Kansas Department of Health and Environment

Regulatory Impact Statement

pursuant to KSA 2013 Supp. 77-416

Proposed Amended Regulations KAR 28-14-1 and KAR 28-14-2

February 14, 2014

Executive Summary of Proposed Regulations

KSA 65-156 authorizes the Secretary of the Kansas Department of Health and Environment (KDHE) to make rules and regulations for the collection of samples and analysis of drinking water submitted by municipalities, corporations, companies or individual members of the public. Water samples, either natural or treated, may be submitted to KDHE's Office of Laboratory Services (aka Kansas Health and Environmental Laboratories (KHEL)) in order to analyze the sample for specified constituents. The statute authorizes the Secretary to establish and fix fees for any such sampling and analysis services in order to cover the cost of those services. As such, the Secretary is required to adopt regulations fixing such fees and to periodically increase or decrease such fees.

The purpose of this proposed regulatory change is two-fold. The first is to correct the name of the laboratory in the regulations. The current regulations identify the laboratory as the "division of health and environmental laboratories". The correct name is the "office of laboratory services" pursuant to KSA 2013 Supp. 75-5608.

The second is to revise the fee schedule in KAR 28-14-2 and to add tests that are now available at the laboratory. As authorized in KSA 65-156, the Secretary is to periodically adjust the fees to cover the services provided by the laboratory. The last time the fees were adjusted was in November 2002. The proposed fee adjustment would increase the cost for most analytical testing. But the fees will still be below the laboratory's actual costs and market rates. Based on the volume of testing completed last fiscal year, the updated fee schedule will provide the laboratory with an additional $233,400 per year. These fees will be deposited into the Office of Laboratory Services operating fund and will be used by the laboratory to continue providing these vital services to the public water suppliers in the state.

Summary of Substantive Changes

To cover part of KDHE's cost for analysis of public water supply samples, KSA 65-156 authorizes KDHE to collect fees from public water suppliers for services rendered by KHEL. The current fee schedule for analytical services was last enacted in November 2002.

KDHE has decided to increase fees to offset the reductions in state general funds that were used to support the analytical services provided by KHEL. The Kansas Legislature agreed with this direction by passing legislation fiscal year 2013 that created a new fee fund for KHEL and that allows the fees collected by KHEL to be placed into the Office of Laboratory Services operating fund pursuant to KSA 2013 Supp. 65-157.

The fee revenue currently collected is inadequate to meet the projected budgetary needs of the public water supply collection and analysis program at KHEL. It has been determined that most fees must be increased to sustain necessary program activities.

Fees

KDHE has prepared this proposal for an increase in many of the laboratory fees in order to maintain the current level of service. KHEL has also proposed fees for some new analytical parameters. Based upon a review of industry-based fees for similar services, KDHE has decided to move forward with an increase in analysis fees for public water supply services. The proposed new fee amounts were determined based upon staffing and operating costs related to actual time spent on drinking water sample analysis. The increase of fees remains consistent with the need to cover the direct and indirect costs of administering the program. The fee increase, in combination with some reduction in program staff size, will allow KDHE to continue to provide these services to municipalities, corporations, companies, and other members of the public.

In State Fiscal Year 2013, KDHE collected approximately $690,361 for laboratory analysis fees from public water suppliers. Using fiscal year 2013 information for the anticipated number of tests requested in the current fiscal year, it is anticipated that the projected annual revenue increase with the new fee structure will be approximately $233,400. The additional revenues will support the continued operation of the public water supply analytical services program for the next several years.

Environmental Benefit Statement

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

a. Need

These amended regulations are being proposed for the purpose of increasing fees for the analysis of drinking water services for public water suppliers by increasing the fee rates in KAR 28-14-2. The amended regulations also add some additional tests that are now being offered at KHEL and correct the name of the laboratory in the regulations.

The purpose of the proposed fee increases is to ensure that fees are consistent with the actual program cost as presently projected. The fee-related provisions of KSA 65-156 specifically direct the department to "fix the fees for any services rendered under said rules and regulations to cover the cost of the services." Recent state general fund reductions for KHEL have caused the need to increase fee rates to meet the projected funding requirements for the program.

The proposed fee increases are consistent with the purpose of the program. Current fee revenue will not adequately sustain the public water supply analysis program. Without the fee increases, the applicable KHEL program would require a staffing reduction, which would jeopardize program adequacy.

b. Environmental benefit

The proposed changes to drinking water analytical fees do not provide direct environmental benefits. However, failure to sustain an adequate state public drinking water sample analysis

program, due to a budget shortfall, could result in serious human health impacts. The program provides reasonable fixed rates to municipalities, corporations, and private companies for the analysis of their drinking water samples. The great majority of the services rendered are to analyze drinking water samples for municipalities and community water suppliers. The preventive nature of this program has virtually eliminated waterborne disease within the state.

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.

Risk is not being reduced by increasing water supply analytical fees as proposed. However, failure to raise fees would increase the risk associated with the failure of timely testing of drinking water within the state. Funding shortfalls could undermine the preventive aspects of the public water supply analysis program causing drinking water suppliers to be out of compliance or increasing their operating cost.

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

Not applicable.

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?

No.

2) Do the proposed regulations or amendments 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 are subject to, the regulations:
a. Capital and annual costs of compliance with the proposed regulations or amendments and the persons who will bear those costs.

