

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

**CONSUMER CONFIDENCE REPORT RULE
REGULATORY IMPACT STATEMENT**

Pursuant to K.S.A. 77-416

PROPOSED NEW REGULATIONS

K.A.R. 28-15a-151
through
K.A.R. 28-15a-155.

May 12, 2004

**Executive Summary of
Proposed New Regulations Necessary to Implement the
Consumer Confidence Report (CCR) 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

K.A.R. 28-15a-151 through K.A.R. 28-15a-155 are new regulations which require each community water system to prepare and submit annual Consumer Confidence Reports (CCRs) to their customers. The reports will contain information on the sources and quality of the water delivered by the systems and characterize the risks (if any) from exposure to contaminants detected in the drinking water. The information contained in CCRs can raise consumers' awareness of where their water comes from, help them understand the process by which safe drinking water is delivered to their homes and educated them about the importance of preventative measures, such as source water protection that ensure a safe drinking water supply.

These reports are the centerpiece of public right-to-know requirements authorized by Congress and promulgated by the Environmental Protection Agency as the Consumer Confidence Report Rule. These revisions are mandated by 1996 amendments to the Safe Drinking Water Act for states wishing to retain administrative and enforcement primacy of the subject drinking water regulations. EPA published the amendments as the CCR Rule in the *Federal Register*; Volume 63, Number 160 on Wednesday, August 19, 1998.

Proposed new regulations K.A.R. 28-15a-151 through K.A.R. 28-15a-155 are recommended under a Kansas Administrative Regulations new Article 15a titled “Primary Drinking Water Regulations”. As codified under 40 C.F.R. 141, the recent federal revisions summarized as the Consumer Confidence Report Rule which now require concurrent amendments to Kansas Administrative Regulations are summarized in their constituent articles, as follows:

Consumer Confidence Report Rule

Part 141 - National Primary Drinking Water Regulations

Subpart O - Consumer Confidence Reports

§ 141.151 Purpose and applicability of this subpart.

§ 141.152 Effective dates.

§ 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

The new proposed regulations recommended as K.A.R. 28-15a-151 through K.A.R. 28-15a-155 will effectively adopt the federal language of these appurtenant National Primary Drinking Water Regulations by reference.

Environmental Benefit Statement

1) Need for proposed regulation and environmental benefit likely to accrue.

a. Need

Consumer confidence reports (CCRs) are the centerpiece of public right-to-know as mandated by the 1996 amendments to the Safe Drinking Water Act (SDWA). This action is mandated by federal regulation 40 CFR Part 141, Subpart O as published by the Environmental Protection Agency (EPA) in the *Federal Register*; Volume 63, Number 160 on Wednesday, August 19, 1998. 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. The proposed regulation will simply provide valuable information to customers of community water systems and allow them to make personal health-based decisions regarding their drinking water consumption. These reports are the centerpiece of public right-to-know in the Safe Drinking Water Act (SDWA).

c. Additional benefits of proposed regulation

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 community water 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 or amendments.

The proposed regulation does not put the public health or environment at risk. There is no research or data available.

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 regulation.

Economic Impact Statement

1) Are the proposed regulations or amendments mandated by federal law?

Yes. Consumer confidence reports (CCRs) are the centerpiece of public right-to-know as mandated by the 1996 amendments to the Safe Drinking Water Act (SDWA). This action is mandated by federal regulation 40 CFR Part 141, Subpart O as published by the Environmental Protection Agency (EPA) in the *Federal Register*; Volume 63, Number 160 on Wednesday, August 19, 1998. 40 CFR § 141.151 mandates State implementation and primacy enforcement requirements for this federal law.

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

No, although the state regulation requires water systems to submit a certification that the CCR has been mailed to its customers at the same time that the CCR is submitted to KDHE. The federal requirement is to submit the certification within three months following the date that the report must be submitted. This modification imposes no additional requirements on the water systems.

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.

