

Proposed Revision of Federal Human Health Criteria Applicable to Washington

Summary

EPA is proposing a rule that revises the current federal human health criteria applicable to Washington's waters to ensure that the criteria are set at levels that will protect fish consumers in Washington from exposure to toxic pollutants.

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. To protect people from cancer and non-cancer effects from pollutants in drinking water and fish and shellfish, states must establish human health criteria for their waters that are designated for such uses. EPA periodically publishes 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 toxic pollutants for which EPA has published CWA section 304(a) criteria recommendations. In 1992, EPA promulgated the National Toxics Rule (NTR) at 40 CFR 131.36, establishing chemical-specific numeric criteria for 14 states and territories, including Washington, that were not in compliance with CWA 303(c)(2)(B). Since Washington has not yet adopted its own water quality criteria to protect human health, the federal human health criteria in the NTR remain applicable to Washington's waters.

EPA derived the human health criteria in the NTR based on available national data at the time, which indicated that people ate, on average, 6.5 grams per day (g/day) of fish. The best available data now demonstrate that fish consumers in Washington, including tribes with treaty-protected rights, consume much more fish than 6.5 g/day. Therefore, to protect fish consumers in Washington from the adverse effects of toxic pollutants, EPA is updating the federal human health criteria applicable to Washington, using the best available science on pollutant toxicity and exposure.

Fish Consumption and Tribal Reserved Rights

When setting criteria to protect human health in Washington, EPA considered the requirements in the CWA and EPA's regulations at 40 CFR 131, as well as other applicable laws, including federal treaties. In Washington, many tribes hold reserved rights to take fish for subsistence, ceremonial, religious, and commercial purposes, including treaty-reserved rights to fish at all usual and accustomed fishing grounds and stations in waters under state jurisdiction. A majority of waters under Washington's jurisdiction are covered by these reserved rights. EPA is proposing to consider the tribal population exercising their reserved fishing rights in Washington as the target population for the purposes of deriving protective criteria that allow

the tribes to harvest and consume fish consistent with their reserved rights.

Scope of the Proposed Rule

EPA now has CWA 304(a) criteria recommendations for 99 priority toxic pollutants (85 for which EPA established criteria in the NTR, plus 14 additional pollutants). In accordance with the requirements of CWA section 303(c)(2)(B), EPA is proposing new and revised Washington-specific human health criteria for these 99 priority toxic pollutants, to apply to waters under Washington's jurisdiction.

How EPA Derived the Proposed Criteria

EPA derives human health criteria for carcinogenic effects using the following inputs: cancer slope factor, cancer risk level, body weight, drinking water intake rate, fish consumption rate (FCR), and a bioaccumulation factor (or factors). For non-carcinogenic and nonlinear carcinogenic effects, EPA uses a reference dose in place of a cancer slope factor and cancer risk level, as well as a relative source contribution, 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 is proposing to use the same cancer slope factors, cancer risk level, body weight, drinking water intake rate, bioaccumulation factors, reference doses and relative source contribution factors that the Agency uses in its current 304(a) recommended human health criteria. To protect fish consumers in Washington, including tribes with treaty-protected rights, EPA proposes to derive the criteria using a FCR of 175 g/day. This rate accounts for local data, reflects input from tribes in Washington, and protects fish consumers downstream in Oregon, where the state has also used a FCR of 175 g/day to derive its human health criteria.

How EPA's Proposal Relates to the State of Washington's Efforts to Develop Criteria and Revise Implementation Tools

The state of Washington proposed human health criteria and revisions to certain implementation tools (e.g., variances and compliance schedules) in January 2015. However, in July 2015, Governor

Inslee directed the Department of Ecology to reconsider its proposed human health criteria and implementation tool revisions given the 2015 Legislature's failure to pass proposed legislation and funding for stronger controls on toxics. Therefore, EPA is moving forward with its proposal to provide for timely, protective updates to the criteria applicable in the state. EPA's proposal does not revise Washington's existing EPA-approved implementation provisions or affect the state's ability to use those tools when implementing the federal criteria.

If the state of Washington submits final criteria to EPA for approval under the Clean Water Act before EPA finalizes the federal human health water quality criteria, EPA will review and act upon the state's submission in a timely manner and prior to any final action on the federal criteria. If EPA approves criteria submitted by the state, the corresponding federal criteria will not be finalized. The state can update its implementation tools and could include those updates in a future submittal along with final human health criteria. Implementation tools can provide a means of making reasonable progress in improving water quality while protecting the economic viability of state industries and communities.

Where can I find more information?

Contact Erica Fleisig at (202) 566-1057, fleisig.eric@epa.gov or Matthew Szelag at (206) 553-5171, szelag.matthew@epa.gov. To access the proposed rule, federal register notice, and supporting documents, visit EPA's Water Quality Standards website at: <http://water.epa.gov/scitech/swguidance/standards/wqswa.cfm>