

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

**LEAD AND COPPER RULE MINOR REVISIONS
REGULATORY IMPACT STATEMENT**

Pursuant to K.S.A. 77-416

PROPOSED NEW REGULATIONS

K.A.R. 28-15a-43;
K.A.R. 28-15a-80 through K.A.R. 28-15a-91.

May 12, 2004

**Executive Summary of
Proposed New Regulations Necessary to Implement the
Lead and Copper Rule Minor Revisions
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

On January 12, 2000, EPA published minor amendments known as the “Lead and Copper Rule Minor Revisions” (LCRMR) to the 1991 Lead and Copper Rule. These revisions are mandated by 1996 amendments to the Safe Drinking Water Act (SDWA) for states wishing to retain administrative and enforcement primacy of the subject drinking water regulations.

K.A.R. 28-15a-43, K.A.R. 28-15a-81 and K.A.R. 28-15a-82, and K.A.R. 28-15a-84 through K.A.R. 28-15a-90 are new regulations proposed under new Article 15a (titled “Primary Drinking Water Regulations”) which represent the amendments necessary to incorporate the federal rule changes into Kansas Administrative Regulations. (*K.A.R. 28-15a-80, K.A.R. 28-15a-83, and K.A.R. 28-15a-91 are new regulations also proposed under Article 15a which were part of the original Lead and Copper Rule; they have existing counterparts in current regulations, and are concurrently being proposed as new Article 15a regulations as part of the LCRMR revisions for purposes of consistency and uniformity.) Subsequently, the general lead and copper requirements in K.A.R. 28-15-22 will be revoked.

These LCRMR amendments streamline requirements, promote consistent national implementation, and in many cases, reduce burden for water systems. EPA calls the revisions “minor” because they do not change the action levels of 0.015 mg/L for lead and 1.3 mg/L for copper, or Maximum Contaminant Level Goals (MCLGs) established by the 1991 Lead and Copper Rule, which are 0 mg/L for lead and 1.3 mg/L for copper. They also do not affect the rule's basic requirements to optimize corrosion control and, if appropriate, treat source water, deliver public education, and replace lead service lines. Entities potentially regulated by the LCRMR are public water systems (PWSs) that are classified as either community water systems (CWSs) or non-transient non-community water systems (NTNCWSs).

As codified under 40 C.F.R. 141, the recent federal revisions summarized as the Lead and Copper Rule Minor Revisions which now require concurrent amendments to Kansas Administrative Regulations are summarized in their constituent articles, as follows:

Lead And Copper Rule Minor Revisions

Part 141 - National Primary Drinking Water Regulations

Subpart D - Reporting and Recordkeeping

§ 141.43 Prohibition on use of lead pipes, solder, and flux.

Subpart I - Control of Lead and Copper

§ 141.81 Applicability of corrosion control treatment to small, medium-size & large water systems.

§ 141.82 Description of corrosion control treatment requirements.

§ 141.84 Lead service line replacement requirements.

§ 141.85 Public education and supplemental monitoring requirements.

§ 141.86 Monitoring requirements for lead and copper in tap water.

§ 141.87 Monitoring requirements for water quality parameters.

§ 141.88 Monitoring requirements for lead and copper in source water.

§ 141.89 Analytical methods.

§ 141.90 Reporting requirements.

*Existing 1991 Lead and Copper Rule regulations not being amended by the 1991 LCRMR revisions but now being converted to the new K.A.R. Article 15a “Primary Drinking Water Regulations”

*§ 141.80 General requirements.

*§ 141.83 Source water treatment requirements.

*§ 141.91 Recordkeeping requirements.

The new proposed regulations recommended as K.A.R. 28-15a-43, and K.A.R. 28-15a-80 through K.A.R. 28-15a-91 will effectively adopt the federal language of these appurtenant National Primary Drinking Water Regulations by reference.

Environmental Benefit Statement

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

a. Need

K.A.R. 28-15a-43, and K.A.R. 28-15a-80 through K.A.R. 28-15a-91 need to be adopted in order to revise the 1991 Rule for lead and copper general requirements with the revisions promulgated under the amendments of the 1996 Safe Drinking Water Act (SDWA). The regulations are no more stringent than the requirements of the federal rule.

