



PROPOSED RULE MAKING

CR-102 (July 2022)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 21, 2024

TIME: 11:04 AM

WSR 24-05-084

Agency: Department of Health

Original Notice

Supplemental Notice to WSR

Continuance of WSR

Preproposal Statement of Inquiry was filed as WSR _____; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: Climate resilience element in water system plans. The Department of Health (department) is proposing amending WAC 246-290-100 WAC, Water system plans, to add climate resilience element as a requirement for public water systems with one thousand or more connections. The proposal also makes editorial changes to align with the Code Reviser's 2023 Bill Drafting Guide.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
April 4, 2024	3:30 PM	In-person location: Department of Health 111 Israel Road SE Town Center 2, Rm 166 & 167 Tumwater, WA 98501, Virtual: Register in advance for this webinar: https://us02web.zoom.us/webinar/register/WN_Cmcv1G-kS8eT0_Ra98onmA After registering, you will receive a confirmation email containing information about joining the webinar.	The rule hearing will be hybrid. Individuals may attend either virtually or in-person.

Date of intended adoption: April 22, 2024 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Jocelyn W. Jones
Address: Department of Health
Division of Environmental Public Health
PO Box 47820
Olympia, WA 98504-7820

Email: drinkingwaterrule@doh.wa.gov

Fax: n/a

Assistance for persons with disabilities:

Contact: Jocelyn W. Jones
Phone: 360-236-3020

Fax: n/a

TTY: 711

Other: <https://fortress.wa.gov/doh/policyreview/>

By (date) April 4, 2024

Email: drinkingwaterrule@doh.wa.gov

Other:

By (date) March 20, 2024

Purpose of the proposal and its anticipated effects, including any changes in existing rules: In 2023, the Legislature passed Engrossed Second Substitute House Bill (E2SHB) 1181 that added a new section to chapter 43.20 RCW. The new law, RCW 43.20.310, requires the department to ensure that Group A community public water system plans for water systems with one thousand or more connections, initiated after June 30, 2025, include a climate resilience element. The proposed change to WAC 246-290-100, Water system plan, impacts only those systems with one thousand or more connections. The proposed change would add the statutorily required climate resilience element to the existing list of required water system plan elements and include a reference to the statute.

Reasons supporting proposal: RCW 43.20.310 requires Group A community public water systems with one thousand or more connections to include a climate resilience element in their water system plans and the department believes updating the rule to include this required element will provide consistency and clarity for water systems. The department will update the water system planning guidebook with additional details and will work with water systems as directed by RCW 43.20.310 to assist water systems with compliance.

Statutory authority for adoption: E2SHB 1181 (Chapter 228, Laws of 2023), chapter 43.20 RCW

Statute being implemented: RCW 43.20.310

Is rule necessary because of a:

Federal Law? Yes No

Federal Court Decision? Yes No

State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Type of proponent: Private Public Governmental

Name of proponent: (person or organization) Department of Health

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting: Jocelyn W. Jones	Department of Health 111 Israel Road SE, Tumwater, WA 98501	360-236-3020
Implementation: Brad Burnham	Department of Health 111 Israel Road SE, Tumwater, WA 98501	360-236-3102
Enforcement: Holly Meyers	Department of Health 111 Israel Road SE, Tumwater, WA 98501	509-329-2113

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Is a cost-benefit analysis required under [RCW 34.05.328](#)?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

No: Please explain: The proposal incorporates by reference without material change, which is exempt under RCW 34.05.328(5)(b)(iii).

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:

- | | |
|--|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule: The proposed rule incorporates by reference without material change and is dictated by statute.

(2) Scope of exemptions: *Check one.*

The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs.
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: February 21, 2024

Name: Kristin Peterson, JD for Umair A. Shah, MD, MPH

Title: Chief of Policy for Secretary of Health

Signature:

A handwritten signature in black ink that reads "Kristin Peterson". The signature is written in a cursive style with a large, looping initial "K".

WAC 246-290-100 Water system plan. (1) The purpose of this section is to establish a uniform process for purveyors to:

- (a) Demonstrate system capacity as defined in WAC 246-290-010;
- (b) Demonstrate how the system will address present and future needs in a manner consistent with other relevant plans and local, state, and federal laws, including applicable land use plans;
- (c) Establish eligibility for funding under chapter 246-296 WAC.

(2) Purveyors of the following categories of community public water systems shall submit a water system plan for review and approval by the department:

(a) Systems serving (~~one thousand~~) 1,000 or more service connections;

(b) Systems required to develop water system plans under the Public Water System Coordination Act of 1977, chapter 70A.100 RCW;

(c) Any system experiencing problems related to system capacity, as determined by the department;

(d) All new systems;

(e) Any system proposing to:

(i) Increase or otherwise modify the service area identified in a previously approved planning document; or

(ii) Increase the geographical area where direct service is provided if a planning or engineering document has not been previously approved; or

(iii) Install additions, extensions, or changes to existing source, storage, or transmission facilities and increase the approved number of service connections.

(f) Any system proposing to use the document submittal exception process in WAC 246-290-125; or

(g) Any system operating under or proposing to operate under an unspecified number of service connections.

(3) The purveyor shall work with the department to establish the relative priority and level of detail for each element of the water system plan. The priority and level of detail must be related to size, complexity, water supply characteristics, forecasted demand characteristics, past performance, planning history, and use of the water system. Project reports may be combined with a water system plan.

