

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

REGULATORY IMPACT STATEMENT

Pursuant to K.S.A. 2013 Supp. 77-416

PROPOSED AMENDMENT TO K.A.R. 28-16-28g

December 12, 2013

Executive Summary of Proposed Regulation

The Kansas Department of Health and Environment (KDHE) is responsible for designating uses of surface waters as part of establishing surface water quality standards. Designated uses of surface waters are listed in the Kansas Surface Water Register which is adopted by reference in K.A.R. 28-16-28g. A use attainability analysis (UAA) is a procedure to evaluate water bodies and assign designated uses.

Upon review since the last Kansas Surface Water Register (December 15, 2010), 269 stream segments and three lakes are proposed for change of designated uses. Five new lakes were added with UAAs completed. Three new stream segments are added and two lakes are proposed for deletion. After conducting and reviewing previous UAAs and assigning the appropriate designated uses, KDHE proposes modifications to K.A.R.28-16-28g and the Kansas Surface Water Register. After conducting and reviewing previous UAAs and assigning the appropriate designated uses, KDHE has updated the Kansas Surface Water Register and proposes an amendment to K.A.R. 28-16-28g to adopt by reference the Kansas Surface Water Register dated December 12, 2013.

Environmental Benefit Statement

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

a. Need

The proposed amendment is in response to the requirements of K.S.A. 2013 Supp. 82a-2001 and K.S.A. 2013 Supp. 82a-2004 and changes to the Kansas Surface Water Register due to UAA findings. K.S.A. 2013 Supp. 82a-2001 establishes five requirements for a classified stream. One of the requirements of classification is to determine if streams less than one cubic feet per second (cfs) are capable of supporting aquatic life and are an important aquatic life refuge. K.S.A. 2013 Supp. 82a-2004 requires that a UAA be conducted on all classified stream segments of the state where a designated UAA has not been completed prior to December 31, 2007. For classified surface waters other than classified stream segments (lakes, ponds and wetlands), KDHE conducted UAAs for designated uses other than recreation for which a UAA had not previously been completed. In response to K.S.A. 2013 Supp. 82a-2001, K.S.A. 2013 Supp. 82a-2004 and changes to the Kansas Surface Water Register due to UAA findings, KDHE proposes amending K.A.R. 28-16-28g to adopt by reference a new Kansas Surface Water Register dated December 12, 2013, which updates recreational uses and other designated uses determined by completed UAAs.

b. Environmental Benefit

Through the process of conducting UAAs, KDHE will identify and classify those stream segments and lakes for which a UAA had not previously been completed. This will allow KDHE the opportunity to assign the appropriate designated uses of these surface waters to be protected.

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.

Classified stream segments are those stream segments defined in K.S.A. 2013 Supp. 82a-2001(a). K.S.A. 2013 Supp. 82a-2001(a) establishes five requirements for a classified stream. One of the requirements of classification is to conduct a scientific study to determine if a stream flow of less than one cfs is capable of supporting aquatic life. K.S.A. 2013 Supp. 82a-2004(b) requires KDHE to publish a listing of classified stream segments that have had UAAs conducted for which all designated uses were completed (excluding recreational use), for which all designated uses were not completed and for which all designated uses were not attainable. For such classified stream segments for which designated use attainability analyses for use other than recreational use had not been completed, the Department has completed a designated use attainability analysis for use other than recreational use. The proposed 2013 Kansas Surface Water Register identifies changes on designated uses for 269 stream segments and three lakes due to review of existing UAAs. Three new stream segments were added and UAAs were completed in 2013 for five new lakes.

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.

The updated use designations deal only with the designated uses assigned to stream segments and lakes. The changes do not address the bacterial indicator criteria for the various subclasses/subcategories of recreational use or water quality criteria for the other designated uses of surface waters.

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?

The Federal Water Pollution Control Act (Clean Water Act) requires states to establish water quality standards. Federal water quality standards regulation 40 CFR 131.10 requires each state to take into account the use and value of water for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agriculture, industrial and other purposes including navigation.

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

No. The proposed amendments are based on requirements set forth in federal regulations.

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 are no additional costs of compliance resulting from changes in designated use designations. The only regulatory authority KDHE has is to control bacteria from point sources. Most point sources are already required to disinfect (remove bacteria) and most existing domestic water supply diversions from surface waters are already required to apply appropriate treatment. The proposed changes identify the designated uses on 269 stream segments and three lakes as the result of review of previous UAA findings. Because of usage of the U.S. Geological Survey current National Hydrography Dataset (NHD), 44 name changes and 103 latitude and/or longitude changes are proposed for streams. Two new stream segments are added because of new National Pollutant Discharge Elimination System (NPDES) permits and one segment is added because of NHD adjustment. Addition of five new classified lakes is proposed. KDHE conducted aquatic life, contact recreational, irrigation, livestock watering, domestic water supply, industrial water supply and groundwater UAAs on these lakes in 2013. Two lakes are slated for deletion while two existing lakes are proposed for a name change.

(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.

Implementing the proposed amended regulation and changes in the updated Kansas Surface Water Register should not cause any significant annual cost increases. The Department anticipates any additional UAA work will be absorbed within the current budget and staff.

(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.

There will be no significant additional costs related to the Kansas Surface Water Register. Legal costs may be incurred only if the Kansas Surface Water Register is not completed.

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

It is anticipated that the cost associated with the proposed amended regulation is only the designated uses and recreational UAAs conducted by KDHE. Funds to cover the original cost to conduct designated use and recreational UAAs were specifically appropriated from the State Water Plan and state general funds.

(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.

Pursuant to K.S.A. 2013 Supp. 82a-2001 and K.S.A. 2013 Supp. 82a-2004, no other options are available.

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

KDHE does not anticipate that the proposed regulation will have any significant fiscal impact on constituencies of these organizations. A copy of proposed regulation, regulatory impact statement and notice of hearing was sent to each organization electronically when the notice of public hearing was published in the *Kansas Register*.