWSRF program loan capitalization grants (approximately \$9.5 million to Kansas in FY2004).

b. Environmental benefit

Adoption of the proposed regulations is expected to provide an increased level of environmental awareness and health protection to the general public through the improved safety of drinking water supplies. Other than the environmental benefits derived from the nine major rule categories being simultaneously proposed for implementation at this time, no other direct benefits to the extended environment are anticipated from the adoption of these related companion regulations. No environmental benefits or detriments are anticipated from the revocation of the existing regulations being simultaneously replaced.

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

This statement is not applicable to the implementation of these six remaining proposed new rules. The subjects of these rules concern general definitions, provisions, and reporting requirements which apply to the nine major rule categories being simultaneously proposed for implementation. K.A.R. 28-15a-111 is being adopted to retain some requirements already existing under current K.A.R. 28-15-14 which is being revoked.

Neither is this statement applicable to the implementation of these two proposed amended rules. The revisions to the two rules merely update citation references to the new Article 15a regulations and

eliminate duplicate language which will now be covered by the many other new Article 15a regulations.

This statement is also not applicable to the revocation of the seven existing regulations which are being replaced by the updated regulations being adopted by reference.

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

This statement is not applicable to the implementation of these six remaining proposed new rules. The subjects of these rules concern general definitions, provisions, and reporting requirements which apply to the nine major rule categories being simultaneously proposed for implementation. K.A.R. 28-15a-111 is being adopted to retain some requirements already existing under current K.A.R. 28-15-14 which is being revoked.

Neither is this statement applicable to the implementation of these two proposed amended rules. The revisions to the two rules merely update citation references to the new Article 15a regulations and eliminate duplicate language which will now be covered by the many other new Article 15a regulations.

This statement is also not applicable to the revocation of these seven existing regulations. The subjects of these rules which are being replaced by the new regulations being adopted by reference are addressed in the environmental impact statements of their associated nine major drinking water rule categories.

Economic Impact Statement

1. Are the proposed regulations or amendments mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program?

Proposed New Regulations:

K.A.R. 28-15a-3. Coverage; conditions for exclusion. No - this section is being proposed for additional definition and comprehension regarding the main body of the Primary Drinking Water Regulations.

K.A.R. 28-15a-29. Monitoring of consecutive public water supply systems. No - this section is being proposed to allow additional flexibility to the agency and leniency to Public Water Supply Systems by avoiding unnecessary duplication in complying with complicated monitoring requirements when several systems are hooked together.

K.A.R. 28-15a-100. Requirements for public water supply systems using point of entry devices. No - this section is being proposed to allow public water supplies an additional methodology for providing potable water to customers in cases where conventional treatment is not practical or possible.

K.A.R. 28-15a-101. Use of bottled water. No - this section is being proposed to limit public water supply use of bottled water to a temporary basis to avoid an unreasonable risk to health.

K.A.R. 28-15a-110. General requirements for treatment techniques. No - this section is being proposed for additional definition and comprehension regarding the requirements of proposed new regulation K.A.R. 28-15a-111 (the contents of which are already embodied in existing regulation K.A.R. 28-15-14(r). Monitoring requirements for laboratory tests.)

K.A.R. 28-15a-111. Treatment techniques for acrylamide and epichlorohydrin. No - this section is being proposed to retain some requirements already existing under current K.A.R. 28-15-14 which is being revoked.

Proposed Amended Regulations:

K.A.R. 28-15-16. Permit requirements for public water supply systems. No - this regulation is just being amended to update the citations referencing the new Article 15a regulations being adopted by reference.

K.A.R. 28-15-18. Operation and maintenance requirements. No - this regulation is just being amended to eliminate duplicate language which will now be covered by the updated Article 15a regulations being adopted by reference.

Proposed Revoked Regulations:

None of the following regulations proposed to be revoked are amendments mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program. They are being revoked to eliminate duplication with the updated article 15a regulations being adopted by reference.

K.A.R. 28-15-11. Definitions.

K.A.R. 28-15-13. Standards for bacteriological, chemical, physical, and radiological quality.

K.A.R. 28-15-14. Monitoring requirements for laboratory tests.

K.A.R. 28-15-15a. Public notice requirements.

K.A.R. 28-15-20. Exemptions and variances.

K.A.R. 28-15-21. Surface water treatment rule.

K.A.R. 28-15-22. Lead and copper; general requirements.

2. Do the proposed regulations or amendments exceed the requirements of applicable federal law?

No. Because the proposed new regulations will effectively adopt the appurtenant federal language by reference, they are no more stringent than federal law requires for these purposes. There are no substantive changes to the proposed amended regulations which exceed their present requirements.

3. Description of costs to agencies, to the general public, and to persons who are effected by, or subject to, the regulations.

These proposed new, amended and revoked regulations do not impose any additional costs to agencies, to the general public, or to persons who are effected by, or are subject to, the regulations other than which already exist.

a. Capital and annual costs of compliance with the proposed regulations or amendments and the persons who will bear those costs.

As with KDHE, the core components of compliance with the SDWA for the majority of these subject public water systems have already been developed and maintained for many years or will otherwise be incurred under the major rule categories being implemented pursuant to the National Primary Drinking Water Regulations. These regulations will require no additional time, labor, and/or financial resources by these entities to generate, maintain, retain, disclose, and/or provide information to the regulating party.

c. Costs which would likely accrue if the proposed regulations or amendments are not adopted, the persons who will bear the costs and those who will be effected by the failure to adopt the regulations.

It is not likely that any additional costs will accrue if the proposed regulations are not adopted because the proposed regulations are generally proposed for the purpose of clarifying, explaining, and linking other rules and regulations to be implemented under the Safe Drinking Water Act.

d. A detailed statement of the data and methodology used in estimating the costs used in the statement.

The data and methodology used in preparing this regulatory impact statement were primarily obtained from EPA references, documents, and publications on the Safe Drinking Water Act.

e. A description of any less costly or less intrusive methods that were considered by the agency and why such methods were rejected in favor of the proposed regulation.

There are no less intrusive or less costly methods that were available for consideration by KDHE to achieve the purposes of the proposed amendments.

f. Consultation with the League of Kansas Municipalities, Kansas Association of Counties, and Kansas Association of School Boards.

KDHE anticipates that the proposed amendments will have no direct or substantial fiscal impact on the constituency of the League of Kansas Municipalities, the Kansas Association of Counties, or the Kansas Association of School Boards. A copy of this regulatory impact statement was sent to each of these organizations on May 12, 2004.