

February 25, 2025

TO: Michelle Davis, Executive Director
Washington State Board of Health

FROM: Lauren Jenks, Assistant Secretary
Division of Environmental Public Health

SUBJECT: State Board of Health Rule Making Authority Delegation Request- Aligning chapters 246-290 and 246-390 WAC with the changes to the National Primary Drinking Water Regulation regarding PFAS.

The Department of Health (department) is requesting delegation of rule-making authority from the State Board of Health (board) to conduct exception rulemaking to align chapter 246-290 WAC, Group A Public Water Supplies, and chapter 246-390 WAC, Drinking Water and Laboratory Certification and Data Reporting, with the recent changes to the National Primary Drinking Water Regulation (40 CFR Part 141) regarding PFAS. Changes to the rule under this delegation request, if approved, will be limited to:

- Citing the federal rule in numerous sections within chapters 246-290 and 246-390 WAC to add by reference the requirements for monitoring, reporting, public notification, treatment, and violations.
- Incorporating the federal PFAS maximum contaminant levels (MCLs) into the appropriate contaminant tables.
- Consideration of minor editorial changes and updates to definitions to ensure consistency of terms between federal and state rules in chapters 246-290 and 246-390 WAC.

On April 26, 2024, the EPA published the first-ever national drinking water standard (federal standard) to protect communities from exposure to PFAS. The federal standard used new science to establish federal MCLs, requirements for monitoring, reporting, public notification, treatment, and violations. Across almost all the contaminants, the MCLs in the federal standard are more stringent than the state action levels (SALs) the Board adopted in 2021. The EPA also included a hazard index for certain chemicals to account for additive effects of some combinations of PFAS. However, certain aspects of the federal standard are not effective until 2027 and 2029, including 30-day public notification.

The Board adopted an emergency rule, WSR 24-14-016 on June 24, 2024, to amend WAC 246-290-315 and is currently working on permanent rulemaking to keep state protections for drinking water in place until the EPA's new federal standards take effect. This exception rulemaking is necessary to adopt by reference the federal PFAS requirements for monitoring, reporting, public notification, treatment, and violations.

Conformance with the State Board of Health Delegation Criteria:

The board's policy (Policy Number 2000-001) for Considering Delegation of Rule to the Department of Health provides the following elements for consideration:

The extent to which the proposed rule revision is expected to include editorial and/or grammatical changes that do not change the substance of the rule:

- Editorial changes and technical corrections may be necessary to improve clarity and align the federal requirements with the structure and organization of the chapter. None of these changes will affect the substance of the language being incorporated into the chapter.

The extent to which the proposed rule may make significant changes to a policy or regulatory program.

- The scope of the proposed rule will be limited to adding by reference the federal PFAS requirements for monitoring, reporting, public notification, treatment, and violations, adding PFAS federal levels into the applicable contaminants tables, and making minor editorial changes and updates to definitions to ensure consistency of terms between federal and state rules.

The extent to which the proposed rule seeks to adopt federal requirements in which the state has little or no discretion.

- The scope of the proposed rule will be limited to adding by reference the federal PFAS requirements for monitoring, reporting, public notification, treatment, and violations, adding PFAS federal levels into the applicable contaminants tables, and making minor editorial changes and updates to definitions to ensure consistency of terms between federal and state rules.

The extent to which the substance and direction of the proposed rule is expected to have broad public and professional consensus.

- The department does not anticipate any controversy or opposition to this rule change.

The extent to which the rule revision process would benefit from the board's role as a convener of interested parties.

- The department will keep interested parties engaged and informed throughout rule-making process via an up-to-date webpage and GovDelivery notifications that will be distributed using existing listservs. The department will have a formal comment period, as well as hold a public hearing.

For additional information, please contact Mike Means, Capacity Development and Policy Manager for the Office of Drinking Water, at mike.means@doh.wa.gov.