

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

**PUBLIC NOTIFICATION RULE  
REGULATORY IMPACT STATEMENT**

Pursuant to K.S.A. 77-416.

**PROPOSED NEW REGULATIONS**

K.A.R. 28-15a-11;  
K.A.R. 28-15a-21;  
K.A.R. 28-15a-23;  
K.A.R. 28-15a-26;  
K.A.R. 28-15a-31;  
K.A.R. 28-15a-33;  
K.A.R. 28-15a-63;  
K.A.R. 28-15a-75;  
K.A.R. 28-15a-133;  
K.A.R. 28-15a-153 through K.A.R. 28-15a-155;  
K.A.R. 28-15a-175;  
K.A.R. 28-15a-201 through K.A.R. 28-15a-210.

May 12, 2004

**Executive Summary of  
Proposed New Regulations Necessary to Implement the  
Public Notification Rule  
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.) 65-171 m 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**

Public notification of drinking water violations and potential hazards is an integral part of the public health protection and consumer right-to-know provisions of the Safe Drinking Water Act amendments of 1996. In response to these Congressional mandates, the Environmental Protection Agency (EPA) promulgated a revised set of new and amended regulations which collectively comprise the Public Notification (PN) Rule. Under these revised reporting and notification requirements, it is necessary for subject public water supply systems to notify the public any time a national primary drinking water regulation has been violated or whenever a situation posing a potential risk to public health has occurred.

K.A.R. 28-15a-11, K.A.R. 28-15a-21, K.A.R. 28-15a-23, K.A.R. 28-15a-26, K.A.R. 28-15a-31, K.A.R. 28-15a-33, K.A.R. 28-15a-63, K.A.R. 28-15a-75, K.A.R. 28-15a-133, K.A.R. 28-15a-153 through K.A.R. 28-15a-155, K.A.R. 28-15a-175, and K.A.R. 28-15a-201 through K.A.R. 28-15a-210 are new regulations recommended under new Article 15a, titled “Primary Drinking Water Regulations”. This series of regulations replace the general public notification regulation for public water

supply systems contained in K.A.R. 28-15-15a with the public notification requirements of the 1996 Safe Drinking Water Act (SDWA) amendments contained in the PN Rule. K.A.R. 28-15-15a is concurrently being revoked.

The proposed new regulations revise the existing requirements by the following:

- Revises timing and distribution requirements - notice must be provided within 24 hours (Tier 1, instead of 72 hours), 30 days (Tier 2, instead of 14 days), or one year (Tier 3, instead of 90 days), based on potential severity of the situation.
- Expands the list of violations and situations requiring immediate notification and broadens applicability of the public notice to other situations, such as water borne disease outbreaks.
- Simplifies mandatory health effects language and adds standard language for monitoring violations and for encouraging notice distribution.
- Consolidates public notification requirements previously found in other parts of drinking water regulations.

These amendments are mandated by the 1996 Safe Drinking Water Act revisions for states wishing to retain administrative and enforcement primacy of the appurtenant drinking water regulations. EPA published the amendments as the PN rule in the *Federal Register*; Volume 65, Number 87 on Thursday, May 4, 2000.

As codified under C.F.R. 141, the recent federal revisions summarized as the Public Notification Rule which now require concurrent amendments to Kansas Administrative Regulations are summarized in their constituent articles, as follows:

## **Public Notification Rule**

### **Part 141 - National Primary Drinking Water Regulations**

#### **Subpart B - Maximum Contaminant Levels**

§ 141.11 Maximum contaminant levels for inorganic chemicals.

#### **Subpart C - Monitoring and Analytical Requirements**

§ 141.21 Coliform sampling.

§ 141.22 Turbidity sampling and analytical requirements.

- § 141.23 Inorganic sampling and analytical requirements.
- § 141.26 Monitoring frequency for radioactivity in community water systems.
- § 141.30 Total trihalomethanes sampling, analytical and other requirements.

**Subpart D - Reporting and Recordkeeping**

- § 141.31 Reporting requirements.
- § 141.32 Public notification.
- § 141.33 Record maintenance.

**Subpart G - National Revised Primary Drinking Water Regulations: Maximum Contaminant Levels and Maximum Residual Disinfectant Levels**

- § 141.63 Maximum contaminant levels (MCLs) for microbiological contaminants.

**Subpart H - Filtration and Disinfection**

- § 141.75 Reporting and recordkeeping requirements.

**Subpart L - Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors**

- § 141.133 Compliance requirements.

**Subpart O - Consumer Confidence Reports**

- § 141.153 Content of the reports.
- § 141.154 Required additional health information.
- § 141.155 Report delivery and recordkeeping.
- \* Appendix A to Subpart O of Part 141 - Regulated Contaminants
- \* Appendix B to Subpart O of Part 141 - Regulated Contaminants (Removed)
- \* Appendix C to Subpart O of Part 141 - Regulated Contaminants (Removed)

**Subpart P - Enhanced Filtration and Disinfection - Systems Serving 10,000 or More People**

- § 141.175 Reporting and recordkeeping requirements.