Costs to the Kansas Department of Health and Environment (KDHE) would include the staff time spent providing technical assistance and support in collecting and interpreting data, time spent in reviewing the reports as well as time spent complying with federal requirements for record keeping in 40 CFR § 142.14, and reporting 40 CFR §142.15. EPA estimates the initial burden incurred by implementing agencies for activities associated with the proposed regulations to be an average of 1,964 hours at a cost of \$55,693 per State. KDHE estimates the annual burden to be an annual average of 1,600 hours at a cost of ± \$24,000.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to, or for, a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing way to comply with any previous applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 community water systems in the State.

Community water systems are those which are public water supplies as defined by K.S.A. 65-162a and which have at least 10 service connections used by year-round residents or that regularly serves 25 year-round residents. Kansas currently permits 913 community water systems across the State, thus 913 systems will be affected by the proposed regulation.

EPA estimated the initial costs of complying with the requirements of the proposed rule, and subsequently adjusted its estimate to account for additional requirements added in the final rule: That systems store a copy of the report for three years after distributing it, and that systems serving 100,000 or more people place their CCR on the Internet.

The costs of complying with the rule were evaluated in terms of fixed costs and variable costs. Fixed costs include those costs that a community water system must incur to comply with the requirements regardless of how many copies of the report it must deliver. These costs include the costs associated with reviewing the regulations, collecting data regarding monitoring results and violations, preparing the technical content of the CCR in a format suitable for distribution, identifying the recipients of the reports, and providing instructions about report production. Variable costs are costs that increase or decrease along with the number of CCRs to be delivered. These costs include costs of producing the reports (costs of paper, photocopying or printing, and labels) and postage.

Based on its analysis, the EPA estimates the annual cost of delivering a report to every customer served by all community water systems nationally is \$20,807,555. EPA estimates that the average cost per system is approximately \$445 annually.

The Kansas Rural Water Association (KRWA) has provided assistance with preparing and distributing CCRs to approximately 550 community water systems across the State. KRWA was consulted in estimating the costs associated with the proposed regulation for community water systems in Kansas. Based on the information obtained from KRWA, the costs for systems are as follows:

- \$100.00 - minimum for preparation of the report
- \$.14 - printing cost for each report
- \$.37 - postage cost for each report

It has been estimated by KDHE that an average of 500 reports per system are mailed to customers. Based on the numbers provided by KRWA, an average cost of \$355 would be incurred by the average size community water system, e.g.

- 500 copies X \$0.14 per copy = \$ 70.00
500 copies X \$0.37 per copy = \$185.00
Preparation of the report = \$100.00
\$355.00

The City of Wichita, the largest community water system in the State (serving more than 344,000 customers) has provided an estimate of \$9,300.00 per year to prepare and distribute the annual reports. However, this system has additional costs associated with the requirement for community water systems serving 100,00 or more persons to post the report to a publicly-accessible site on the Internet as required in § 141.155(f).

The costs for complying with this new, proposed regulation are dependent upon the following factors:

- size of the system/number of customers served.
- posting the report on the Internet (systems serving \$100,000 customers).
- preparing and distributing the report themselves or contracting the assistance of an outside entity, such as KRWA.
- additional content in the reports, not required by this proposed regulation (eg. pictures, graphics).

d. Costs which would likely accrue if the proposed regulation is not adopted.

Failure to adopt 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.

Under section 141.155(g) of the CCR rule, the requirement that community water systems mail the CCR to its customers can be waived by the Governor or his/her designee for systems serving fewer than 10,000 persons. The State of Kansas currently regulates 913 community water systems, only 31 of which serve 10,000 or more people. Therefore, the Governor's waiver would have allowed 882 community water systems in the State to forgo the mailing requirements of the regulation, saving these systems the costs of printing and mailing or otherwise distributing the reports. Based on input from stakeholders, KDHE has not recommended the Governor waive this requirement because this is important information about public drinking water which is desired by constituents.

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 a direct and significant impact on the constituency of the League of Kansas Municipalities. No direct impact is anticipated on the constituencies of the Kansas Association of School Boards or the Kansas Association of Counties. A copy of this Regulatory Impact Statement was sent to each of these organizations on May 12, 2004.