This action is mandated by federal regulation 40 CFR Part 141, Subpart I as published by the Environmental Protection Agency (EPA) in the *Federal Register*; Volume 65, on Wednesday, January 12, 2000. The rule revisions are being adopted to be consistent with EPA requirements.

b. Environmental benefit

There will be minimal, if any, direct environmental benefit from the regulations. The new regulations will simply streamline requirements, promote consistent national implementation, and in many cases, reduce burden for water systems. Minimal environmental benefit may be achieved by the lead service line (LSL) replacement requirement.

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

Aside from the benefits of protecting human health by the control, treatment, and public education of lead and copper in drinking water, there are no other environmental benefits achieved by revoking the general regulation to allow for the minor revisions of the original 1991 Lead and Copper Rule.

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.

Lead poses a significant public health threat because it builds up in the body over many years and can cause damage to the brain, red blood cells and kidneys. The greatest risk is to young children and pregnant women. EPA estimates that approximately 20% of human exposure to lead is attributable to lead in drinking water. Copper is an essential nutrient, but at high doses it can cause stomach and intestinal distress, liver and kidney damage, and anemia.

The goal of the rule is to provide maximum human health protection by reducing lead and copper levels at consumers' taps to as close to the MCLGs as is feasible. The minor revisions are necessary to promote effective implementation of the LCR.

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.

The revocation of K.A.R. 28-15-22 and the adoption of the new regulations do not change the action levels of 0.015 mg/L for lead and 1.3 mg/L for copper, or Maximum Contaminant Level Goals (MCLGs) established by the 1991 Lead and Copper Rule, which are 0 mg/L for lead and 1.3 mg/L for copper. They also do not affect the rule's basic requirements to optimize corrosion control and, if appropriate, treat source water, deliver public education, and replace lead service lines.

Economic Impact Statement

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

Yes - these revisions are mandated by the 1996 amendments to the Safe Drinking Water Act (SDWA). This action is mandated by federal regulation 40 CFR Part 141, Subpart I as published by the Environmental Protection Agency (EPA) in the *Federal Register*; Volume 65, on Wednesday, January 12, 2000. 40 C.F.R. § 142.10 mandates state implementation and primacy enforcement requirements for this federal law.

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.

EPA projects that States choosing to maintain primacy for this rule may incur a slight increase in administrative costs due to the adoption of these revisions, additional training, and the modifications to the State reporting requirements. However, the actual burdens incurred will vary from State to State and, EPA projects that the increased burden will not be significant. Accordingly, this rule will not have a substantial direct effect on the States or on intergovernmental relationships or responsibilities. The rule contains a number of provisions intended to reduce burden and costs associated with implementing the 1991 requirements. These savings offset much of the burden and cost associated with the revisions.

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

According to EPA, this rule will not have a substantial direct effect on the States or on intergovernmental relationships or responsibilities.

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

Public water systems include both publicly and privately owned water systems. EPA is required to estimate the burden on water systems for complying with the final rule. 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 purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously 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.

The rule amends EPA's 1991 Lead and Copper Rule to reduce the burden on PWSs, especially smaller systems. These revisions make a number of changes including the establishment of differing compliance or reporting requirements for smaller systems that take into account the resources available to smaller water systems. In addition, the final regulation clarifies and simplifies the current compliance and reporting requirements and eliminates unnecessary or redundant requirements. The Agency has incorporated provisions into the rule that specifically benefit many small entities. These include monitoring waiver provisions where the risk of high levels of lead or copper at the tap are low and greater flexibility in the delivery of required public education materials. In addition, other provisions, while not specifically targeted for small entities, should further reduce burden for many small entities. These provisions include accelerated reduced monitoring, sample invalidation, elimination of sample site justifications and sample collection certifications, and flexibility for the State to calculate 90th percentile levels for the system.

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 proposed new regulations.

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.