Proposed Rule to Restore Protective Human Health Water Quality Criteria in Washington

Summary
EPA is proposing a rule that would reinstate the same science-based federal human health water quality criteria to protect Washington’s waters that it withdrew in 2020, including waters where tribes have reserved rights to fish. This rule would replace the less stringent state criteria that EPA approved in the prior administration.

Background
Clean Water Act (CWA) section 101(a)(2) establishes the national goal that water quality should provide for the protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water. EPA periodically publishes national criteria recommendations under CWA section 304(a) for states to consider using to meet these CWA section 101(a)(2) goals. CWA section 303(c)(2)(B) requires states to adopt numeric water quality criteria for all priority pollutants for which EPA has published criteria recommendations. When states designate waterbody uses such as fish and shellfish harvesting and drinking water supply, they must also establish human health criteria (HHC) that protect people from cancer and non-cancer effects of pollutants.

In August 2016, Washington submitted HHC to EPA for review under the CWA, which EPA partially approved and partially disapproved in November 2016. For the HHC that EPA disapproved, the Agency promulgated federal HHC to protect Washington’s waters for use in fish and shellfish harvesting and drinking water supplies. In response to a 2017 petition from several regulated entities, the Agency reversed its prior partial disapproval of certain HHC in May 2019. EPA then withdrew the federally promulgated HHC in May 2020. The Agency’s actions in 2019 and 2020 are the subject of two legal challenges.

On June 30, 2021, the Court approved EPA’s request for the cases to be held in abeyance pending voluntary reconsideration and rulemaking by the Agency. EPA has concluded that its 2019 and 2020 actions related to Washington’s HHC were not based on a sound scientific rationale and were therefore not protective of the applicable designated uses in Washington.

EPA’s Recommended Approach to Derive HHC
EPA derives HHC to protect against carcinogenic effects using the following inputs: cancer slope factor, cancer risk level (CRL), body weight, drinking water intake rate, fish consumption rate (FCR), and a bioaccumulation factor(s) (BAFs). For non-carcinogenic and nonlinear carcinogenic effects, EPA uses a reference dose in place of a cancer slope factor and CRL, as well as a relative source contribution (RSC), which is intended to ensure that an individual’s total exposure from all sources does not exceed the criteria.

How EPA Derived the Proposed Criteria
To derive Washington-specific criteria, EPA is proposing to use the same cancer slope factors, CRL of one in one million (10^-6), body weight, drinking water intake rate, BAFs, reference doses, FCR of 175 g/day, and pollutant-specific RSCs that the Agency used in its 2016 federal rule.
Scope of the Proposed Rule

EPA is proposing 141 HHC for 72 different pollutants (70 organism-only criteria and 71 water-plus-organism criteria) to protect the applicable designated uses of Washington’s waters. These proposed federal criteria would supersede the HHC that EPA disapproved in 2016 and later approved in 2019 (the “2019 Reconsidered HHC”). This rule would not affect the federal HHC that EPA promulgated for arsenic, methylmercury, or bis (2-chloro-1-methylethyl) ether in 2016, which remain in place for CWA purposes, nor Washington’s HHC that EPA approved in 2016. These proposed federal criteria would apply only to waters under Washington’s jurisdiction.

Public Hearings and Soliciting Comments on EPA’s Proposed Rule

EPA welcomes comments concerning the proposed rule and requests any additional information for consideration by the Agency.

In addition to accepting written comments from the public, EPA is offering two online public hearings on the proposed rule so that interested parties may provide oral comments. For details on how to submit comments and/or attend an online public hearing, visit: www.epa.gov/wqs-tech/federal-human-health-criteria-washington-state-waters.

Where can I find more information?

Contact Erica Fleisig at (202) 566-1057, fleisig.ERICA@epa.gov or Lindsay Guzzo at (206) 553-0268, guzzo.lindsay@epa.gov. To access the proposed rule, Federal Register notice, and supporting documents, visit EPA’s Water Quality Standards website at: www.epa.gov/wqs-tech/federal-human-health-criteria-washington-state-waters.