

WSR 24-20-093
PREPROPOSAL STATEMENT OF INQUIRY
STATE BOARD OF HEALTH

[Filed September 30, 2024, 1:57 p.m.]

Subject of Possible Rule Making: Per- and polyfluoroalkyl substances (PFAS); state action levels, state maximum contaminant levels, and public notifications for Group A public water supplies in chapter 246-290 WAC.

The state board of health (board) is considering amending WAC 246-290-315 State action levels (SALs) and state minimum contaminant levels (MCLs) and 246-290-71006 Public notice for contaminants with a SAL and other unregulated contaminants to align with the federal Environmental Protection Agency's (EPA) new federal standards for PFAS. The board adopted an emergency rule, WSR 24-14-016 on June 24, 2024, to amend WAC 246-290-315 to keep state protections for drinking water in place until the EPA's new federal standards take effect. The board is considering permanent rule amendments to incorporate the changes from the emergency rule making to keep current state protections in place until the federal provisions take effect and to explore changing the SALs to align with the new EPA standards before the federal effective date. The board may also consider editorial changes and updates to definitions to ensure consistency of terms between federal and state rules in WAC 246-290-010 and 246-290-025.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 43.20.050 (2) (a).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The rules may be necessary to keep current protections related to SALs in place until the federal effective date, and not the adoption date. This is because many important federal provisions, including public notification of high contaminant levels, are not effective until 2029. The way the state rule was written, the protections that were in place under state SALs would go away until that date. This emergency rule prevents the notification requirements from lapsing; however, emergency rules are only effective for 120 days.

To ensure safe drinking water, water must be tested for contaminants. The board establishes SALs and MCLs to ensure contaminate levels are tested and actions are taken above a certain threshold. The board sets criteria for the adoption of SALs and MCLs in WAC 246-290-315 and includes criteria that would apply upon federal adoption of MCLs. WAC 246-290-315(8) states that upon federal adoption of an MCL, the MCL will supersede an SAL and associated requirements, including monitoring and public notice. The emergency rule amended this language to state that when a federal MCL takes effect, the MCL will supersede an SAL and associated requirements, including monitoring and public notice. It may be necessary to permanently adopt this language.

The federal government recently adopted MCLs related to PFAS. MCLs are stricter than Washington's current SALs, but do not take effect until 2029. This means that people served by water systems that detect contamination levels above the MCL, but below the SAL, will not be notified within 30 days that their water contains elevated levels of PFAS. Because Washington already has a notification system in place for the SALs, the board is exploring adopting the stricter contaminant values as SALs so that these customers can receive additional protections sooner than the federal effective date.

The board may also consider editorial changes and updates to definitions to ensure consistency of terms between federal and state rules in WAC 246-290-010 and 246-290-025.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The board will coordinate and collaborate with the state department of health, which enforces the rule. The board will also regularly update the state department of ecology, the state department of agriculture, and the state department of fish and wildlife. These agencies regulate PFAS in other contexts. Some of the changes being considered come from new regulations from the EPA. The board will work to ensure the changes align with the EPA's science and research.

Process for Developing New Rule: The board will use a collaborative rule-making approach.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Shay Bauman, P.O. Box 47990, Olympia, WA 98504-7790 [7990], phone 564-669-8929, fax 360-236-4088, TTY 711, email shay.bauman@sboh.wa.gov, website <https://sboh.wa.gov/>.

Additional comments: To be added to the listserv for notifications regarding this rule making, email drinkingwater@sboh.wa.gov with the subject line "PFAS Notification." The board, in collaboration with the department of health, will complete an environmental justice assessment for this rule making.

September 30, 2024
Michelle A. Davis, MPA
Executive Director