There is no cost to the agency or the general public unless they are part of a public water supply system in the form of a municipality, corporation, company or member of the public who manages a water supply. The total estimated annual cost for the all public water supply systems, due to the proposed increase in fees, is $233,400. This is based on the number of samples submitted to KHEL in fiscal year 2013 multiplied by the difference between the old fee rate and the new proposed rate. Provided below is the method used to forecast the fiscal impact to the drinking water suppliers. The adjusted fee rate will generate an estimated additional $233,400 per year of revenue for the laboratory. There are approximately 1000 drinking water suppliers in the state that use KHEL for their analytical work. The average increased cost to the drinking water providers is $233 per year. The drinking water providers may increase their rates to their customers to offset the new proposed analytical rates by KHEL.

GROUP CODE	GROUP NAME	Current	Proposed	Difference	Samples	Fiscal Impact
CIOS,CIOC	PWS PARAMETERS	$ 244.00	$ 296.00	$ 52.00	600	$ 31,200.00
TIOC,TIOS	PWS TEST SOURCE PARAMETERS	$ 251.00	$ 300.00	$ 49.00	35	$ 1,715.00
CNO3	NITRATE	$ 7.00	$ 10.00	$ 3.00	1550	$ 4,650.00
CFLU	FLUORIDE	$ 7.00	$ 10.00	$ 3.00	302	$ 906.00
2029	TOC FINISHED WATER	$ 10.00	$ 20.00	$ 10.00	822	$ 8,220.00
CTOA	TOC RAW WATER	$ 16.00	$ 30.00	$ 14.00	822	$ 11,508.00
QD	WATER QUALITY DISTRIBUTION	$ 31.00	$ 43.00	$ 12.00	10	$ 120.00
QP	WATER QUALITY POE	$ 54.00	$ 71.00	$ 17.00	10	$ 170.00
CLCR	LEAD-COPPER	$ 16.00	$ 18.00	$ 2.00	3500	$ 7,000.00
HAA	Haloacetic Acid	$ 125.00	$ 125.00	$ -	1318	$ -
SOC	Semi Vol-Organic Comp	$ 250.00	$ 250.00	$ -	30	$ -
2050	Atrazine or Alachlor	$ 100.00	$ 100.00	$ -	111	$ -
C515	Chlorinated Acid Pesticides	$ 125.00	$ 125.00	$ -	30	$ -
CIMA	Immunoassay IA (Triazine Screen)	$ 35.00	$ 40.00	$ 5.00	337	$ 1,685.00
C507	Organochlorine Pest- PCBS	$ 150.00	$ 150.00	$ -	60	$ -
THM	Trihalomethanes	$ 40.00	$ 50.00	$ 10.00	1003	$ 10,030.00
CVOC	Volatiles	$ 100.00	$ 100.00	$ -	438	$ -
TCR	Coliform determination	$ 8.00	$ 12.00	$ 4.00	35700	$ 142,800.00
Radiochemical analyses:						
	(1) Gamma isotopic	$60.00	$60.00	$ -		$ -
CRAL	(2) Gross alpha	$35.00	$35.00	$ -	330	$ -
	(3) Gross beta	$35.00	$35.00	$ -		$ -
CCRM	(4) Radium-226	$50.00	$75.00	$ 25.00	268	$ 6,700.00
CCRM	(5) Radium-228	$50.00	$75.00	$ 25.00	268	$ 6,700.00
TRAD	(6) Radon	$35.00	$35.00	$ -	30	$ -
	(7) Tritium	$60.00	$60.00	$ -		$ -
CRAL	(8) Uranium	$70.00	$70.00	$ -	67	$ -
Total						$ 233,404.00

b. Initial and annual costs of implementing and enforcing the proposed regulations or amendments, including the estimated amount of paperwork, and the state agencies, other governmental agencies or other persons or entities who will bear the costs.

There will be no initial or annual costs to implement or enforce the fee increases. The fees are already being collected.

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 affected by the failure to adopt the regulations.

If the fee increase amendments are not adopted, KHEL will not receive adequate revenues for the drinking water analytical program. If the proposed increases in water sampling and analysis fees are not adopted, KDHE would need to reduce public water supply analytical program services.

Only the drinking water suppliers bear the costs of the laboratory services. KHDE has estimated the new fee rates would increase the drinking water providers annual cost by an average of $233 per year. The drinking water providers may increase their rates to the customer to offset this rate increase.

If KHEL were to discontinue its services, the drinking water suppliers would be required to contract the work to private laboratories. The private laboratories' rates are routinely higher than the new proposed rates at KHEL. Therefore, the drinking water suppliers would incur higher costs and the compliance rate would potentially be lower. A failure to implement the proposed fee increase would likely cause reduction in services, which would result in reduced compliance rates by the drinking water suppliers and could jeopardize the health of some Kansans.

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

The estimated cost of implementing the new proposed fee rates was calculated based upon the number of facilities currently paying fees for each type of analytical service (KDHE's current fee schedule) and the proposed change in the fee for each specific type of analysis.

e. 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 regulations.

The new proposed fee rates are designed to generate the revenue needed to sustain the KHEL drinking water analysis program at an already reduced staffing level. Current statutory authority allows a variety of fees to be collected from the facilities that utilize KHEL's analytical services. No less intrusive or costly methods were identified based upon existing statutory authority. The new proposed fee rates at KHEL are still below market rate at private laboratories. This regulatory approach will spread the costs evenly among all affected public water suppliers and is based on a "fee for service" scheme. The fee schedules were developed to ensure that analysis fees are adequate to fund the program.

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

Cities, counties and school boards may incur minimal cost increases as a result of these regulatory changes. If they operate a public water supply system, they will incur an average $233 per year increase for analytical services from KHEL and rates to customers may increase. Copies of the draft regulations and regulatory impact statement will be forwarded electronically to the Kansas League of Municipalities, Kansas Association of Counties and Kansas Association of School Boards at the time of publication of the Notice of Hearing in the Kansas *Register*.