



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

Agency: State Board of Health

☒ **Original Notice**

☐ **Supplemental Notice to WSR**

☐ **Continuance of WSR**

☒ **Preproposal Statement of Inquiry was filed as WSR 18-01-080 ; or**

☐ **Expedited Rule Making--Proposed notice was filed as WSR ; or**

☐ **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).**

☐ **Proposal is exempt under RCW .**

Title of rule and other identifying information: (describe subject) Chapter 246-290 WAC, Group A public water supplies. The proposal makes amendments to this chapter to include requirements regarding per- and polyfluoroalkyl substances (PFAS), federally unregulated contaminants. The proposal establishes the administrative processes for setting drinking water quality standards as state action levels (SAL) and state maximum contaminant levels (MCLs). The proposal also establishes SALs for five PFAS contaminants: perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorohexane sulfonic acid (PFHxS), and perfluorononanoic acid (PFNA) and perfluorobutane sulfonic acid (PFBS). The proposal requires Group A community and nontransient noncommunity public water systems to test for PFAS. For those Group A water systems that have detections of PFAS, but do not exceed the SAL, the proposal requires additional ongoing monitoring, with the frequency of monitoring based upon the detected level in comparison to the SAL. It also establishes reporting, recordkeeping, and consumer confidence report requirements. For those Group A water systems that exceed the SAL, the proposal requires follow-up actions such as monitoring, public notification, and additional recordkeeping and reporting requirements.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
10/13/2021	1:30 pm	<p>In response to the COVID-19 pandemic and public health emergency, the State Board of Health will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington State. A virtual public hearing, without a physical meeting space, will be held instead. Please register for the public hearing for Chapter 246-290 WAC, Group A public water supplies.</p> <p>registration link here</p> <p>After registering, you will receive a confirmation email containing information about joining the webinar.</p>	

Date of intended adoption: 10/13/2021 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Jocelyn W. Jones

Address: Washington State Department of Health

Office of the Assistant Secretary
PO Box 47820-7820

Email: <https://fortress.wa.gov/doh/policyreview>

Fax: N/A

Other: PFAS1@doh.wa.gov

By (date) 09/03/2021

Assistance for persons with disabilities:

Contact Jocelyn W. Jones

Phone: 360-236-3020

Fax: N/A

TTY: 711

Email: jocelyn.jones@doh.wa.gov

Other: PFAS1@doh.wa.gov

By (date) 07/29/2021

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of the proposal is to protect public health by establishing SALs for PFAS, which are currently unregulated contaminants without an established maximum contaminant level (MCL), and which may be present in Washington state Group A public drinking water systems.

At a minimum, Group A water systems will be required to take one sample every three years for each active and permanent or seasonal source to determine if the drinking water is contaminated with PFAS.

The anticipated effect of the proposal is to inform customers of Group A drinking water systems about the quality of the drinking water. Group A water systems with an exceedance of any PFAS SAL must notify their customers so they can make more informed decisions about their health and the health of their families.

In addition, the Department of Health (department) and purveyors of Group A water systems will have more data available upon which to base future decisions regarding PFAS drinking water contamination and potential mitigation options, should they be necessary to protect public health.

The proposal also establishes the process the board and the department would be required to follow should it ever be necessary to establish a state MCL.

Reasons supporting proposal: Reasons supporting proposal: PFAS are chemicals that have been used in industry and consumer products such as carpeting, apparels, upholstery, food paper wrappings, fire-fighting foams, and metal plating worldwide since the 1950s. Wide use combined with their persistent and bioaccumulative properties have led to widespread detection of PFOA, PFOS, PFHxS, and PFNA in the blood serum of the general U.S. population. Average serum levels of PFAS may be more than 100 times higher than national norms in communities exposed via contaminated drinking water and currently the state has limited data on PFAS contamination in Group A water systems in Washington state.

A recent Center for Disease Control / Agency for Toxic Substances and Disease Registry study in the community of Airway Heights, Washington showed that study participants had mean serum levels of PFHxS that were 60 times higher than national norms even two years after PFAS contamination had been fully mitigated in their community drinking water. Mean serum levels of PFOS and PFOA in participant's serum were 10 and six times higher than national norms, respectively.

Health concerns about PFAS stem from the wide range of adverse effects observed in animal testing. Effects of the best studied PFAS include liver, kidney, thyroid and immune toxicity; developmental and reproductive toxicity, hormone disruption and tumors in certain organs like the liver. The specific profile of effects and the weight of evidence varies by the PFAS examined.

Monitoring for the five proposed PFAS contaminants in the state's Group A water systems will assist the state in identifying PFAS contamination in Group A water systems statewide and is intended to help the department locate sources of contamination and allow for source control measures to be implemented, stopping future contamination from occurring.

Public notification requirements will inform drinking water customers if their drinking water exceeds a SAL, providing customers with information that can protect their health and safety and that of their families.

Statutory authority for adoption: RCW 43.20.050

Statute being implemented: RCW 70A.125.080

Is rule necessary because of a:		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Federal Law? Federal Court Decision? State Court Decision?		
If yes, CITATION:		
Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None		
Name of proponent: (person or organization) State Board of Health		<input type="checkbox"/> Private <input type="checkbox"/> Public <input checked="" type="checkbox"/> Governmental
Name of agency personnel responsible for:		
	Name	Office Location
Drafting:	Jocelyn W. Jones	111 Israel Rd SE, Tumwater, WA 98501
Implementation:	ODW Director	111 Israel Rd SE, Tumwater, WA 98501
Enforcement:	ODW Director	111 Israel Rd SE, Tumwater, WA 98501
		Phone
		360-236-3020
		360-236-3178
		360-236-3178
Is a school district fiscal impact statement required under RCW 28A.305.135?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, insert statement here:		
The public may obtain a copy of the school district fiscal impact statement by contacting: Name: Address: Phone: Fax: TTY: Email: Other:		
Is a cost-benefit analysis required under RCW 34.05.328?		
<input checked="" type="checkbox"/> Yes: A preliminary cost-benefit analysis may be obtained by contacting: Name: Jocelyn W. Jones Address: Department of Health PO Box 47820 Olympia Washington 98504-7820 Phone: 3602363020 Fax: N/A TTY: 711 Email: jocelyn.jones@doh.wa.gov Other: pfas1@doh.wa.gov		
<input type="checkbox"/> No: Please explain:		

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

☐ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

☐ This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

☐ This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

☐ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

☐ RCW 34.05.310 (4)(b)
(Internal government operations)

☐ RCW 34.05.310 (4)(e)
(Dictated by statute)

☐ RCW 34.05.310 (4)(c)
(Incorporation by reference)

☐ RCW 34.05.310 (4)(f)
(Set or adjust fees)

☐ RCW 34.05.310 (4)(d)
(Correct or clarify language)

☐ RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

☐ This rule proposal, or portions of the proposal, is exempt under RCW .

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

☐ No Briefly summarize the agency's analysis showing how costs were calculated.

☒ Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The majority of estimated costs of the proposed rule are associated with collecting and analyzing the samples. These costs are relatively fixed and are not contingent or impacted by the size of the business. Public notices, follow-up monitoring, and including these contaminants in the system's CCR are not required unless a Group A water system detects or exceeds a PFAS SAL in a compliance sample.

Because the costs are relatively fixed the department assumes that that rule will have a disproportionate impact on small businesses.

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Jocelyn W. Jones

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Phone: 360-236-3020

Fax: N/A

TTY: 711

Email: jocelyn.jones@doh.wa.gov

Other: pfas1@doh.wa.gov

Date:

Name: .Michelle A. Davis

Title: Executive Director

Signature:

Place signature here