

**State of Kansas  
Department of Health and Environment**

**Notice of Hearing on Proposed Administrative Regulations**

The Kansas Department of Health and Environment, Division of Environment, Bureau of Water, will conduct a public hearing at 1 p.m. Thursday, May 15, 2014, in the Azure Conference Room, fourth floor, of the Curtis State Office Building, 1000 S.W. Jackson, Topeka, to consider the adoption of proposed amended regulation K.A.R. 28-16-28g regarding Kansas surface water quality standards that adopts by reference the updated Kansas Surface Water Register.

A summary of the proposed regulation and the estimated economic impact follows:

**Summary of Regulation:**

**K.A.R. 28-16-28g** is the classification and use designation section of the Kansas Surface Water Quality Standards. Water bodies are evaluated by a designated use attainability analysis (UAA) to determine the appropriate use designations. Designated uses of surface waters are listed in the Kansas Surface Water Register that is adopted by reference in K.A.R. 28-16-28g. The register identifies major classified streams, lakes and wetlands and the uses that are existing or attainable. Upon review since the last Kansas Surface Water Register dated December 15, 2010, 269 stream segments and three lakes are proposed for change of designated uses. Five new lakes are added with UAAs completed. Three new stream segments are added and two lakes are proposed for deletion (removed from classification).

**Economic Impact:**

Costs to the agency: The costs to KDHE of the updated and revised Kansas Surface Water Register adopted by the proposed amended regulation are from conducting the designated uses and recreational UAAs. Funds to cover the original designated use and recreational UAAs were specifically appropriated from the State Water Plan and state general funds. KDHE anticipates that

any additional UAA work will be absorbed within the current budget and staff. Costs to implement the proposed amended regulation and updated Kansas Surface Water Register should not cause any significant annual cost increases.

Costs to the public: There are no known additional costs to the public of additional UAA work or implementing the proposed amended regulation.

Costs to other governmental agencies or units: There are no known additional costs associated with implementation of the proposed amended regulation.

The time period between publication of this notice and the scheduled hearing serves as the required public comment period of at least 60 days for the purpose of receiving written public comments on the proposed amended regulation. At any time during the public comment period any interested parties may submit written comments to Mike Butler, Kansas Department of Health and Environment, Bureau of Water, 1000 S.W. Jackson, Suite 430, Topeka, 66612-1274, by fax at 785-296-6247, or by e-mail to [mbutler@kdheks.gov](mailto:mbutler@kdheks.gov). During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulation as well as an opportunity to submit their written comments. In order to give each individual an opportunity to present their views, it may be necessary for the hearing officer to request that each presenter limit any oral presentation to an appropriate time frame.

Complete copies of the proposed regulation and the corresponding regulatory impact statement may be obtained on the Bureau of Water website at

[http://www.kdheks.gov/befs/download/Current\\_Kansas\\_Surface\\_Register.pdf](http://www.kdheks.gov/befs/download/Current_Kansas_Surface_Register.pdf)

or by contacting Mike Butler at the address above, 785-296-5580 or fax 785-296-6247.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and regulatory impact statement in an

accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Mike Butler.

Robert Moser, M.D.

Secretary of Health and Environment

28-16-28g. Surface water register. The classification and use designations of surface waters of the state shall be those identified in the department's "Kansas surface water register," dated December ~~15, 2010~~ 12, 2013, which is hereby adopted by reference. (Authorized by K.S.A. ~~2010~~ 2013 Supp. 82a-2010; implementing K.S.A. ~~2010~~ 2013 Supp. 82a-2001, 82a-2002, 82a-2003, 82a-2004, and 82a-2005; effective Jan. 28, 2005; amended May 20, 2005; amended Sept. 15, 2006; amended May 25, 2007; amended June 6, 2008; amended Feb. 26, 2010; amended Aug. 5, 2011; amended P- \_\_\_\_\_.)

**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*.