**Subpart Q - Public Notification of Drinking Water Violations**

- § 141.201 General public notification requirements.
- § 141.202 Tier 1 Public Notice - Form, manner and frequency of notice.
- § 141.203 Tier 2 Public Notice - Form, manner and frequency of notice.

- § 141.204 Tier 3 Public Notice - Form, manner and frequency of notice.
- § 141.205 Content of the public notice.
- § 141.206 Notice to new billing units or new customers.
- § 141.207 Special notice of the availability of unregulated contaminant monitoring results.
- § 141.208 Special notice for exceedance of the SMCL for fluoride.
- § 141.209 Special notice for nitrate exceedances above MCL by non-community water systems (NCWS), where granted permission by the primacy agency under §141.11(d).
- § 141.210 Notice by primacy agency on behalf of the public water system.

\*Appendix A to Subpart Q of Part 141 - NPDWR Violations and Other Situations  
Requiring Public Notice

\*Appendix B to Subpart Q of Part 141 - Standard Health Effects Language for Public  
Notification

\*Appendix C to Subpart Q of Part 141 - List of Acronyms Used in Public Notification  
Regulation

The new proposed regulations recommended as K.A.R. 28-15a-11, K.A.R. 28-15a-21, K.A.R. 28-15a-23, K.A.R. 28-15a-26, K.A.R. 28-15a-31, K.A.R. 28-15a-33, K.A.R. 28-15a-63, K.A.R. 28-15a-75, K.A.R. 28-15a-133, K.A.R. 28-15a-153 through K.A.R. 28-15a-155, K.A.R. 28-15a-175, and K.A.R. 28-15a-201 through K.A.R. 28-15a-210 will effectively adopt the federal language of these appurtenant National Primary Drinking Water Regulations by reference.

(K.A.R. 28-15a-22, K.A.R. 28-15a-30, and K.A.R. 28-15a-32 are proposed to be reserved.)

### **Environmental Benefit Statement**

#### **1) Need for proposed regulations and environmental benefit likely to accrue.**

##### **a. Need**

K.A.R. 28-15a-11, K.A.R. 28-15a-21, K.A.R. 28-15a-23, K.A.R. 28-15a-26, K.A.R. 28-15a-31, K.A.R. 28-15a-33, K.A.R. 28-15a-63, K.A.R. 28-15a-75, K.A.R. 28-15a-133, K.A.R. 28-15a-153 through K.A.R. 28-15a-155, K.A.R. 28-15a-175, and K.A.R. 28-15a-201 through K.A.R. 28-15a-210 need to be adopted in order to revise the general public notification requirements for public water supply systems to implement the public notification requirements of the 1996 Safe Drinking Water Act (SDWA) amendments. The general public notification regulations contained in K.A.R. 28-15-15a are being revoked.

Public notification of violations is an integral part of the public health protection and consumer right-to-know provisions of the 1996 SDWA amendments. This action is mandated by federal regulation 40 CFR Part 141, Subpart Q as first published by the Environmental Protection Agency (EPA) in the *Federal Register*; Volume 65, Number 87 on Thursday, May 4, 2000. However, due to several revisions of the final rule, the most recent version as published in the July 1, 2003 edition of the *Federal Register* is being adopted by reference.

##### **b. Environmental benefit**

There will be minimal, if any, direct environmental benefit from the new regulations. The new regulations will simply give consumers more accurate and timely information on violations, taking into account the seriousness of any potential adverse health effects that may be involved.

##### **c. Additional benefits of proposed regulations, amendments, or revocations.**

The U.S. Environmental Protection Agency (EPA) has considered environmental justice related issues with regard to the potential impacts of this regulation on the environmental and health conditions in low-income and minority communities. KDHE believes that two of the proposed requirements will be particularly beneficial to these communities. One is that public water supply systems must include information in language other than English if a significant portion of the population does not speak English. The other is that systems must make a good faith effort to reach consumers who are not bill paying customers.

**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 regulation, amendments, or revocations.**

Revoking the existing regulation in order to allow for the proposed new regulations does not put the public health or environment at risk. The proposed revocation and adoption of new regulations does not remove or introduce contaminants to be regulated, but rather specifies requirements for notifying the public when violations of primary drinking water regulations occur.

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

There are no specific contaminants proposed for control in the proposed new regulation. There are also no contaminants which will not be controlled by revoking K.A.R. 28-15-15a.

