

Final Rule: Reestablishing Water Quality Criteria to Protect Human Health in the State of Washington

On November 15, 2022, EPA announced a final rule to reestablish federal water quality criteria for water bodies in the State of Washington. This action reinstates science-based federal human health criteria (HHC) to protect Washington's waters and help protect the health of Washingtonians and Tribal members who eat locally caught fish and shellfish.

What Does this Mean for Communities?

Fifty years ago, the Clean Water Act (CWA) was passed by an overwhelming bipartisan majority of Congress, and it established a vision that our waters should support fishing and swimming. EPA's final rule brings the waters in the State of Washington one step closer to achieving this vision. This action uses the latest scientific knowledge to ensure that locally caught fish and shellfish, an important and culturally significant food source, are safe to eat for Washingtonians and Tribes.

What are Human Health Criteria?

As required under CWA section 304(a), EPA periodically publishes national recommended human health ambient water quality criteria that represent specific levels of chemicals or conditions in a water body that are not expected to cause adverse effects to human health. 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, if those pollutants are expected to affect the state's designated waterbody uses. When states designate waterbody uses such as fish and shellfish harvesting and drinking water supply, they must also establish HHC that protect people from cancer and non-cancer effects of pollutants. If EPA disapproves a state's submitted HHC, in certain cases the agency must promulgate federal criteria.

Background

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 May 2019, EPA reversed its prior partial disapproval of certain HHC in response to a 2017 petition from several regulated entities. In May 2020, EPA withdrew the federally promulgated HHC. EPA'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.

On March 28, 2022, EPA Administrator Regan signed a proposed rule to restore protective HHC for Washington's waters. EPA requested written comment on this proposal and conducted two online public hearings. The agency considered all comments received in development of this final rule.

Reestablishing Protective HHC for the State of Washington

EPA is finalizing 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 federal criteria apply only to Washington's water bodies, and they supersede the HHC that EPA disapproved in 2016 and later approved in 2019. This rule does 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.

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.

To derive Washington-specific criteria, EPA used 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.

Where can I find more information?

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