(4) The purveyor shall, at a minimum, address the following elements in the water system plan:

(a) Description of the water system, including:

(i) Ownership and management, including the current names, addresses, and telephone numbers of the owners, operators, and emergency contact persons for the system;

(ii) System history and background;

(iii) Related plans, such as coordinated water system plans, abbreviated coordinated water system plans, local land use plans, groundwater management plans, and basin plans;

(iv) Service area maps, including retail service area and future service area, if applicable, and areas where wholesale water is provided to other public water systems. Municipal water suppliers shall identify the area that will expand their water rights' place of use if the requirements under WAC 246-290-107 have been met;

(v) Service area characteristics, agreements, and policies;

(vi) Satellite management, if applicable.

(b) Basic planning data, including:

(i) Current population, service connections, water use, and equivalent residential units; and

(ii) Sufficient water production and consumption data to identify trends including the following elements:

(A) Monthly and annual production totals for each source, including water purchased from another public water system;

(B) Annual usage totals for each customer class as determined by the purveyor;

(C) Annual usage totals for water supplied to other public water systems; and

(D) For systems serving (~~one thousand~~) 1,000 or more total connections, a description of the seasonal variations in consumption patterns of each customer class defined by the purveyor.

(iii) Designated land use, zoning, population, and water demand within the water system's service area for the plan approval period, and at least a (~~twenty~~) 20-year planning period.

(c) Demand forecasts, developed under WAC 246-290-221, for the plan approval period, and at least a (~~twenty~~) 20-year planning period. These must show future use with and without savings expected from the system's water use efficiency program.

(d) For systems serving (~~one thousand~~) 1,000 or more total connections, a demand forecast for the plan approval period and at least a (~~twenty~~) 20-year planning period that projects demand if the measures deemed cost-effective per WAC 246-290-810 were implemented.

(e) System analysis, including:

(i) System design standards;

(ii) Water quality analysis;

(iii) Inventory and analysis of water system facilities; and

(iv) Summary of system deficiencies.

(f) Water resource analysis for the plan approval period and at least a (~~twenty~~) 20-year planning period, including:

(i) A water use efficiency program. Municipal water suppliers must meet the requirements in WAC 246-290-810;

(ii) Source of supply analysis, which includes:

(A) An evaluation of water supply alternatives if additional water rights will be pursued within (~~twenty~~) 20 years; and

(B) A narrative description of the system's water supply characteristics and the foreseeable effect from current and future use on the water quantity and quality of any body of water from which its water is diverted or withdrawn based on existing data and studies;

(iii) A water shortage response plan as a component of the reliability and emergency response requirements under WAC 246-290-420;

(iv) Water right self-assessment;

(v) Water supply reliability analysis;

(vi) Interties; and

(vii) For systems serving (~~one thousand~~) 1,000 or more total connections, an evaluation of opportunities for the use of reclaimed water, where they exist, as defined in RCW 90.46.120.

(g) Source water protection program under WAC 246-290-135.

(h) Operation and maintenance program under WAC 246-290-415 and 246-290-654(5), as applicable.

(i) Improvement program, including a capital improvement schedule that identifies all capital improvements scheduled within the plan approval period and any major projects or other capital improvements planned within at least a (~~twenty~~) 20-year planning period.

- (j) Financial program, including demonstration of financial viability by providing:
 - (i) A summary of past income and expenses;
 - (ii) A balanced operational budget for the plan approval period;
 - (iii) A plan for collecting the revenue necessary to maintain cash flow stability and to fund the capital improvement program and emergency improvements; and
 - (iv) An evaluation that has considered:
 - (A) The affordability of water rates; and
 - (B) The feasibility of adopting and implementing a rate structure that encourages water demand efficiency.
 - (k) Other documents, such as:
 - (i) Documentation of SEPA compliance;
 - (ii) Agreements; and
 - (iii) Comments from each local government with jurisdiction and adjacent utilities.
- (1) Systems serving 1,000 or more connections, a climate resilience element as required under RCW 43.20.310.
- (5) Purveyors intending to implement the project report and construction document submittal exceptions authorized under WAC 246-290-125 must include:
 - (a) Standard construction specifications for distribution mains; and/or
 - (b) Design and construction standards for distribution-related projects, including:
 - (i) Description of project report and construction document internal review procedures, including engineering design review and construction completion reporting requirements;
 - (ii) Construction-related policies and requirements for external parties, including consumers and developers;
 - (iii) Performance and sizing criteria; and
 - (iv) General reference to construction materials and methods.
- (6) Purveyors shall submit reports identifying the progress in developing their water system plans if required by the department.
- (7) Purveyors shall transmit water system plans to adjacent utilities and each local government with jurisdiction, to assess consistency with ongoing and adopted planning efforts.
- (8) Prior to department approval of a water system plan or a water system plan update, the purveyor shall:
 - (a) Hold an informational meeting for the water system consumers and notify consumers in a way that is appropriate to the size of the water system; and
 - (b) Obtain approval of the water system plan from the purveyor's governing body or elected governing board.
- (9) Department approval of a water system plan is effective for ~~((ten))~~ 10 years from the date of written approval unless:
 - (a) The purveyor requests and receives a plan approval period of less than ~~((ten))~~ 10 years; or
 - (b) The department requests an updated plan.
- (10) The purveyor shall update the water system plan and obtain department approval at or before the expiration of the current plan approval if the system meets any of the conditions of subsection (2) of this section.
- (11) Water system plan amendments. A purveyor may submit an amendment to its current approved water system plan for department approval at any time during the plan approval period. Project reports may be included in a water system plan amendment to meet the require-

ments under WAC 246-290-110(3). Department approval of a water system plan amendment does not alter the current plan approval period in accordance with subsection (9) of this section and does not satisfy the requirement of subsection (2) of this section to update the water system plan.