### **Economic Impact Statement**

#### **1) Are the proposed regulations, amendments, or revocations mandated by federal law?**

Yes - section 114 of the SDWA amendments of 1996 (Public Law 104-182), enacted August 6, 1996, amended section 1414(c) of the Act (42 U.S.C. 300g-3(c)). Sections 1414(c)(1) and (c)(2) were significantly revised and require EPA to amend the existing public notification regulations. These actions are mandated by federal regulations contained in 40 CFR Part 141, Subpart Q as first published by the Environmental Protection Agency (EPA) in the *Federal Register*; Volume 65, Number 187 on Thursday, May 4, 2000. 40 CFR § 141.201 mandates State implementation and primacy enforcement requirements for this federal regulation.

#### **2) Do the proposed regulations, amendments, or revocations exceed the requirements of applicable federal law?**

No.

#### **3) Description of costs to agencies, to the general public and to persons who are affected by or subject to the regulations.**

##### **a. Anticipated economic impact upon the Kansas Department of Health and Environment.**

There are no additional capital or annual costs associated with adopting the new series of regulations nor are there any costs associated with revoking K.A.R. 28-15-15a. The intent of the new regulations is only to revise the general public notification requirements currently contained in K.A.R. 28-15-15a by implementing the public notification requirements of the 1996 SDWA amendments.

##### **b. Anticipated financial impact upon other governmental agencies and upon private business or individuals.**

The Department does not anticipate economic impact on other governmental agencies or on private business.

##### **c. Anticipated economic impact upon public water systems in the State.**

Public water supply systems are only required to provide public notification for violations of State and Federal regulations. Notices must be sent within 24 hours (Tier 1), 30 days (Tier 2), or one year (Tier 3) depending on the degree of health impacted. The following table summarizes anticipated costs for each Tier of violation based on a water system with 1,000 service connections, or an estimated population of 3,300 persons.

<b>Anticipated Costs for Public Notice to be Distributed for Public Water Supply Systems Serving 1,000 Service Connections</b>				
<b>Violation Tier</b>	<b>Public Notice Requirements</b>	<b>Approved Methods of Notice</b>	<b>Cost per Method of Notice</b>	<b>Estimated Total Cost</b>
<b>Tier 1</b>	<b>Immediate, Within 24 hours</b>	<b>TV</b>	<b>\$2,000<sup>1</sup></b>	<b>\$160 - \$3,360</b>
		<b>Radio</b>	<b>\$200<sup>2</sup></b>	
		<b>Direct Delivery</b>	<b>\$160<sup>3</sup></b>	
<b>Tier 2</b>	<b>As Soon as Possible, Within 30 days</b>	<b>Mail (copies &amp; postage)</b>	<b>\$530<sup>4</sup></b>	<b>\$160 - \$720</b>
		<b>Newspaper</b>	<b>\$190<sup>5</sup></b>	
		<b>Direct Delivery</b>	<b>\$160<sup>3</sup></b>	
<b>Tier 3</b>	<b>Annual Notice</b>	<b>Mail (copies &amp; postage)</b>	<b>\$530<sup>4</sup></b>	<b>\$0 - \$530</b>
		<b>Posting in Public Venues</b>	<b>\$10</b>	
		<b>Consumer Confidence Report (CCR)</b>	<b>No Additional Cost<sup>6</sup></b>	

<sup>1</sup> Cost based of providing notice during two separate newscasts @ \$1,000 per newscast according to: KSNT Chanel 27 - Topeka.

<sup>2</sup> Cost based on one 60 second notice given on radio according to: Kansas Radio Information Network

<sup>3</sup> Cost based on \$ 0.16 per copy at Kinkos

<sup>4</sup> Cost based on \$ 0.16 per copy at Kinkos plus \$ 0.37 postage per public notice

<sup>5</sup> Cost based on publishing an article in the newspaper according to: Topeka Capital Journal

<sup>6</sup> The Consumer Confidence Report (CCR) Rule requires community public water supply systems to distribute an annual water quality report to their customers. The Public Notification Rule allows systems to use the CCR for a Tier 3 annual notice. Because the CCR is already required by regulation, the notice may be provided to customers at no additional cost.

Although media outlets are listed as a means of providing notice to the public, a water system is not required to expend financial resources for media notice. In many instances, KDHE may assist a water system by issuing a press release on behalf of the water system. According to estimates provided by EPA, these revisions to the Public Notification Rule will actually decrease the economic impact by allowing for flexible means of providing notice to the public.

**d. Costs which would likely accrue if the proposed regulations are not adopted.**

The SDWA requires State programs to meet federal guidelines or lose the public water supply SRF capitalization grant. Failure to amend the regulation would result in the department losing approximately \$1.1 million in program grant money and approximately \$9.5 million from the loan program, all of which are funded by the federal government.

**e. Less costly or intrusive methods that were considered, but rejected, and the reason for rejection.**

There are no less costly or intrusive methods available for consideration by KDHE to achieve the purpose of the amended regulation.

**f. Consultation with 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.