

WSR 24-05-084

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed February 21, 2024, 11:04 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Climate resilience element in water system plans. The department of health (department) is proposing amending WAC 246-290-100 Water system plans, to add a climate resilience element as a requirement for public water systems with 1,000 or more connections. The proposal also makes editorial changes to align with the code reviser's 2023 Bill Drafting Guide.

Hearing Location(s): On April 4, 2024, at 3:30 p.m., at the Department of Health, 111 Israel Road S.E., Town Center 2, Room 166 and 167, Tumwater, WA 98501; or virtually. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_Cmcv1G-kS8eT0_Ra98onmA. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: April 22, 2024.

Submit Written Comments to: Jocelyn W. Jones, Department of Health, Division of Environmental Public Health, P.O. Box 47820, Olympia, WA 98504-7820, email drinkingwaterrule@doh.wa.gov, <https://fortress.wa.gov/doh/policyreview/>, by April 4, 2024.

Assistance for Persons with Disabilities: Contact Jocelyn W. Jones, phone 360-236-3020, TTY 711, email drinkingwaterrule@doh.wa.gov, by March 20, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2023, the legislature passed E2SHB 1181 that added a new section to chapter 43.20 RCW. The new law, RCW 43.20.310, requires the department to ensure that Group A community public water system plans for water systems with 1,000 or more connections, initiated after June 30, 2025, include a climate resilience element. The proposed change to WAC 246-290-100 Water system plan, impacts only those systems with 1,000 or more connections. The proposed change would add the statutorily required climate resilience element to the existing list of required water system plan elements and include a reference to the statute.

Reasons Supporting Proposal: RCW 43.20.310 requires Group A community public water systems with 1,000 or more connections to include a climate resilience element in their water system plans and the department believes updating the rule to include this required element will provide consistency and clarity for water systems. The department will update the water system planning guidebook with additional details and will work with water systems as directed by RCW 43.20.310 to assist water systems with compliance.

Statutory Authority for Adoption: E2SHB 1181 (chapter 228, Laws of 2023); chapter 43.20 RCW.

Statute Being Implemented: RCW 43.20.310.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Jocelyn W. Jones, Department of Health, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3020; Implementation: Brad Burnham, Department of Health, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3102; and Enforcement:

Holly Meyers, Department of Health, 111 Israel Road S.E., Tumwater, WA 98501, 509-329-2113.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposal incorporates by reference without material change, which is exempt under RCW 34.05.328 (5)(b)(iii).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: The proposed rule incorporates by reference without material change and is dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

February 21, 2024
 Kristin Peterson, JD
 Chief of Policy
 for Umair A. Shah, MD, MPH
 Secretary

OTS-5188.1

AMENDATORY SECTION (Amending WSR 21-23-097, filed 11/17/21, effective 1/1/22)

WAC 246-290-100 Water system plan. (1) The purpose of this section is to establish a uniform process for purveyors to:

- (a) Demonstrate system capacity as defined in WAC 246-290-010;
 - (b) Demonstrate how the system will address present and future needs in a manner consistent with other relevant plans and local, state, and federal laws, including applicable land use plans;
 - (c) Establish eligibility for funding under chapter 246-296 WAC.
- (2) Purveyors of the following categories of community public water systems shall submit a water system plan for review and approval by the department:
- (a) Systems serving (~~one thousand~~) 1,000 or more service connections;
 - (b) Systems required to develop water system plans under the Public Water System Coordination Act of 1977, chapter 70A.100 RCW;
 - (c) Any system experiencing problems related to system capacity, as determined by the department;
 - (d) All new systems;

(e) Any system proposing to:

(i) Increase or otherwise modify the service area identified in a previously approved planning document; or

(ii) Increase the geographical area where direct service is provided if a planning or engineering document has not been previously approved; or

(iii) Install additions, extensions, or changes to existing source, storage, or transmission facilities and increase the approved number of service connections.

(f) Any system proposing to use the document submittal exception process in WAC 246-290-125; or

(g) Any system operating under or proposing to operate under an unspecified number of service connections.

(3) The purveyor shall work with the department to establish the relative priority and level of detail for each element of the water system plan. The priority and level of detail must be related to size, complexity, water supply characteristics, forecasted demand characteristics, past performance, planning history, and use of the water system. Project reports may be combined with a water system plan.

(4) The purveyor shall, at a minimum, address the following elements in the water system plan:

(a) Description of the water system, including:

(i) Ownership and management, including the current names, addresses, and telephone numbers of the owners, operators, and emergency contact persons for the system;

(ii) System history and background;

(iii) Related plans, such as coordinated water system plans, abbreviated coordinated water system plans, local land use plans, groundwater management plans, and basin plans;

(iv) Service area maps, including retail service area and future service area, if applicable, and areas where wholesale water is provided to other public water systems. Municipal water suppliers shall identify the area that will expand their water rights' place of use if the requirements under WAC 246-290-107 have been met;

(v) Service area characteristics, agreements, and policies;

(vi) Satellite management, if applicable.

