

Office of Drinking Water

Request for Delegation of Rulemaking

June 2009



Introduction

The mission of the Department of Health (department) Office of Drinking Water (ODW) is to protect the health of the people of Washington State by assuring safe and reliable drinking water. Washington regulates public water systems by carrying out the federal Safe Drinking Water Act under a formal agreement with the U.S. Environmental Protection Agency (EPA).

Group A water systems serve 15 or more residential connections, or 25 or more people for 60 or more days per year. The State Board of Health (board) has authority to update regulations for Group A public water systems in chapter 246-290 Washington Administrative Code (WAC).

Proposal

The department is requesting the board's delegation of rule-making authority to adopt new federal drinking water requirements into chapter 246-290 WAC, Group A public water systems. Changes to the regulation will be limited to the new federal requirements and technical and editorial changes necessary to improve clarity, and ensure the state regulation is consistent with the federal requirements.

What: Adoption of New Federal Requirements

In October 2007, EPA finalized the Lead and Copper: Short-Term Regulatory Revisions and Clarifications Rule. This change is designed to increase public health protection by strengthening implementation of the original Lead and Copper Rule (adopted June 1991) and the Lead and Copper Rule – Minor Revisions (adopted January 2000). The revision will address changes in monitoring, treatment processes, consumer awareness, and lead service line replacement. Revisions to chapter 246-290 WAC have been adopted by reference during the past two revisions for Lead and Copper. The Short-Term requirements will also be adopted by reference except that the new health effects language will be incorporated into Part 7 - Reporting - Subpart B – Consumer Confidence Reports.

Why:

- The Lead and Copper Rule – Short-Term Revisions enhances the implementation of the Lead and Copper Rule in the areas of monitoring, treatment, consumer awareness, lead service line replacement, water system compliance with public education, and consumer information.
- As part of a formal agreement with EPA, the state must adopt and administer state regulations that are at least as stringent as the federal rules.
- The new federal rule must be adopted by the state within two years (by October 2009), unless EPA grants the state an additional two-year extension (to October 2011). The department is currently in the process of requesting an extension from EPA.

Who is affected and how:

- Group A public water systems: The Lead and Copper Rule – Short-Term Revisions affects about 2,590 community and non-community water systems who provide drinking water to more than 5.7 million people. The largest impact to these systems will be notifying affected households of sample collection test results and providing educational information on what the results mean.

- Local health jurisdictions: The revisions require community water systems deliver educational materials to local health agencies and to encourage local health to distribute these materials to at-risk populations they may serve. Additionally, community systems must make a good-faith effort to contact at-risk populations and can include requesting a contact list of childcare facilities, obstetrician-gynecologists, midwives, and preschools from the local health agencies. However, the revisions put no specific requirements on local health agencies
- DOH/ODW – Existing staff will need to implement the Lead and Copper Rule – Short-Term Revisions and enforce the regulation primarily by tracking more consumer notices/public education, conducting additional reviews of new sources related to corrosion control issues, and potential compliance actions.

Conformance with the State Board of Health Delegation Criteria:

The board “Policy 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:
 - Limited editorial changes will be necessary to improve clarity and ensure consistency with the federal rule.
- The extent to which the proposed rule seeks to adopt federal requirements in which the state has little or no discretion:
 - The rule allows the state limited discretion in specific areas. The department will choose from EPA options to determine the department’s direction on discretionary items.
 - Limited discretion is provided primarily in areas of sampling, public education, monitoring requirements, and public notification. For example, the rule allows the state to require water systems with less than 5 taps used for human consumption to only collect one sample from each tap with the highest result being used to determine the 90th percentile value.
- The extent to which the proposed rule may make significant changes to a policy or regulatory program:
 - Changes to the state regulation will be limited to those required by the federal Lead and Copper Rule – Short-Term requirements.
- The extent to which the rule revision process would benefit from the board’s role as a convener of interested parties:
 - The department does not expect the rule revision to be controversial or contentious. Stakeholders will be fully involved through the Washington Water Utility Council and through ODW presentations and rule adoption-related public hearings. The draft rule will be made available through the department’s Web sites, e-mail notification to stakeholders and interested parties, and the quarterly newsletter “Water Tap”. The department will distribute the proposed rule to stakeholders and post it on the department’s rules comment Web site during the formal public comment period.

For additional information contact:

Denise Clifford; Director, Office of Drinking Water

(360) 236-3110

denise.clifford@doh.wa.gov

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