STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: DG-01-24

Relating to: Revisions to ch. NR 809 related to drinking water standards for PFAS.

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

The rule will be proposed as a permanent rule.

2. Detailed description of the objective of the proposed rule:

The objective of the proposed rule is to amend ch. NR 809, Wis. Adm. Code, to establish drinking water standards, referred to as Maximum Contaminant Levels (MCLs), based on the new federal standards for certain per- and polyfluoroalkyl substances (PFAS) including the contaminant compounds perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorohexane sulfonic acid (PFHxS), perfluorononanoic acid (PFNA), perfluorobutane sulfonic acid (PFBS), and hexafluoropropylene oxide dimer acid (HFPO-DA). The impacts of certain PFAS to Wisconsin's surface water and groundwater sources are threats to public health, welfare, and safety in consuming drinking water. Establishing drinking water standards for certain PFAS contaminants in this rule will protect public health by setting MCLs that may not be exceeded at certain public water systems. If MCLs are exceeded, the public water system must take corrective action to protect public health, welfare and safety of the customers it serves.

The Environmental Protection Agency (EPA) set individual MCLs for five of the PFAS, including PFOA, PFOS, PFHxS, PFNA, and HFPO-DA. Additionally, EPA is using a Hazard Index (HI) approach to protect public health from mixtures of PFHxS, HFPO-DA, PFNA, and PFBS because of their known additive toxic effects and occurrence, and likely co-occurrence, in drinking water. The HI MCL is for any mixture containing two or more of the four compounds at or above the practical quantitation levels.

As part of a 2022 ch. NR 809 revision, the Wisconsin Department of Natural Resources (department) promulgated state MCLs for PFOA and PFOS. This rule would revise the state PFOA and PFOS MCLs to be consistent with (no less stringent than) the new federal MCL standards for PFOA and PFOS. The federal Safe Drinking Water Act (SDWA) requires Wisconsin to implement the federal PFAS MCL standards into its own state regulations in order to retain primary enforcement authority over the state's public water systems.

Sampling conducted pursuant to the current ch. NR 809 rule identified PFAS contaminants above the level of detection in the drinking water at 568 of 1,860 (30%) Wisconsin public water systems. Ninety-one (5%) of all active public water systems that submitted compliance samples pursuant to ch. NR 809 have had detects above EPA's new MCLs.

Many studies have documented adverse health effects associated with exposure to PFOA, PFOS, PFNA, PFBS, PFHxS, and HFPO-DA. Adverse health effects include effects on the liver (*e.g.,* liver cell death),

growth and development (*e.g.,* low birth weight), hormone levels, kidney, the immune system (reduced response to vaccines), lipid levels (*e.g.,* high cholesterol), the nervous system, and reproduction, as well as increased risk of certain types of cancer.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Chapter NR 809, Wis. Adm. Code contains MCLs for more than 90 regulated contaminants, including MCLs established in 2022 for PFOA and PFOS. This rulemaking will add drinking water standards for four PFAS contaminants: PFNA, PFHxS, PFBS, and HFPO-DA. This rulemaking will also lower the current state MCLs for PFOA and PFOS (currently 70 parts per trillion (ppt) individually or combined) to be consistent with EPA's MCLs (4 ppt individually). This is consistent with the existing policy in ch. NR 809, Wis. Adm. Code, to establish drinking water standards that are no less protective than what is required under the SDWA and provide minimum standards for the protection of public health, safety and welfare in the consumption of safe drinking water.

A policy alternative would be to enact stricter PFAS MCLs than the federal standards. However, the new federal standards will already reduce Wisconsin's MCLs for PFOA and PFOS and include 4 new PFAS compounds which were not previously regulated by ch. NR 809, Wis. Adm. Code. Enacting state standards that are lower than EPA's MCLs could increase treatment costs for some systems, making it more expensive than it would be to comply with the EPA MCLs.

Another policy alternative would be to not enact state standards for PFAS that are consistent with the federal SDWA regulations. However, Wisconsin's public water systems would still be required to comply with the federal SDWA regulations for PFAS and would be subject to enforcement by EPA rather than the department.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Chapter NR 809, Wis. Adm. Code, is adopted under authority granted in chs. 280 and 281, Wis. Stats. Under s. 281.17(8)(a), Wis. Stats., "the department may establish, administer and maintain a safe drinking water program no less stringent than the requirements of the safe drinking water act, 42 USC 300f to 300j-26." The new federal MCLs include standards for PFHxS, PFNA, HFPO-DA, and PFBS, which do not currently have state standards in Wisconsin, and includes MCLs for PFOA and PFOS that are lower than Wisconsin's current MCLs. The rule will amend Wisconsin's standards to be no less stringent than the federal MCLs established under the SDWA.