(b) Basic planning data, including:

(i) Current population, service connections, water use, and equivalent residential units; and

(ii) Sufficient water production and consumption data to identify trends including the following elements:

(A) Monthly and annual production totals for each source, including water purchased from another public water system;

(B) Annual usage totals for each customer class as determined by the purveyor;

(C) Annual usage totals for water supplied to other public water systems; and

(D) For systems serving (~~one thousand~~) 1,000 or more total connections, a description of the seasonal variations in consumption patterns of each customer class defined by the purveyor.

(iii) Designated land use, zoning, population, and water demand within the water system's service area for the plan approval period, and at least a (~~twenty~~) 20-year planning period.

(c) Demand forecasts, developed under WAC 246-290-221, for the plan approval period, and at least a (~~twenty~~) 20-year planning period. These must show future use with and without savings expected from the system's water use efficiency program.

(d) For systems serving (~~one thousand~~) 1,000 or more total connections, a demand forecast for the plan approval period and at least a (~~twenty~~) 20-year planning period that projects demand if the measures deemed cost-effective per WAC 246-290-810 were implemented.

(e) System analysis, including:

(i) System design standards;

(ii) Water quality analysis;

(iii) Inventory and analysis of water system facilities; and

(iv) Summary of system deficiencies.

(f) Water resource analysis for the plan approval period and at least a (~~twenty~~) 20-year planning period, including:

(i) A water use efficiency program. Municipal water suppliers must meet the requirements in WAC 246-290-810;

(ii) Source of supply analysis, which includes:

(A) An evaluation of water supply alternatives if additional water rights will be pursued within (~~twenty~~) 20 years; and

(B) A narrative description of the system's water supply characteristics and the foreseeable effect from current and future use on the water quantity and quality of any body of water from which its water is diverted or withdrawn based on existing data and studies;

(iii) A water shortage response plan as a component of the reliability and emergency response requirements under WAC 246-290-420;

(iv) Water right self-assessment;

(v) Water supply reliability analysis;

(vi) Interties; and

(vii) For systems serving (~~one thousand~~) 1,000 or more total connections, an evaluation of opportunities for the use of reclaimed water, where they exist, as defined in RCW 90.46.120.

(g) Source water protection program under WAC 246-290-135.

(h) Operation and maintenance program under WAC 246-290-415 and 246-290-654(5), as applicable.

(i) Improvement program, including a capital improvement schedule that identifies all capital improvements scheduled within the plan approval period and any major projects or other capital improvements planned within at least a (~~twenty~~) 20-year planning period.

(j) Financial program, including demonstration of financial viability by providing:

(i) A summary of past income and expenses;

(ii) A balanced operational budget for the plan approval period;

(iii) A plan for collecting the revenue necessary to maintain cash flow stability and to fund the capital improvement program and emergency improvements; and

(iv) An evaluation that has considered:

(A) The affordability of water rates; and

(B) The feasibility of adopting and implementing a rate structure that encourages water demand efficiency.

(k) Other documents, such as:

(i) Documentation of SEPA compliance;

(ii) Agreements; and

(iii) Comments from each local government with jurisdiction and adjacent utilities.

(1) Systems serving 1,000 or more connections, a climate resilience element as required under RCW 43.20.310.

(5) Purveyors intending to implement the project report and construction document submittal exceptions authorized under WAC 246-290-125 must include:

(a) Standard construction specifications for distribution mains; and/or

(b) Design and construction standards for distribution-related projects, including:

(i) Description of project report and construction document internal review procedures, including engineering design review and construction completion reporting requirements;

(ii) Construction-related policies and requirements for external parties, including consumers and developers;

(iii) Performance and sizing criteria; and

(iv) General reference to construction materials and methods.

(6) Purveyors shall submit reports identifying the progress in developing their water system plans if required by the department.

(7) Purveyors shall transmit water system plans to adjacent utilities and each local government with jurisdiction, to assess consistency with ongoing and adopted planning efforts.

(8) Prior to department approval of a water system plan or a water system plan update, the purveyor shall:

(a) Hold an informational meeting for the water system consumers and notify consumers in a way that is appropriate to the size of the water system; and

(b) Obtain approval of the water system plan from the purveyor's governing body or elected governing board.

(9) Department approval of a water system plan is effective for (~~ten~~) 10 years from the date of written approval unless:

(a) The purveyor requests and receives a plan approval period of less than (~~ten~~) 10 years; or

(b) The department requests an updated plan.

(10) The purveyor shall update the water system plan and obtain department approval at or before the expiration of the current plan approval if the system meets any of the conditions of subsection (2) of this section.

(11) Water system plan amendments. A purveyor may submit an amendment to its current approved water system plan for department approval at any time during the plan approval period. Project reports may be included in a water system plan amendment to meet the requirements under WAC 246-290-110(3). Department approval of a water system plan amendment does not alter the current plan approval period in accordance with subsection (9) of this section and does not satisfy the requirement of subsection (2) of this section to update the water system plan.