

WSR 25-05-095

EMERGENCY RULES

STATE BOARD OF HEALTH

[Filed February 19, 2025, 8:49 a.m., effective February 19, 2025, 8:49 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Testing of drinking water contaminants; state action levels (SALs) and state maximum contaminant levels (MCLs) in WAC 246-290-315.

The state board of health (board) has authority under RCW 43.20.050 to adopt rules for group A public water systems that are necessary to ensure safe and reliable public drinking water and to protect the public health. Chapter 246-290 WAC, Group A public water supplies, establishes standards and requirements for these water systems. The department of health (department) administers the rules.

To ensure safe drinking water, water must be tested for contaminants. The board establishes SALs and MCLs to ensure contaminate levels are below 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 a less stringent SAL and associated requirements, including monitoring and public notice.

The Environmental Protection Agency published new federal standards for per- and polyfluoroalkyl substances (PFAS) on April 10, 2024, with an adoption date of June 25, 2024. These new standards include MCLs. This affects the board's rule and triggers the provision in WAC 246-290-315(8). The federal standards, however, have delayed effective dates for criteria and public health protections that are currently in place for Washington. According to the Washington state rules associated with the SALs, public water systems must notify customers of detections of PFAS above the SAL within 30 days of that detection. This is necessary to allow people the opportunity to protect themselves by using bottled water, securing a filter, or taking other measures. Thirty-day public notification is not effective for MCLs in the federal standard until April 2029. Without this amendment to WAC 246-290-315, customers served by group A public water systems will no longer be notified of dangerous levels of PFAS in their drinking water, which is a significant reduction in protections.

The board adopted an emergency rule on June 12, 2024, to amend WAC 246-290-315 such that the criteria would apply on the effective date of an MCL as set in the federal standard, not the adoption date, in order to maintain vital public health protections for drinking water safety. Along with the emergency rule making, the board initiated a permanent rule making to amend the rule language to align with the emergency provision and explore other protections. The CR-101 preproposal statement of inquiry for the permanent rule making was filed as WSR 24-20-093 on September 30, 2024. This third emergency rule continues the emergency rule originally filed on June 24, 2024, as WSR 24-14-016; and extended on October 22, 2024, as WSR 24-21-138, without change.

Citation of Rules Affected by this Order: Amending WAC 246-290-315.

Statutory Authority for Adoption: RCW 43.20.050 (2)(a).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and

that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The federal adoption date of the standards was June 25, 2024, at which point the MCLs and relative protections would have superseded the SALs. Because of the delayed effective date, currently active public health protections would have ended on that date. The board finds that emergency adoption of this rule is necessary to preserve public health.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: February 19, 2025.

Michelle A. Davis, MPA
Executive Director

OTS-5531.1

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

WAC 246-290-315 State action levels (SALs) and state maximum contaminant levels (MCLs). (1) The department shall consider the following criteria to select a contaminant for developing a SAL:

(a) Drinking water contributes to human exposure to the contaminant.

(b) The contaminant is known or likely to occur in public water systems at levels of public health concern. Sources of occurrence information include, but are not limited to:

(i) Washington state department of agriculture;

(ii) Washington state department of ecology; and

(iii) Monitoring results reported in accordance with 40 C.F.R. 141.35.

(c) The contaminant has a possible adverse effect on the health of persons exposed based on peer-reviewed scientific literature or government publications, such as:

(i) An EPA health assessment such as an Integrated Risk Information System assessment;

(ii) Agency for Toxic Substances and Disease Registry toxicological profiles;

(iii) State government science assessment; and

(iv) EPA guidelines for exposure assessment such as the EPA exposure factors handbook.

(d) A certified drinking water lab can accurately and precisely measure the concentration of the contaminant in drinking water at and below the level of public health concern using EPA-approved analytical methods.

(2) After consideration of the criteria in subsection (1) of this section, the department may develop a SAL based on the following:

(a) Evaluation of available peer-reviewed scientific literature and government publications on fate, transport, exposure, toxicity and health impacts of the contaminant and relevant metabolites;

(b) An assessment based on the most sensitive adverse effect deemed relevant to humans and considering susceptibility and unique exposures of the most sensitive subgroup such as pregnant women, fetuses, young children, or overburdened and underserved communities; and

(c) Technical limitations to achieving the SAL such as insufficient analytical detection limit achievable at certified drinking water laboratories.

(3) The state board of health shall consider the department's findings under subsections (1) and (2) of this section when considering adopting a SAL under this chapter.

(4) Contaminants with a SAL.

(a) If a SAL under Table 9 of this section is exceeded, the purveyor shall take follow-up action as required under WAC 246-290-320. For contaminants where the SAL exceedance is determined based upon an RAA, the RAA will be calculated consistent with other organic contaminants per WAC 246-290-320(6) or other inorganic contaminants per WAC 246-290-320(3).

TABLE 9
STATE ACTION LEVELS

Contaminant or Group of Contaminants	SAL	SAL Exceedance Based On:
Per- and polyfluoroalkyl substances (PFAS)		
PFOA	10 ng/L	Confirmed detection
PFOS	15 ng/L	Confirmed detection
PFHxS	65 ng/L	Confirmed detection
PFNA	9 ng/L	Confirmed detection
PFBS	345 ng/L	Confirmed detection

(b) If a system fails to collect and submit a confirmation sample to a certified lab within ten business days of notification of the sample results, or as required by the department, the results of the original sample will be used to determine compliance with the SAL.

(5) The department shall consider the following when developing a state MCL:

(a) The criteria in subsection (1) of this section;

(b) Whether regulating the contaminant presents a meaningful opportunity to reduce exposures of public health concern for persons served by public water systems;

(c) The need for an enforceable limit to achieve uniform public health protection in Group A public water systems; and

(d) The need for an enforceable limit to support source water investigation and clean-up of a contaminant in drinking water supplies by responsible parties.

(6) In addition to the requirements in subsection (5) of this section, the department shall:

(a) Meet the requirements of subsection (2) of this section;

(b) Comply with the requirements in RCW 70A.130.010 to establish standards for chemical contaminants in drinking water;

(c) Consider the best available treatment technologies and affordability taking into consideration the costs to small water systems; and

(d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs.

(7) The state board of health shall consider the department's findings under subsections (5) and (6) of this section and follow the requirements under chapters 34.05 and 19.85 RCW when adopting a state MCL under this chapter.

(8) (~~Upon federal adoption of an MCL~~) When a federal MCL takes effect, the federal MCL will supersede a SAL or a less stringent state MCL, and the associated requirements, including for monitoring and public notice. If the federally adopted MCL is less stringent than a SAL or state MCL, the board may take one of the following actions:

(a) Adopt the federal MCL; or

(b) Adopt a state MCL, at least as stringent as the federal MCL, using the process in subsections (6) and (7) of this section.