Other related statutory authority includes:

- Section 280.11(1), Wis. Stats., provides department authority to prescribe, publish and enforce minimum reasonable standards for obtaining pure drinking water for human consumption and establishing all safeguards deemed necessary in protecting the public health against the hazards of polluted sources of impure water supplies intended or used for human consumption. The department has general supervision and control of all methods of obtaining groundwater for human consumption including sanitary conditions. It is generally authorized to prescribe, amend, modify or repeal any rule or regulation previously prescribed and shall do and perform any act deemed necessary for the safeguarding of public health.

- Section 281.12, Wis. Stats., provides that the department has general supervision and control over the waters of the state and is to carry out the planning, management and regulatory programs necessary for implementing the policy and purpose of ch. 281, Wis. Stats., including to protect, maintain and improve water quality. The department shall also formulate plans and programs for

the prevention and abatement of water pollution and for the maintenance and improvement of water quality.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The department estimates that 925 hours of state employee time will be required to complete the promulgation of the proposed rules.

6. List with description of all entities that may be affected by the proposed rule:

The proposed rule will affect the following entities:

- Municipal community water systems (cities, townships, sanitary districts)
- Other-than-municipal community water systems (mobile home parks, apartment buildings, condominium associations)
- Non-transient non-community water systems (small businesses with 25 or more employees that are not on a municipal source)
- Laboratories certified to perform PFOS, PFOA, PFHxS, PFNA, PFBS, and HFPO-DA analysis in drinking water
- Treatment installation businesses
- Wisconsin Department of Natural Resources
- Wisconsin Department of Health Services
- Wisconsin Department of Safety and Professional Services

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

The process for the proposed amendment to ch. NR 809, Wis. Adm. Code, to establish and amend MCLs for PFAS is consistent with the process for establishing rules for other drinking water contaminants regulated under the federal SDWA, specifically Title 40, Ch. 1, Subch. D, related to EPAs' Water Programs. EPA has granted the department primary enforcement authority (primacy) to implement the SDWA.

In April 2024, EPA finalized federal regulations that create MCLs for PFOS, PFOA, PFHxS, PFNA, PFBS, and HFPO-DA. Specifically, EPA established National Primary Drinking Water Regulation (NPDWR) and health-based Maximum Contaminant Level Goals (MCLGs) for PFOS, PFOA, PFHxS, PFNA, and HFPO-DA. The NPDWR, which is the same as the MCL, is the regulatory enforcement number that takes into consideration feasibility, including currently available analytical methods to measure and treat these chemicals in drinking water. The MCLG is a health-based goal. EPA finalized the following standards for PFOS, PFOA, PFHxS, PFNA, and HFPO-DA:

	NPDWR / MCL (ppt)	MCLG (ppt)
PFOS	4	0
PFOA	4	0
PFHxS	10	10
PFNA	10	10
HFPO-DA	10	10

EPA finalized federal regulations use a HI approach to protect public health from mixtures of PFHxS, HFPO-DA, PFNA, and PFBS because of their known additive toxic effects and occurrence and likely co-occurrence in drinking water. EPA is proposing a HI of 1 as the MCLG and MCL for any mixture

containing two or more of these compounds because it represents a level at which no known or anticipated adverse human health effects are expected to occur and allows for an adequate margin of safety.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):

The federal regulation and this rule will require testing at a frequency similar to other synthetic organic compounds having SDWA MCLs. This will affect approximately 1,900 public water systems. This testing would occur at least every 3 years but may be as often as every quarter for approximately 10% of public water systems, depending on their detected levels of the regulated PFAS. Currently the cost of this analysis is approximately $600 per sample.

Under the federal regulation and this rule, approximately 90 systems would need to treat their water or drill a new well (based on data from ch. NR 809 compliance monitoring). The range of potential costs for mitigation of PFAS contamination at these public water systems is broad and will be further examined in an economic impact analysis. On the high end, treatment at a large municipal public water system could be $25 million or more. On the lower end a smaller noncommunity system may choose to drill a new well if it is possible to find an uncontaminated aquifer. The typical cost of a well at a non-transient non-community system is approximately $16,000.

Municipal public water systems may be eligible for loans through the Safe Drinking Water Loan Program, which can include reduced-interest rate loans and principal forgiveness. Federal Bipartisan Infrastructure Law funding of four million dollars is available for other-than-municipal community and non-profit non-Transient non-Community public water systems through the Emerging Contaminants in Small or Disadvantaged Communities Grant Program. Up to $240,000 is available for each qualifying system to mitigate PFAS contamination.

The economic benefits of the avoided cost of human health impacts may greatly outweigh the costs of treating the water or drilling a new well.

9. Anticipated number, month and locations of public hearings:

The department anticipates holding one public hearing on the final proposed rule language in the fall of 2026. The department will hold the meeting in Madison with an option for virtual participation to allow for as many people to attend as possible.

Comments may be provided by mail, phone and email as well as in-person.

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Steven Little, Deputy Secretary

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